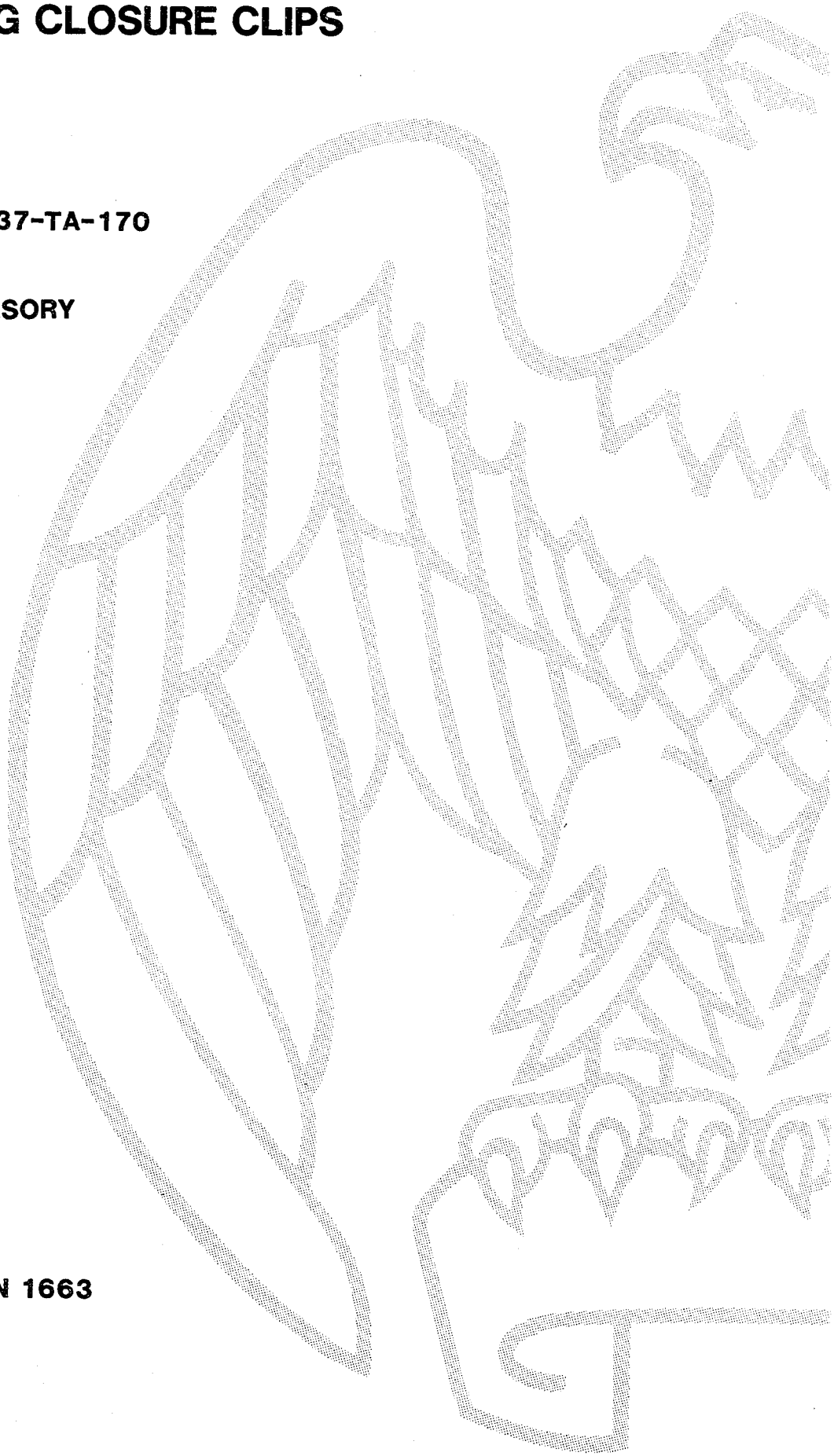
In the Matter of

CERTAIN BAG CLOSURE CLIPS

Investigation No. 337-TA-170

COMMISSION ADVISORY
OPINION



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Washington, D.C.

