

FEDERAL CIRCUIT PATENT LAW CASE UPDATE

Free Motion Fitness, Inc. v. Cybex Int'l, Inc., 05-1006 (Fed. Cir. Sept. 16, 2005) (Dyk, J.)

Disagreeing with the district court's claim construction for multiple claim terms in Free Motion's patents for an exercise machine using pivoting arms with cables attached to the weights, the court vacated the summary judgment of noninfringement. Judge Prost dissented, arguing in favor of the claim construction below.

Free Motion owns U.S. Pat. Nos. 6,238,323 (the "323 patent") and 6,458,061 (the "061 patent").

The patents claim an exercise apparatus comprising a resistance assembly, two adjustable extension arms that pivot on an axis substantially parallel to the axis of rotation of a pulley at the end of each arm, and a cable linking the resistance assembly to the arms.

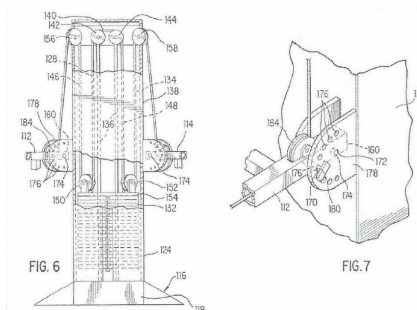
The accused devices have two pivot points in their arms, rather than one in the claimed technology.

The court disagreed with the claim construction below.

The addition of unclaimed elements does not typically defeat infringement when a patent uses an open transitional phrase such as "comprising." . . . That is essentially what the district court did here under the guise of construing the claims. . . . [T]he claims include two arms, and the claims' use of the terms "first pivot point" and "second pivot point" distinguishes the pivot point on the "first extension arm" from the pivot point on the "second extension arm." "First" does not denote spatial location, that is, it does not suggest where on the "first extension arm" or the "second extension arm" the pivot points are located. The correct construction of the word "first" merely associates the first pivot point with the first extension arm, and thus does not support the district court's judgment that the accused devices do not infringe.

The claimed pivot points are "adjacent" the assembly. The court corrected this construction to "not distant," where the district court required no interposing objects.

Finally, the district court held that the term "a cable linking" in the claims is limited to only a single cable. . . . At oral argument Cybex admitted that the legal meaning of the term "a" suggests that the claim term "a linking cable" normally should be interpreted to mean one or more cables. That is correct. "[A]" or "an" in patent parlance carries the meaning of 'one or more' in open-ended claims containing the transitional phrase 'comprising.'" . . . This convention is overcome only when "the claim is specific as to the number of elements" or "when the patentee evinces a clear intent to . . . limit the



article." . . . Cybex argues that here the presumption is overcome because the specification describes the cable as a "single cable." We disagree. The references to a single cable in the specification are found in the description of the preferred embodiments, and do not evince a clear intent by the patentee to limit the article to the singular.

Finally, the court addressed an issue for remand relating to the infringement inquiry that would occur under the corrected claim interpretations.

The presence of an undesirable prior art feature in addition to the elements recited in the claim, even when the undesirability of that feature formed the basis of an amendment and argument overcoming a rejection during prosecution, does not limit the claim unless there is a clear and unmistakable disclaimer of claim scope. Here, there is no such disclaimer. The "comprising" language allows additional features. The disclaimer, if there was one, only applied to the "claimed assembly," not unclaimed features added to the patented device.

In dissent, Judge Prost argued in favor of the district court's claim construction.

I would affirm the decision of the district court, because I agree with its constructions of "first pivot point" (as I understand that construction), "adjacent," and "a cable linking." . . . I also think the district court properly selected the appropriate dictionary definition of "adjacent." As the majority states, a claim term does not "presumptively receive its broadest dictionary definition or the aggregate of multiple dictionary definitions[.]"

