

Federal Circuit Decisions Analyzing Infringement Under the Doctrine of Equivalents Since Festo

CASE	CITE	JUDGES	PROCEDURE POSTURE	INVENTION	DOE TEST	PATENT NO.	DECISION
1	Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.	234 F.3d 558, 56 USPQ2d 1865 [Fed. Cir. Nov. 29, 2000] (<i>en banc</i>) [D. Mass.; Judge Saris]	Mayer/Newman/ Michel/Plager/Lourie/ Clevenger/ Rader/ *Schall/Bryson/ Gajarsa/Linn/Dyk	Defendants appealed decision of infringement under DOE	<u>mechanical</u> rodless cylinders	prosecution history estoppel	4,354,125 [reversed] no infringement
2	Stryker Corp. v. Davol	234 F.3d 1252, 57 USPQ2d 1133 [Fed. Cir. Dec. 12, 2000] [W.D. Mich.; Judge McKeague]	*Mayer/Newman/ Schall	Defendant appealed Summ. J. of infringement of Plaintiffs patent and non-infringement by Plaintiff of Defendant's patents	<u>mechanical</u> surgical suction irrigator	ii] function way result	i] 5,391,145 [Davol] ii] 5,586,977 [Davol] iii] 5,484,402 [Stryker] [affirmed] i] no infringement ii] no infringement iii] literal infringement
3 **	Utah Medical Products Inc. v. Clinical Innovations Assoc. et. al.	251 F.3d 171 [Fed. Cir. Dec. 2001] [D. Utah; Judge Benson]	*Michel/Lourie/ Rader	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> catheter device	all elements rule	4,966,161 [affirmed] no infringement
4	Pioneer Magnetics, Inc. v. Micro Linear Corp.	238 F.3d 1341, 57 USPQ2d 1553 [Fed. Cir. Jan. 23, 2001] [C.D. Cal.; Judge Baird]	*Mayer/Newman/ Lourie	Plaintiff appealed Summ. J. of non-infringement	<u>electronic</u> switching power supply	prosecution history estoppel	4,677,366 [affirmed] no infringement
5	Litton Systems Inc. v. Honeywell, Inc.	238 F.3d 1376, 57 USPQ2d 1653 [Fed. Cir. Feb. 5, 2001] [C.D. Cal.; Judge Pfaelzer]	*Mayer/Rader/ Bryson Bryson concurs in part and dissents in part	Plaintiff appealed Summ. J. and JMOL of non-infringement	<u>electronic</u> multiple layer optical films	prosecution history estoppel	4,142,958 [affirmed] no infringement

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6 **	Collett v. Piper's Saw Shop, Inc.	No. 00-1290, 00-1291 [Fed. Cir. Feb. 9, 2001] [E.D. Tex.; Judge Brown]	*Newman/Michel/Rader	Plaintiff appealed judgement of non-infringement	<u>chemical</u> circular saw w/ tungsten carbide	all elements rule	4,889,025 [affirmed] no infringement
7	Forest Labs v. Abbott Labs, et al.	239 F.3d 1305, 57 USPQ2d 1794 [Fed. Cir. Feb. 13, 2001] [W.D. N.Y.; Judge Arcara]	*Lourie/Linn/Dyk	D.J. Def. appealed JMOL of non-infringement	<u>chemical</u> lung surfactant composition	i] all elements rule; prosecution history estoppel ii] all elements rule; prosecution history estoppel	i] 4,338,301 ii] 4,397,839 [affirmed] i] no infringement ii] no infringement
8	Demarini Sports, Inc. v. Worth	239 F.3d 1314, 57 USPQ2d 1889 [Fed. Cir. Feb. 13, 2001] [D. Or.; Judge King]	Schall/Bryson/ *Linn	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> aluminum softball bat	function way result hypothetical claim	5,415,398 [affirmed] no infringement
9	Biovail Corp., et al. v. Andrx Pharm, Inc.	239 F.3d 1297, 57 USPQ2d 1813 [Fed. Cir. Feb 13, 2001] [S.D. Fla.; Judge Dimitrouleas]	Newman/Clevenger/ *Gajarsa	Plaintiff appealed judgement of non-infringement	<u>chemical</u> hypertension drug	prosecution history estoppel	5,529,791 [affirmed] no infringement