In the Matter of CERTAIN BAG CLOSURE CLIPS	Investigation No. 337-TA-170 Advisory Opinion Proceeding

ADVISORY OPINION 1/

Introduction and Background

On October 5, 1983, a complaint was filed with the Commission by Chip Clip Corporation (Chip Clip), alleging unfair methods of competition and unfair acts in the importation and sale of certain bag closure clips that infringe the claims of U.S. Letters Patent Nos. 4,394,791 (the '791 patent) and 4,356,600 (the '600 patent). 2/ Six respondents were named in the notice of investigation, but five of those respondents, including Aluminum Housewares, Inc. (Aluminum Housewares), ultimately entered into consent order agreements with complainant Chip Clip.

On August 9, 1984, the administrative law judge (ALJ) issued an initial determination (ID) finding a violation of section 337 in that bag clips imported by the remaining respondent and by an unidentified concern infringed the claims of both the '791 and '600 patents. On September 6, 1984, the

1/ Vice Chairman Liebeler does not join in this Advisory Opinion. Her views are set forth at pp. 17-18, infra.

2/ The claims of those patents are set forth in the appendix to this opinion.

Commission determined not to review the ID. Thereafter, the Commission issued a general exclusion order prohibiting the entry of bag closure clips that infringe either or both of the patents at issue. That order was entered on November 9, 1984, and, upon expiration of the 60-day Presidential review period, became final on January 9, 1985.

Meanwhile, respondent Aluminum Housewares filed a petition with the Commission pursuant to Commission rule 211.54(b) (19 C.F.R. § 211.54(b)) seeking an advisory opinion as to whether its redesigned bag clips (Exhibits 1 and 2 to that petition) infringed either of the two patents at issue. Thereafter, Chip Clip and the Commission's Office of Unfair Import Investigations (OUII) were given an opportunity to respond to Aluminum Housewares' petition. Chip Clip filed an opposition alleging (1) that Aluminum Housewares' petition failed to comply with the requirements of rule 211.54(b) and (2) that the two redesigned bag clips infringe the '791 and '600 patents and therefore are included within the scope of the exclusion order. OUII filed a statement in support of Aluminum Housewares' position that Exhibits 1 and 2, the redesigned clips, do not infringe Chip Clip's patents.

Having considered those arguments, the relevant law, the patents, and the redesigned clips, the Commission has determined that neither of the Aluminum Housewares clips infringes the patents at issue.

Discussion

I. Conformance with rule 211.54(b)

Authority for the Commission to issue advisory opinions is set forth in section 211.54 of the Commission's Rules of Practice and Procedure. Specifically, subsection (b) of that rule provides:

> Upon request of a respondent, the Commission may, upon such investigation as it deems necessary, issue an advisory

> opinion as to whether a respondent's proposed new course of action or conduct would violate the Commission order or section 337. The Commission will consider whether the issuance of such an advisory opinion would facilitate enforcement of section 337, would be in the public interest, and would benefit consumers and competitive conditions in the United States.

In a prior advisory opinion, the Commission set forth the duties it imposes upon a respondent requesting an advisory opinion:

> First, a respondent seeking such advice must demonstrate a compelling business need for the advice sought. . . .
>
> Second, a party seeking the Commission's advice must take care to frame its request as fully and accurately as possible. . . .
>
> Third, . . . [rather than filing] reiterated requests based on facts that differ only slightly from one request to the next. . . . the party seeking advice should fully state its request in its first submission. . . .
>
> Finally, the Commission will consider any equitable factor which might effect the balance of interests among the parties and between the parties and the Commission.

Certain Surveying Devices, Inv. No. 337-TA-68, USITC Publication 1178 (August, 1981) at 3-4.

