STAAS & HALSEY LLP

2020 FALL NEWSLETTER

1201 NEW YORK AVENUE, N.W.
WASHINGTON, D.C.

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UNITED STATES SUPREME COURT

Google LLC v. Oracle America, Inc., Dkt. 18-956 (S. Ct. 2018)

U.S. copyright protection for software interfaces.

Background

In 2008, Google LLC ("Google") released Android, "an open-source platform designed to enable mobile devices such as smartphones and tablets. The Android platform was built using the Java programming language developed by Sun Microsystems, which was later acquired by Oracle American, Inc. ("Oracle"). Prior to Oracle's acquisition of Sun Microsystems, Google replicated the syntax and structure of the Java application programming interface ("API") within the Android platform to ensure third-party developers could utilize the prewritten methods and declarations known within Java's API libraries. Google replicated "37 Java API libraries that were determined by Google to be 'key to mobile devices,'" which attributed to only 3% of the Android environment. Google independently wrote the remainder of the code to "accommodate the unique challenges" of the mobile device environment. Upon its acquisition of Sun Microsystems, Oracle sued Google in the U.S. District Court for the Northern District of California ("District Court"), alleging copyright infringement for the replicated code.

At the end of trial, the District Court held the Java API was not copyrightable and rejected Google's fair use defense, which permits the unlicensed use of copyright-protected works in certain circumstances. On appeal, the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") reversed and remanded the district court's decision. Specifically, the Federal Circuit found the Java API was subject to copyright protection and remanded the case because there was a lack of sufficient factual findings to resolve the fair use issue raised by Google in the District Court. On remand, the jury concluded Google's use of the Java API constituted fair use. Oracle timely appealed. Once again on appeal in the Federal Circuit, the court overturned the jury's verdict, finding Google did not engage in fair use as a matter of law. Google subsequently petitioned for certiorari, which the Supreme Court granted.

Oral Argument at the U.S. Supreme Court

As noted, the questions before the Supreme Court are whether copyright protection extends to a software interface, and whether Google's use of a software interface in the context of creating a new computer program constitutes fair use. In its petition for certiorari, Google asserts that if the Federal Circuit's approach is allowed to stand, "developers will be forced to abandon their traditional building-block approach to software interface development," and in turn, "would have a devastating impact on the development of computer software." Nevertheless, Oracle asserts that a finding in favor of Google would penalize software developers for simply creating a software interface popular enough since that would allow other companies to use it without consequence under the fair use doctrine.

The Supreme Court held oral arguments in the case on October 7, 2020.

Google argued at pages 3, 4, and 5 of the transcript that:

The merger doctrine resolved the copyrightability question in this case. Oracle has a copyright to the computer code in Java SE but not a patent. That means that the public, not Oracle, has the right to Java SE's function, and Oracle cannot leverage its copyright to create patent-like rights. Specifically, under the merger doctrine, there is no copyright protection for computer code that is the only way to perform those functions.

Here, Java software developers have the right to use certain commands to create applications for Google's Android smartphone platform, but, to work, the commands require Google to reuse an exact set of declarations from Java SE, like a key that fits into a lock.

Because there are no substitutes, Oracle is impermissibly claiming the exclusive right not merely to what the declarations say but also to what the declarations do. That is not a copyright; it is a patent right.

With respect to fair use, the long-settled practice of reusing software interfaces is critical to modern interoperable computer software. Here, reusing the minimally creative declarations allowed the developers to write millions of creative applications that are used by more than a billion people.

But those policy questions are almost academic because the issue is not whether this Court would find fair use. The standard of review asks the much narrower question whether the jury could reasonably find fair use. Oracle now obviously regrets its demand that the jury weigh all the evidence and decide fair use in a general verdict that contains no subsidiary findings.

No previous court ever held that only a court may decide fair use. It is so fact-bound that no prior appellate court ever overturned a fair use verdict. This uniquely contested case should not be the first.

Today, you will hear three lawyers present legal arguments for an hour. In 2016, the jury heard the starkly conflicting testimony of almost 30 witnesses and reviewed roughly 200 exhibits over two-and-a-half weeks. This case perfectly illustrates, as this Court recently reiterated in Georgia versus Public. Resource, that fair use "is notoriously fact-sensitive and often cannot be resolved without a trial."

Oracle argued at pages 38, 39, and 40 of the transcript that:

Google's whole argument this morning is code is different.

Now a few basic legal principles and concessions control the outcome of this case.

Legal principle 1: Congress defined literary work to include software and granted copyright protection as long as the code is original. Google conceded Oracle's code is original. That's the end of the question.

Google asks this Court to carve out declaring code, but Congress rejected the very carveout in multiple ways, including in its definition of computer program and by not including Google's carveout among the limitations in Section 117.

Google LLC v. Oracle America, Inc., Dkt. 18-956 (S. Ct. 2018) *(cont.)*

Legal principle 2: This Court held in Harper and in Stewart that a superseding use is always unfair as a matter of law. No court has found fair use or upheld a fair use verdict where a copyist copied so much valuable expression into a competing commercial sequel to mean the same thing and serve the same purpose as the original. Google conceded the purpose and the meaning are the same. That's the end of Question 2.

