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Federal Circuit Holds That Patentee’s Disavowal of Claim Construction Warrants Reversal of Summary Judgment

In *Focus Products Group International, LLC v. Kartri Sales Co.*, --- F.4th ---, 2025 WL 2774853 (Fed. Cir. Sept. 30, 2025), the Federal Circuit reversed the district court’s grant of summary judgment of patent infringement to the plaintiffs because the district court adopted a claim construction that the patentee disavowed during patent prosecution and failed to adequately explain another construction. This overview focuses on the Federal Circuit’s analysis of the patent infringement claims at issue, rather than its separate analyses of trademark and trade-dress claims.

Background

Five entities (collectively, Plaintiffs) obtained three patents for a “hookless” shower curtain with “rings”: U.S. Patent Nos. 6,494,248 (the ’248 Patent), 7,296,609 (the ’609 Patent), and 8,235,088 (the ’088 Patent) (collectively, the Asserted Patents). *Id.* at *1. In June 2015, Plaintiffs sued Kartri Sales Co., Inc. (Kartri) for infringement of the Asserted Patents in the Southern District of New York based on Kartri’s sales of its “Ezy-Hang” shower curtains (the “Accused Products”). *Id.* at *3. Plaintiffs added Marquis Mills, International, Inc. (Marquis), Kartri’s supplier, as a defendant the following year. *Id.*

In 2020, the district court granted Plaintiffs’ motion for summary judgment on their patent infringement claims based on the court’s construction of several claim terms in the Asserted Patents. *Id.* at *4.

Reversal of Summary Judgment Regarding ’248 and ’609 Patents

In granting Plaintiffs’ summary judgment motion with respect to the ’248 and ’609 Patents, the district court construed the term “ring” in the patent claims as “a piece of material that is curved at least in part and that generally encloses and reinforces an opening.” *Id.* at *6. The district court rejected the defendants’ argument that the prosecution histories showed that the patentee “disavowed any non-circular construction of the ‘ring’ limitation,” including a “flat upper edge.” *Id.* That was significant because the Accused Products contained only rings with a “flat upper edge.” *Id.*

The Federal Circuit reversed. *Id.* at *6–8. The appellate court agreed with Marquis’ argument—which Kartri had waived, *see, id.* at *16 — that the prosecution histories “show[ed] that the patent owner clearly disavowed a ring having a flat upper edge.” *Id.* at *6. The court explained that the prosecution histories “paint[ed] a clear and consistent picture that the ’248 and ’609 patents exclude shower rings having a flat upper edge.” *Id.* at *7. The court pointed to several aspects of the prosecution histories supporting this conclusion.

First, the patent examiner concluded that the claims of the parent application for the '248 Patent were "directed to multiple patentably distinct species" of shower curtain rings and, accordingly, the examiner directed the patentee to elect one species for continued prosecution. *Id.* The patentee did so, excluding the species of rings with a "flat upper edge." *Id.*

Second, when the patentee added a new claim to its patent application directed to a "ring [that] includes a flat upper edge along at least a portion of said ring," the examiner found that claim to be improperly "drawn to a nonelected species." *Id.* The Federal Circuit emphasized that the patentee "could have disagreed with the examiner's narrowing of the patent scope at th[at] juncture but, as with the initial restriction requirement, did not do so." *Id.* Instead, the patentee continued to prosecute its patent application. *Id.*

Third, in the notice of allowance, the examiner provided the patentee with an opportunity to challenge the withdrawal of the claim covering rings with a "flat upper edge," but the patentee did not challenge the withdrawal. *Id.*

Finally, during the prosecution of the '088 Patent, the examiner initially rejected all claims on the ground of "double patenting," given the similarity of the '088 Patent to the '248 and '609 Patents. *Id.* at *8. The patentee responded by distinguishing the '088 Patent claims from the other claims by including a ring with a "flat upper edge," "thereby showing that [the '248 and '609 Patents] did not encompass a ring having a flat upper edge." *Id.*

The Federal Circuit ultimately held that "by cooperating with the examiner's repeated demand to exclude rings with a flat upper edge from the '248 and '609 patents, ... the patent owner made it clear that it accepted the narrowed claim scope for these patents." *Id.* at *7. Because the "ring" limitation in the claims excluded rings with "flat upper edges," the Federal Circuit reversed the district court's grant of summary judgment with respect to the '248 and '609 Patents. *Id.*

Vacatur of Summary Judgment Regarding '088 Patent

The Federal Circuit also vacated the district court's grant of summary judgment to Plaintiffs with respect to the '088 Patent. *Id.* at *10. Claim 1 of the '088 Patent includes a shower ring with, among other things, a "projecting edge." *Id.* at *3. The district court construed this term as "an edge that projects from the outer circumference of the ring." *Id.* at *8. That construction, the Federal Circuit noted, was consistent with the specification. *Id.* The court concluded, however, that the district court "failed to explain its reasoning for why one section of the outer edge of an accused product is the 'outer circumference,' while the other section ought to be deemed the 'projecting edge.'" *Id.* In other words, the district court did not adequately explain why a part of a ring's outer edge is a "projecting edge," rather than "a continuation of the ring's 'outer circumference.'" *Id.* at *10. According to the Federal Circuit, that warranted vacatur of summary judgment and a remand for further explanation. *Id.*

Federal Circuit Concludes That Two Organizations Lack Associational Standing to Challenge USPTO's Denial of Petition for Rulemaking

In *US Inventor, Inc. v. U.S. Patent and Trademark Office*, --- F.4th ---, 2025 WL 2810576 (Fed. Cir. Oct. 3, 2025), the Federal Circuit held that two advocacy organizations lacked associational standing to sue the U.S. Patent and Trademark Office (“USPTO”) based on its denial of their joint petition for rulemaking. *Id.* at *1.

