

Class 9: Claim Construction And Literal Infringement

Administrative

Next Time: Skim 159-164;
Read 263-80

PHE: Probably the most complex doctrine you'll face all year. So read and reread.
The doctrine has been described as an exception to an exception from the standard rule of infringement.
What does Festo's three scenarios where an absolute bar should not apply mean?

Make sure you follow why this is.

News Wednesdays

Right of Publicity Cases

Virgin Mobile Australia

<http://www.smh.com.au/news/technology/virgin-sued-for-using-teens-photo/2007/09/21/1189881735928.html>

Grand Theft Auto IV

<http://prawfsblawg.blogs.com/prawfsblawg/2007/09/can-i-sue-you-f.html>

More on Copyright Enforcement

http://online.wsj.com/article_email/SB118653300178391145-IMyQjAxMDE3ODI2MzUyMzMzWj

Patents

Supreme Court grant: Quanta v. LG

<http://www.patentlyo.com/patent/2007/09/supreme-court-t.html>

Federal Circuit reining in State Street Bank progeny

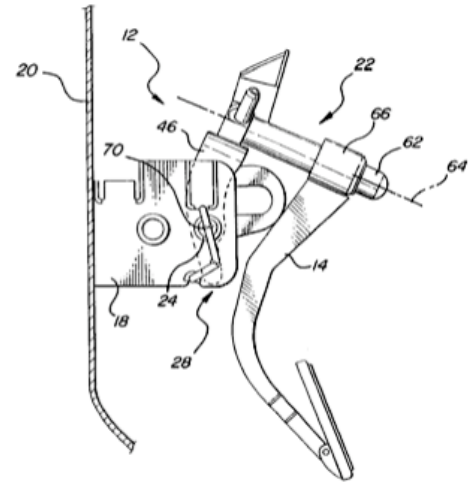
Comiskey
Nuitjen
<http://www.patentlyo.com/patent/2007/09/ineligible-subj.html>

Class 9: Claim Construction And Literal Infringement

Last Time

KSR v. Teleflex

- Invention
 - Adjustable Accelerator Pedals
 - Electronic control for reading the angle of pivot
 - Problem: If you mount it to the moving part of the pedal, wire wear, more size, more complexity.
 - Solution/Invention: Mount it to the fixed support surface instead.
- District Court
- Prior Art
 - Asano Patent: Adjustable pedal assembly, but no electronic control.
 - Electronic Controls were well known.
 - Smith Patent: Potentiometer attached to fixed support to avoid wire failure.
 - Rixon: Sensor on adjustable footpad, but wires wore out
- Fed Circuit
- Supremes
- Test



Designed to solve the "constant ratio problem"
Redding too

Finished Five Requirements for Patentability

1. Patentable Subject Matter
2. Utility
3. Enablement / Written Description
4. Novelty / No Statutory Bars
5. Non-Obviousness

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Claim Construction

Briefly Defined: What did the inventor mean when he chose the words he chose?

- Role of Judge and Jury
 - Markman
 - Cyber Corp v. FAS
 - Why?
 - Ramifications

Phillips: How to construct claims.

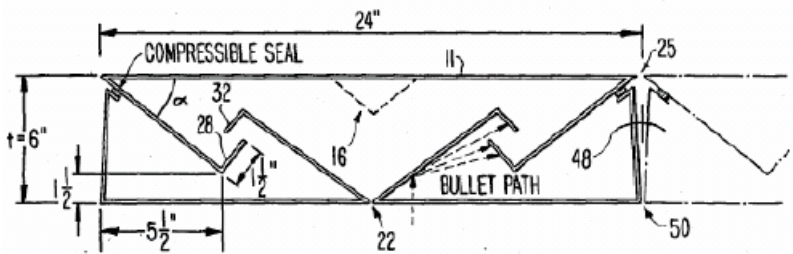
Road map for construction

- Basic Rule
- Intrinsic Evidence
 - Means: Claims, Spec, Prosecution History
 - Claims: "substantial guidance".
 - Specification
 - Prosecution History
- Extrinsic Evidence
 - Means: Experts and Dictionaries
 - Generally: Risk of changing the meaning from the indisputable public records (intrinsic evidence)
 - Dictionaries
 - Expert Testimony

Basic Facts

- Boulder case
- Alleged Infringer
- Lower Courts
- En Banc
- Other Issues

FIG. 6.

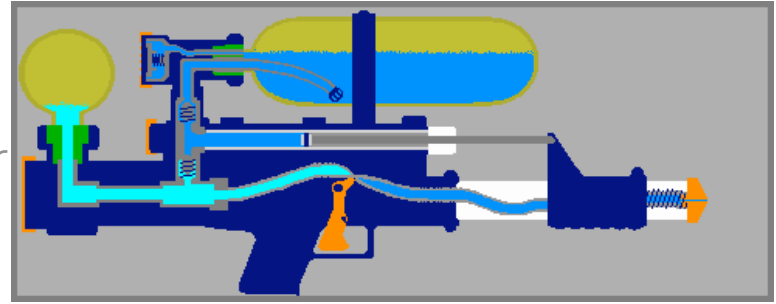
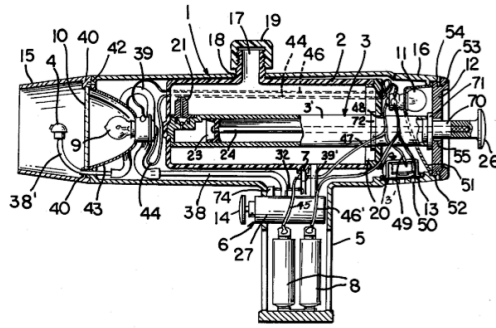


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Literal Infringement

The All-Elements Rule

Claim 1: "A toy comprising an elongated housing having a chamber therein for a liquid, a pump including a piston having an exposed rod and extending rearwardly of said toy facilitating manual operation for building up an appreciable amount of pressure in said chamber for ejecting a stream of liquid therefrom an appreciable distance substantially forward of said toy, and means for controlling the ejection."



Larami

Super-Soaker: Tank is an external water reservoir.

Held (E.D. Penn.)

Infringing "open" versus "closed" claims.
 What about the lights and sounds included in the patent?

Question: Super-Soaker, by all accounts, is a huge improvement on the art. How can they be said to infringe this more primitive version of the technology?