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Court of Appeal takes AIM at attempts to show knock-on effect of pragmatic case management

Supponor Ltd v AIM Sport Development AG [2024] EWCA Civ 396

In a judgment handed down on 23 April 2024, the Court of Appeal dismissed Supponor's appeal against the decision of Meade J in the High Court finding AIM Sport's European Patent (UK) 3 295 663 valid and infringed.

Background

The patent relates to electronic superimposition technology used in TV broadcasts, such as sporting events, whereby different advertising material from that seen at the venue can be transmitted to different territories. Claim 12 of the patent remained the only claim in issue at the first instance, covering a method of digitally overlaying an image with another image. AIM Sport proposed conditional amendments to claim 12 in the event the claim as granted did not hold up on its proposed construction. The proposed amendments to that claim narrowed the method to include further integers whereby the display device is configured to display a moving image in the real world and the camera is configured to receive the same.

Supponor argued the proposed amendments were not allowable as they did not improve the position on construction, they lacked clarity, and added matter. Meade J held that claim 12 was valid and infringed in its unamended form, and additionally that the amendments to claim 12 were allowable had they been necessary.

Construction

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On construction, Supponor argued that the claim as granted is limited to a light-on-dark overlaying method (thereby excluding a dark-on-light overlaying approach). The Court of Appeal agreed that claim 12 would not survive the prior art if it did not amend the claim on the basis that the prior art in effect covered what was in claim 12, being the detection of an occluding object by means of an image property (including brightness of the pixels in the image detected) of the occluding object.[1]

Ultimately, however, the appeal was unanimously dismissed on the basis that claim 12 of the patent in its narrowed form following amendment would remain valid and infringed. As such, it did not matter that the Court of Appeal did not agree with Meade J on construction of the main claim.[2]

Parallel litigation in Germany is pending appeal on the finding that EP 663 was not infringed (by Supponor's older electronic superimposition technology), as well as an appeal pending in the UPC after it dismissed AIM Sport's preliminary injunction application.

Promptu and good case management practice for litigants

In the UK litigation, certain case management points were made by the Court of Appeal.

Supponor argued that because AIM Sport had made a prior admission that claim 1 of the patent was invalid, claim 12, which they said was effectively the same as claim 12, was also necessarily invalid. They supported their point citing Meade J's decision in Promptu v Sky [2021] EWHC 2021 (Pat) at [118]-[124]. This was rejected by Meade J at [269] and the Court of Appeal on the basis that AIM Sport's "pragmatic case management concession" on claim 1 (a product claim) did not have any knock-on effect on claim 12 (method claim).

The Court of Appeal considered that even if the concession was to be interpreted as an admission of invalidity, claims 1 and 12 are not identical given the difference between product and method claims. Supponor's own counsel submitted that it would be " extremely unjust to prevent AIM from relying on claim 12" , to which the Court of Appeal led by Birss LJ added that "such a conclusion would be extremely unjust but as I have also sought to show in answer to counsel's technical submission, such a technical approach is not right."[3]

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At [271] of his judgment, with which the Court of Appeal agreed, Meade J said, " it would be unfortunate to discourage patentees in this sort of situation from making sensible admissions about claims other than the main ones for fear of an unforeseen consequence."[4]

In support of this sentiment, Males LJ added:

"Litigants generally, and not just in patent litigation, should be encouraged to streamline the case proposed to be advanced at trial, so that the trial can focus on what really matters, rather than fighting every point to the death. If a pragmatic decision to abandon some points were to lead to arguments about the knock-on effect of that decision on the remaining points, litigants would be deterred from adopting a sensible approach and trials would take longer, which would be contrary to the interests of justice." [5]

Judgment can be found here.

[1] [49]-[52]

[2] [79]-[80]

[3] [72]-[74]

[4] [66]

[5] [94]