

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIGGS & STRATTON CORP.,

Plaintiff,

v.

KOHLER CO.,

Defendant.

OPINION AND
ORDER

05-C-0025-C

It's déjà vu all over again. On August 15, 2005, plaintiff Briggs & Stratton Corp. filed a motion for summary judgment, asking the court to find as a matter of law that defendant Kohler Co. infringed plaintiff's United States Patent No. 6,382,166 (the '166 patent) and United States Patent No. 6,460,502 (the '502 patent), and that the '166 and '502 patents were not invalid. On November 3, 2005, I issued an order construing the claims in this case and granting plaintiff's motion with respect to defendant's partial infringement of the '166 patent and denying the motion in all remaining respects. Both parties moved promptly for reconsideration; as a result, the summary judgment order was withdrawn and briefing was set on the proper construction of the '166 patent claim term "rail."

On January 6, 2006, an order was issued revising construction of the claim term "rail"

and reconsidering the November 3, 2005 summary judgment order in light of the revised construction. Now before the court is the parties' second round of cross-motions for reconsideration, in which they ask the court to clarify and revisit several elements of the January 6 order. Specifically, plaintiff asks the court to vacate its finding that the guide shoe found in defendant's Courage engine is not a rail. Defendant asks the court to reconsider its newly adopted construction of the term rail. Both parties ask the court to clarify whether, under the court's construction of rail, it is the motion of the guide shoe or the counterbalance weight that a rail must "direct substantially along its axis."

From the parties' briefs supporting their motions for reconsideration, it appears that material facts regarding whether the guide shoe is a rail were not fully developed on summary judgment and remain in dispute. Therefore, I will grant plaintiff's motion to vacate summary judgment that the guide shoe is not a rail. For reasons stated at length in the January 6 order, I will deny defendant's motion for reconsideration of the claim term "rail."

The parties' last request merits greater comment. In the January 6 order, I framed in two different ways the question whether the ribs of defendant's engine are rails. On page 3, I stated, "Plaintiff's motion for reinstatement of summary judgment will be denied because the parties dispute whether the ribs of defendant's engine 'direct substantially' *the movement of the engine's counterbalance weight*." (Emphasis added). On page 10, I stated: "Whether the ribs 'direct substantially' *the movement of the [] guide shoe* along their ax[e]s and

therefore constitute rails is a matter for the jury to resolve at trial.” (Emphasis added.)

Plaintiff contends that the first formulation is the correct; defendant contends the opposite.

I am perplexed.

In the November 3, 2005 summary judgment order, I found the following to be undisputed:

To guide the planar motion of its counterbalance weight, the Courage engine uses a bearing that fits between two raised ribs formed integrally with the crankcase housing. Defendant refers to this bearing surface as a “guide shoe.” The metal guide shoe is affixed to one end of the counterbalance weight by a pin and can pivot around the pin’s axis. The guide shoe fits into a groove in the crankcase housing created by two raised ribs that extend outward from the crankcase. The ribs are parallel to the cylinder axis and guide the planar motion of the counterbalance weight along the ribs’ central axis. The ribs form an elongated recess in the space between them. This space receives the guide shoe and guides the motion of the counterbalance weight along its axis as it moves back and forth within the slot in opposition to the reciprocating piston. As the guide shoe moves, the ribs extending from the closure plate do not touch the counterbalance weight.

The pin is loosely placed in the guide shoe. As the counterbalance weight moves back and forth, the pin and the counterbalance weight pivot, causing the weight to “waggle.” As the weight waggles, the sides of the guide shoe are not in contact with both ribs at the same time. Instead, the guide shoe moves back and forth in the space between the ribs, never touching both ribs at the same time. There is always empty space between the guide shoe and the back wall created by the two ribs. This “waggling” of the guide shoe causes the counterbalance weight to move across the cylinder axis unequally distributing the counterbalance weight on each side of the cylinder axis. The “waggling” does not affect the ability of the Courage engine to dynamically balance the forces caused by piston reciprocation.

Order dated Nov. 3, 2005, dkt. #110, at 32-33. Now, for the first time, plaintiff asserts that

the court erred when it found undisputed that the guide shoe “waggles” as it moves back and forth between the engine’s ribs. (Defendant has remained silent on the matter.) Plaintiff does not contest that (1) the counterbalance weight waggles as it reciprocates; (2) the counterbalance weight is attached to the guide shoe with a pin; and (3) the guide shoe moves back and forth between the ribs, never touching both ribs at the same time. But according to plaintiff, the court erred when it inferred from these facts that both the guide shoe and its attached counterbalance weight move, or “waggle,” in the same way. How the motion of these two components differ is entirely unclear; it appears, however, that the difference is of some import to the parties.

Defendant argues convincingly that the patent itself is concerned only with the movement of the counterbalance weight; it says nothing of “guide shoes.” However, the definition of rail adopted by the court is a creation of the parties, not a feature of the patent. In the January 6 order, I found the parties in agreement that a rail “is a bar supported along its length” that “directs substantially the motion of another component along the rail’s axis.” Order dated Jan. 6, 2005, dkt. #219, at 4-5. But, as is now obvious, the Courage engine has two “components” whose motion the rail might reasonably direct: the guide shoe and the counterbalance weight. In the end, it does not matter which of these objects’ motion is “directed substantially” by the alleged rails; either will do. For purposes of infringement, the critical question is whether the Courage engine’s guide shoe or ribs are rails, not how they

acquire that status. The jury must decide whether the ribs or the guide shoe is “a bar supported along its length that serves to direct substantially the motion of a component that slides along the axis of the bar.” It could do so by determining either that the guide shoe or the counterbalance weight is a “sliding component.” Therefore, I will deny both parties’ motions insofar as they ask the court to prefer one “rail theory” over the other. As a final matter, it has been brought to my attention that two motions in this case remain outstanding: defendant’s November 11, 2005 “Motion for Summary Judgment (Partial) by Deft. of Noninfringement of Claims 15-31 of the ‘502 Patent” and plaintiff’s November 22, 2005 “Motion to Adopt the Undisputed Claim Construction for ‘Slot’ in the ‘166 Patent.” Because defendant’s motion was brought after the court’s deadline for the filing of dispositive motions, it will be denied as untimely. Plaintiff’s motion is unopposed by plaintiff and therefore will be granted.

ORDER

IT IS ORDERED that

1. Plaintiff’s motion for reconsideration is GRANTED in part and DENIED in part.
2. Defendant’s motion for reconsideration is GRANTED in part and DENIED in part.
3. The court’s January 6, 2006 order is revised as follows: The entry of summary

judgment against plaintiff holding that the guide shoe is a “rail” within the meaning of the ‘166 patent is VACATED;

4. At trial, the jury must determine whether the ribs found on the Courage engine are rails that direct the motion of the engine’s *counterbalance weight* substantially along their axes.

5. Defendant’s “Motion for Summary Judgment (Partial) by Deft. of Noninfringement of Claims 15-31 of the ‘502 Patent” is DENIED as untimely.

6. Plaintiff’s “Motion to Adopt the Undisputed Claim Construction for ‘Slot’ in the ‘166 Patent” is GRANTED.

Entered this 30th day of January, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge