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Federal Circuit unambiguously endorses references to patent drawings as 'exemplary embodiments'

Baker Donelson - USA
Aaron Chaloner

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Aaron Chaloner

BAKER DONELSON

On April 24 2017 the Federal Circuit in *Skedco v Strategic Operations* stated that a patent's use of the phrase ‘exemplary embodiments’ accentuates that the claimed invention is not limited to representations that are identical to those depicted in a patent’s drawings.

Skedco is the exclusive licensee of US Patent 8,342,852 (the ‘'852 patent’) relating to a medical training system that pumps fluid to a wound site on a lifelike mannequin to simulate a haemorrhaging patient. Strategic Operations markets and sells a realistic blood-pumping system that also simulates a bleeding patient. Skedco sued Strategic Operations for infringement of the '852 patent, which, in relevant parts, claims:

- a pump in fluid communication with a reservoir;
- at least one valve in fluid communication with said pump; and
- a controller connected to said pump and said valve.

The district court granted summary judgment in favour of Strategic Operations and held that there was no literal infringement of Skedco’s patent. The district court construed the claims in Skedco’s patent as requiring that the valve and pump be physically separate structures. The district court further read the claims to require that the controller be directly, independently and physically connected to the pump and the valve. Strategic Operations’ blood-pumping system utilises a pump and valve within a single housing and employs valves that are manually activated via the rotation of a handle. Thus, Strategic Operations did not infringe the '852 patent as construed by the district court because its valve and pump were not physically separate – the blood-pumping system had no direct, independent and physical connections between the controller and the valve.

On appeal, Skedco argued that the district court improperly construed the '852 patent claims, asserting in part that the claims did not require the pump and valve to be physically separate and that the claim language did not require a direct, physical connection between the controller and the valve. In response, Strategic Operations directed the Federal Circuit’s attention to the drawings of the '852 patent, arguing that the figures would be “nonsensical if the valve were integral to the pump”.

The Federal Circuit was unmoved by Strategic Operations’ contentions and cited prior case law clearly showing that a patented invention can claim more than that which is disclosed in the drawings. The court went on to state that the cited judicial precedent was particularly relevant in this case because Skedco's patent referred to the drawings as ‘exemplary embodiments’. Thus, Skedco's reference to the drawings as examples of the present invention strengthened the argument that the invention was not merely limited to the system disclosed in the drawings.

The Federal Circuit also agreed that the '852 claims did not require a direct, independent and physical connection between the controller and the valve. The court referred to language in the patent itself to show that the word ‘connected’, as used in the claim, encompassed both direct and indirect linkages. The court further specified that the patent disclosed specific embodiments wherein a remote controller activates the valve, providing evidence that a physical connection is not required. Therefore, the Federal Circuit vacated the district court's dismissal of Skedco's claim and remanded the case back to the district court to determine whether Strategic Operations had infringed the '852 patent.

In the present case, the Federal Circuit unambiguously endorsed an important lesson that bears repeating for patent applicants who might otherwise be caught unaware: use of the phrase ‘exemplary embodiments’ may help insulate the applicant from unnecessarily narrow construction of patent claims. Patent applicants should avoid describing the figures as ‘drawings of the present invention’; rather, they should refer to them as ‘exemplary embodiments of the present invention’. This may provide additional leverage for the patent holder in supporting an infringement claim.

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For further information please contact:

Aaron Chaloner
Baker Donelson
www.bakerdonelson.com
Email: achaloner@bakerdonelson.com
Tel: +1 615 726 5600

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