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566 F.3d 1075
United States Court of Appeals,
Federal Circuit.

PARAGON SOLUTIONS, LLC, Plaintiff–Appellant,
v.
TIMEX CORPORATION, Defendant–Appellee.

No. 2008–1516.
|
May 22, 2009.

Synopsis
Background: Owner of patent disclosing an exercise monitoring system brought infringement action against competitor. Following claim construction, the United States District Court for the Southern District of Ohio, Michael R. Barrett, J., entered final judgment of noninfringement on the parties stipulation. Patent owner appealed.

Holdings: The Court of Appeals, Linn, Circuit Judge, held that:

[1] term "data acquisition unit" meant a structure or set of structures including at least the electronic positioning device and the physiological monitor;

[2] term "display unit" meant a structure or set of structures, separate from the data acquisition unit, for displaying real-time data provided by both the electronic positioning device and the physiological monitor independently or over a common transmission path;

[3] term "displaying real-time data" meant displaying data without intentional delay, given the processing limitations of the system and the time required to accurately measure the data; and

[4] fact question precluded judgment of noninfringement as a matter of law.

Vacated and remanded.

West Headnotes (16)

[1] Patents
De novo review in general

Patent claim construction is an issue of law that a court of appeals reviews de novo.

Cases that cite this headnote

[2] Patents
State of the art

Court of appeals determines the ordinary and customary meaning of undefined patent claim terms as understood by a person of ordinary skill in the art at the time of the invention, using the methodology in *Phillips v. AWH Corp.*.

10 Cases that cite this headnote

[3] Patents
Multiple sources for construction

Patents
Extrinsic Evidence

In construing a patent claim term, a court looks to those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean; those sources include the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.

7 Cases that cite this headnote

[4] Patents
Measuring, testing, and indicating devices

Term "data acquisition unit," in patent disclosing an exercise monitoring system, meant a structure or set of structures including

at least the electronic positioning device and the physiological monitor.

Cases that cite this headnote

[5] Patents

Particular patents and claims

Owners of patent disclosing an exercise monitoring system clearly and unmistakably disavowed a single structure that encompassed an electronic positioning device, a physiological monitor, and a display unit, but did not clearly and unmistakably disavow a monitoring system with more than two structures, during patent prosecution, so as to limit the meaning of the "data acquisition unit" claim term, by amending claims to require a separate data acquisition unit and display unit, and by remarking that this distinguished the "unitary structure" of the prior art patent.

1 Cases that cite this headnote

[6] Patents

Rejection and Amendment of Claims; Prosecution History

A patentee may limit the meaning of a claim term by making a clear and unmistakable disavowal of scope during prosecution.

1 Cases that cite this headnote

[7] Patents

Measuring, testing, and indicating devices

Term "display unit," in patent disclosing an exercise monitoring system, meant a structure or set of structures, separate from the data acquisition unit, for displaying real-time data provided by both the electronic positioning device and the physiological monitor independently or over a common transmission path.

5 Cases that cite this headnote

[8] Patents

Construction of Particular Claims as Affected by Other Claims

In construing patent claim terms, a court applies a presumption that the same terms appearing in different portions of the claims should be given the same meaning unless it is clear from the specification and prosecution history that the terms have different meanings at different portions of the claims.

21 Cases that cite this headnote

[9] Patents

Measuring, testing, and indicating devices

Term "displaying real-time data," in patent disclosing an exercise monitoring system, meant displaying data without intentional delay, given the processing limitations of the system and the time required to accurately measure the data.

8 Cases that cite this headnote

[10] Patents

Products or devices

Apparatus patent claims cover what a device is, not what a device does.

8 Cases that cite this headnote

[11] Patents

In general;comparison with patent claims

Absent an express limitation to the contrary, any use of a device that meets all of the limitations of an apparatus patent claim written in structural terms infringes that apparatus claim.

12 Cases that cite this headnote

[12] Patents

In general;comparison with patent claims

Construing a non-functional patent term in an apparatus claim in a way that makes direct

infringement turn on the use to which an accused apparatus is later put confuses rather than clarifies, frustrates the ability of both the patentee and potential infringers to ascertain the propriety of particular activities, and is inconsistent with the notice function central to the patent system.

9 Cases that cite this headnote

[13] Patents

Dictionaries, encyclopedias, treatises, and other reference works

Dictionaries and treatises can be useful in patent claim construction, particularly insofar as they help the court to better understand the underlying technology and the way in which one of skill in the art might use the claim terms.

4 Cases that cite this headnote

[14] Patents

Judgment as a matter of law

Factual question of whether accused products incorporated an intentional delay between the time at which data was acquired and the time at which it was displayed, so as to not meet "displaying real-time data" limitation of patent disclosing an exercise monitoring system precluded judgment of noninfringement as a matter of law in infringement action.