No one else thought that innovating required copying Sun's code without a license.

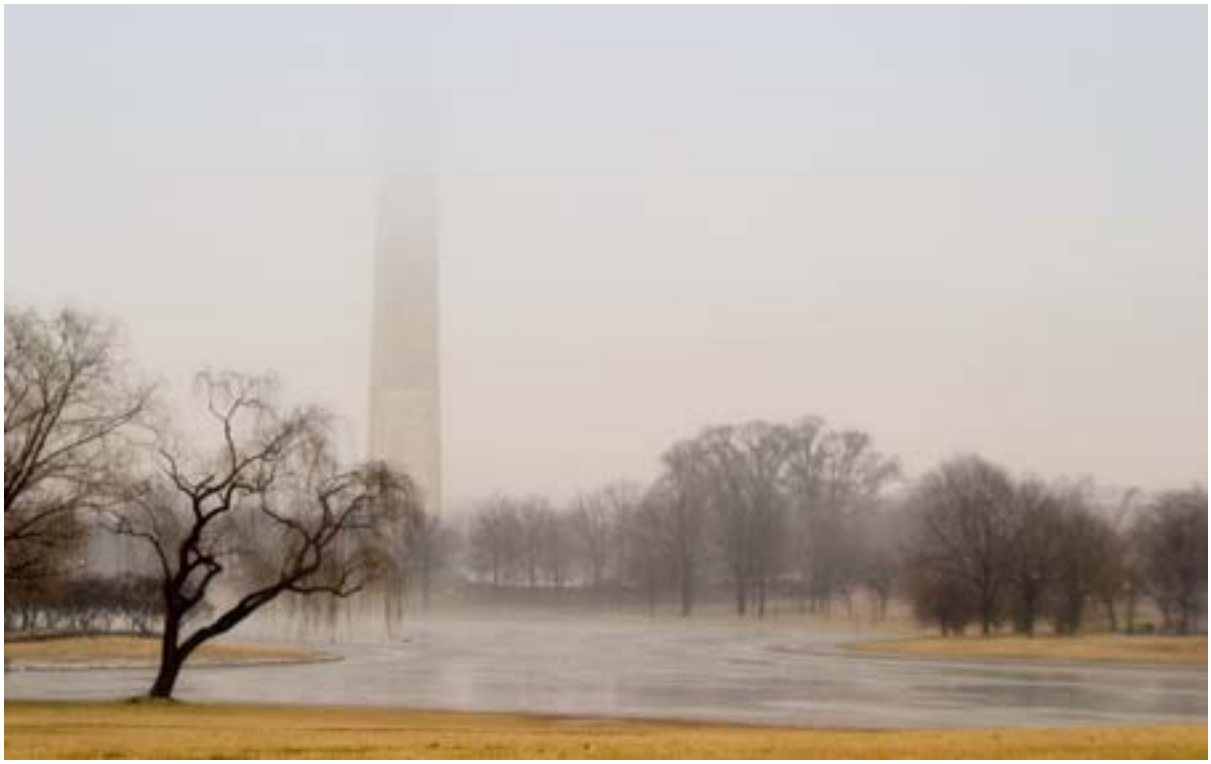
As Justice Alito notes, Apple and Microsoft did not copy to create their competing platforms.

Neither did others who wrote competing platforms in the Java language.

There was and still is a huge market for declaring code. Other major companies like IBM and SAP were paying a lot of money to license just the Sun declaring code precisely because it was created. And throughout this litigation, Google never denied this.

If this Court holds that a jury may conclude that copying declaring code is fair, it will encourage copying, create legal uncertainty, and decimate the business model which a lot of companies depend on, undermining the very incentives copyright was designed to promote.

We await a decision.



UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

AMGEN INC. V. SANOFI, AVENTISUB LLC

On December 9, 2020, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) heard oral argument in a pharmaceutical patent case, Amgen Inc. v. Sanofi, Aventisub LLC.

Background

Amgen sued Sanofi and Regeneron Phamaceuticals, Inc., alleging their competing drug, PRALUENT, infringed Amgen's patents for REPATHA. Amgen's patents are related to a genus of antibodies called PCSK9 inhibitors, which help patients with LDL, a bad cholesterol, who have difficulty getting their condition under control with widely used statins such as Pfizer Inc.'s LIPITOR.

A lower federal trial court found Amgen's two patents should never have been granted because it would take an undue experiment and would not enable a skilled artisan to recreate the genus of antibodies claimed by the patents at issue.

Oral Argument at Federal Circuit

The court considered arguments from both parties regarding the enablement requirement with respect to antibody claims.

Before Amgen's presentation of arguments, Judge Lourie commented that the claims are directed to composition of matter claims that were claimed by function rather than structure. Further, Judge Lourie indicated, the district court found that no structure-function relationship would eliminate the need for undue experimentation and therefore lack of enablement.

