

Trivascular, Inc. v. Samuels: Even the “Broadest Reasonable Interpretation” Has Limits

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In a decision demonstrating the limits of the broadest reasonable interpretation standard, the US Court of Appeals for the Federal Circuit upheld a non-obviousness finding by the Patent Trial and Appeal Board (PTAB or Board), concluding that the petitioner’s claim construction position stretched the claim beyond its broadest reasonable interpretation and that the patent owner had not disclaimed its opposing interpretation. *Trivascular, Inc. v. Samuels*, Case No. 15-1631 (Fed. Cir., Feb. 5, 2016) (O’Malley, J).

The patent in issue covered a vascular stent designed to hold open blood vessels to prevent stenosis and aneurisms. The novel feature of the patented stent was a set of “inflatable and deflatable cuff[s]” that hold the blood vessel being supported in the right position without having to puncture it. The key claim element was that the cuffs were inflated and deflated by passing fluid into “at least one circumferential ridge disposed about the cuff.” The parties disagreed over whether such a circumferential ridge had to be a single continuous strip, as argued by the patent owner, or could be discontinuous, as argued by petitioner.

In the *inter partes* review proceeding, the Board found that the claimed “ridge” meant a continuous ridge, siding with the patent owner. The petitioner presented two contrary arguments at the Board and on appeal. First, the petitioner argued that a ridge could be discontinuous, using the Blue Ridge Mountains as an example of discontinuous peaks being referred to as a ridge. The Federal Circuit declined to adopt a topological definition, looking instead at ordinary dictionary definitions that defined ridges as continuous. The Court also pointed out that in the petitioner’s example, the Blue Ridge Mountains are so named for the blue haze or “ridge” that they give off as a result of releasing hydrocarbons into the atmosphere. That blue ridge is visible as a single, continuous strip. The Court found that to adopt the petitioner’s argument would stretch the language of the claim beyond its broadest reasonable interpretation.

The petitioner also argued that the patent owner had disclaimed limiting the term “ridge” to a continuous body during prosecution. At one point during prosecution, the patent owner had included an amendment that added the word “continuously” to the claim language to avoid certain prior art. However, that modifier ultimately fell out of the claim as other amendments were made. The petitioner argued that deletion of the word continuously meant that the patent owner had disclaimed limiting the construction to a continuous ridge.

The Federal Circuit disagreed. The Court found it significant that ultimately the claim was found to be patentable based on other amendments entered after an interview with an examiner. The fact that the word continuously entered and then left the claims without actually affecting their patentability was not evidence of a “clear and unmistakable” disclaimer.

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