

CAFC Upholds Jury Verdict Form's Condition That A Patent's Validity Only Be Considered After A Determination That The Patent Was Infringed

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[Flexuspine Inc. v. Globus Medical Inc.](#): January 19, 2018. Before Prost, Clevenger, and Dyk.

Takeaway:

- A jury verdict form can be internally inconsistent, thereby necessitating a new jury verdict, if the jury ignores an instruction telling it to stop if it finds no infringement.

Procedural Posture:

Globus appealed decisions by E.D. Tex denying its Rule 59(e) motion to amend the judgment and dismissing its Rule 50(b) motion for a judgment as a matter of law. CAFC affirmed the district court.

Synopsis:

- **Procedures:** The final jury verdict form by the district court included a “stop instruction,” stating that the jury should only proceed to a consideration of validity or damages if it found the patent was infringed. The jury found no infringement, but ignored the stop instruction and proceeded to answer subsequent questions pertaining to invalidity and damages. No objections were made when the judge asked if either party objected to retiring the jury to return a verdict consistent with the instructions. The jury’s new verdict found no infringement and left questions about invalidity and damages unanswered. At that juncture, Globus filed a formal objection, acknowledging that it did not make the objection at the appropriate time. The district court denied Globus’s Rule 59(e) motion requesting that the court’s final judgment include the jury’s original invalidity verdict, as well as its Rule 50(b) motion for judgment as a matter of law on invalidity. On appeal, Globus argued that the stop instruction was not sufficient to make the answers in the jury’s first verdict inconsistent, that the oral jury instructions were inconsistent and did not include a similar stop instruction, and that it was denied its Seventh Amendment rights to a jury trial on its invalidity counterclaims. Reviewing

the denial of the Rule 59(e) motion and dismissal of the rule 50(b) motion for abuse of discretion, the CAFC affirmed. It explained that a violation of a stop instruction is sufficient to make the verdict internally inconsistent under Fifth Circuit precedent, and that retiring the jury for further deliberations was within the district court's discretion. It found no violation of Globus's Seventh Amendment rights because Globus did not timely object to the verdict form; however, it noted that the counterclaims were dismissed without prejudice and could still be brought. The CAFC agreed that the Rule 50(b) motion was moot because there was no live issue once Globus's counterclaims were dismissed without prejudice.

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