Disagreeing that the claims were claimed by function and not structure, Amgen responded that it is unrelated to the issue. Amgen asserted that two "anchor antibodies" spanned the full area of one spot in the PCSK9 antibody and argued that one of ordinary skill in the art can identify all of the at most 400 distinct antibodies that bind anywhere on that one spot." Further, he argued, identifying the antibodies to those that bind to the sweet spot could be done without undue experimentation, with commonly available laboratory resources and the basic research tools of the field of antibody research.

"I'm having trouble seeing where your road map and your examples get you to enablement of the full scope of the claims," Chief Judge Sharon Prost said.

Judge Lourie emphasized that the district court was concerned that the claim did not provide guidance on predicting whether an antibody would bind. Amgen responded that antibody scientists as persons with ordinary skill in the art would understand that once you make the sequence you know to which site they will bind, and that the specification provided guidance on how to make each of the 400 distinct antibodies.

Judge Prost also asked how the patent road map encompassed Sanofi's alleged infringing antibodies. Judge Prost said these infringing antibodies seemed to function differently from those claimed by binding a different number of antibodies. Amgen responded that expert testimony indicated no antibody scientist would consider the competitor antibodies to be of a different class from those created by the patent road map.

AMGEN INC. V. SANOFI, AVENTISUB LLC (cont.)

Sanofi emphasized the number "400" was unsupported, responding to Amgen's arguments, and argued that this "400" number was not in the district court's opinion because this number was never presented to the district court. When asked how many antibodies would accomplish the function if the patent road map was used, Sanofi argued Amgen's inventor replied "I don't know a specific number" and Amgen's expert answered "I can't give you a number on what the total is."

Judge Lourie asked to Sanofi on why the enablement requirement would not have been met in this case when the written description requirement has been met. Sanofi responded by arguing that when you have a functional limitation, too many candidates, and you would have to test each and every one to see which ones work, which is a typical example of undue experimentation. According to the district court, Sanofi argued, "the fact that you knew there [was] gold in the hills and that you knew how to use a pan to find it, [that] doesn't mean you are entitled to every ounce of gold in every square mile of the California countryside."

Judge Hughes asked why requiring a large quantity of experimentation would be considered undue experimentation if qualitatively the experimentation required could be minimal and easy. Sanofi responded by arguing that Amgen's own expert testified that testing "millions and millions of antibodies to see whether they would work . . . would be 'an enormous amount of work' and more than any scientist would even contemplate doing."

Judge Hughes then asked whether a genus claim with regard to antibodies should be able to be claimed functionally in any way. Sanofi did not give a definite position to the inquiry. Sanofi argued that there may be a case where function dictates structure sufficiently in the antibody field to cross the threshold of predictability, but that it was not the case in this set of facts.

Amgen replied that, given the structure and the specific one spot in the PCSK9 antibody, one would expect that a limited number of antibody candidates would result from the patent road map. Amgen also argued that an expert estimated somewhere around 100 antibodies, and Amgen conservatively argued that this number could be 400.

Judge Hughes asked why, if millions and millions of tests were required to see if the antibody binds and blocks, that situation would not be undue experimentation. Amgen replied that, while he believed that number appears to be extreme, experimentation would not be undue because of the low risk of experimental failures. In this case, the enablement of a process is defeated only when such failures are pervasive and frequent. In comparison to prior cases, Amgen argued, claims failed when thousands of tests were expected to fail, and you were searching for one that might work. Here, thousands of tests would be expected to succeed with a possibility of a few variations. "It's only when you have failures that impede your ability to make and use the invention that you have undue experimentation," Amgen argued. "Being able to successfully make these products isn't undue experimentation, it's production."

S&H's Analysis

This case is interesting in part because it may have implications for the patentability of an anti-body drug, including antibodies to treat COVID-19.

We await a decision by the Federal Circuit.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CORCAMORE, LLC v. SFM, LLC

On October 27, 2020, the U.S. Court of Appeals for the Federal Circuit (CAFC) affirmed a Trademark Trial and Appeal Board ("TTAB") decision that SFM was entitled to bring and maintain a petition under 35 U.S.C. § 1064.

Background

SFM owns U.S. trademark registrations for the mark SPROUTS to be used with retail grocery store services. SFM filed a petition to cancel Corcamore's mark SPROUT for use with vending machine services alleging a likelihood of consumer confusion.

The TTAB relied on *Empresa Cubana del Tabaco v. General Cigar Co*., 753 F.3d 1270 (Fed. Cir. 2014) to deny Corcamore's motion to dismiss the cancellation petition for lack of standing as the TTAB concluded SFM had standing due to its real interest in the cancellation proceeding and a reasonable belief of damage caused by the SPROUT mark continuing to be registered.

Corcamore appealed that the TTAB erred in applying *Empresea Cubana* rather than following the analytical framework established in *Lexmark International, Inc. v. Static Control Components, Inc.,* 572 U.S. 118 (2014) for determining whether the requirements for maintaining a statutory cause of action have been satisfied.