We determine that the Aluminum Housewares petition provides sufficient grounds for issuing an advisory opinion. As evidence of its compelling business need for the Commission's advice, Aluminum Housewares has noted that bag closure clips are its biggest selling item in a product line of over 460 items. Second, the Aluminum Housewares petition and reply memorandum include legal arguments, copies of relevant prior patents, and a detailed affidavit of a patent expert analyzing the patents at issue and the redesigned clips. Further, rather than seeking a series of advisory opinions, Aluminum Housewares has filed a single petition presenting the Commission with two redesigned clips. Additionally, Aluminum Housewares contends that "consumers

and competitive conditions within the United States will be definitely benefited, with the public being spared the consequences and hardships of a monopoly of improper scope . . . ." 3/

II. Infringement

A. Legal framework for analysis

A multistep process is necessary to determine whether there is infringement here. First, each of the redesigned bag clips must be studied while reading the patent claims at issue in order to determine whether the claims of the two patents at issue "read on" the Aluminum Housewares bag clips. If so, there would be literal infringement. However, even if there is no literal infringement, one must determine if there is infringement under the so-called "doctrine of equivalents." That doctrine has been established to preclude avoidance of infringement by "minor deviations." Graver Tank & Mfg. Co. v. Linde Air Products Co., 339 U.S. 605, 608 (1950); Duplan Corp. v. Deering Milliken, Inc., 181 USPQ 621, 628 (D. S. Car. 1973); Coleco Industries, Inc. v. USITC, 197 USPQ 472, 477 (CCPA 1978). Specifically, the doctrine of equivalents provides:

> Where a device "performs substantially the same function in substantially the same way to obtain the same result" as the patented invention, that device may infringe the patent even if it does not fall within the terms of the claims read literally.

Duplan Corp., supra at 628, quoting Graver Tank & Mfg. Co.

In explaining that doctrine, the Supreme Court noted:

> The doctrine operates not only in favor of the patentee of a pioneer or primary invention, but also for the patentee

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3/ Petition at 2.

> of a secondary invention consisting of a combination of old ingredients which produce new and useful results . . ., although the area of equivalence may vary under the circumstances.

Graver Tank & Mfg. Co., supra, 339 U.S. at 608.

More recently, the Court of Customs and Patent Appeals (CCPA) explained:

> Under this doctrine the patent claims are interpreted in light of all the circumstances of a case, including prior art, and they are also subject to estoppels which may be created by an applicant.

Coleco Industries, Inc., supra, 197 USPQ at 478.

Thus, the parameters of equivalence amounting to infringement will vary from case to case. For example, if the claimed invention is a "pioneer invention" then the patent is entitled to a broad range of equivalents. However, if the claimed invention represents only a minor improvement to the art, the doctrine of equivalents is narrowly applied. Further, application of the doctrine may be limited if it is determined that the patentee, during the course of prosecuting the patent, made admissions or amended his claims in such a way as to estop him from contending that an equivalent feature is encompassed by the patent claims. Such limitation is known as "file wrapper estoppel" or "prosecution history estoppel." As the CCPA explained in Coleco Industries:

> A patentee having argued a narrow construction for his claims before the [Patent Office] should be precluded from arguing a broader construction for the purposes of infringement.
>
> * * * *
>
> Because applicant's ultimate goal in submitting amendments and offering arguments in support thereof is the securing of a patent, we find no reason not to extend the traditional estoppel doctrine beyond estoppel by amendment to estoppel by admission. Therefore, whenever a patentee

> utilizes the doctrine of equivalents in an infringement suit to extend the scope of his claims, he opens his case to rebuttal based on any statements he made on the record during prosecution.

197 USPQ at 480 (emphasis in text).

It was with this framework in mind that the Commission reached its determination that the Aluminum Housewares clips do not infringe the Chip Clip patents.

B. Literal infringement

1. Exhibit 1 and the '791 patent

The Commission compared Aluminum Houseware's Exhibit 1 bag clip with the claims of the '791 patent. 4/ The underlined language below describes how Exhibit 1 deviates from claim 1 of the '791 patent while the bracketed language is the contrasting claim language. 5/

> - a pair of clamp members, with each clamp member including a bar-like jaw which is wide relative to its depth and a bar-like handle which is long relative to its width,
>
> - each of said jaws defining a channel extending the entire width thereof, a solid rod [tube] of pliable material slightly shorter than [coextensive] said channel and seated in said channel with no portion of said rod extending outside the channel [with a circumferential portion thereof extending outside the channel],
>
> - each of said handles extending transversely from said jaw and terminating in a free end with a fulcrum means on the handle,

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4/ See Appendix.

