# Patents

Class 13

# Direct Infringement

- In order to prove induced or contributory infringement, first must prove that there was **direct infringement**.
- Direct infringement does not require knowledge, either of the existence of the patent, or the infringement.

# Direct Infringement

- The 5 acts that are prohibited (without a license/sale)
  - Making a patented invention
  - Using a patented invention
  - Offering a patented invention for sale
  - Selling a patented invention
  - Importing a patented invention into the U.S.
- 2 steps in an infringement case:
  - Interpret the patent to see what it protects.
  - Compare defendant's product/process with the patented product/process and see if it… well… infringes!!! ☺

# Patent Infringement

- Claim construction & interpretation (*Does it infringe?*)
  - Determine the scope of the patent (what it protects)
  - The JURY compares the defendant's product to the patent product by looking at the patent claim.
  - When defining words in a patent, look at:
    - The claims and specifications
    - Dictionaries and expert testimony

# Patent Infringement

- When interpreting claims, the courts use the "canons of construction":
  - Patentee as lexicographer (make up new words…)
  - Specifications used to understand (not limit…)
  - Claim differentiation (none are extra)
  - Claims construed to preserve validity (not render invalid)

# Literal Infringement

(*How* does it infringe?)

- The patented product and the allegedly infringing product must be *identical*.
- If the allegedly infringing product is missing even *one* claim that's found in the patented product, there will be no literal infringement!
- The Super Soaker Case
  - Water chamber "thereIN"
  - Water chamber "thereON"

1. A refillable sheet dispenser having a generally flat C-shaped configuration for individually dispensing sheets from a stack arranged within the dispenser, comprising:
   - (a) a generally planar bottom section having remote ends; and
   - (b) a pair of elastically deformable wing sections each extending from a respective bottom section remote end toward the other wing section in overlapping spaced relation relative to said bottom section, thereby allowing a stack of sheets to be accommodated between the wing sections and the bottom section, each said wing section having a terminal edge spaced from and opposing the other wing section terminal edge, thereby defining an opening therebetween, whereby as sheets are dispensed through the opening, each wing section is alternately urged pivotally away from the bottom section, and further whereby when said stack of sheets is exhausted, the wing sections may be elastically flexed to allow a new stack to be accommodated within the dispenser.

2. A dispenser as defined in claim 1, wherein said bottom section and said wing sections are integrally formed of a plastic film having a generally uniform thickness.
3. A dispenser as defined in claim 2, and further including a connecting portion arranged between said bottom section and each said wing section having a thickness less than the thickness of said bottom section and each said wing section, whereby said plastic film easily bends to form the dispenser.
4. A dispenser as defined in claim 3, wherein said plastic film has a thickness in the range of 50μm to 500μm.
5. A dispenser as defined in claim 1, wherein each said wing section is formed of a transparent material, thereby allowing the sheets accommodated between said wing section and said bottom section to be seen through said wing sections.
6. A dispenser as defined in claim 1, wherein each wing section has a width at least twice as large as the width of each sheet, whereby the dispenser can accommodate at least two kinds of sheets.

7. A dispenser as defined in claim 1, wherein said opening has a width in the range of 3 mm to 8 mm.
8. A dispenser as defined in claim 1, wherein the stack of sheets includes a lower-most sheet fixed relative to said bottom section.
9. A dispenser as defined in claim 1, and further including a clip arranged to allow the dispenser to be mounted on a supporting structure.
10. A dispenser as defined in claim 1, wherein the dispenser has an overall thickness of generally less than 5 mm.
11. A dispenser as defined in claim 1, and further including at least one projection extending oppositely from each said bottom section remote end.
12. A dispenser as defined in claim 1, wherein said bottom section further includes projections extending upwardly toward each said wing section between adjacent stacks of sheets, thereby preventing sideways movement of the stacks of sheets arranged within the dispenser.

# The Doctrine of Equivalents

- The Doctrine of Equivalents (DOE)
  - Prevent unscrupulous avoidance of literal infringement
  - "Function-Way-Result Test" (aka "Graver Test" & "Function-Way Test")
  - Reasonable Interchangeability Test
  - Limitation on DOE: When claims are amended during prosecution
  - "Reverse Doctrine of Equivalents"
  - Festo v. Shoketsu, 535 U.S. 722 (2002)

# Patent Infringement

DIRECT infringement vs. INDUCED infringement & CONTRIBUTORY infringement

- Induced infringement and contributory infringement are also known as INDIRECT infringement.
- Someone who did not *use* or *build* or *manufacture* a patent-protected invention can still be liable for patent infringement, and it would fall under the theories of induced infringement and contributory infringement.

# Induced Infringement

- Induced infringement requires more than a mere suggestion
- Must "actively induce infringement"
- Need a purposeful or intentional act
  - Demonstrating how a particular device can be used to recreate a patented device is enough.
- Plaintiff must prove that defendant *knew* that his actions would induce (has to have been either purposeful or intentional)
- If defendant *didn't know* that his actions would induce infringement, he is not guilty of induced infringement.

# Contributory Infringement

- Is the device that's assisting the infringement a "staple good?"
- If the good has a "substantial non-infringing use," then there's no contributory infringement.
- If someone makes and sells an item that customers will use in infringement, there is contributory infringement.
  - Too burdensome to sue all of the direct infringers

# Defenses to Patent Infringement

1. Misuse
   a. Cannot use a patent to stifle competition of an unpatented product.
   b. Defendant must prove:
      I. Patent owner has market power
      II. The product is a staple good (has substantial, non-infringing uses)
2. Prior Use
   a. Applies to business methods
   b. Alleged infringer can continue use if he
      I. Acted in good faith, and
      II. Started using it at least 1 year before patent was filed
   c. NON-transferable (applies only to prior user)

# Defenses to Patent Infringement

3. Patent Exhaustion –

   Bowman v. Monsanto, 133 S.Ct. 1761 (2013)

4. Equitable Defenses
   a. Laches
   b. Estoppel