



[STUMBO v. EASTMAN OUTDOORS, INC.](#)

Authored by: Mihsuhn Koh

2007-1205 DECIDED: November 28, 2007

JUDGES: Before SCHALL, BRYSON, and MOORE

OPINION BY: MOORE

Procedural Posture:

Steve Stumbo appeals the District Court's grant of summary judgment of non-infringement in favor of Eastman Outdoors, Inc. and Ameristep Corp. (collectively, "Defendants"). After construing the important terms in Stumbo's U.S. Patent No. 5,628,338 ('338 patent), the District Court found no literal infringement or infringement under the doctrine of equivalents.

Overview:

While the Federal Circuit is making strides to prevent reading limitations from the specification into the claims, it still has a ways to go. A patent claim recited a tent having a "vertical opening" whereas an accused tent included a tent having a triangular opening, the opening having one vertical side. The CAFC determined that the patent claim was limited to a vertical slit-like opening. This holding was based on the patent's specification and figures.

Facts:

- The '338 patent involves a portable and collapsible hunting shelter or blind that allows quick and easy set-up by hunters, photographers, and other wildlife enthusiasts. The shelter is hub-style with four walls and a top made of fabric, with the structure being supported by five support members. The '338 patent claims a "closable vertical opening at a side edge or vertical corner" through which one can enter and exit the blind. The specification, in relevant part, states that "a zipper is incorporated in one corner of the structure where two side walls meet ... The leg members must flex in order to enable the door opening to expand for ingress and egress. When the zipper is in an open position, the fabric adjacent to the opening can be pulled slightly away from the opening (which results in widening of the opening as the legs flex.)"
- The defendants' products are similar shelters, however, the entrance is a triangular shaped "loose door flap" placed along a zipper line diagonally from one corner to the center, then back again diagonally to the other corner on the same side as the first.

WASHINGTON DC AREA

112 S. West Street • Alexandria, Virginia 22314
Tel: 703.548.NATH • Tel: 703.548.6284 • Fax: 703.683.8396

SAN DIEGO

12264 El Camino Real, Suite 400 • San Diego, CA 92130
Tel: 858.792.8211 • Fax: 858.792.8946



- Stumbo contended that the District Court misapplied the word “vertical” to the slit-like shape of the opening in the blind instead of to its orientation; the word “vertical” limits the opening only to shapes that are more tall than wide.
- The District Court construed the term “closable vertical opening” as a “slit-like opening that runs straight up and down or perpendicular to the plane of the horizon”.

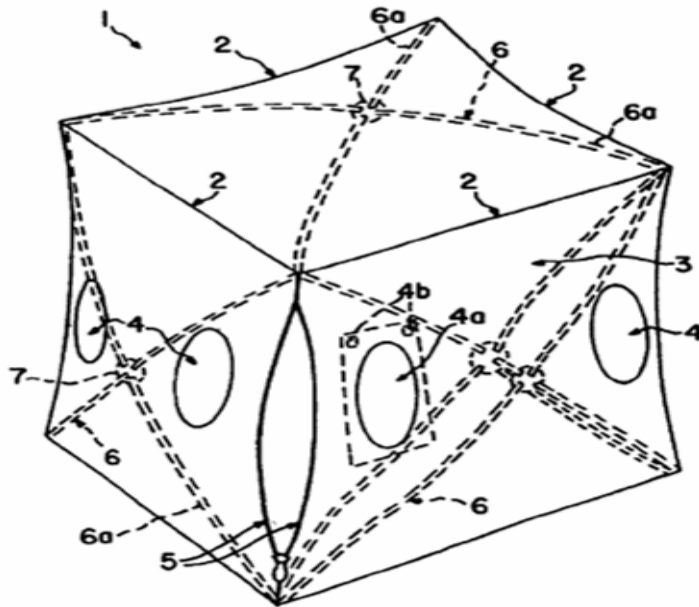
Further, the court held that Stumbo could not claim triangular openings under the doctrine of equivalents because the ‘338 patent would then cover the prior art.

Issue: At issue is the construction of the claim language “closable vertical opening”, with respect to literal infringement or infringement under the doctrine of equivalents.

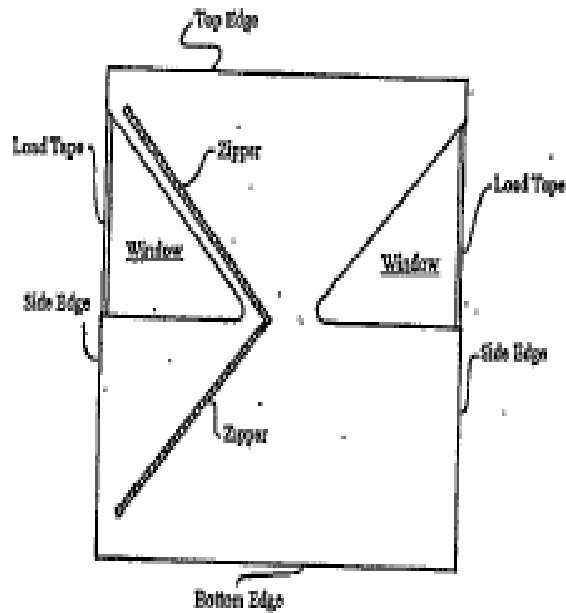
Held: The Federal Circuit found that the claim language “closeable vertical opening at a side edge or vertical corner” is properly construed to a slit-like opening that runs straight up and down or perpendicular to the plane of the horizon.

Analysis: To support its holding, the court reasoned that: (i) there was no special meaning in the hunting blind industry to the term “vertical;” (ii) only if “vertical” refers to the shape of the opening instead of redundantly to the orientation of the opening would each claim term have a distinct meaning; (ii) the specification, as well as the figure, supports the construction of “vertical” to the slit-like shape of the opening. In view of the description, “the leg members must flex to enable the door opening to expand for ingress and egress”, a linear slit is the only fathomable shape of an opening with the described characteristics. Based on this construction, the court held that there was no debate that the defendants’ products did not literally infringe.

Regarding infringement under the doctrine of equivalents, the court found that the defendant’s engineer’s testimony shows that a person of ordinary skill in the art would conclude that the offending product achieves a substantially different result in a substantially different way.



'338 patent



Defendants' product