5/ Claims 2 through 5 are "dependent" claims. Thus claim 1, the only independent claim, is the crucial one for purposes of determining infringement. We note, however, that the elements of claim 2, which further describe the torsion spring as "having an intermediate straight torsion bar section disposed between the handles and between the fulcrum means and the free ends of the handles," do not read on Exhibit 1. Elements of claims 3-5, which further describe how the fulcrum means and handles are attached to one another and are made of a single piece of plastic, and state that the clamp members are identical to one another, do read on Exhibit 1.

- said jaws being of equal length and said handles being of equal length,

- said clamp members being disposed with the fulcrum means of one clamp member in pivotal engagement with the fulcrum means of the other clamp member with said jaws, tubes and handles respectively opposite each other,

- said fulcrum means and said tubes holding the jaws and handles in spaced relation with clearance space between the jaws throughout the depth thereof to receive the end of the bag,

- a torsion spring having a torsion rod exteriorly located around the fulcrum, said spring element having arms extending along the sides of said clamp members in a forwardly direction and whose extremities lie at right angles thereto in grooves formed transversely in the outer face of said members [disposed between said fulcrum means and the free ends of said handles] and being adopted to hold said fulcrum means together and to urge said jaws closed, whereby said rods are adapted to grippingly engage a bag along most of the [the full] width of said jaws.

It is clear that, contrary to the contention of Chip Clip, the '791 patent is not literally infringed by Exhibit 1.

2. Exhibit 2 and the '791 patent

The only differences between Exhibits 1 and 2 are the construction of the channels in the the jaws and the pieces of pliable material contained within those channels. The channels in Exhibit 2 contain "ridges" into which the flat (as opposed to round) pliable strips fit by virtue of four "nodules" extending from one side of the flat strips. Like Exhibit 1, the Exhibit 2 strip of pliable material lies in the channel with no portion of the strip extending outside the channel. Thus, Exhibit 2 also does not literally infringe the '791 patent.

3. Exhibit 1 and the '600 patent

The Commission also compared Exhibit 1 with the claim of the '600

patent. 6/ Again, the language underlined below indicates those respects in which the Aluminum Housewares clip differs from the patent claim, with the bracketed language being the corresponding claim language.

> - a pair of straight, overlying but separate elongated scissor type members disposed adjacent each other and including,
>
> - a spring means operatively interconnected around the two members binding said members together [intermediately between a closing end and an opposite finger squeezing end for biasing the closing end of said members] towards a closed position and wherein said closing end may be opened by pressing the finger squeezing end together so as to overcome said spring means, and wherein,
>
> - said scissor members are identical and when disposed adjacent each other to form said bag closure device the scissor members include outer flat sides that extend from said closing end to said finger squeezing end,
>
> - a concave shaped mouth area defined interiorly of said scissor members about the closing and thereof, and wherein said mouth includes generally arcuately shaped upper and lower roof areas that form inside portion of said scissor members about the closing end and which extend throughout the closing end of said scissor members,
>
> - said spring means for holding said scissor type members together and biasing the same for closing including a torsional type [clothespin] spring, said spring element having arms extending along the sides of said scissor type members in a forwardly direction and whose extremities lies at right angles thereto [interposed between and intermediate the ends of the respective scissor type members], and wherein said torsional spring includes two end portions that engage outer areas of the respective scissor type members for biasing said mouth towards a closed position,
>
> - and a pair of elongated bag closure means secured within said mouth and interiorly of said scissor members such that portions of said scissor type members extend within [over and beyond] said bag closure member for movement therewith, said elongated closure members extending substantially from the mouth defined by said scissor type members and generally perpendicular to said scissor members and aligned such that in a closed position said two elongated closure members move together to grip a substantial length of one open portion of a bag therebetween to close the same.

6/ See appendix.

Because of the differences between the spring claimed by the '600 patent and Exhibit 1, Exhibit 1 does not literally infringe the '600 patent. 7/

4. Exhibit 2 and the '600 patent

The only difference between Exhibits 1 and 2 is the construction of the channel inside the mouth and the shape of the pliable strip in that channel. Therefore, Exhibit 2 also does not literally infringe the '600 patent.

