

Kinetic Concepts, Inc. v. Blue Sky Med. Corp.

Nos. 07-1340, -1341, -1342, Fed. Cir. (Bryson, Dyk, Prost*)

“If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, . . . the claim [is] sufficiently clear to avoid invalidity on indefiniteness grounds.”

On February 2, 2009, the Federal Circuit, inter alia, affirmed the district court’s judgment that the defendants did not infringe U.S. Patents No. 5,636,643 and No. 5,645,081, which related to reduced and negative pressure treatment of difficult-to-heal wounds, and that the patents were not invalid for obviousness or indefiniteness. The Federal Circuit stated:

In the alternative to their request for JMOL of obviousness, Defendants seek a new trial on obviousness because of alleged errors in the jury instructions. At trial, the jury was instructed that: In order to prove obviousness, [Defendants] must prove by clear and convincing evidence that one of ordinary skill in the art at the time would have found in the prior art some teaching, suggestion or incentive to combine the prior art in the way [KCI] did in its invention. Defendants concede that they stipulated to this instruction, but argue that a supervening change in the law resulting from KSR justifies their raising this issue for the first time on appeal. KCI responds that because Defendants stipulated to the instruction, any error was “invited” and is thus unreviewable. For the purpose of this review, we assume arguendo that Defendants did not invite the alleged error in the jury instructions. . . .

“To overturn a verdict for plain error in the instructions, we must find an obviously incorrect statement of law that was probably responsible for an incorrect verdict, leading to substantial injustice.” [S]ubstantial evidence supports a finding that the Chariker-Jeter, Svedman, Johnson, and Davydov prior art references do not “treat wounds with negative pressure” as claimed in the asserted patents. The alleged error in the jury instruction relates to the “teaching, suggestion, or incentive to combine the prior art.” Based on our conclusion that there was substantial evidence that none of the prior art references “treat wounds with negative pressure,” we are not persuaded that the instruction on obviousness was “probably responsible for an incorrect verdict.” Accordingly, we affirm the district court’s denial of Defendants’ request for a new trial.

The definiteness analysis requires a determination of “whether one skilled in the art would understand the bounds of the claim when read in light of the specification.” “If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, we have held the claim sufficiently clear to avoid invalidity on indefiniteness grounds.”. . .

Defendants first argue that “selected stage of healing” is indefinite because the specification does not explain how the selected stage is to be determined for particular wounds at particular times. Further, Defendants argue that whether a wound has progressed to a selected stage of healing is wholly subjective. However, KCI points out that the specification of the '643 patent provides several examples of selected stages of healing. Additionally, KCI submitted a declaration from one of the named inventors of the asserted patents explaining that a doctor of ordinary skill in the art would understand how the selected stage of healing may vary from wound to wound. While it may be true that the patentee’s ability to “articulate a definition supported by the specification . . . does not end the inquiry,” Defendants have not shown in this case that a person of skill in the art would be unable to ascertain the meaning of the term. Accordingly, we conclude that “selected stage of healing” is not “insolubly ambiguous.” . . .

Defendants also argue that “reduction in bacterial density in the wound by at least 50%” is indefinite because there are several methods for measuring bacterial density, each of which may yield a drastically different result, and a person of ordinary skill in the art would not know which method to use. However, KCI responds that a person of ordinary skill in the art would know which method to use because Example 2 of the '643 patent describes a particular method. We agree with KCI that Honeywell does not control where, as here, several methods for calculating reduction in bacterial density are available but the specification discloses one particular method. Thus, we conclude that “reduction in bacterial density in the wound by at least 50%” is not indefinite.

Finally, Defendants argue that the claims reciting a “screen” are indefinite because a person of skill in the art would not know what “overgrowth of tissue in the wound” is or how a “screen” could prevent it. Defendants point to several parts of the record that allegedly present conflicting definitions of “preventing overgrowth,” such as “preventing loculation,” “removing bacteria,” “removing dead tissue that sticks to the screen,” and “preventing the formation of scar tissue.” KCI argues in response that one of the named inventors defined overgrowth as “[g]rowth of granulation tissue above the surrounding uninjured tissue” and explained that the screen prevented this by “distribut[ing] the pressure” within the wound. . . . In light of KCI’s explanation of the record before us, we are not persuaded that this claim term is “insolubly ambiguous.” Accordingly, we find no error in the district court’s failure to find the term indefinite.

The previous statements are for information purposes only, and do not constitute legal advice. Questions regarding the matters discussed above, and any requests to be subscribed to the free electronic distribution of this publication, may be directed to Lawrence M. Sung, Ph.D., at +1 202.346.7850 or lsung@dl.com, or to any other Dewey & LeBoeuf LLP attorney with whom you regularly consult.

NEW YORK | LONDON MULTINATIONAL PARTNERSHIP | WASHINGTON, DC
ALBANY | ALMATY | BEIJING | BOSTON | BRUSSELS | CHICAGO | DOHA | DUBAI
FRANKFURT | HONG KONG | HOUSTON | JOHANNESBURG (PTY) LTD. | LOS ANGELES | MILAN | MOSCOW
PARIS MULTINATIONAL PARTNERSHIP | RIYADH AFFILIATED OFFICE | ROME | SAN FRANCISCO | SILICON VALLEY | WARSAW