CAFC's Analysis

The CAFC agreed with Corcamore that *Lexmark's* "analytical framework is the applicable standard for determining whether a person is eligible under § 1064 to bring a petition for the cancellation of a trademark registration" and explained that the Supreme Court in *Lexmark* established a party is entitled to bring a statutory cause of action if it demonstrates "(i) an interest falling within the zone of interests protected by the statute and (ii) proximate causation." Thus, the CAFC concluded the *Lexmark* analytical framework applies to § 1064.

Although the TTAB applied the standard of *Empresa Cubana* rather than *Lexmark*, the CAFC asserted there was "no meaningful, substantive difference between the analytical frameworks expressed in *Lexmark* and *Empresa Cubana*"; therefore, the TTAB still reached the correct result.

S&H's Analysis

The *Corcamore* decision appears to show that *Lexmark's* analytical framework that a party is entitled to bring a statutory cause of action if it demonstrates (i) an interest falling within the zone of interests protected by the statute and (ii) proximate causation, and that this is the applicable standard for determining whether a person is eligible under § 1064 to bring a petition for the cancellation of a trademark registration.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

DONNER TECHNOLOGY, LLC v. PRO STAGE GEAR, LLC (precedential)

On November 9, 2020, the U.S. Court of Appeals for the Federal Circuit (CAFC) vacated and remanded an inter partes review (IPR) decision from the U.S. Patent Trial and Appeal Board (PTAB) for Pro Stage Gear's patent for guitar effects pedals. The PTAB had rejected obviousness challenges by Donner on the ground that Donner did not prove that a prior art reference is analogous art.

Background

Pro Stage Gear's patent U.S. Patent No. 6,459,023 ('023 patent) describes improvements to guitar effects pedals. The "Background of the Invention" portion of the specification of the '023 patent states a prior art solution for a problem of cable management is to cover the cables by foam so that the cables are not exposed, but that this prior art solution "restricts the ability to change out or one effect for another or add an additional effect because the foam must be removed to uncover the cable connections, the effect removed from the board, the cables repositioned for the new effect, the new effect positioned on the board, the cables rerouted, and the foam re-cut or replaced for the new effect."

The "Summary of the Invention" portion of the '023 patent describes "*a cable connection opening* which is adapted to allow the cable to pass from the adapter on the guitar effect through the effect mounting surface into a cable routing and storage area which allows for the cable to be kept contained and out of the way during use of the effect pedals".

In the PTAB IPR proceeding, Donner challenged various claims of the '023 patent as obvious in view of U.S. Patent No 3,504,311 (Mullen). Mullen is directed to providing "an improved support for supporting one or more relay structures and for providing wiring-channel space for receiving wires that would be connected to the relay structures to connect the relay structures in various control circuits." Donner asserted Mullen's structure is analogous to the claimed structure in the '023 patent. The PTAB determined that Donner's obviousness challenge failed because Donner had not proven that Mullen is analogous art.

CAFC's Analysis

The CAFC stated "It is undisputed that the '023 patent and Mullen are not from the same field of endeavor. Therefore, the only question is whether Mullen is reasonably pertinent to one or more of the particular problems to which the '023 patent relates." The CAFC identifies the proper standard for the "problem" analysis as "the problems to which the claimed invention and reference at issue relate must be identified and compared from the perspective of a person having ordinary skill in the art".

The CAFC then stated the PTAB may not have "meaningfully considered all of Donner's arguments and evidence" including detailed expert testimony, and "failed to properly identify and compare the purposes or problems to which Mullen and the '023 patent relate". Accordingly, the CAFC concluded that "because the Board failed to identify and compare the problems to which the '023 patent and Mullen relate, the Board failed to apply the proper standard."

S&H's Analysis

The precedential Donner decision reinforces the proposition that the PTAB "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.". In Donner, the CAFC identified the proper standard for the "problem" analysis in analogous art as "the problems to which the claimed invention and reference at issue relate must be identified and compared from the perspective of a person having ordinary skill in the art". Therefore, Applicants may wish to take the Donner decision into consideration when drafting a specification to avoid potentially analogous art, or when making non-analogous art arguments during prosecution of an application.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

IN RE GOOGLE TECHNOLOGY HOLDINGS LLC, 2019-1828 (precedential)

On November 13, 2020, the U.S. Court of Appeals for the Federal Circuit (CAFC) affirmed a decision by the Patent Trial and Appeal Board (PTAB) sustaining the rejection of the Examiner's final rejection of various claims under 35 U.S.C. §103 in an application by Google. In clarifying the difference between the doctrines of "waiver" and "forfeiture," the CAFC held that Google had forfeited the arguments put forth on appeal because those arguments were not presented to the Examiner or PTAB. Therefore, the CAFC affirmed the PTAB's decision.

Background

Google's application related to "distributed caching for video-on-demand systems, and in particular to a method and apparatus for transferring content within such video-on-demand systems." Independent claim 1 was directed to a method to responding to requests to stream content to set-top boxes from various content servers. In appealing the rejection of independent claim 1 to the PTAB, Google broadly argued in lengthy block quotes that the cited references did not disclose most of the features from claim 1. Google also argued that the cited references did not disclose the features of evicting items from a cache in a manner which minimized a "network penalty," as recited in dependent claim 2.