6 Cases that cite this headnote

[15] Patents

In general;utility

US Patent 6,013,007. Cited as Prior Art.

1 Cases that cite this headnote

[16] Patents

In general;utility

US Patent 6,736,759. Construed.

Cases that cite this headnote

Attorneys and Law Firms

***1077** James D. Liles, Porter, Wright, Morris & Arthur LLP, of Cincinnati, OH, argued for plaintiff-appellant. With him on the brief was Bryan R. Faller, of Columbus, OH.

John R. Horvack, Jr., Carmody & Torrance LLP, of New Haven, CT, argued for defendant-appellee. With him on the brief was Fatima Lahnin.

Before BRYSON, LINN, and MOORE, Circuit Judges.

Opinion

LINN, Circuit Judge.

Paragon Solutions, LLC ("Paragon") appeals from a final judgment of noninfringement in favor of Timex Corporation ("Timex") in a suit alleging that certain Timex products, including Timex's Bodylink watches, infringed Paragon's U.S. Patent No. 6,736,759 (the "#759 patent"). Following claim construction, the parties stipulated that the accused products did not infringe, and the district court entered the final judgment of noninfringement on the stipulation. ***1078** *Paragon Solutions, LLC v. Timex Corp.,* No. 1:06–CV–677 (S.D.Ohio July 10, 2008) ("*Final Judgment* "); *Paragon Solutions, LLC v. Timex Corp.,* No. 1:06–CV–677 (S.D.Ohio Apr. 23, 2008) ("*Claim Construction Op.*"). Because we conclude that the district court's constructions of the claim terms "data acquisition unit" and "display unit" were incorrect, and because we reject Timex's asserted alternative basis for affirmance based on the claim term "displaying real-time data," we vacate and remand.

I. BACKGROUND

The #759 patent discloses an exercise monitoring system. #759 patent col.2 ll.66–67. The claimed monitoring system includes a "data acquisition unit," which itself includes both an "electronic positioning device" and a "physiological monitor." *Id.* col.27 ll.66–67. When the user wears the system during exercise, the electronic positioning device—one embodiment of which is a GPS device—tracks "at least one of" the user's

"location, altitude, velocity, pace, [or] distance traveled." *Id.* col.3 ll.8–10. The physiological monitor retrieves "physiological data" from a user during exercise, namely, blood oxygen level or heart rate. *Id.* col.3 ll.11–13, 40, 50–51. Data from both the electronic positioning system and the physiological monitor are provided to a "display unit," which displays data to the user in "real-time." *Id.* col.28 ll.3–5, 13–14. Figures 1 and 3 are exemplary illustrations of the disclosed exercise monitoring system:

