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Federal Circuit Patent Bulletin: *ClearCorrect Operating, LLC v. Int'l Trade Comm'n*

November 11, 2015

"[W]e conclude that 'articles' [in 19 U.S.C. § 1337(a)] does not cover electronically transmitted digital data."

On November 10, 2015, in *ClearCorrect Operating, LLC v. Int'l Trade Comm'n*, the U.S. Court of Appeals for the Federal Circuit (Prost,* Newman, O'Malley) reversed and remanded the U.S. International Trade Commission's (Commission) decision that the respondents violated 19 U.S.C. § 1337 by infringing U.S. Patents No. 6,217,325, No. 6,705,863, No. 6,626,666, No. 8,070,487, No. 6,471,511, No. 6,722,880, and No. 7,134,874, which related to the production of orthodontic appliances known as aligners. The Federal Circuit stated:

The Commission's jurisdiction to remedy unfair international trade practices is limited to "unfair acts" involving the importation of "articles." Thus, when there is no importation of "articles" there can be no unfair act, and there is nothing for the Commission to remedy. Here, the only purported "article" found to have been imported was digital data that was transferred electronically, i.e., not digital data on a physical medium such as a compact disk or thumb drive. . . .

Under Chevron, in reviewing an agency's construction of its organic statute, we address two questions. The two questions are as follows: The first is whether Congress has directly spoken to the precise question at issue. If the answer is yes, then the inquiry ends, and we must give effect to Congress' unambiguous intent. If the answer is no, the second question is whether the agency's answer to the precise question at issue is based on a permissible construction of the statute. The agency's interpretation governs in the absence of unambiguous statutory language to the contrary or unreasonable resolution of language that is ambiguous.

[W]e conclude that the literal text by itself, when viewed in context and with an eye towards the statutory scheme, is clear and thus answers the question at hand. "Articles" is defined as "material things," and thus does not extend to electronic transmission of digital data. . . . The Commission found that contemporaneous definitions of "articles" "embrace a generic meaning that is synonymous with a particular item or thing, such as a unit of merchandise." . . . [T]he ordinary meaning of the term "articles" is "material things." It is not a question of whether there are multiple definitions for us to choose between. Instead, every dictionary referenced by the Commission, with the exclusion of one imprecise definition, along with all the other relevant dictionaries point to the fact that "articles" means "material things." As we "must presume that [the] legislature says in a statute what it means and means in a statute what it says," we conclude that "articles"

does not cover electronically transmitted digital data. . . .

The Commission concluded that because the term "articles" appears in the statutory provisions defining a violation of Section 337, 19 U.S.C. §§ 1337(a)(1)(A), (B),(C), and (E), with the terms "importation" and "sale," the term "articles" is meant to encompass all "imported items that are bought and sold in commerce." The Commission then stated that . . . "articles of commerce" includes digital files. We disagree. The context in which "articles" is used throughout the chapter, not just this singular subsection, indicates that "articles" means "material things." . . .

A construction of the term "articles" that includes electronically transmitted digital data is also not reasonable when applied to Section 337(i)(3). . . . Not only can an electronic transmission not be subject to an "attempted entry" through a "port of entry," it also cannot be intercepted at a "port of entry" as contemplated in the statute. . . .

Align further argues that because "articles" is used in connection with "articles that infringe," "articles" must be read broadly enough that it encompasses all possible forms of infringement. We disagree. The question before us is not what types of infringement are covered, but what goods are protected from infringement under Section 337. It is perfectly reasonable that Congress only intended that some subset of infringing goods be covered by Section 337. "Further, were we to adopt [the Commission's] construction of the statute, we would render the word '[articles]' insignificant, if not wholly superfluous. It is our duty to give effect, if possible, to every clause and word of a statute."