

The Critical Second Step in a “Means”-Defined Infringement Analysis

Today in *VocalTag Ltd.v. Agis Automatisering B.V.*, __ Fed. App’x __ (Fed. Cir. Sept. 1, 2016)(Stoll, J.), the panel affirmed a conclusion of noninfringement of a “means”-defined claim where the patentee had failed to present evidence of the second step of an infringement analysis:

All too often, “means”-defined terminology is utilized by the patent draftsman who only focuses on the equivalent function, without full appreciation of the second step, that to establish that an equivalent to a “means”-defined element also requires that the patentee “show that the accused device has the same or equivalent structure as the corresponding structure disclosed in the specification.”

The pdf version of this note includes an excerpt from the opinion.

Regards,

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From the Opinion: “[Patentee] VocalTag’s infringement evidence is directed to whether the accused system performs the claimed function But to demonstrate infringement of a means-plus-function claim limitation, a patentee must also show that the accused device has the same or equivalent structure as the corresponding structure disclosed in the specification. *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 (Fed. Cir. 2006) (‘Literal infringement of a means-plus-function claim limitation requires that the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the corresponding structure in the specification.’).”