

CLIENT ALERT

Compared To Structural Claim Language, Functional Language More Susceptible To Inherent Anticipation

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In *Leggett & Platt, Inc. v. Vutek, Inc.* (No. 07-1515; August 21, 2008), the Federal Circuit affirms the district court's summary judgment of invalidity of a patent for a method and apparatus for ink jet printing UV curable ink on a rigid substrate.

The claims of the asserted patent use functional language rather than structural language to describe a cold UV curing assembly, *i.e.*, "the cold UV assembly being *effective to* impinge sufficient UV light on the ink to substantially cure the ink." The district court had construed the phrase "substantially cure" to mean "cured to a great extent or almost completely cured." Thus, the Federal Circuit concludes that this claim limitation will be anticipated so long as the Light Emitting Diodes ("LEDs") disclosed in the prior art patent are able to cure the ink to a great extent. The prior art does not expressly disclose that its LEDs cure the ink to a great extent, but it does teach that if a UV radiation source is passed over the ink at a slower speed and/or multiple times, the degree to which the ink is cured will increase. This teaching was supported by expert testimony that multiple passes by the disclosed LEDs would eventually result in a substantial cure. Therefore, the Federal Circuit concludes that the prior art inherently discloses LEDs that are "effective to" cure the ink to a great extent, and thus affirms the district court's summary judgment of invalidity.

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