Stretchline v H&M

Strechline Intellectual Properties Ltd v. H&M Hennes & Mauritz UK Ltd [2015] EWCA Civ 516

In this action, Stretchline alleges that H&M has sold products which fall within the claims of its patent. It claims that this constitutes a breach of an agreement entered into by the parties in settlement of earlier patent infringement proceedings. H&M's Defence is that its products were not within the scope of the patent and that the patent was in any event invalid. It counterclaimed for revocation of the patent.

In January 2015, Sales J. struck out H&M's invalidity defence and counterclaim. He concluded that under the settlement agreement, H&M had agreed not to dispute the validity of the Patents. H&M appealed.

The first issue on appeal was whether, as a matter of construction, the settlement agreement precluded H&M from challenging validity. Kitchin LJ, with whom Aikens and Briggs LLJ agreed, found that a reasonable person would have understood that the parties intended the agreement to be in full and final settlement of all issues in dispute between them on a worldwide basis - including the issue of validity. As such, H&M could not contend that the patent was invalid whether by way of a defence or counterclaim.

H&M's alternative argument was that, in the earlier proceedings, the parties had proceeded on the basis that the scope of the patent was defined by reference to a particular method of testing, whereas, in the present action, Stretchline was proposing to use a different method of testing. This, H&M argued, meant that Stretchline was adopting a materially different construction of the patent. Relying on *Bank of Commerce and Credit International SA v Ali* [2002] 1 AC2 51, H&M argued that its agreement not to challenge the validity of the patent did not apply because Stretchline was relying on a new construction which had not been envisaged at the time of the settlement agreement.

Kitchin LJ rejected this argument for several reasons. He found that there was nothing in the patent which required the use of any one particular method of testing. He also found that the supposedly new test being proposed by Stretchline had been within the reasonable contemplation of H&M at the time of the settlement. Indeed, H&M was then using very similar methods to test its products for infringement of the patent. In any event, there was no satisfactory evidence that H&M had entered into the settlement agreement in the belief that the scope of the patent *must* be determined by one particular test.

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As such, the Court of Appeal determined that the settlement agreement was binding and precluded H&M from challenging validity in all the manners proposed. The appeal was dismissed.

The successful respondent was represented by Nicholas Caddick QC and Andrew Norris, instructed by Nick McDonald of Nelsons.

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