

## Summary Judgment Shot Down in Rifle Patent Lawsuit

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In a recent patent case concerning hunting rifles, Judge McCafferty in the District of New Hampshire granted the defendant's motion for summary judgment with respect to literal infringement of a patent on a rifle handguard, but denied the motion with respect to infringement under the doctrine of equivalents. The case arose when the plaintiff, Davies Innovations, Inc., the owner of a U.S. patent that discloses a particular type of rifle handguard, brought separate patent infringement lawsuits against defendants SIG Sauer, Inc. and Sturm, Ruger & Company, Inc. ("Ruger"). Ruger moved for summary judgment of non-infringement.

Each claim of the patent-in-suit required a rifle having a handguard with an open forward end to permit access to certain components of the rifle's operating system. Ruger moved for summary judgment, arguing that it does not infringe because its rifles do not have a handguard with, "the forward end being open to permit access to the barrel coupling and end-plug of the operating system," as recited in the claims of the asserted patent.

The court used a two-part inquiry to evaluate the non-infringement summary judgment motion, first construing the scope and meaning of the pertinent patent claims, and then comparing the construed claims to the accused product. Under the claim construction analysis, the court construed the "open to permit access" limitation of the claim language to mean a tubular handguard with, "the forward end being open for the purpose of permitting access to the barrel coupling and end plug of the operating system." Specifically, the court disagreed with Davies' assertion that the claimed phrase "to permit access" has the plain and ordinary meaning of "not preventing access" because this would require a finding that any rifle with an open-fronted handguard could infringe the asserted patent, regardless of how the user accessed the operating system components.

Instead, based on the prosecution history of the patent and the grammatical structure of the claim language itself, the court reasoned that permitting access to the operating system's components is the reason for the handguard's forward end being open. Thus, according to the court, the phrase "to permit access" should be construed to mean, "for the purpose of permitting access."

Under the infringement analysis, the court found that Ruger's rifles do not literally infringe the asserted patent. The court found that there is no literal infringement because, when assembled, the handguard of the forward end of Ruger's rifles is obstructed by and attached to the barrel coupling and end plug. Thus, when assembled, the handguard of the forward end of a Ruger rifle is not "open to permit access" to the relevant components of the operating system. The court thus granted Ruger's motion for summary judgment of no literal infringement.

However, with respect to infringement under the doctrine of equivalents, the court denied Ruger's motion for summary judgment. Under the doctrine of equivalents, a product that does not literally infringe the express terms of a patent claim may be found to infringe if there is "equivalence" between the elements of the accused product and the claimed elements of the patented invention. However, there are certain limitations to the doctrine of equivalents. Ruger invoked two of them: prosecution history estoppel and claim vitiation.

Prosecution history estoppel can bar a patentee from asserting equivalents if the scope of the claims has been narrowed by amendment during prosecution. The narrowing amendment may be presumed to be a general disclaimer of the territory between the original claim and the amended claim. Here, the application that matured



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into the patent was a divisional patent application including claims as originally filed directed at the composition of a rifle's operating system. None of the original claims even mentioned a handguard. Davies later submitted a pre-examination amendment canceling all the original claims and replacing them with a set of new claims that eventually matured into the patent.

Ruger argued that the claim amendment prevented Davies from challenging as infringing any equivalent to a handguard. According to the court, prosecution history estoppel does not apply unless the patentee makes an amendment that narrows the patent's scope. Here, Davies did not amend the prior claims to add the handguard limitation, thereby narrowing the claim scope. Instead, Davies canceled the prior claims and submitted a new set of claims directed to a distinct invention. Therefore, according to the court, Ruger did not show that prosecution history estoppel bars a claim of infringement under the doctrine of equivalents.

Under the vitiation doctrine, if a finding of infringement under the doctrine of equivalents would entirely vitiate a particular claim element, then there is no infringement under the doctrine of equivalents. Ruger argued that because its handguard could not be considered "open" under any claim construction, any finding of equivalence would vitiate the limitation in the patent-in suit requiring the handguard to have a forward end being "open to permit access."

The court found that even though the handguard in Ruger's rifles does not satisfy the claim construction of the "open to permit access" claim limitation, Ruger did not demonstrate that its rifles are "an entirely different structure" from that claimed. According to the court, although the forward end of the Ruger handguard is not "open" under the court's claim construction, the cut-out in the upper portion of the forward end of the handguard allows the user to access operating system components. In other words, the Ruger's handguard is designed to allow access to the operating system components by having them sit in a cut-out portion of the front end of the handguard. Thus, applying the doctrine of equivalents to the Ruger handguard does not read out the "open to permit access" limitation. As such, the court was not persuaded that claim vitiation applies to bar infringement under the doctrine of equivalents, and denied summary judgment of non-infringement with respect to the doctrine of equivalents.

The case is *Davies Innovations, Inc. v. SIG Sauer, Inc.*, No. 16-cv-352-LM, pending in the U.S. District Court for the District of New Hampshire.

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