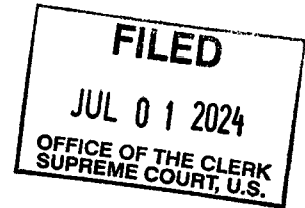


No. -
24-5152

ORIGINAL

In the Supreme Court of the United States

LELAND J. HEBERT, Petitioner



v.

ALLIED RUBBER & GASKET CO., Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Federal Circuit

Petition for Writ of Certiorari

LELAND HEBERT
3 BEDALE CIRCLE
BELLE VISTA, AR 72715
720 315-0719

Questions Presented

Whether the Federal Circuit's affirmance of the district court's grant of summary judgment without an opinion under Rule 36 is permissible when the decision conflicts with the Federal Circuit's own precedent, which would warrant a reversal.

Whether the district court erred in granting summary judgment of non-infringement despite admissible circumstantial evidence that the defendant knowingly marked the accused device with the patent-in-suit, which could support a reasonable jury's finding of infringement.

Petition for Writ of Certiorari

Petitioner Leland J. Hebert respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

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Opinions Below

The judgment of the court of appeals was entered without an opinion pursuant to Federal Circuit Rule 36. The district court's opinion granting summary judgment to the respondent is unreported but can be found in the record at App. __.

Jurisdiction

The judgment of the court of appeals was entered on April 3, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

35 U.S.C. § 271 - Infringement of Patent

"Whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent."

35 U.S.C. § 282 - Presumption of Validity; Defenses

"A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity."

28 U.S.C. § 1331 - Federal Question Jurisdiction

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

28 U.S.C. § 1338(a) - Jurisdiction of Patent Cases

"The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases."

28 U.S.C. § 1295 - Jurisdiction of the Federal Circuit

"The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from a final decision of a district court of the United States... in any civil action arising under, or in any civil action in which a party has asserted a compulsory counterclaim arising under, any Act of Congress relating to patents or plant variety protection."

Federal Circuit Rule 36 - Entry of Judgment - Judgment of Affirmance Without Opinion

“The court may enter a judgment of affirmance without opinion, noting simply that it finds no error in the judgment, order, or decision on appeal.”

Statement of the Case

A. Background

Leland J. Hebert is the inventor of a patented adjustable head wrench covered by U.S. Patent No. 8,850,931 (“the ‘931 Patent”). The patent describes an offset wrench with an adjustable head, designed to accommodate various sizes and types of fire sprinkler systems. The wrench includes a handle, a shank, a fixed jaw, an adjustable jaw, a smooth collar, a threaded collar, and an adjustment mechanism that mechanically connects the smooth and threaded collars.

Hebert entered into an exclusive distribution agreement with Allied Rubber & Gasket Co. (ARGCO), wherein ARGCO acknowledged Hebert’s patent and agreed not to infringe the ‘931 Patent. ARGCO’s CEO sent design files to the manufacturer, clearly marked with the patent number, indicating ARGCO’s deliberate marking of the product with the patent-in-suit.

B. Procedural History

In July 2020, Hebert filed a lawsuit against ARGCO in the Southern District of California, alleging infringement of the ‘931 Patent. The district court construed the claims of the patent and subsequently granted summary judgment in favor of ARGCO, finding non-infringement. The district court’s ruling was based on the assertion that the accused devices lacked the “threaded interior wall” and “adjustment mechanism” limitations.

Hebert presented substantial evidence, including expert testimony and photographic documentation, demonstrating that the accused devices met the claimed limitations. Despite this, the district court improperly weighed the evidence and granted summary judgment.

Hebert appealed to the Federal Circuit, arguing that the district court’s decision was inconsistent with Federal Circuit precedent, particularly *Frolow v. Wilson Sporting Goods Co.*, 710 F.3d 1303 (Fed. Cir. 2015), which holds that deliberate marking with a patent number is circumstantial evidence supporting a finding of infringement. The Federal Circuit affirmed the district court’s decision without an opinion under Rule 36.

Reasons for Granting the Petition

I. The Federal Circuit’s Rule 36 Affirmance Conflicts with Its Own Precedent

The Federal Circuit’s decision to affirm without an opinion under Rule 36 is in direct conflict with its precedent in *Frolow v. Wilson Sporting Goods Co.* The evidence presented by Hebert was sufficient to create a genuine issue of material fact regarding infringement,

particularly given ARGCO's deliberate marking of the accused devices with the patent number. The Federal Circuit should not be allowed to affirm without an opinion when the case involves clear conflicts with established precedent that demand a reversal.

II. The District Court Erred in Granting Summary Judgment

The district court's grant of summary judgment was improper as it failed to view the evidence in the light most favorable to Hebert, as required at the summary judgment stage. The court disregarded substantial circumstantial evidence, including the deliberate marking of the accused devices, which supports a reasonable jury's finding of infringement. By failing to consider this evidence, the district court usurped the role of the jury, which is responsible for weighing evidence and determining credibility.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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