

## Federal Circuit Patent Bulletin: *Rivera v. Int'l Trade Comm'n*

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May 24, 2017

*"The knowledge of ordinary artisans may be used to inform what is actually in the specification, but not to teach limitations that are not in the specification, even if those limitations would be rendered obvious by the disclosure in the specification."*

On May 23, 2017, in *Rivera v. Int'l Trade Comm'n*, the U.S. Court of Appeals for the Federal Circuit (Reyna, Linn,\* Chen) affirmed the Commission decision finding that Solofill's K2 and K3 beverage capsules for Keurig® brewers did not violate 19 U.S.C. § 1337 because U.S. Patent No. 8,720,320, which related to single-brew coffee machine pods, was invalid for lack of written description. The Federal Circuit stated:

The specification of a patent as filed must "contain a written description of the invention." A specification has an adequate written description when it "reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date" of the patent. "[T]he test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art . . . [to] show that the inventor actually invented the invention claimed."

The basic issue in this case is whether the "pod adaptor assembly," "pod," and "receptacle" disclosures in the patent as filed, support Rivera's "container . . . adapted to hold brewing material," as recited in independent claim 5. Rivera argues all the asserted claims together, and we treat dependent claims 6-7, 18, and 20 as rising or falling with independent claim 5. The Commission concluded that the specification did not provide the necessary written description support for the full breadth of the asserted claims, because the

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specification was entirely focused on a “pod adaptor assembly” or “brewing chamber,” and did not disclose a container that was itself a pod or that contained an integrated filter. The Commission only cited the explicit definition of “pod” in its Background section, and cited the narrower “typical” definitions of “pod” in its analysis section.

Both parties analyze the written description issue under the assumption that the asserted claims read on Solofill’s K2 and K3 cup-shaped containers. The salient feature of the K2 and K3 containers is the integration of the filter into the cup itself, allowing the insertion of loose coffee into the receptacle. The parties agree that nothing in the ’320 patent explicitly describes a pod adaptor assembly with a filter integrated into the cartridge. . . .

The underlying concern addressed by the ’320 patent is enabling compatibility between pods used in pod-type beverage brewers and cartridges used in cartridge-type beverage brewers. The distinction between “pods” and cartridges permeates the entire patent. There is no hint or discussion of a cartridge or pod adaptor assembly or receptacle that also serves as the “pod.” Instead, the specification explains how the cartridge may be adapted to accept a separate “pod” to be used inside the cartridge. . . . The disclosure of the ’320 patent consistently describes an invention in which the “pod” and the receptacle or container are distinct components. Thus, even applying the “broad” definition of “pod” as “a package formed of a water permeable material and containing an amount of ground coffee or other beverage therein,” written description support for broad claims covering a receptacle with integrated filter such as Solofill’s accused products and Rivera’s Eco-Fill products is lacking. Whatever a “pod” is, the specification indicates that it is distinct from the receptacle; for the integral filter cartridge to be supported by the written description definition of a “pod” it must act as both a “pod” and a receptacle. But nothing in the specification shows that the “pod” and the receptacle may be the same structure. . . . [T]he question is whether a pod adaptor assembly intended to allow compatibility between distinct brewing systems, also supports an undisclosed configuration that eliminates a fundamental component of one of those systems (i.e., the “pod”) through integration. It does not.

Moreover, we believe that the Commission did not use the citations to the “typical” definitions of “pod” contained in the specification in a limiting way, but merely to demonstrate that the purpose of the ’320 patent was bridging the compatibility gap between pod-type beverage brewers and cup-shaped cartridge brewers. [A] key characteristic of a “pod” is that it is separate from the claimed container into which it fits. The Commission did not require that the pod be “small,” “flattened,” “disk-shaped,” or composed of “filter paper,” as provided by the typical definitions of “pod.” We thus reject Rivera’s argument that the Commission’s failure to apply the “broad” definition of “pod” is reversible error.

Finally, Rivera argues that the background knowledge of those skilled in the art can supplement the teaching in the specification to provide written description support. . . . We reject Rivera’s argument. [T]he written description inquiry looks to “the four corners of the specification” to discern the extent to which the inventor(s) had possession of the invention as broadly claimed. The knowledge of ordinary artisans may be used to inform what is actually in the specification, but not to teach limitations that are not in the specification, even if those limitations would be rendered obvious by the disclosure in the specification. The specification here does

not teach a container with an integrated filter, and so, does not provide written description support for such a container, even if that type of container might be rendered obvious by the specification.

For the foregoing reasons, we affirm the Commission's conclusion that claims 5-7, 18, and 20 are invalid for lack of written description and that Solofill thus did not violate Section 337. We need not and do not consider the Commissioner's holding with respect to anticipation of claims 5 and 6, nor the alternative grounds for affirmance presented by Solofill.