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10 **	Maltezos v. AT&T Corp.	No. 99-1529 [Fed. Cir. Mar. 8, 2001] [S.D. N.Y.; Judge McKenna]	Per Curiam	Plaintiff appealed Summ. J. of non-infringement.	<u>mechanical</u> public telephone which provides multi-lingual instructions	all elements rule function way result	5,014,301 [affirmed] no infringement
11 **	Senior Tech., Inc. v. R.F. Tech.	No. 00-1089, 00-1090 [Fed. Cir. March 12, 2001] [D. Neb.; Judge Kopf]	*Clevenger/Smith/Bryson Sr. Judge Smith heard oral argument but due to illness was unable to participate in the disposition. This case was decided by the remaining judges in accordance with Fed. Cir. R.47.11.	Plaintiff appealed judgement of non-infringement	<u>mechanical</u> personnel security system	prosecution history estoppel all elements rule	4,682,155 [affirmed] no infringement
12	Netword v. Centraal Corp.	242 F.3d 1347, 58 USPQ2d 1076 [Fed. Cir. March 14, 2001] [E.D. Va.; Judge Brinkema]	*Newman/Archer/Clevenger Opinion for the court filed by Newman. Dissenting opinion filed by Clevenger	Plaintiff appealed judgement of non-infringement	<u>electrical</u> on line information systems	all elements rule	5,764,906 [affirmed] no infringement
13	Scimed Life Systems, Inc. v. Advanced Cardiovascular Systems	242 F.3d 1337, 58 USPQ2d 1059 [Fed. Cir. March 14, 2001] [N.D. Cal.; Judge Jenkins]	*Bryson/Plager/Dyk Opinion for the court filed by Bryson. Concurring opinion filed by Dyk.	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> balloon catheters	i] all elements rule ii] all elements rule iii] all elements rule	i] 5,156,594 ii] 5,217,482 iii] 5,395,334 [affirmed] no infringement

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14	Karsten Manuf. Corp., v. Cleveland Golf Co.	242 F.3d 1376, 58 USPQ2d 1286 [Fed. Cir. Mar 22, 2001] [D. Ariz.; Judge Van Sickle]	*Newman/Michel/ Plager	Plaintiff appealed Summ. J. of non- infringement	<u>mechanical</u> golf clubs	i) prosecution history estoppel ii) prosecution history estoppel	i) 4,621,813 ii) 5,193,805 iii) 5,297,803	i and ii) - non-infringement affirmed; iii) remanded for determination of infringement
15 **	Insituform Tech, Inc. v. Cat Contracting, et. al.	58 USPQ2d 1392 [Fed. Cir. 2001] [S.D. Tex.; Judge Gilmore]	Mayer/Michel/ *Schall	Plaintiff appealed judgement for infringement	<u>mechanical</u> method of repairing pipes	prosecution history estoppel	4,366,012	[reversed] no DOE infringement
16	Schoell v. Regal Marine Industries, Inc. et.al	247 F.3d 1202, 58 USPQ2d 1450 [Fed. Cir. 2001] [M.D. Fla.; Judge Fawsett]	Newman/*Plager/ Schall	Plaintiff appealed Summ. J. of non- infringement	<u>mechanical</u> boat hull	function way result	5,456,202	[affirmed] no infringement
17 **	Somfy, S.A. v. Springs Window Fashions Div., Inc., et. al.	No. 00-1379 [Fed. Cir. April 25, 2001] [N.D. Ill.; Judge Kennelly]	Mayer/Bryson/Dyk	Plaintiff appealed Summ. J. of non- infringement	<u>mechanical</u> window winding device	function way result	5,328,113	Summ. J. of non- infringement reversed-in- part and remanded
18	Telemac Cellular Corp. v. Topp Telecom, Inc.	247 F.3d 1316, 58USPQ2d 1545 [Fed. Cir. April 25, 2001] [N.D. Cal.; Judge Wilken]	Newman/Lourie/ *Gajarsa	Plaintiff appealed Summ. J. of non- infringement	<u>electrical</u> debit cell phone	function way result all elements rule	5,577,100	[affirmed] no infringement