The PTAB was not persuaded by Google's arguments, and found that the cited references taught the concept of distributing content based on a "cost" which was "based on a network impact." The PTAB found the Examiner's broad interpretation of the term "cost," in view of the cited references, was consistent with the application's specification. Furthermore, the PTAB noted that Google had not cited to a definition of "cost" or "network impact," in the specification which would have precluded the Examiner's interpretation. Finally, the PTAB also sustained the rejection of claim 2, finding that Google's attempt to attack certain references individually did not consider the teachings of the references in combination.

CAFC's Analysis

On appeal, Google argued that the PTAB had erred in its construction of the terms "cost" and "network penalty" in view of the explicit definitions in the specification. Googled argued that because the PTAB had relied on incorrect interpretations of the claim terms, the PTAB's decision was incorrect. The PTAB argued that Google had waived its arguments regarding claim construction of those terms because those arguments were not presented to the PTAB.

In addressing each party's arguments, the CAFC first noted the distinction between waiver and forfeiture. The CAFC stated "forfeiture is the failure to make the timely assertion of a right," while "waiver is the 'intentional relinquishment or abandonment of a known right.'" Here, the CAFC found Google had failed to raise its arguments regarding claim construction of the terms "cost," and "network penalty," to the Examiner or to the PTAB. Therefore the CAFC found that, intentional or not, Google had forfeited those arguments, stating that "a position not presented in the tribunal under review will not be considered on appeal in the absence of exceptional circumstances." Accordingly, the CAFC declined to hear Google's new arguments as to the proper construction of "cost," and found that Google had not provided any reasonable explanation as to why it never argued to the Examiner or to the PTAB why a particular construction should be afforded to the term. Similarly, the CAFC held that Google had not suggested any particular definition of "network penalty," to the Examiner or PTAB and had also forfeited its arguments pertaining to claim 2.

S&H's Analysis

The CAFC's decision serves as a reminder to applicants that arguments regarding patentability of a claim, such as claim construction, should be presented to both the Examiner as well as the PTAB once an Examiner makes a *prima facie* case for rejecting an application. Instead of presenting new arguments on appeal, the CAFC encouraged applicants "to avoid waste of appellate resources and instead take the intra-PTO route of filing new or amended claims (perhaps through a continuation application) containing language that makes the desired scope clear, thereby serving the goal of facial clarity of patent claims."

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

IQASR vs WENDT

In *IQASR vs Wendt,* the U.S. Court of Appeals for the Federal Circuit (CAFC) affirmed a district court's decision to invalidated US Patent. No. 9, 132, 432 due to indefiniteness. At issue in the case was the term "magnetic fuzz".

Background

U.S. Patent 9,132,432 ('432 patent) is directed to a process for automobile scrap recycling. Claim 1 is reproduced below:

A method of separation of automobile shredder residue comprising the steps of:

providing automobile shredder residue as a result form a ferrous sorting recovery system;

introducing said automobile shredder residue into an auto mobile shredder residue sorting, non-ferrous recovery system;

non-magnetically sorting *magnetic fuzz* from said automobile shredder residue with said automobile shredder residue sorting, non-ferrous recover system;

wherein said sorted magnetic fuzz is substantially free of recyclable materials.

In *Biosig Instruments, Inc. v. Nautilus, Inc.* the Court of Appeals for the Federal Circuit stated that "in the face of an allegation of indefinites, general principles of claim construction apply". Applying these general principles, the district court found that the term magnetic fuzz in the '432 patent had no ordinary and customary meaning. As such, the district court held that the term "magnetic fuzz" was a coined term.

Having established "magnetic fuzz" as a coined term, the district court relied on intrinsic evidence, (*i.e.* claim language, the specification, and the prosecution history) and extrinsic evidence (*i.e.* expert witnesses) to attempt to assign meaning for magnetic fuzz.

In analyzing the intrinsic evidence of the '432 patent, the district court found that "magnetic fuzz" was not clearly defined and not enough of an explanation was given so that an artisan could infer with reasonable certainty objective boundaries for the term. The district court also weighed extrinsic evidence to determine a definition for magnetic fuzz.

CAFC's Analysis

The Federal Circuit found that the specification of the '432 patent included open-ended definition for magnetic fuzz and this prevented a reasonable bound on the scope the term. Also, in view of the intrinsic evidence, the Federal Circuit agreed with the district court that extrinsic evidence by itself cannot deem a claim definite. In fact, the Federal Circuit stated that " a claim term does not become reasonably certain simply because a skilled artisan, when pressed, managed to articulate a definition for it". As such, the Federal Circuit affirmed the district court's decision to invalidate the '432 patent.

