

Perspectives on the Law: Intellectual Property

Publication: Bench & Bar

Date: June 2004

by Tony Zeuli, Merchant & Gould, P.C.

What good is a patented process for burned bread? The obvious answer to that question did not bother the Court of Appeals for the Federal Circuit when it affirmed a claim construction that defined the words of a patent such that the result was certainly not intended by the inventor: bread burned to a crisp. The disputed phrase was "heating the resulting batter-coated dough to a temperature in the range of about 400° F. to 850° F." The only issue on appeal was whether the *dough itself* is to be heated to that temperature or whether the claim only specifies the temperature at which the dough is to be heated, i.e., the *temperature of the oven*. There was no dispute that if the dough itself was heated to about 400° F. to 850° F it would resemble a charcoal briquette - not at all the invention sought to be protected. Such a nonsensical result did not phase the Court of Appeals. Citing the presumption that the words chosen by the inventor receive their ordinary meaning, the Court said: "a nonsensical result does not require the court to redraft the claims of the patent." *Chef America v. Lamb-Weston*, __ F.3d __, 03-1279 (Fed. Cir. Feb. 20, 2004).

Judge Frank, on the other hand, avoided just such a nonsensical result during a recent patent-claim construction proceeding. Calling the ordinary meaning of the patent term "untenable," the Court defined the term so that it made sense in view of the invention as described by the inventor in the patent. The invention is an electronic funds transfer system. The ordinary meaning of the disputed term "accumulator agency" appeared to be "a computer program or processor that can perform functions on behalf of any number of entities, including government agencies." The problem with the ordinary-meaning definition, noted the Court, is that it would have resulted in "a computer program or processor, apart from any organizational entity, operated with its own bank account." Using the patent's claim language and specification, the Court reached what it believed to be a definition that made sense. *Pay Child Support Online v. ACS State & Local Solutions*, Civ. No. 02-1321 (D. Minn. Apr. 5, 2004).

A recent decision by Judge Tunheim reminds all who do trademark litigation that some claims under the Minnesota Consumer Protection laws are not available in commercial cases. Most trademark actions filed in Minnesota include claims for unfair trade practices, deceptive trade practices, false advertising, and consumer fraud. So too in the complaint filed by Solvay against Ethex. However, the Court granted Ethex's motion to dismiss Solvay's claim that the Minnesota Consumer Fraud Act was violated. The Court reminded readers that the Consumer Fraud Act was enacted to curb deceptive practices in *consumer* transactions. "As a manufacturer of a competing product, Solvay cannot be considered a consumer of Ethex's products and thus is not entitled to protection under the Minnesota Consumer Fraud Act." *Solvay Pharm. v. Ethex Corp.*, Civ. No. 03-2836 (D. Minn. Mar. 30, 2004).