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19	Lockheed Martin Corp. v. Space Systems/Loral, Inc.	249 F3d 1314, 58 USPQ2d 1671 [Fed. Cir. April 30, 2001] [N.D. Cal.; Judge Illston]	Schall/Friedman/ *Gajarsa	Plaintiff appealed Summ. J. of non-infringement	<u>electrical</u> satellite steering method	prosecution history estoppel	4,084,772 [affirmed] no infringement
20 **	Altech Controls Corp. et. al. v. EIL Instruments, Inc.	No. 00-1216 [Fed. Cir. May 2, 2001] [S.D. Tex.; Judge Harmm]	Clevenger/*Schall/ Bryson 21	Plaintiff appealed judgement of non-infringement	<u>mechanical</u> refrigeration controllers	i) prosecution history estoppel ii) prosecution history estoppel iii) infringement conceded	i) 4,621,776 [i] no infringement [affirmed] ii) 4,628,700 [ii] no infringement [affirmed] iii) 5,067,326 [iii] literal infringement [remanded]
21	Oak Tech., Inc., v. International Trade Commission, et. al.	248 F.3d, 58 USPQ2d [Fed. Cir. May 2, 2001]	Newman/ *Clevenger/Bryson	Appellant appealed ITC decision of non-infringement	<u>electrical</u> cd-rom drive controller	function way result	5,581,715 [affirmed] no infringement
22 **	Bernard Dalsin Mfg. Co. v. RMR Prods., Inc.	No. 00-1308 [Fed. Cir. May 7, 2001] [D. Minn.; Judge Tunheim]	Lourie/Rader/*Dyk	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> chimney damper	function way result	4,554,863 Summ J. of non-infringement reversed and remanded
23 **	Creo Prods., Inc. v. Dainippon Screen Mfg. Co., Ltd., et. al.	No. 00-1536 [Fed. Cir. May 14, 2001] [W.D. Wash.; Judge Rothstein]	Lourie/Bryson and Linn per curiam	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> laser diode array	prosecution history estoppel	4,743,091 [affirmed] no infringement

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24	Mycogen Plant Sci., Inc. v. Monsanto Co.	252 F.3d 1303, 58 USPQ2d 1891 [Fed. Cir. May 30, 2001] [S.D. Cal.; Judge Jones, Jr.]	Clevenger/*Bryson/ Linn	Plaintiff appealed Summ. J. of non- infringement	<u>biotech</u> synthetic Bt gene	prosecution history estoppel	5,380,831	[affirmed] no infringement
25 **	Accuscan, Inc. v. Xerox Corporation	No. 00-1316, 00-1320, 00-1406 [Fed. Cir. May 31, 2001] [S.D. N.Y.; Judge Baer, Jr.]	*Clevenger/Plager/ Schall	Defendant appealed judgement of infringement	<u>electrical</u> automatic background and contrast control	prosecution history estoppel	3,952.144	[reversed] no infringement
26 **	Scholle Corp. v. Packaging Sys., LLC	No. 00-1248, 00-1334 [Fed. Cir. June 6, 2001] [C.D. Cal.; Judge Lew]	Rader/ Plager/*Dyk	Plaintiff appealed Summ. J. of non- infringement	<u>mechanical</u> apparatus and method of filling flexible containers	all elements rule	4,120,134	Summ. J. of non infringement vacated and remanded
27 **	Semitool, Inc. v. Novellus Systems, Inc.	No. 00-1375 [Fed. Cir. June 8, 2001] [N.D. Cal.; Judge Jensen]	Michel/*Lourie/ Rader	Plaintiff appealed Summ. J. of non- infringement	<u>mechanical</u> wafer processing tool	i] prosecution history estoppel ii] prosecution history estoppel	i] 5,222,310 ii] 5,337,708	[affirmed] i] no infringement ii] no infringement
28 **	Unique Coupons, Inc. v. Northfield Corp., et.al.	No. 00-1300, 00-1314, 00-1315 [Fed. Cir. June 13, 2001] [N.D. Ill.; Judge Leinenweber]	Newman/*Lourie/ Bryson	Defendant appealed judgement of infringement	<u>mechanical</u> coupon sensor	i] all elements rule ii] all elements rule	i] 5,079,901 ii] 5,588,280	[reversed] i] no infringement ii] no infringement