C. Infringement under the doctrine of equivalents

Although there is no literal infringement of the two patents by the Aluminum Housewares clips, even a superficial examination of those clips indicates that they appear to "employ substantially the same means to accomplish substantially the same result in substantially the same way" as the patented Chip Clip bag closure clip. Graver Tank & Mfg. Co., supra, 339 U.S. at 608. Chip Clip calls the differences between the Aluminum Housewares clips and the patents merely "cosmetic." Thus, Chip Clip argues, the torsional spring, channel design, and pliable material used in Exhibits 1 and 2 are the full functional and structural equivalents of what is claimed in the patents.

Specifically, in arguing that the exteriorly located torsional spring utilized by Aluminum Housewares is the equivalent of a torsional spring having a torsional rod disposed between the fulcrum and the free ends of the handles

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7/ We note that Aluminum Housewares argued in its petition that its clips do not include "elongated scissor type members" or a "concave shaped mouth" as described by the '600 patent. Petition at 29. However, we believe that Aluminum Housewares is construing "scissor type" and "concave" too narrowly. In his initial determination (ID), the ALJ found that the Chip Clip bag clip, which is, at least with respect to its overall shape, virtually identical with the Aluminum Housewares redesigned clips, included scissors-type members and a "hollowed out (concave) mouth area . . . ." (Finding of Fact 31, ID at p. 14). We believe that the ALJ's interpretations of the claim language are more reasonable and should be followed.

(the '791 patent) or a spring located intermediately between a closing end and an opposite finger squeezing end (the '600 patent), Chip Clip relies upon O'Brien v. O'Brien, 202 F.2d 254 (7th Cir. 1953). In that case, the patent described a device utilizing a "conventional or standard type of motor." Defendant, in order to escape infringement, stressed that its device embodied "a special motor built into a special casing." In holding that defendant's device did infringe, the court found that the patent did not limit the type of motor to be employed.

However, the court reached that result only after carefully studying the prosecution history of that patent to determine whether the patentee had merely expressed a preference for a standard or conventional motor or had, through arguments to the Patent Office or amendments to the patent claims, limited his invention to such a motor. Had the court found that the patentee had limited his claims, he would have been estopped from arguing that the special motor was an equivalent to a standard motor. At least with respect to the '791 patent, the same study must be conducted here, both with respect to Chip Clip's contention that any torsion spring is an equivalent and with respect to its argument that a solid rod or a strip of pliable material is equivalent to a tube of pliable material.

With respect to the '600 patent, though, the question of whether the Aluminum Housewares' springs infringe may be disposed of on the grounds that the doctrine of equivalents is inapplicable. As Aluminum Housewares notes in its pleadings, the '600 patent is essentially a "picture claim." As such, the claim merely describes what is in the picture. Given that this bag clip device is just one of many such inventions in what is clearly a very crowded art (we note the number of prior patents cited throughout the prosecution

histories and these proceedings), we determine that the patent must be strictly construed. See Coleco, supra, 197 USPQ at 481 (concurring opinion):

> As to applying the doctrine of equivalents in this case no basis has been laid for its application by showing for example, that appellant's invention made a great advance in the art . . . . The doctrine [of equivalents] is an exception to the rule that patents are limited to what they claim and is not applied in every case.

See also the opinion of the Court of Appeals for the Federal Circuit in Thomas & Betts Corp. v. Litton Systems, Inc., 720 F.2d 1572, 1580 (Fed. Cir. 1983):

> [w]hile a pioneer invention is entitled to a broad range application of the doctrine of equivalents, an invention representing only a modest advance over the prior art is given a more restricted (narrower range) application for the doctrine. When a patentee claims an improvement over an earlier invention, other parties are entitled to practice variations of that prior invention, so long as they are not the same as, or an equivalent of, the improvement claimed by the patentee. Sealed Air Corp. v. USITC, 645 F.2d 976, 984-85, 209 USPQ 469, 477 (Cust. & Pat. App. 1981).

