

B.3 Infringement

3.1a DIRECT INFRINGEMENT BY “LITERAL INFRINGEMENT”

There are two types of “direct infringement”: (1) “literal infringement” and (2) “infringement under the doctrine of equivalents.” In order to prove direct infringement by literal infringement, [patent holder] must prove by a preponderance of the evidence, i.e., that it is more likely than not, that [alleged infringer] made, used, sold, offered for sale within, or imported into the United States a [product or process] that meets all of the requirements of a claim and did so without the permission of [patent holder] during the time the [] patent was in force. You must compare the [product or process] with each and every one of the requirements of a claim to determine whether all of the requirements of that claim are met.

You must determine, separately for each asserted claim, whether or not there is infringement. For dependent claims, if you find that a claim to which a dependent claim refers is not infringed, there cannot be infringement of that dependent claim. On the other hand, if you find that an independent claim has been infringed, you must still decide, separately, whether the [product or process] meets the additional requirement(s) of any claims that depend from the independent claim to determine whether those dependent claims have also been infringed. A dependent claim includes all the requirements of any of the claims to which it refers plus additional requirement(s) of its own.

Authorities

Kim v. ConAgra Foods, Inc., 465 F.3d 1312, 1316, n.1 (Fed. Cir. 2006) (dependent claims not infringed when independent claim not infringed); *MicroStrategy Inc. v. Bus. Objects, S.A.*, 429 F.3d 1344, 1352-53 (Fed. Cir. 2005) (no literal infringement where accused product did not contain every element of the claim); *Cross Med. Prods. v. Medtronic Sofamor Danek*, 424 F.3d 1293, 1309-11 (Fed. Cir. 2005) (no direct infringement where accused product did not include each claim limitation); *Netword, LLC v. Centraal Corp.*, 242 F.3d 1347, 1353-54 (Fed. Cir. 2001) (no literal infringement where all of the elements of the claim not present in the accused system); *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261 (Fed. Cir. 1986) (affirming finding of direct infringement based on circumstantial evidence).