



TECHNOLOGY LAW UPDATE

***Frank's Casing Crew
& Rental Tools, Inc.***
v.
***Weatherford Int'l,
Inc.***

Nos. 03-1519, -1563
Federal Circuit
Nov. 30, 2004

The primary difference between structural equivalents under § 112, ¶ 6 and the doctrine of equivalents is a question of timing. . . . If [a proposed equivalent arose before patent filing], a § 112, ¶ 6 structural equivalents analysis applies and any analysis for equivalent structure under the doctrine of equivalents collapses into the § 112, ¶ 6 analysis. If after, a non-textual infringement analysis proceeds under the doctrine of equivalents.

On November 30, 2004, the Federal Circuit affirmed the district court's summary judgment that Weatherford did not infringe U.S. Patent No. 5,049,020, which related to a system for handling sections of well casing suspended within a derrick during oil field operations. The Federal Circuit stated:

[T]he claim element "means for selectively pivoting" is in means-plus-function format and governed by § 112, ¶ 6. A means-plus-function limitation requires a court first to identify the claimed function and then to determine the structure in the specification that corresponds to that function. . . . The district court determined that the structure for this function necessarily includes a lift plate under the boom. The specification amply supports the trial court's identification of corresponding structure. . . .

A consistent reading of the claims also supports the trial court's claim construction. In other words, "the same terms appearing in different portions of the claims should be given the same meaning unless it is clear from the specification and prosecution history that the terms have different meanings at different portions of the claims." If possible, this court construes claim terms "in a manner that renders the patent internally consistent" . . .

This court recognizes that the principle of consistency within claims operates within the framework of related claims. In this case, however, this court discerns a sufficient relationship between the claims with and without a yawing function. . . . Thus, the means-plus-function limitation must have the same structure in claims with and without the yawing function. The specification gives no reason to read the same limitation differently in claims with or without yawing. Because the '020 patent neither clearly indicates that the pivoting limitation should have different meanings in claims that do not have a yawing function, nor discloses an alternative embodiment, the trial court correctly read "means for selectively pivoting" to include a lift plate under the boom. To conclude otherwise would render the patent internally inconsistent and the invention inoperable. Because these reasons sufficiently support the district court's claim construction, this court need not reach the district court's disclaimer finding.

Because structural equivalents under § 112, ¶ 6 are included within literal infringement of means-plus-function claims, "the court must compare the accused structure *with the disclosed structure*, and must find equivalent *structure* as well as *identity* of claimed *function* for the structure." [N]o reasonable jury could fail to find a substantial difference between the two raising and lowering mechanisms in the accused device and the '020 patent. [T]here is also no possible equivalent under the doctrine of equivalents. The primary difference between structural equivalents under § 112, ¶ 6 and the doctrine of equivalents is a question of timing. As this court has explained, "[a] proposed equivalent must have arisen at a definite period in time, i.e., either before or after [patent filing]. If before, a § 112, ¶ 6 structural equivalents analysis applies and any analysis for equivalent structure under the doctrine of equivalents collapses into the § 112, ¶ 6 analysis. If after, a non-textual infringement analysis proceeds under the doctrine of equivalents." In this case the proposed equivalent—a lifting mechanism without a lift plate—was in use before filing of the patent, therefore this court need not conduct a separate analysis under the doctrine of equivalents.