

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GET-A-GRIPP, II, INC. : CIVIL ACTION
: :
v. : :
: :
HORNELL BREWING CO., INC. : :
d/b/a FEROLITO, VULTAGGIO & : :
SONS : NO. 00-3937

MEMORANDUM AND ORDER

J. M. KELLY, J.

MAY , 2000

Presently before the Court is a Motion for Summary Judgment filed by the Defendant, Hornell Brewing Co., Inc. (“Hornell”). The motion arises from a patent infringement claim filed by the Plaintiff, Get-A-Gripp, II, Inc. (“Get-A-Gripp”). Hornell seeks summary judgment because, they argue, their product does not infringe upon that patent.

I. BACKGROUND

Get-A-Gripp is the exclusive owner of United States Patent No. 5,330,054 (the “’054 Patent”), a patent for a beverage bottle with finger grips. Get-A-Gripp¹ filed an application for a patent on December 9, 1992 and it issued on July 19, 1994. The ‘054 Patent issued with eighteen claims, of which Claim 1 is the only independent claim. Claim 1 reads, in pertinent part:

A hand grippable bottle for holding a beverage which can be securely grasped and which affords a high degree of beverage product information visibility while being hand held, comprising: a slender bottle having a main body closed at one end by a base and a neck extending from an opposite end of the main body, and a beverage contained in the bottle, said neck being tapered in a direction toward an open end of the neck where said neck terminates, said main body having a plurality of finger indentations formed therein, arranged on a first side of the main body, suitable for receiving a corresponding plurality of a person’s fingers to facilitate grasping and holding of the bottle without slipping, the individual finger indentations of said plurality being separated from each other by adjoining non-

¹ The original patent was issued to Harvey Brown and assigned to Get-A-Gripp.

indented regions of the main body, said main body having a second side, opposite the first side, which does not define any finger indentations and which bears information as to the beverage contained in the bottle.

Poscillo Dec., Ex. A. Get-A-Gripp explained that its design allows an end user to maintain a better grip on a moist bottle while maximizing advertising display. In addition, the interior of the bottle allows efficient filling with carbonated beverages.

Get-A-Gripp alleges in its Complaint that Hornell has infringed upon its patent through the use of a glass bottle for the distribution of Hornell's AriZona beverages. The AriZona bottles have three or four finger indentations and an opposing thumb indentation on the body of the bottle. Get-A-Gripp's initial patent application was rejected as unpatentable in response to United States Patent No. 2,035,404 which issued to J.J. Quinn (the "Quinn Patent"). The Quinn Patent was issued for finger grips on containers of liquid that did not require modification of the original container design. In response to that rejection, Get-A-Gripp amended ¶ 1 of its application to include the language "said main body having a second side, opposite the first side, which does not define any finger indentations. . . ." Hornell argues that the AriZona bottles do not infringe upon the '054 Patent because they contain an opposing thumb grip and Get-A-Gripp is estopped from asserting an infringement claim for a design that it specifically withdrew from its application.

II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). This

Court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant’s favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment “after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

With respect to patent cases, the Federal Circuit has stated that:

Summary judgment is as appropriate in a patent case as in any other. Where no genuine issue of material fact remains and the movant is entitled to judgment as a matter of law, the court should utilize the salutary procedure of Rule 56 to avoid unnecessary expense to the parties and wasteful utilization of the jury process and judicial resources.

Barmag Barmer Maschinenfabrik AG v. Murata Mach., Ltd., 731 F.2d 831, 835 (Fed. Cir. 1984).

Therefore, if no dispute of fact is presented and it appears “that the case may be determined by a mere comparison of structures and extrinsic evidence is not needed for purposes of explanation, or evaluation of prior art, or to resolve questions of the application of descriptions to subject matter, the questions of invention and infringement may be determined as questions of law.”

United States v. Esnault-Pelterie, 303 U.S. 26, 30 (1938).

III. DISCUSSION

Determination of infringement is a two-step process. First, the court construes the claims to correctly determine their scope. Second, it compares the properly construed claims to the accused device. Cybor Corp. v. FAS Techs., Inc., 138 F.3d 1448, 1454 (Fed. Cir. 1998) (en banc). Here, Hornell's AriZona bottles have a thumb grip that opposes its finger grips. The scope of Get-A-Gripp's claim specifically rejects an opposing thumb grip. Moreover, Get-A-Gripp amended its application in order to meet the Patent Office's rejection of the initial application as unpatentable over the Quinn Patent. Claims that have been narrowed in order to obtain issuance over the prior art cannot later be interpreted to cover that which was previously disclaimed during prosecution. See Graham v. John Deere Co., 383 U.S. 1, 33 (1966). Accordingly, Hornell's AriZona bottles are not within the scope of the '054 patent and Hornell's Motion for Summary Judgment is granted.

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ORDER

AND NOW, this day of May, 2001, in consideration of the Motion for Summary Judgment (Doc. No. 6) filed by the Defendant, Hornell Brewing Co., Inc. and the Response thereto of Plaintiff, Get-A-Gripp, II, Inc., it is ORDERED that the Defendant's motion is GRANTED. Judgment is ENTERED in favor of the Defendant, Hornell Brewing Co. and against the Plaintiff, Get-A-Gripp, II, Inc.

BY THE COURT:

JAMES MCGIRR KELLY, J.