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**FEDERAL CIRCUIT PATENT LAW CASE UPDATE**


The court affirmed a jury verdict of infringement because the district court’s claim constructions for the terms “base,” “capable of flexing” and “corner” were correct in a patent covering electrical box extenders, used in household wiring during renovation. Judge Dyk concurred in part and dissented in part, disagreeing with the majority over the claim construction of the term “capable of flexing.”

Arlington owed U.S. Pat. No. 5,736,674, for an electrical box extender. The patent claimed a structure that could be inserted into existing electrical boxes that provide outlets, light switches, and the like. The extender had “wings” or sides that flexed inwardly so that it fit a variety of existing electrical boxes.

[T]he district court construed the claim limitation “capable of flexing” . . . to mean “a generalized combination of cantilever bending and bowing about the general area of the base or base end.” . . . Neither party disputes that the ordinary and customary meaning of the term “flexing” encompasses not only cantilever flexing but also bowing or bending.

The court described cantilever flexing as akin to the motion of a hinge, where there is no bend in the swinging member. Among other arguments, Bridgeport contended “that the meaning of ‘flexing’ must be limited to cantilever flexing because the written description ‘teaches only cantilever flexing.’”

Bridgeport . . . essentially invites us to import a limitation from the preferred embodiments to restrict the meaning of a claim term. We have consistently warned against this approach to claim construction, which is seldom justified.

Moreover, Arlington did not disclaim non-cantilever flexing in arguments made to distinguish prior art references in both the original prosecution and in its reexamination request.

As for the claim term “base” the court approved the district court’s construction of this element as the structure about which the wings bent and flexed.

We do not accept Bridgeport’s premise that the use of “base” or “base end” “so deprive[s] the claim of clarity” as to require resort to the other intrinsic evidence for a definite meaning.” . . . Bridgeport simply asserts that the terms are unclear; it does not explain why one of ordinary skill in the art would not be able to understand what was signified by those terms. Because we do not find the terms at issue unclear, we decline to resort to the specification to supplant the ordinary meaning of those terms, and find no error in the district court’s construction.

One independent claim had removable corners as an element. Upon removal, the wings had increased flex. The court rejected Bridgeport’s arguments that the corners “must be specially constructed to flex” as an attempt to incorporate a limitation from the specification into that claim term.

Judge Dyk concurred in part and dissented in part.

I agree that the judgment should be affirmed. However, I respectfully dissent from the majority’s construction of “capable of flexing” limitation in claim 1 of the ’674 patent. The majority’s claim construction allows the patentee to claim the very device disclaimed in the course of patent prosecution, a result plainly at odds with our precedent.