S&H's Analysis

The Federal Circuit's decision serves as reminder that there are limits to the use of extrinsic evidence to cure indefiniteness and that a poorly written specification cannot simply be saved by an expert witness. A patent application must be drafted to define claims terms such that that a person of ordinary skill can clearly understand the claim scope with reasonable certainty. The court will look at the claim language, specification, and prosecution history to determine the scope of claim terms.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ST. JUDE MEDICAL, LLC V. SNYDERS HEART VALVE LLC

The Court of Appeals for the Federal Circuit (Federal Circuti) in *St. Jude Medical, LLC v. Snyders Heart Valve LLC* held that the broadest reasonable interpretation of a claim must be considered in light of the specification.

Background

St. Jude Medical, LLC petitioned twice for *inter partes* review of a patent owned by Snyders Heart Valve LLC. The claim at issue was directed to an artificial heart valve and a system for inserting the valve. The heart valve can be installed via catheter without invasive surgery and without a need for removal of the patient's diseased heart valve.

In response to the petition at issue, the PTAB found that four of these claims were anticipated by the prior art.

In finding the prior art's anticipation of these four claims, the claim recitations at issue was a "frame sized and shaped for insertion between the upstream region and the downstream region", and the PTAB applied the "broadest reasonable interpretation" of these claim recitations. Based on the prior art disclosed a valve insert sized to fit the valve after the damaged native valve was removed, the PTAB under the broadest reasonable interpretation interpreted "frame sized and shaped" as also covering a frame that fits in place after removal of a damaged heart valve. Therefore, the PTAB found that the prior art anticipated the claims.

CAFC's Analysis

The Federal Circuit reversed. The Federal Circuit held that the prior art required removal of a damaged native heart valve before placing the artificial valve. In contrast, the Snyders Heart Valve LLC patent specification disclosed that the disclosed artificial heart valve can be inserted without removing the native valve and expressly indicated that this feature was an improvement over the prior art. The Federal Circuit found that the PTAB failed to take such language in the specification into consideration for the broadest reasonable interpretation. Accordingly, the PTAB improperly construed the "sized and shaped" limitation as covering an artificial valve fitted for the space left after removing the native valve. Instead, the Federal Circuit held that, in light of the specification disclosure discussed, the claim at issue was not anticipated by the prior art.

S&H's Analysis

This case reconfirms the patent policy that the broadest reasonable interpretation of the claims should still be interpreted in light of the specification.

USPTO NEWS

USPTO TO ADJUST TRADEMARK FEES EFFECTIVE JANURY 2, 2021

The United States Patent and Trademark Office (USPTO) is set to increase certain trademark fees effective January 2, 2021.

The trademark fee increases relate to application filing, post registration fees for trademark maintenance, petitions, and Trademark Trial and Appeal Board fees.

Of particular interest to owners of registered trademarks, a new fee is being implemented for certain requests to delete goods and services from a registration. The new fee applies if a request to delete goods, services, or classes from a trademark registration is filed after a Section 8 or a Section 71 declaration of continued use is filed. The new fee will not apply if a request for such deletion is filed before, or at time of filing, of a Section 8 or a Section 71 declaration of continued use. According to the USPTO, the new fee is to encourage trademark owners to determine sooner than later whether a good, service or class in a trademark registration is no longer in use and needs to be removed.

Trademark owners intending to register a trademark with the USPTO can consider whether to file a trademark application before the trademark fee increases.

For registered trademarks which renewal windows are open before January 2, 2021, the trademark owners can consider whether to file a renewal before the trademark fee increases.

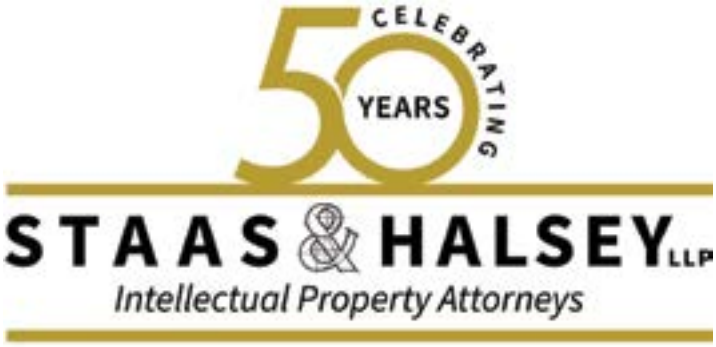
You may follow the links below to USPTO's breakdown of the adjustments to the trademark fees including a comparison with the old trademark fees.

Table of Trademark Fees – Current, Final Trademark Fee Schedule, and Unit Cost.

Fee Setting and Adjusting | USPTO

For more information about the USPTO adjustments to the trademark fees, or If you have any question, please contact us.

S&H FIRM NEWS



STAAS & HALSEY LLP CELEBRATES 50 YEARS in 2021

Specializing exclusively in intellectual property, Staas & Halsey LLP brings together technical and legal expertise in our commitment to provide quality legal representation.

Since 1971, we have provided clients with technical expertise and intellectual property protection.