In Thomas & Betts Corp., the court ruled that because the invention claimed in the patent at issue was not a pioneer invention and had been issued as an improvement over a prior invention, "the claims should be given a range of equivalents narrow enough to distinguish over the prior art and, thus, avoid invalidity." Id. Here, the prosecution history indicates that the Patent Office examiner initially rejected the claims primarily because the combination of features described by the applicant's claims had been disclosed by prior art. 8/ Among the 11 U.S. patents cited, but not specifically discussed in the Notification of Rejection, was the "Stinne" patent. That patent, which expired in 1966, describes the precise torsion spring utilized by Aluminum Housewares' clips.

8/ Jan. 7, 1982 Notification of Rejection.

After the first rejection of the claims, the applicant's attorney met with the patent examiner. The examiner's record of that meeting indicates that they discussed "the prior art used to reject the claims" and agreed that "applicant's attorney will submit a one [sic] specific claim including the limitation of the mouth area for receiving the pair of dowels, for reconsideration." 9/ Two weeks later, such a claim was submitted. That claim made the following changes with respect to the spring means (brackets indicate deletions from the original; underlining indicates additions):

> and including spring means operatively interconnected immediately between [opposite ends of said members] a closing end and an opposite finger squeezing end for [holding the members together and] biasing [a] the closing end of said members towards a closed position.

Further, in the "Remarks" accompanying the new single claim, applicant stated:

> The comments of the Examiner as set forth in the Official Office Action on January 13, 1982, have been carefully studied and reviewed.
>
> * * *
>
> Also claim 1, as amended herein, particularly recites the type of spring means involved and how the same is incorporated between the respective scissor members.

The facts above fail to establish a basis for applying the doctrine of equivalents. Further, they establish that even if the doctrine could be applied, the claim could be accorded only an extremely limited range of equivalents because the art is so crowded. Having so concluded, the differences between the spring in the Aluminum Housewares' clips and that claimed by the '600 patent preclude a finding of infringement.

9/ April 30, 1982 examiner interview summary record.

F. Prosecution history estoppel

Aluminum Housewares strenuously argues that Chip Clip is estopped from contending that the springs, channels, and pliable rods or strips used in Exhibits 1 and 2 infringe under the doctrine of equivalents because of the specificity of the language of the claims and the arguments put forward by the patentees of the two patents in the process of trying to get the patents' claims allowed by the Patent Office. We derermine that this issue can be disposed of by looking at the spring mechanism alone.

Aluminum Housewares argues that Chip Clip is estopped from arguing that any torsion spring is encompassed by the claim of the '791 patent because during the course of trying to get the patent allowed, the patentee's attorney made the following statement in an attempt to distinguish a prior patent relied upon by the patent examiner to reject the claims:

> Stenersen discloses a clothespin with a spring having a torsion rod. The torsion rod portion of Stenersen is positioned in an intermediate region between the handles and the gripper portion of the jaws. It is not "disposed between said fulcrum means and the free ends of the handles" as defined in applicant's claim 1 . . . . As to Stenersen, in summary, this reference does not disclose or suggest . . . a torsion spring having "a torsion rod disposed between said fulcrum means and the free ends of said handles", as defined in claim 1 . . . . 10/

Aluminum Housewares thus contends that the patentee limited the type of torsion spring that could be used in the bag clip described by the '791 patent.

In response, Chip Clip argues that the statement by the patentee's attorney is irrelevant and cannot form the basis for a file wrapper estoppel because in the very next ruling by the patent examiner, the claims were

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10/ Sept. 17, 1982 submission at 4.

rejected a second time and new reasons were given for rejecting the claims. Specifically, the examiner listed two additional patents as constituting prior art making the invention obvious and further stated:

> Applicant's arguments with respect to claims 1-6 have been considered but are deemed to be moot in view of the new grounds of rejection. 11/

Chip Clip argues that the above statement renders irrelevant what otherwise might be considered a limiting admission. In support of this argument, Chip Clip cites two cases, Ziegler v. Phillips Petroleum Co., 483 F.2d 858 (5th Cir), cert. den., 94 S.Ct. 597 (1973), and H.K. Porter Co., Inc. v. Gates Rubber Co., 187 USPQ 692 (D. Colo. 1975). In Ziegler, the court stated that in order to determine whether file wrapper estoppel applies,

> [i]t is necessary to determine what patentee gave up in order to receive his patent. Moreover, an applicant should not be presumed to have made a disclaimer broader than necessary to yield to the actual challenge to his claim.