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29	Gart v. Logitech, Inc.	254 F.3d 1334, 59 USPQ2d 1290 [Fed. Cir. 2001] [C.D. Cal.; Judge Marshall]	Lourie/Rader/*Linn	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> computer mouse	function way result test suggested	4,862,165 Summ. J. of no infringement vacated and remanded
30	Durel Corp. v. Osram Sylvania Inc.	256 F.3d 1298, 59 USPQ2D 1238 [Fed. Cir. June 27, 2001] [D. Ariz.; Judge Rafeedie]	*Lourie/Plager/Gajarsa	Defendant appealed holding of infringement	<u>chemical</u> phosphor particles	i] all elements rule ii] all elements rule iii] all elements rule	i] 5,418,062 ii] 5,439,705 iii] 5,156,885 [reversed] i] no infringement ii] no infringement iii] no infringement
31 **	Avery Dennison Corp. v. Flexcon Co., Inc.	No.00-1549 [Fed. Cir. July 18, 2001] [N.D. Ill.; Judge Rosenbaum]	*Newman/Lourie/Gajarsa	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> adhesives	i] prosecution history estoppel ii] prosecution history estoppel iii] prosecution history estoppel	i] 4,713,273 ii] 4,946,532 iii] 5,372,669 [affirmed] i] no infringement ii] no infringement iii] no infringement
32	Dow Chem. Co., v. Sumitomo Chem. Co., et.al.	257 F.3d 1364, 59 USPQ2d 1609 [Fed. Cir. 2001] [D. Mich.; Judge Roberts]	Clevenger/Rader/*Gajarsa	Plaintiff appealed Summ. J. of non-infringement	<u>chemical</u> epoxy resins	prosecution history estoppel all elements rule	4,499,255 Summ. J. of non-infringement vacated and remanded
33 **	Mollhagen v. Witte	No. 01-1056 [Fed. Cir. July 30, 2001] [D. Neb.; Judge Shanahan]	Mayer/*Lourie/Rader	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> portable animal chute	function way result	5,331,923 [affirmed] no infringement

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34	Viskase Corp., v. American Nat'l Can Co.	261 F.3d 1316, 59 USPQ2d 1823 [Fed. Cir. July 31, 2001] [N.D. Ill.; Judge Bucklo]	*Newman/Lourie/Rader	Defendant appealed judgement of infringement	<u>chemical</u> heat shrinkable plastic films	i - vi] Summ. J. of DOE "inappropriate" for Affinity Product	i] 4,863,769 ii] 4,976,898 iii] 5,059,481 iv] 5,256,351 v] 4,863,784 vi] 4,988,465	i]-iv] no literal infringement of Attane product; v-vi] literal infringement affirmed of Attane product; i-vi] Summ. J. of infringement of Affinity product vacated and remanded.
35	Innovad, Inc., v. Microsoft Corp, et.al.	260 F.3d 1326, 59 USPQ2d 1676 [Fed. Cir. Aug., 6, 2001] [N.D. Tex.; Judge McBryde]	Mayer/Friedman/*Rader	Defendant appealed Summ. J. of non-infringement	<u>electronic</u> dialer system	all elements rule	4,882,750	[affirmed] no infringement
36	Adv. Cardiovascular Sys. Inc. v. Scimed Life Sys. Inc. et. al.	No. 00-1454 [Fed. Cir. August 6, 2001] [S.D. Ind.; Judge Hamilton]	Michel/Archer/*Schall	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> coronary stent	i] prosecution history estoppel not found ii] prosecution history estoppel not found iii] prosecution history estoppel not found iv] prosecution history estoppel not found	i] 5,421,955 ii] 5,514,154 iii] 5,603,721 iv] 5,728,158 v] 5,735,893	[i-iv: Summ. J. of non-infringement affirmed in-part, vacated in-part remanded v] no infringement [affirmed]

