Doctrine of Equivalents II:

The “All-Elements” Rule

The DOE and Means-Plus-Function
The All-Elements Rule

The basic statement of the rule:

For literal infringement, if any element of the claim is missing, there can be no infringement

Likewise for DOE infringement; each element of the claim must be present, though it need be present only “equivalently”

Thus, a DOE infringement claim must be conducted element-by-element.

The origin of the “all-elements rule” was Pennwalt Corp. v. Durand-Waylan, Inc., 833 F.2d 931 (Fed. Cir. 1987). It was reaffirmed by the USSC in Warner-Jenkinson.

Note: in Warner-Jenkinson, the court referred to this as a rule that one could not “vitiate” an element of the claim language. (Thus you might see it referred to as “vitiation theory”, etc.)
The All-Elements Rule

The All-Elements Rule in Practice

*Dolly v Spaulding & Evenflo*

Key claim element:
“a stable rigid frame which is formed in part from said side panels . . . said stable rigid frame being self-supporting and free-standing.”

Evenflo makes a chair that uses the side panels, plus the seat and back panels, as the frame for the chair.

Claim construction.

Literal Infringement

DOE infringement?

What is the “rule” of Dolly?
The All-Elements Rule

The All-Elements Rule in Practice

*Weiner v NEC Electronics (1996) (RR)*

The claim required data in “columns,” which was interpreted to require data stored on the chip to be stored in columns.

The accused device arranged data in columns, but only in an external data register.

*Sage Products (1997) (RR)*

The claim language required “an elongated slot at the top of the container body”

The accused device had a slot (if at all) within the body (not the top)

What is the rule of *Dolly, Weiner, and Sage*?

Note *Ethicon*, page 378-79: limits *Dolly* et al to their facts.
**The All-Elements Rule**

The All-Elements Rule in Practice

*Should we contain the “all-elements” rule? How?*

1. A fastening system comprising:
   a two-inch long bolt
   a corresponding nut with five angled sides
   wherein the nut includes an insert of plastic material

   **Accused devices:**

   a. Same system, except the bolt is 2.0 inches long

   b. Same system, except the insert is a polymer (not quite plastic)
The All-Elements Rule

The All-Elements Rule in Practice

1. A fastening system comprising:
   a two-inch long bolt
   a corresponding nut with five angled sides

1. A fastening system comprising:
   a bolt,
   said bolt being two inches in length, and
   a corresponding nut, said nut having five angled sides

Which of these claims has more elements / limitations?
The DOE and Means-Plus-Function Elements

35 U.S.C. 112 ¶ 6:
An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

What does literal (statutory) infringement look like?

What does DOE infringement look like?
The DOE and Means-Plus-Function Elements

Chiuminatta Concrete Concepts (1998) (Lourie)

Means connected to the saw for supporting the surface of the concrete adjacent [to] the leading edge of the cutting blade to inhibit chipping, spalling, or cracking of the concrete surface during cutting.

Is this a means-plus-function element? Why?

What is the corresponding structure?

An Embodiment of the Invention

The Accused Device
The DOE and Means-Plus-Function Elements

Chiuminatta Concrete Concepts (1998) (Lourie)

Does the accused device (wheels) infringe? Literally? Under DOE?

How does Chiuminatta distinguish between 112 ¶ 6 equivalents, and DOE equivalents?

<table>
<thead>
<tr>
<th>Type of Infringement</th>
<th>Coverage</th>
<th>Why it fails</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literal</td>
<td>skid plates</td>
<td>wheels ≠ skid plates</td>
</tr>
<tr>
<td>112 ¶ 6 equivalents</td>
<td>equivalents of skid plates</td>
<td>wheels are not “insubstantially” different from skid plates</td>
</tr>
<tr>
<td>DOE equivalents</td>
<td>after-arising technology that is e equivalent to skid plates</td>
<td>wheels are not “after arising” technology.</td>
</tr>
</tbody>
</table>

The Chiuminatta timeline:

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§ 112 ¶ 6     DOE
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“key date”
**The DOE and Means-Plus-Function Elements**

*Odetics v. Storage Technology (1999)*

Claim element: “rotary means, rotably mounted . . .”

What is the “corresponding structure?”

**Infringement?**

<table>
<thead>
<tr>
<th>‘151 patent</th>
<th>Accused Device</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bins</td>
<td>Bins</td>
</tr>
<tr>
<td>Axis of rotation</td>
<td>Axis of rotation</td>
</tr>
<tr>
<td>Gear</td>
<td>Pins</td>
</tr>
</tbody>
</table>

A jury found equivalence between the ‘151 patent and the accused device. *Why did the District Court enter JMOL?*

*What does the Federal Circuit do? Why?*
The DOE and Means-Plus-Function Elements

Odetics v. Storage Technology (1999)

How does Odetics distinguish between 112 ¶ 6 equivalents and DOE equivalents?

Test for equivalents:
  • Equivalent function
  • Equivalent way
  • Equivalent result

What function does a 112 ¶ 6 claim element perform? Literally? Equivalently?

So what is the Odetics distinction?

Why not consider equivalence on a component-by-component basis?
## The DOE and Means-Plus-Function Elements

### The Chiuminatta and Odetics Approaches

<table>
<thead>
<tr>
<th>Type of Infringement</th>
<th>Coverage: Chiuminatta</th>
<th>Coverage: Odetics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literal</td>
<td>structural identity</td>
<td>structural identity</td>
</tr>
<tr>
<td>112 ¶ equivalents</td>
<td>pre-existing structural equivalents</td>
<td>structure with identical “function”, equivalent “way” and “result”</td>
</tr>
<tr>
<td>DOE equivalents</td>
<td>after-arising structural equivalents</td>
<td>structure with equivalent “function”, “way”, and “result”</td>
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</tbody>
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