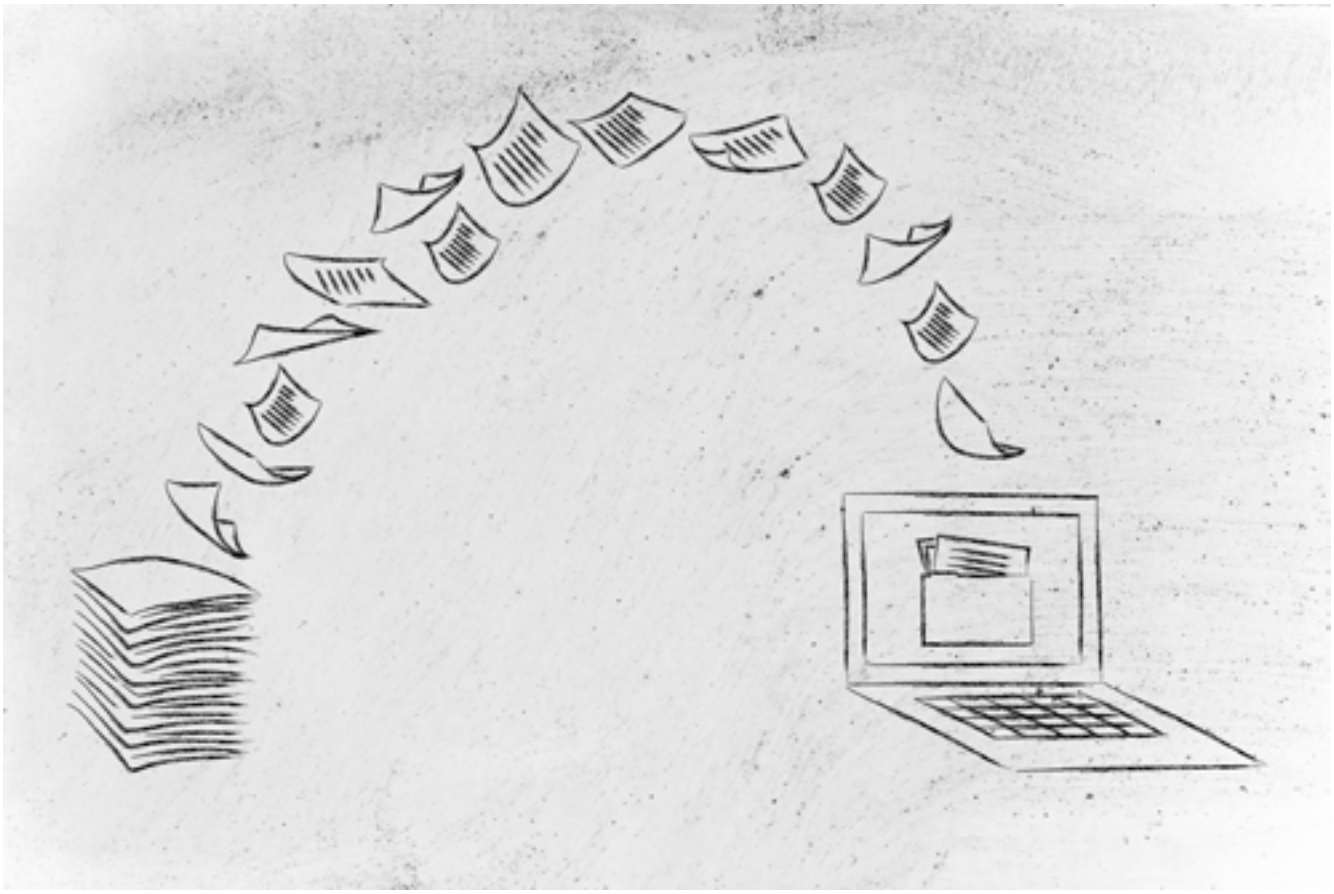
We provide our clients with high quality and high value intellectual property protection through patent application and trademark application preparation and prosecution services before the United States Patent and Trademark Office, understand and care for our clients' concerns by developing long-term and close relationships with our clients, and provide our clients with training to understand the complexities and nuances of U.S. patent prosecution.

We thank all of our clients for being part of our journey!

S&H FIRM NEWS

Staas & Halsey LLP Has Gone Paperless!

Since about the year 2010, our firm has maintained duplicative paper and electronic "official" files for each of our client's matters. Effective January 1, 2020, our firm discontinued maintenance and use of our "official" paper client files, and instead relies only on our electronic official client files. This change in procedure takes advantage of advances in technology to reduce costs and improve efficiency.



STAAS & HALSEY LLP

S&H FIRM NEWS

Continuing Uninterrupted In View of COVID-19

Staas & Halsey LLP (S&H) continues to monitor the rapidly changing circumstances surrounding COVID-19, the illness caused by a novel coronavirus. We have taken measures to continue to provide uninterrupted service to our clients during the COVID-19 outbreak in the USA and other countries.

Beginning Monday, March 16th 2020, we implemented the S&H business continuity plan that allows our attorneys and staff to work remotely when necessary. By adopting a document management system ten years ago and going completely paperless in early 2020, the transition to remote working has been relatively smooth.