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37	Pall Corporation v. PTI Tech., Inc.	259 F.3d 1383, No. 00-1203,00-1215 [Fed. Cir. August 7, 2001] [E.D. N.Y.; Judge Trager]	Schall/Friedman/ *Dyk	Defendant appealed Summ. J. of non-infringement	<u>mechanical</u> filter technology	i) prosecution history estoppel ii) prosecution history estoppel	i) 4,663,041 ii) 4,609,465 i) no infringement [affirmed] ii) vacated and remanded for determination of infringement under DOE
38 **	Masimo Corp., v. Mallinckrodt, Inc.	No. 01-1038, [Fed. Cir. August 8, 2001] [C.D. Cal.; Judge Stotler]	Newman/*Lourie/ Gajarsa Opinion for the court filed by Lourie. Gajarsa concurs-in-part and dissents-in-part.	Plaintiff appealed Summ. J. of non-infringement	<u>electrical</u> pulse oximeter	function way result prosecution history estoppel	[affirmed] no infringement
39	Day Int'l, Inc. v. Reeves Brothers, Inc.	260 F.3d 1343, 59 USPQ2d 1790 [Fed. Cir. Aug., 9, 2001] [D. S.C.; Mag. Judge Catoe]	*Clevenger/Schall/ Gajarsa	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> printing blanket	prosecution history estoppel	[affirmed] no infringement
40 **	KX Industries L.P. v. Pur Water Purification Prods., Inc.	No. 00-1543 [Fed. Cir. August 10, 2001] [D. Del.; Judge McKelvie]	Rader/Gajarsa/ *Linn	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> carbon black filters	prosecution history estoppel	[affirmed] no infringement
41	Mycogen Plant Science, Inc. v. Monsanto Co.	261 F.3d 1345, 59 USPQ2d 1852 [Fed. Cir. Aug., 14, 2001] [S.D. Cal.; Judge Jones, Jr.]	Clevenger/*Bryson/ Linn	Plaintiff petitioned for rehearing of Fed. Cir. decision of no infringement	<u>biotech</u> synthetic Bt gene	prosecution history estoppel	[affirmed] petition denied no infringement