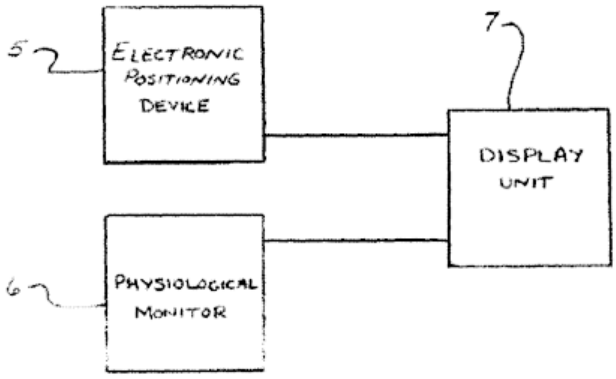

FIG. 1

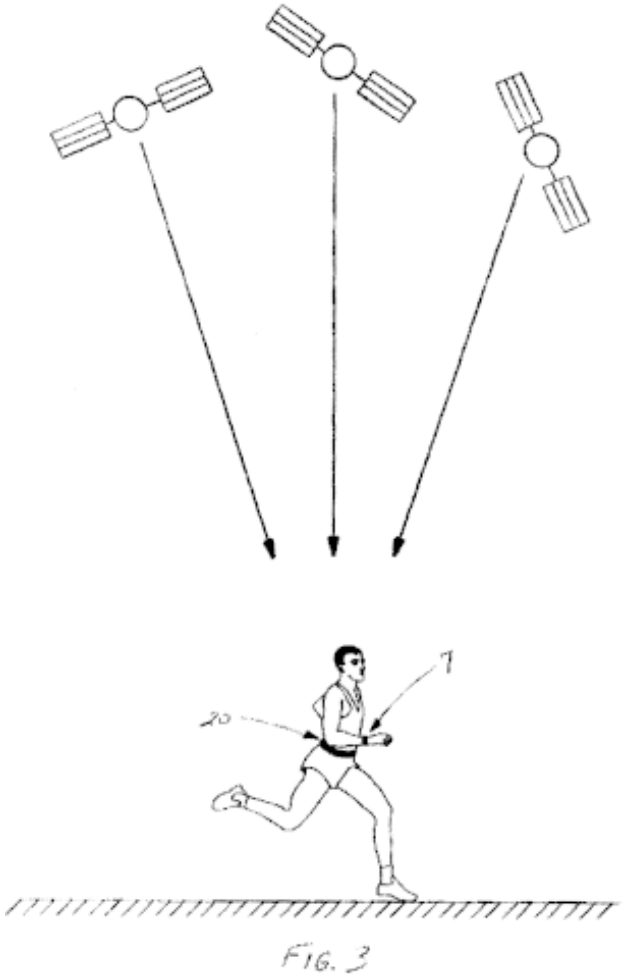

FIG. 3

***1079**

The #759 patent has two independent claims, reproduced as follows, with disputed portions emphasized:

1. An exercise monitoring system, comprising:

(a) a *data acquisition unit* comprising an *electronic positioning device* and a *physiological monitor,* said data acquisition unit configured to be worn by a subject performing a physical activity; and

(b) a *display unit* configured for displaying *real-time data* provided by said electronic positioning device and said physiological monitor, ***1080** said display unit separate from said data acquisition unit;

wherein said display unit is configured to be worn by the subject, worn by someone other than the subject, or attached to an apparatus associated with the physical activity being performed by the subject

so as to be visible to the subject while performing the physical activity, and

further wherein said system is configured such that said display unit displays *real-time data* comprising at least one of a subject's location, altitude, velocity, pace, and distance traveled.

29. An exercise monitoring system, comprising:

(a) an electronic positioning device configured to receive electromagnetic signals from three or more sources so that said monitoring system can determine at least one of a subject's velocity or pace, wherein said electronic positioning device is provided as part of a *data acquisition unit*;

(b) a physiological monitor;

(c) a *display unit* configured to be worn by a user and for simultaneously displaying *real-time data* provided by said electronic positioning device and said physiological monitor, wherein said *display unit is separate from said electronic positioning device;* and

(d) an alarm, wherein said alarm is activated when a subject's velocity or pace does not meet a predetermined target.

Id. col.27 l.66–col.28 l.16, col.30 ll.11–27 (emphases added).

Of particular relevance to this case are the structural relationships among the electronic positioning device, the physiological monitor, and the display unit. As recited in claim 1, the electronic positioning device and the physiological monitor are both part of a data acquisition "unit." *Id.* col.27 ll.66–67. The #759 patent refers to the data acquisition unit interchangeably as a "data acquisition component." *See id.* col.3 ll.15–16 (describing "data acquisition unit (or component)"). Likewise, the display unit is referred to interchangeably as a "unit" and a "component." *Id.* col.3 l.3 (describing "a display unit (or component)"). Concerning the structure of the data acquisition unit, the specification states that "the data acquisition component of a monitoring system according to the present invention may even comprise multiple structures which are physically separate from each other." *Id.* col.8 ll.36–39. The claims and specification also indicate that the data acquisition unit—including its component parts—and the display unit are physically separate from each other. *See, e.g., id.* col.28 ll.5–6 (claiming "said display unit *separate* from said data acquisition unit") (emphasis added); *id.* col.3 ll.14–17 ("The electronic positioning device and the physiological monitor may be provided as part of a user-wearable data acquisition unit (or component) which is *separate* from the display unit.") (emphasis added).

The structural relationships among the electronic positioning device, the physiological monitor, and the display unit were also addressed during the prosecution of the #759 patent. Prior to its second amendment, claim 1 did not include the claim term "data acquisition unit." Instead, it recited:

1. (amended) An exercise monitoring system, comprising:

(a) an electronic positioning device;

(b) a physiological monitor, and

***1081** (c) a display unit configured for displaying data provided by said electronic positioning device and said physiological monitor;

wherein said system is configured such that said display unit displays at least one of a subject's location, altitude, velocity, pace, and distance traveled.

Defendant Timex Corporation's Opening Claim Construction Statement, Doc. No. 21 Ex. 2 ("*Doc. 21*"), Part M, *Paragon Solutions, LLC v. Timex Corp.,* No. 1:06–CV–677, 2007 WL 5271272 (S.D.Ohio July 23, 2007) (J.A. 289). The examiner rejected claim 1 (amended) as anticipated by U.S. Patent No. 6,013,007 ("Root"), which the examiner concluded "disclose[d] an electronic positioning device, a physiological monitor, [and] a display unit." *Doc. 21,* Ex. 2–N (J.A. 295) (citations omitted).

In response, the applicants further amended claim 1 to recite:

1. (twice amended) An exercise monitoring system comprising:

(a) *a data acquisition unit comprising* an electronic positioning device and [; (b)] a physiological

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