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Federal Circuit Patent Bulletin: *Homeland Housewares, LLC v. Whirlpool Corp.*

August 7, 2017

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On August 4, 2017, in *Homeland Housewares, LLC v. Whirlpool Corp.*, the U.S. Court of Appeals for the Federal Circuit (Prost, Newman, Dyk*) reversed the U.S. Patent and Trademark Office Patent Trial and Appeal Board's inter partes review decision that certain claims of U.S. Patent No. 7,581,688, which related to household blenders, were not invalid as anticipated by prior art reference U.S. Patent No. 6,609,821 (Wulf). The Federal Circuit stated:

Anticipation is a two-step analysis. The first step is properly interpreting the claims. The second step is determining whether the limitations of the claims, as properly interpreted, are met by the prior art. The Board determined that Wulf did not anticipate the '688 patent because its disclosures did not meet the "settling speed" limitation. However, the Board did "not adopt any explicit construction of the term for [its] Final Written Decision," even though the parties disagreed as to claim construction. Just as district courts must, "[w]hen the parties raise an actual dispute regarding the proper scope of . . . claims . . . resolve that dispute," the Board also must resolve such disputes in the context of IPRs. Given that the Board did not rely on extrinsic evidence here as to claim construction, we can determine the correct construction of "settling speed" and then determine whether the Board correctly held that Wulf does not meet the limitations of claim 1.

"[T]he claim construction inquiry . . . begins and ends in all cases with the actual words of the claim." . . . The words of a claim are generally given their ordinary and customary meaning. In some

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cases, the ordinary meaning of claim language may be readily apparent and claim construction will involve little more than the application of the widely accepted meaning of commonly understood words. Here, it is undisputed that the plain meaning of "predetermined" is to determine beforehand. This plain language definition does not require that a predetermined speed be empirically determined for each use, depending on the particular blender or the individual contents of the blender.

Claims must also be read in view of the specification, of which they are a part. While the specification refers to an embodiment of the invention in which "a predetermined settling speed" is empirically determined and varies depending on blender use, the process for empirically determining a settling speed is neither taught in the specification nor a part of the claims. The claim language only requires "a predetermined settling speed," and does not require empirically determining a particular settling speed for a particular blender or a particular blender load. . . .

[W]e, of course, may adopt a definition not proposed by either party that best fits with the claim language and specification. The broadest reasonable construction of "a predetermined settling speed" is a speed that is slower than the operating speed and permits settling of the blender contents. This is consistent with the ordinary and customary meaning of the words of the claim . . . and with the specification. . . .

Based on this construction of "settling speed," we conclude that the Board erred in finding that Figure 25 of Wulf does not anticipate the '688 patent. . . . Because Wulf uses "low speeds" to refer to speeds at which blending ingredients fall back to the cutters, we conclude that Figure 25's use of that same term should be understood in the same manner.