Background

In August 2020, two advocacy organizations, US Inventor, Inc. and National Small Business United (collectively, Plaintiffs), jointly filed a petition for rulemaking to establish criteria to limit the authority of the USPTO to institute *inter partes* review (IPR) and post-grant review (PGR) in certain circumstances. *Id.* The petition proposed amending USPTO regulations to add that an IPR or PGR “shall not be instituted” if the patent owner objects and at least one of five requirements is met. *Id.* One of those proposed requirements, which had three parts, was that the patent owner “(A) was the applicant to whom the patent was originally issued; (B) claimed small entity or micro entity status at the time the patent was issued; and (C) actually reduced one or more of the challenged claims to practice.” *Id.*

In 2021, the USPTO denied Plaintiffs’ petition, explaining that the issues raised in the petition overlapped with those already raised in an October 2020 request for public comments on the agency’s discretion to institute an IPR or PGR. *Id.* The USPTO explained that the petition “w[ould] be considered as part of any future rulemaking” on that topic. *Id.*

Plaintiffs sued the USPTO, claiming that the agency’s denial of their petition violated the Administrative Procedure Act in several ways — for example, by failing to “conclude a matter presented to it” “within a reasonable time” because the denial stated only that the USPTO would consider Plaintiffs’ proposals in a “future rulemaking.” *Id.*

The USPTO filed a motion to dismiss for lack of standing, which the district court granted. *Id.* at *2. On appeal, Plaintiffs pressed their argument that they had associational standing. *Id.* at *2. Rejecting that argument, the Federal Circuit affirmed. *Id.*

Court’s Analysis of Associational Standing

Advocacy organizations have associational standing if, among other things, “at least one of their members would have standing to sue.” *Id.* at *3 (quoting *Sierra Club v. EPA*, 754 F.3d 995, 999 (D.C. Cir. 2014)). Plaintiffs’ main argument on appeal was that they had associational standing because the USPTO’s denial of their petition for rulemaking caused their members to suffer a “risk of cancellation of a patent and/or patent claim as a result of institution” of an IPR or PGR. *Id.* at *4. The Federal Circuit rejected that argument because Plaintiffs had not shown that the risk of cancellation was “actual or imminent,” as opposed to “conjectural or hypothetical.” *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

The Federal Circuit presented the “extended chain of events” that would need to occur before the USPTO’s denial of Plaintiffs’ petition would result in the risk of cancellation of a patent or patent

claim of one of Plaintiffs' members. *Id.* First, a third party would need to file a petition for an IPR or PGR on a patent owned by a member of Plaintiffs. *Id.* That third party would need to satisfy the requirements for institution of an IPR or PGR on the merits. *Id.* Next, the Patent Trial and Appeal Board (PTAB) would need to exercise its discretion to grant institution of an IPR or PGR. *Id.* And finally, institution of an IPR or PGR would need to increase the probability that the PTAB would cancel the challenged patent, as compared to litigation. *Id.* At least some of those events, the court explained, were "highly speculative" because they depended on "future actions to be taken by third parties," including IPR and PGR petitioners and the PTAB. *Id.* at *5.

The court also rejected several of Plaintiffs' arguments. For example, Plaintiffs asserted that one of their members suffered an imminent risk of cancellation of a patent. *Id.* Although the PTAB had already denied a petition for an IPR of that patent, the member asserted that it faced a "renewed threat" of cancellation if the petitioner filed for reconsideration after Plaintiffs' petition for rulemaking was denied. *Id.* The Federal Circuit rejected that argument, explaining that the PTAB denied the member's petition for IPR on the merits, so reconsideration would only "restart[] the causal chain" presented above. *Id.* Thus, Plaintiffs did not allege facts demonstrating that the member's patent would plausibly be challenged again. *Id.*

Plaintiffs also attempted to analogize their case to *Apple Inc v. Vidal*, 63 F.4th 1 (Fed. Cir. 2023). There, the Federal Circuit concluded that Apple had standing to challenge USPTO guidance regarding the PTAB's discretion to institute IPRs on claims being litigated in parallel infringement lawsuits. *Id.* at *6. Distinguishing *Apple*, the Federal Circuit explained that Apple was "very likely to repeatedly petition for IPR of patent claims asserted in infringement suits against it" because it had been sued repeatedly for infringement, it "regularly petition[ed] for an IPR" of patent claims at issue in those suits, and its complaint "contained detailed allegations of past harm, which c[ould] be probative of standing based on threat of future conduct." *Id.* By contrast, Plaintiffs "ha[d] not shown that third parties regularly file petitions for IPR or PGR against any single one of [their] members," nor had they "alleged past harm of the kind that could be probative of future, non-speculative harm." *Id.*

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