483 F.2d at 870-71.

In H.K. Porter, the court stated that "mere argumentation during prosecution of a patent will not create an estoppel where the argument is rejected." 187 USPQ at 716.

In response, Aluminum Housewares argues that (1) an examiner's statement that an argument is moot cannot "relieve the applicant of the responsibility for his own freely made admissive statements"; 12/ (2) that Ziegler, Porter, and O'Brien, supra, are inapplicable because in each of those cases the applicant provided "argument as to the advantage of the structure recited but without there being claim language relating to such advantage," 13/ whereas

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11/ Dec. 3, 1982 action by examiner at 4.
12/ Reply Brief of Aluminum Housewares at 14.
13/ Id. at 10.

here the claim does describe the location of the torsion spring rod with respect to the fulcrum means; (3) the Court of Customs and Patent Appeals in Coleco, supra, held that file wrapper estoppel can apply to "any statements . . . made on the record during prosecution"; and (4) even after the examiner stated that the applicant's arguments were deemed moot, applicant again "urged that his clamp was inventive by reason of including a torsion rod spring with the torsion rod located between the fulcrum means and the free ends of the handles" (emphasis added). 14/

We are inclined to agree with Aluminum Housewares on each of these points. In particular, we note that the location of the torsion spring rod is specifically defined in the claim as being located between the fulcrum means and that, during the course of prosecution of the patent, the the patent applicant sought to stress that fact. The Patent Office examiner's statement basically disregarding (but not necessarily rejecting) the applicant's attempt to distinguish his spring from that described in Stenersen cannot be a basis for permitting Chip Clip to pretend the argument was never made. Coleco and Thomas & Betts Corp., supra, make clear that the doctrine of equivalents may be rebutted "based upon prior statements made . . . to the [Patent office examiner] which appear in the file history," and not merely those statements which are specifically accepted by the examiner. 720 F.2d at 1579-80.

Further, as in the case of the '600 patent, we determine that the applicant wrote his claim with such specificity because his invention represented only a modest advance over the prior art in this crowded field. Therefore, the '791 patent is entitled to only a narrow range of equivalents,

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14/ Id. at 14.

and that range does not encompass the spring utilized by Aluminum Housewares in its bag clips.

Conclusion

We determine that the Aluminum Housewares' clips do not literally infringe the '791 and '600 patents, that there is no basis for applying the doctrine of equivalents with respect to the '600 patent (which would be entitled to only very limited equivalents in any event), and that Chip Clip is estopped from claiming infringement of the '791 patent under the doctrine of equivalents, at least with respect to the spring utilized, any further discussions of other allegedly equivalent aspects of the redesigned clips is unnecessary. It is basic patent law that so long as one element described by a claim is missing, there can be no infringement of the patent, even if every other element described by the patent is present. Deller's Walker on Patents, § 542; Dunbar v. Meyers, 94 U.S. 187, 201 (1876); Gaddis v. Calgon Corp., 184 USPQ 449 (5th Cir. 1975).

We therefore advise Aluminum Housewares that its two redesigned bag closure clips do not infringe the '791 and '600 patents, and, therefore, they are not within the scope of our November 9, 1984, general exclusion order.

VIEWS OF VICE CHAIRMAN LIEBELER

Respondent Aluminum Housewares entered into a consent agreement with petitioner Chip Clip Corp. in Certain Bag Closure Clips, Inv. No. 337-TA-170. The agreement provided that respondent would not import certain clips. Respondent now requests an advisory opinion as to whether its redesigned clips infringe the subject patent.

In Apparatus for Flow Injection Analysis and Components Thereof, Inv. No. 337-TA-151 (1984), the Commission terminated the investigation as having abated as the result of the issuance of a reexamination certificate by the Patent and Trademark Office after the commencement of the Commission proceeding. Commissioner Eckes and I dissented, stating:

> Although the Commission has the authority to act as finder of fact in the first instance, and has done so in the past, the Commission operates most efficiently when it delegates the initial factual and legal determination in unfair trade practice cases to an Administrative Law Judge. The Commission is able to make a more reasoned decision after the ALJ has provided us with his determination and analysis. This step in the procedure should not be foregone in the absence of exigent circumstances.