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42	Bell Atlantic Network Ser., Inc. v. Covad Comm. Grp, Inc. et. al.	260 F.3d 1343, 59 USPQ2d 1790 [Fed. Cir. 2001] [E.D. Va.; Judge Friedman]	Lourie/Plager/ *Gajarsa	Plaintiff appealed Summ. J. of non-infringement	<u>electrical</u> DSL technology	all elements rule prosecution history estoppel	5,812,786 [affirmed] no infringement
43	Glaxo Group Ltd., V. Ranbaxy Pharm, Inc.	262 F.3d 1333, 59 USPQ2d 1950 [Fed. Cir. Aug., 20, 2001] [D. N.J.; Judge Cooper]	Mayer/Newman/ *Rader	Defendant appealed granting of Prelim. Junction	<u>pharmaceutical</u> antibiotic	prosecution history estoppel	4,562,181 [vacates preliminary injunction and remands] no infringement under DOE likely
44	Turbocare Div. Of Demag Delaval Turbomachinery Corp. v. General Elec. Co.	60 USPQ2d 1950 [Fed. Cir. 2001] [D. Mass.; Judge Ponsor]	*Bryson/Gajarsa/ Linn	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> shaft seal	prosecution history estoppel	4,436,311 Summ. J. Affirmed In Part, Vacated In Part and Remanded for determination of infringement under DOE
45	Kustom Signals, Inc. v. Applied Concepts, Inc.	60 USPQ2d 1135 [Fed. Cir. 2001] [D. Kan.; Judge Vratil]	*Newman/ Mayer/Lourie Opinion for the court filed by Newman. Dissenting opinion filed by Mayer.	Plaintiff appealed Summ. J. of non-infringement	<u>electrical</u> traffic radar equipment	all elements rule improperly used function way result argued prosecution history estoppel	5,528,246 [affirmed] no infringement
46	Ecolab, Inc. v Envirochem, Inc.	No. 00-1402 [Fed. Cir. September 6, 2001] [D. N.J.; Judge Greenaway, Jr.]	Newman/Friedman/ *Linn	Plaintiff appealed Summ. J. of non-infringement	<u>chemical</u> solid detergent cast	prosecution history estoppel	32,818 (reissue) no infringement under DOE affirmed

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47	Fin Control Systems PTY, LTD v. OAM, Inc.	No. 00-1516 [Fed. Cir. September 12, 2001] [C.D. Cal.; Judge Snyder]	Newman/*Clevenger/Dyk	Plaintiff appealed Summ J. of non-infringement	<u>mechanical</u> detachable fins	all elements rule	5,464,359 [affirmed] no infringement
48 **	Doorking, Inc. v. Sentex Systems, Inc.	No. 00-1439, 00-1490 [Fed. Cir. September 13, 2001] [C.D. Cal.; Judge Feess]	Mayer/Schall/*Dyk Judge Schall concurs-in-part and dissents-in-part	Plaintiff appealed Summ J. of non-infringement	<u>electrical</u> communication system	all elements rule	4,604,501 Summ. J. of non-infringement vacated and remanded
49	Hilgraeve Corp., v. Symantec Corp.	No. 00-1383, 00-1374 [Fed. Cir., September 17, 2001] [E.D. Mich.; Judge Gadola]	Rader/Plager/*Dyk	Plaintiff appealed Summ J. of non-infringement	<u>electrical</u> computer virus software	function way result	5,319,776 Summ. J. of non-infringement vacated and remanded
50	The Toro Company v. White Consolidated Industries, Inc.	No. 00-1561 [Fed. Cir. September 24, 2001] D. Minn.; Judge Doty]	Newman/*Rader/Linn	Plaintiff appealed Summ J. of non-infringement	<u>mechanical</u> convertible vacuum -blower	function way result	4,694,528 Summ. J. of non-infringement vacated and remanded
51 **	Circle R, Inc. v. Trail King Industries, Inc.	No. 01-1068 [Fed. Cir. September 28, 2001] [D. Neb.; Judge Jaudzemis]	Newman/Bryson/*Dyk	Plaintiff appealed Summ J. of non-infringement	<u>mechanical</u> side dump trailer	prosecution history estoppel	5,480,214 [affirmed] no infringement

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52	Ballard Medical Products v. Allegiance Healthcare Corp.	No. 00-1393 [Fed. Cir. October 9, 2001] [D. Utah; Judge Jenkins]	Mayer/*Bryson/Dyk	Plaintiff appealed Summ. J. of non-infringement	<u>mechanical</u> catheter	prosecution history estoppel	i] 4,569,344 ii] 4,696,296	[affirmed] no infringement
53	Asyst Technologies, Inc. v. Jenoptik	No. 00-1514 [Fed. Cir. October 10, 2001] [N.D. Cal.; Judge Fogel]	Newman/Archer/*Bryson	Plaintiff appealed Summ. J. of non-infringement	<u>electrical</u> semi-conductor wafers	i] function way result ii] all elements rule	i] 4,974,166 ii] 5,097,421	Summ. J. of non-infringement remanded