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Federal Circuit Patent Bulletin: *Arlington Indus., Inc. v. Bridgeport Fittings, Inc.*

July 17, 2014

"[A]n appeal from an injunctive order cannot be used as a way of securing interlocutory review of the contempt order."

On July 17, 2014, in *Arlington Indus., Inc. v. Bridgeport Fittings, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Chen, Clevenger, Hughes*) dismissed Bridgeport's appeal of the district court's contempt order. Arlington had sued Bridgeport alleging infringement of U.S. Patent No. 6,335,488, which related to a method for connecting electrical cables to a junction box using electrical fittings. The parties agreed in a 2004 settlement that Bridgeport would be enjoined from infringing activity related to its Speed-Snap™ fittings or any colorable imitations. The district court later found that Bridgeport's new Whipper-Snap® connectors violated the 2004 injunction, held Bridgeport in contempt, and issued a 2013 injunction. The Federal Circuit stated:

We can exercise appellate jurisdiction under § 1292(c)(1) if the injunction has been modified. Thus, we must determine whether the district court's order constitutes a modification, or is simply an interpretation or clarification. [T]he Supreme Court has instructed that the exception in 1292(a)(1) should be construed narrowly. . . . The focus of the clarification-or-modification analysis is whether there were changes to the original injunction that "actually altered the legal relationship between the parties." Because clauses of both injunctions are almost identical in wording and are congruent in meaning, the legal relationship between the parties is not altered.

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The 2004 Injunction and the 2013 Injunction are directed to the same parties, apply to the same activities, and are in force for the same time period. Similarly, the injunctions apply to the same products even though the actual wording in each injunction differs slightly. Because the 2004 Injunction applies to "any colorable imitations" of the Old Connectors, and the district court found that the New Connectors were colorable imitations of the Old Connectors, the district court's express inclusion of the New Connectors in the 2013 Injunction simply clarifies what was already implicit in the 2004 Injunction. Accordingly, because the injunctions cover the same parties, activities, products, and time periods, the slight word differences do not rise to the level of altering the parties' legal relationship. . . .

Also, just because the district court construed claim terms for the first time in the 2013 Injunction, it does not necessarily follow that the 2013 Injunction is transformed into a modification of the parties' relationship. Because the 2004 Injunction was the result of a settlement agreement, the district court did not need to analyze infringement and therefore did not need to issue any claim constructions at that time. Later, the district court determined that it needed claim constructions for its analysis and issuance of a contempt order (which includes the2013 Injunction). In expressly providing the claim constructions, the district court simply interpreted or clarified the meaning of those claim terms. Between the 2004 Injunction and the 2013 Injunction, the claim language of the '488 patent did not change. Thus, the actual meanings of those claim terms did not change, and the district court's interpretation of the claim terms—whether or not it was expressly provided—did not change from one injunction to the next. Accordingly, the district court simply clarified the meaning of the claim terms implicated by both the 2004 Injunction and the 2013 Injunction. . . .

As an exception to the final judgment rule, § 1292(c)(2) is to be interpreted narrowly. . . . We have recognized that § 1292(c)(2) "confers jurisdiction on this court to entertain appeals from patent infringement liability determinations when a trial on damages has not yet occurred." We need not and do not decide what standard would govern an appeal of an injunction separate from and not intertwined with a contempt order finding of no more than colorable differences. We hold only that an appeal from an injunctive order cannot be used as a way of securing interlocutory review of the contempt order. Here, we are not considering a determination of patent infringement; we have before us a civil contempt order. And contempt proceedings and patent infringement cases are not co-extensive. Thus, although Congress created an exception to the final judgment rule in patent cases via § 1292(c)(2), this patent carve-out does not expressly include contempt orders. Accordingly, § 1292(c)(2) does not extend to contempt orders.