I believe that the same rationale applies to this determination. Whether one product infringes upon another is a mixed question of fact and law. The Commission generally relies on an Administrative Law Judge in the first instance for such determinations. Unless compelling reasons for expediency

are set forth in a request for an advisory opinion, the Commission should rely on the ALJ for the initial determination. I therefore dissent from the Commission's determination that the subject clips do not infringe.

APPENDIX

1. The '791 Patent.

The patent contains of five claims:

1. A clamp for closing food bags and the like comprising,

a pair of clamp members,

each clamp member including a bar-like jaw which is wide relative to its depth and a bar-like handle which is long relative to its width,

each of said jaws defining a channel extending the width thereof, a tube of pliable material coextensive with said channel and seated in said channel with a circumferential portion thereof extending outside the channel,

each of said handles extending transversely from said jaw and terminating in a free end with a fulcrum means on the handle, said jaws being of equal length and said handles being of equal length,

said clamp members being disposed with the fulcrum means of one clamp member in pivotal engagement with the fulcrum means of the other clamp member with said jaws, tubes and handles respectively opposite each other,

said fulcrum means and said tubes holding the jaws and handles in spaced relation with clearance space between the jaws throughout the depth thereof to receive the end of a bag,

and a torsion spring having a torsion rod disposed between said fulcrum means and the free ends of said handles with the free ends of the spring engaging the handles at the juncture thereof with the jaws and being adapted to hold said fulcrum means together and to urge said jaws closed, whereby said tubes are adapted to grippingly engage a bag along the full width of said jaws.

2. The invention as defined in claim 1 wherein said torsion spring comprises,

a wire having an intermediate straight torsion bar section disposed between said handles and between the fulcrum means and the free ends of said handles,

said wire having first and second straight side sections extending, respectively, along the first and second handles from opposite ends of said intermediate section toward said jaws,

said wire terminating in first and second end sections extending, respectively, across said handles adjacent said jaws whereby said jaws are urged closed by said spring.

3. The invention as defined in claim 1 wherein,

said fulcrum means on one of said handles comprises a post extending transversely thereof toward the other of said handles,

and said fulcrum means on the other of said handles comprises a socket for receiving the end of said post in pivotal connection.

4. The invention as defined in claim 1 wherein,

said fulcrum means on each of said handles comprises a post and a socket disposed in lateral alignment with each other,

the post on one handle being received in pivotal engagement by the socket on the other handle.

5. The invention as defined in claim 4 wherein each clamp member is a unitary body of plastic,

each clamp member being identical in construction to the other.

2. <u>The '600 patent</u>

The single claim of this patent states:

1. A spring actuated bag closure device for engaging and closing bags such as potato chips and cookie bags, comprising: a pair of straight, overlying but separate, elongated scissor type members disposed adjacent each other and including spring means operatively interconnected intermediately between a closing end and an opposite finger squeezing end for biasing the closing end of said members towards a closed position and wherein said closing end may be opened by pressing the finger squeezing end together so as to overcome said spring means, and wherein said scissor members are identical and when disposed adjacent each other to form said bag closure device the scissor members include opposed outer flat sides that extend from said closing end to said finger squeezing end; a concave shaped mouth area defined between and interiorly of said

scissor members about the closing end thereof, and wherein said mouth includes generally arcuately shaped upper and lower roof areas that form inside portions of said scissor members about the closing end and which extend throughout the closing end of said scissor members; said spring means for holding said scissor type members together and biasing the same for closing including a torsional type clothespin spring interposed between and intermediate the ends of the respective scissor type members and wherein said torsional spring includes two end portions that engage opposite outer areas of the respective scissor type members for biasing said mouth towards a closed position; and a pair of elongated bag closure means secured within said mouth and interiorly of said scissor members such that portions of said scissor type members extend over and beyond said bag closure member for movement therewith, said elongated bag closure members extending substantially from the mouth defined by said scissor type members and generally perpendicular to said scissor members and aligned such that in a closed position, said two elongated closure members move together to grip a substantial length of an open portion of a bag there between to close the same.