The S&H remote work system for employees uses an encrypted tunnel to provide connectivity to the S&H servers storing the S&H document and docketing management software, and access to email servers. Staas & Halsey is in compliance with the UK Data Protection Act 2018, as amended in 2019; the European Union's General Data Protection Regulation (GDPR); and the California Consumer Privacy Act (CCPA).

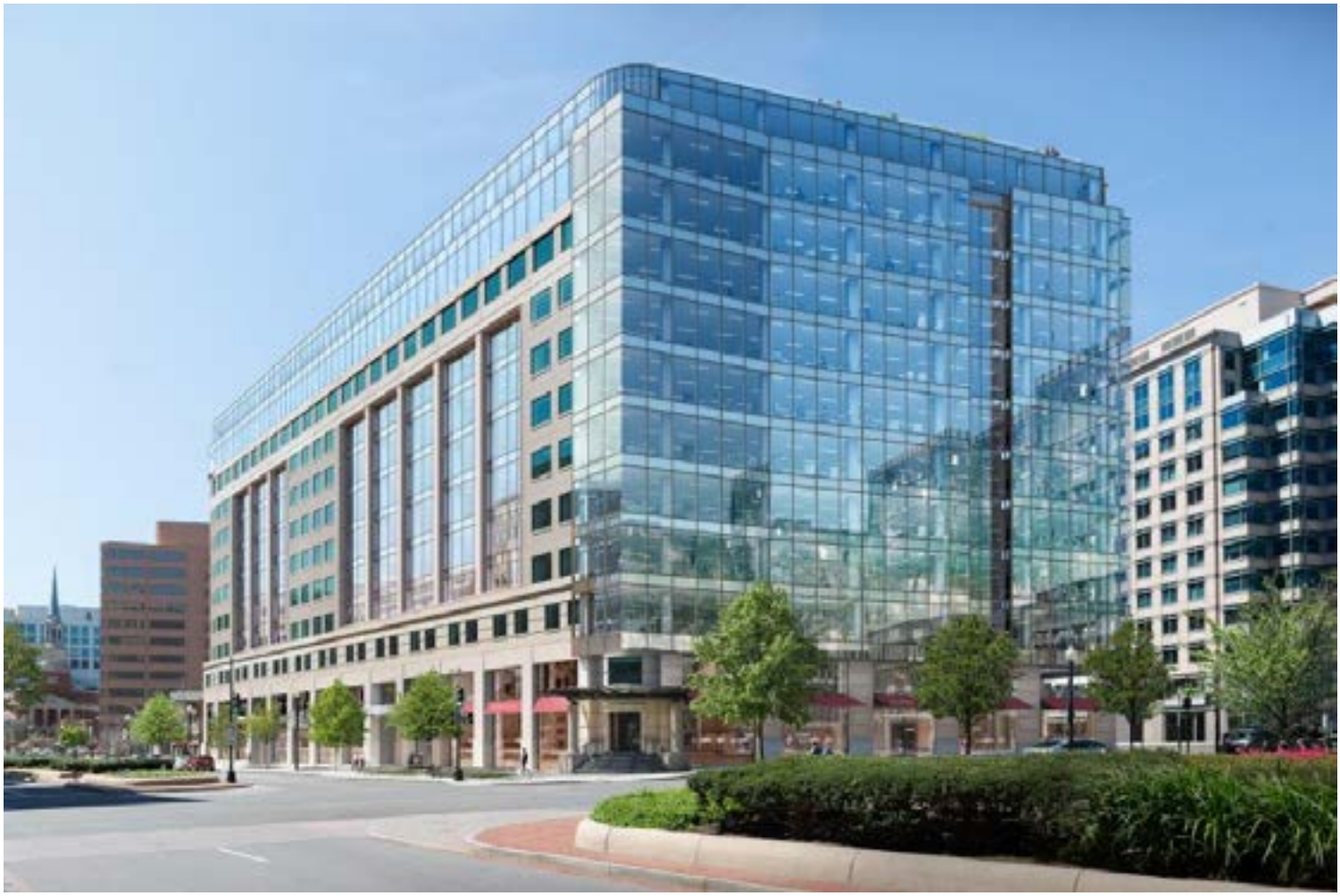
The above mentioned business continuity plan is anticipated to continue until further notice, and may be updated, including any updates taking into consideration recommendations of U.S. local and federal governments and the World Health Organization.

We continue to ask that communication to our firm be electronic, via e-mail, facsimile, portals, or similar means. If physical items need to be sent to Staas & Halsey LLP, please provide S&H prior notification and at least inform Docketing@s-n-h.com of any such anticipated delivery of physical items so that S&H can make arrangement for receipt of such physical items. If we normally send you packages of physical items, like paper copies of communication, please note that at times these may be delayed.

We have postponed all travel plans as a precaution based on the recommendation of the U.S. local and federal governments and the World Health Organization.

We send our best wishes and thoughts to everyone that have been affected by the COVID-19 virus and hope for a healthy tomorrow.

If you have any questions, please contact us at Docketing@s-n-h.com.



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