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The Precedent: The Federal Circuit Remands and Reassigns District Court Patent Infringement Case to a New Judge

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In this edition of *The Precedent*, we outline the decision in *Trudell Medical International Inc. v. D R Burton Healthcare LLC*.

Overview

The U.S. Court of Appeals for the Federal Circuit recently affirmed in part, reversed in part and remanded a district court's decision, finding errors in the admission of noninfringement testimony and denial of a new trial on infringement, while upholding the denial for judgment as a matter of law (JMOL) on infringement, and ordering a new trial before a different district court judge.

Issues

1. Whether the district court erred in admitting noninfringement testimony presented by D R Burton Healthcare, LLC (D R Burton)
2. Whether the district court erred in denying Trudell Medical International Inc.'s (Trudell) motion for JMOL of infringement
3. Whether the district court erred in denying Trudell's motion for a new trial on infringement
4. Whether the case should be remanded and reassigned to a different district court judge

Holdings

1. The district court abused its discretion in allowing the noninfringement testimony presented by D R Burton.
2. The district court did not abuse its discretion in denying Trudell's motion for JMOL.
3. The district court abused its discretion in denying Trudell's motion for new trial.

4. The case should be remanded and reassigned to a different district court judge.

Background and Reasoning

Trudell owns U.S. Patent No. 9,808,588 (the '588 patent) claiming portable devices for performing oscillatory positive expiratory pressure therapy. In 2018, Trudell sued D R Burton for the infringement of certain claims of the '588 patent. As the case progressed, the district court set the closure of all discovery for September 30, 2022. Before the discovery deadline, Trudell submitted expert reports on infringement and damages. After the discovery deadline passed, D R Burton filed a declaration from expert Dr. John Collins, in support of denial of a motion for summary judgment on infringement submitted by Trudell. The motion was ultimately denied.

At trial, the jury found the asserted claims of the '588 patent valid but not infringed. Trudell then filed a renewed motion for JMOL on infringement or, alternatively, for a new trial, both of which the district court denied. Trudell then appealed the district court's decisions to the Federal Circuit, challenging the admission of Dr. Collins' noninfringement testimony, the denial of JMOL and the denial of a new trial. Trudell also requested that the case be reassigned to a different district court judge on remand.

District court's admission of noninfringement testimony

The Federal Circuit held that the district court erred in admitting the non-infringement testimony of Dr. Collins. It was undisputed that the declaration from Dr. Collins was not submitted in a timely manner as required under Federal Rule of Civil Procedure ("FRCP") 26 and should have resulted in the exclusion of Dr. Collins' testimony absent a showing that the failure to disclose was substantially justified or harmless as required by FRCP 37. The district court and D R Burton both failed to show that the failure to disclose was substantially justified or harmless.

D R Burton argued that the accelerated discovery and trial schedule provided substantial justification for the failure to disclose. The Federal Circuit found this argument unavailing as D R Burton did not initially indicate an intention to submit a non-infringement expert report. D R Burton further argued that Trudell was not prejudiced because they also submitted late expert reports; therefore, both parties were untimely. Unlike D R Burton, Trudell submitted expert reports before the discovery deadline. Further, D R Burton expressly communicated that they did not intend to conduct a deposition of Trudell's expert.

The district court reasoned that significant portions of Dr. Collins' testimony had been disclosed in his declaration. Further, its decision to reserve ruling on Trudell's motion in limine provided notice that Dr. Collins might testify at trial. However, the Federal Circuit found this reasoning flawed. Dr. Collins' testimony constituted nearly all of D R Burton's evidence of noninfringement and Trudell had no opportunity to depose him on the issue because his declaration was served weeks after the close of discovery. Even if the declaration was timely, the trial testimony exceeded the scope of his declaration because it did not fully disclose the noninfringement testimony given at trial. The testimony should have been excluded and the district court's decision to admit Dr. Collins' testimony was an abuse of discretion.

The Federal Circuit additionally found Dr. Collins' testimony to be unreliable under Federal Rule of Evidence 702. Specifically, Dr. Collins noninfringement declaration was untethered from the district court's claim constructions. For example, the district court construed the term "rotate relative to the opening" as

“move a fixed body relative to the opening about a point at a fixed radius” and rejected D R Burton’s argument that the term required “a full revolution.” However, Dr. Collins opined in his declaration that “rotate relative to the opening” in the context of the ‘588 patent meant “the vanes rotate in one direction during expiration, round and round in a circular manner.” As noted, “[t]he methodological unsoundness of Dr. Collins’ declaration provides an independent basis by which the district court abused its discretion in allowing Dr. Collins to testify at trial.”

District court’s denial of JMOL on infringement

The Federal Circuit held that Trudell did not establish entitlement to JMOL on infringement and therefore affirmed the district court’s denial of Trudell’s JMOL motion. Trudell contended that if Dr. Collin’s testimony had been properly excluded, the jury would have lacked sufficient evidence to find non-infringement. Although the Federal Circuit agreed that without Dr. Collin’s testimony D R Burton would be left with minimal evidence, the credibility of testimony, including testimony from Trudell’s witnesses, is up to the jury and the court does not reweigh the evidence presented at trial. Therefore, the district court did not err in their denial of Trudell’s JMOL motion.

Reassignment

The Federal Circuit reassigned the case to a different district court judge. Reassignment is proper where both for the judge’s sake and the appearance of justice an assignment to a different judge is salutary and in the public interest, especially as it minimizes even a suspicion of partiality. In determining whether reassignment is warranted, the Federal Circuit considered: (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

The Federal Circuit believed that from the moment the district court received the case it did not intend to manage a fair trial with respect to the issues in this case. This was indicated for example, through statements such as “[b]ut I have to report this case by September 30th and I’m going to get it off my report. That’s the problem you have. Did you know that?” Further the judge’s statements at trial undermined the appearance of fairness. For example, the judge made statements including: “[t]he jury’s just being tolerant of this, and it’s painful. My gosh. I should have put time limits . . . I don’t think they understand they have to get through this case,” “THE COURT: You [Trudell’s counsel] can’t do anything quickly. What do you [the jury] want, do you want to hear this stuff or do you want it kept moving along in the case? SOME JURORS: Move along.”

Reassignment also would not result in undue delay or wasted judicial resources, as the judge presided over this case for only one of the four years of this litigation. Lastly, the Federal Circuit saw this case as analogous to a similar case *Beach Mart, Inc. v. L&L Wings, Inc.*, 784 F. App’x 118 (4th Cir. 2019), in which the court ordered reassignment to a different district court judge. Coincidentally, the same judge being questioned in this case was the same judge in the initial trial of Beach Mart. For these reasons, the Federal Circuit remanded the case for new trial before a different district court judge.

Takeaways

Deadlines are important and should be upheld by courts absent good cause. In doing so, courts maintain the appearance of justice and impartiality and litigants are held to the high standards set by the federal judiciary.

