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"180 Degrees" Does Not Mean "About 180 Degrees" in Patent

Here is a problem patent applicants face during patent prosecution. Applicants want to use the term "about" when claiming a numerical feature in a broad fashion but the patent office rejects the word "about" as being indefinite.

In *Cobalt Boats v. Brunswick*, the patent was for a step attached to the back of a boat that made it easier for one to get in and out of the water. The patent claim said the step was "capable of being rotated 180 [degrees]".

Cobalt argued that "180 degrees" meant "about 180 degrees".

The Federal Circuit replied that "[w]here a precise value is included in the claim without a term such as 'about,' we interpret the claim language as imposing a strict numerical boundary, absent evidence that such a construction would be inconsistent with the intrinsic evidence."

The Court pointed out that during prosecution, the "180 degrees" limitation was added to the claims to distinguish prior art swim steps that rotated less than 180 degrees.

Therefore, the Court construed "180 degrees" to mean capable of rotating "at least 180 degrees."

COMMENT:

To argue against patent examiner rejections of "about" being indefinite, a patent applicant may have to rely on the patent specification which, hopefully, defines the outer limits of what is "about".

Some Hope for Data Capture/Reporting Inventions Being Patentable

Cellspin owned patents for connecting a digital camera to a mobile device that enabled a user to automatically publish content to a website. The two devices wirelessly communicated with each other.

The patents described the prior art as needing to transfer content from a digital camera to a computer via a memory stick or cable.

The Federal Circuit found that the patents involved "capturing and transmitting data from one device to another" - an abstract idea.

However, the Court pointed out that the inventions could still be patentable if they involved an "inventive concept" - something more than just applying "well-understood, routine" steps.

The Court accepted as true, Cellspin's argument that it was "unconventional to separate the steps of capturing and publishing data so that each step would be performed by a different device linked via a wire-less, paired connection." And, the paired connection was established "before data is transmitted."

This, according to the Court, was enough to survive a motion to dismiss the complaint.

COMMENT:

A key here is that the Court was deciding a motion to dismiss at an early stage of the lawsuit, and the Court was required to accept as true Cellspin's allegations. A different result may have occurred if the Court was required to weigh the evidence.

Ban on the Registration of "Scandalous" Trademarks Violates First Amendment

"FUCT" is an example of what might seen as a scandalous or immoral trademark.

Federal trademark law precluded the registration of "immoral or scandalous" marks.

In, *Iancu v. Brunetti*, the latter tried to register "FUCT" for his clothing line.

The Trademark Trial and Appeal Board (TTAB) found the mark to be "highly offensive", "vulgar", and with "decidedly negative sexual connotations."

The US Supreme Court noted that it had previously found that a federal ban on "disparaging" marks of a person violated of the First Amendment.

Here, the Supreme Court concluded that the bar of "immoral or scandalous" marks is "substantially overbroad" and "therefore violates the First Amendment."

COMMENT:

The prior Supreme Court decision on disparaging marks involved "THE SLANTS". Given that decision, the current decision was probably not a surprise to many.

Some Cannabis Related Trademarks Are Now Registrable

Federal registration of trademarks requires lawful use in commerce of the mark. Because marijuana has been illegal at the federal level, federal registration of cannabis-related marks has not been allowed.

Federal law has now changed. "Hemp" is no longer defined as marijuana. Hemp is now a part of the cannabis plant and derivatives thereof, but having no more than 0.3 percent THC. THC is the main psychoactive compound in marijuana.

Trademarks for certain cannabis goods - foods, beverages, dietary supplements, and pet treats - are still not available for federal registration.

For trademark applications filed on or after December 20, 2018 that cover cannabis goods, the application must identify the goods as containing less than 0.3 percent THC.

For applications filed before December 20, 2018, the application may be amended to change the filing date to December 20, 2018. And, the application must identify the goods as containing less than 0.3 percent THC.

Service marks, such as for cultivation, production, and sale of cannabis products will be similarly allowed/restricted. In other words, if the services relate to "hemp", applications will be allowed.

COMMENT:

Will the limitation to "hemp" now lead to claims of false advertising?

Contact Us

SHIMOKAJI IP
8911 Research Drive
Irvine California 92618 USA
www.shimokaji.com
info@shimokaji.com
949-788-9961