

FEDERAL CIRCUIT PATENT LAW CASE UPDATE

Callicrate v. Wadsworth Mfg., Inc., 04-1597 (Fed. Cir. Oct. 31, 2005) (Rader, J.)

Finding the jury's non-infringement verdict unsupported by evidence due in part to several misconstrued claim terms, the court reversed the verdict in Callicrate's suit based on several patents for "methods and apparatuses for castrating large animals (like cattle)." The court also reversed the jury verdict of anticipation and obviousness. Wadsworth's intervening patent was not invalidating because enablement for priority for some of Callicrate's later patents should have reached an original patent that predated Wadsworth's intervening patent.

"Callicrate is the owner of several patents on methods and apparatuses for castrating large animals (like cattle)," including U.S. Pat. Nos. 5,236,434, 5,997,553 and 5,681,329.

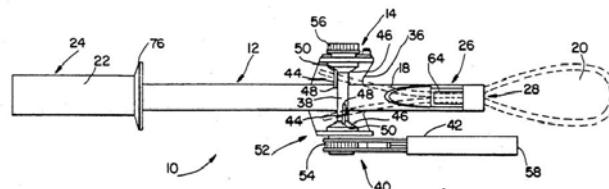
Wadsworth and Callicrate are competitors in the manufacture and sale of castration tools. These tools operate by tensively securing ligature material around an animal's scrotum, thereby preventing blood from flowing to the testicles. With time, the ligated testicles atrophy and fall from the animal.

Wadsworth's first product, the EZE No. 1, used a caulking-gun type mechanism to tighten the cord or string (ligature material). Callicrate's '434 patent disclosed a pulling means to achieve tightening that uses a winding assembly.

Unlike the '434 patent, however, Callicrate's later '553 and '329 patents claim tools with a "means for pulling" that encompasses both caulking gun-type tightening mechanisms as well as winding assembly mechanisms.

A jury determined that Wadsworth's devices did not infringe.

The jury ultimately agreed with Wadsworth, finding none of the asserted claims infringed by the sale or use of the EZE No. 2 or No. 3 castration tools. Wadsworth also argued that the '553 and '329 patents are invalid as anticipated or obvious in view of Wadsworth's U.S. Patent No. 5,425,736 (the '736 patent) and the EZE No. 2 device disclosed



therein. . . . Based on [the] reasoning [that the '434 patent not satisfy 35 U.S.C. § 112, ¶1 with respect to the caulking gun-type tightening mechanism], the district court instructed the jury that the '736 patent is prior art to the '553 and '329 patents. The jury then found those patents anticipated by and obvious in view of the '736 patent.

The court revised the construction of several claim terms. The first, "lever for deforming a grommet," was incorrectly narrowed to a specification embodiment, in part by adding the requirement for a fulcrum pin.

The district court determined that "cutting means" invoked means-plus-function treatment under 35 U.S.C. § 112, ¶ 6. . . . The district court defined this limitation as a "cutting mechanism which is pivotally mounted to a tool body and which will cut ligature material when pivoted into contact with the ligature material." . . . While § 112, ¶ 6 applies to this claim term, the structures disclosed in the '553 patent that perform the cutting function do not limit the "cutting means" as strictly as the district court's construction.

A “pivotally mounted cutting mechanism” was insufficient structural identification because the specification also annotated slidably-mounted and hand-held mechanisms.

In another patent, the court also corrected the limitation “preformed endless loop.”

While mostly correct, this construction is slightly too broad because it reads out the “preformed” limitation and thus transforms the limitation into simply an “endless loop.”

The court next addressed the jury infringement verdict.

The court’s instructions also noted that Wadsworth admitted before trial that the EZE No. 2 and No. 3 devices (or use thereof) include all of the claim elements. Wadsworth does not dispute this admission on appeal, and has not challenged the district court’s jury instructions. In light of these jury instructions and Wadsworth’s admission, this court detects no basis for the jury’s finding of non-infringement. Thus, the district court erred in denying JMOL to Callicrate on infringement of the asserted claims in both patents.

Moreover, this court sees no reason for a new trial on the infringement issues even though Wadsworth made its admissions based on the district court’s erroneous claim construction. As to the ’553 patent, the district court’s claim construction error has no effect because Wadsworth’s admissions were made under a narrower construction.

Finally, the court reversed the invalidity determination. With benefit of the priority date of the ’434 patent, the later patents are not invalidated by Wadsworth’s intervening patent.

In the present case, the district court determined that the ’434 patent did not

contain adequate “disclosure” or “support” for [priority for the later patents for] the use of a caulking gun-type tightening mechanism for three reasons: (1) the only disclosure of the caulking gun-type tightening mechanism is in the background section; (2) the background section contains disparaging remarks about this mechanism; and (3) Callicrate distinguished his winding assembly mechanism from the caulking gun-type tightening mechanism during prosecution. . . . These three reasons, even in combination, do not support the district court’s conclusion of no enablement.

