

From: Patton, Thomas <TPatton@fredlaw.com>
Sent: Tuesday, May 16, 2023 10:05 PM
To: LLagostera, Domingo M.; Johnson, R. Scott
Cc: Jeana Goosmann; William Hale; Wood, Megan; Wong, Russell T.; Johnson, R. Scott; Donels, Cara; Palmer, Erica; Mike Frey; Dan MacLemore
Subject: RE: Intirion v. College Products - simplifying the case

Domingo,

Thank you for your email. Initially, Intirion believes that many of the positions you lay out below depend on improper claim constructions. Further, Intirion disagrees with your assertions regarding the scope of the claims, infringement, invalidity, and your characterization (and omission) of certain material facts. College Products' MicroChill device infringes the asserted claims in the '974, '206, '374, and '876 patents, and Intirion has provided preliminary infringement charts to support its claims. Below, we have also addressed the rather conclusory noninfringement assertions. However, we agree that an additional inspection of College Products' MicroChill device may be appropriate to the extent certain assurances are made, including that the inspections be of devices "in the field" at universities and that, prior to any inspection, College Products provide supporting technical documentation, including circuit diagrams, the design documentation, and the code/programming information showing how the MicroChill units are designed to function. To that end, please provide the technical documentation, including the source coding, control/circuit diagrams, and other schematics, at your earliest convenience.

Regarding the '974 patent and your assertion that "[t]he USB ports of the accused MicroChill devices are always live, including when the microwave and/or refrigerators are in use," we have a reasonable basis to believe your assertion is not accurate for all MicroChill devices. Regardless, College Products has offered to sell its MicroChill devices with USB charging ports that are automatically shut off when the microwave oven is in use, and thereafter made (and continues to make) sales based on its promise that the MicroChill devices included this feature. This is sufficient to show College Products' infringement of asserted claims of the '974 patent.

Regarding the '206 and '374 patents, your understanding of the asserted claims is incorrect. Moreover, even under your incorrect understanding, the MicroChill product infringes the asserted claims. For example, that you believe a non-infringing mode of operation is possible does not avoid infringement. *See, e.g., Core Wireless Licensing S.A.R.L. v. Apple Inc.*, 899 F.3d 1356, 1363 (Fed. Cir. 2018). The hypothetical described in your email is also illogical and runs contrary to directions that would be provided to end users instructing users to use the air blowing function, with a default of two minutes, after each smoke alarm. Moreover, under the correct construction of the asserted claims, MicroChill satisfies the limitation(s) identified in your email both literally and under the doctrine of equivalence at least because the MicroChill includes a control circuit configured to reset, enabling the microwave oven to be available for another cooking session responsive at least in part due to the smoke sensor not thereafter sensing a dangerous condition. If the smoke sensor in the MicroChill senses a dangerous condition in the subsequent cooking session, power again would be withdrawn. College Products' attempt to read in extra limitations, including exacting temporal limitations, into the claims is improper. Further, as with the USB limitation, College Products advertised and sold the MicroChill devices based on the smoke detection system shutting off the unit once smoke is detected—again, an offer for sale of an infringing product is sufficient to show infringement. MicroChill even offered their "Smart Stop Internal Smoke Sensor" as an equivalent of Intirion's "1st Defense Smoke Sensor."

Intirion clearly has more than sufficient basis to allege (and will show) College Products' infringement of the asserted claims in all asserted patents. Please refrain from making statements to the contrary. They are not productive and, in our experience, do not assist the parties in resolving the real disputes in a case.

Please let me know if you have any questions or would like to coordinate College Products' production of the underlying technical documentation for the MicroChill units.

Best,
Thomas

Thomas M. Patton | Fredrikson & Byron, P.A.

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From: Llagostera, Domingo M. <domingo.llagostera@blankrome.com>

Sent: Wednesday, May 10, 2023 1:57 PM

To: Johnson, R. Scott <RSJohnson@fredlaw.com>

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Subject: Intirion v. College Products - simplifying the case

CAUTION: EXTERNAL E-MAIL

Scott,

Now that Intirion's case has been transferred to Iowa we want to re-open the discussion on our offer for Intirion to inspect College Products' MicroChill device, which should result in substantially narrowing the issues in dispute. As explained below, we do not believe Intirion has a basis to pursue its infringement allegations as to the '974, '206, and '374 Patents. As for the asserted '876 Patent, as you know, we have several non-infringement and invalidity defenses on that one as well. We will address that one separately.

The '974 Patent claims include the following limitations:

- "wherein the second power supply outlet includes at least one USB port which is not electrically powered and inoperative when the microwave draws cooking power" (claims 1-11); or
- "wherein the second power supply outlet includes a USB port that is not operative when the microwave draws cooking power" (claims 12-16); and
- "wherein the control circuit is configured to disable the second power supply outlet including the at least one USB port, when the refrigerator is operated during refrigerator compressor startup" (claims 17-21).

In sum, **all claims** of the '974 Patent require an inoperative USB port when the microwave or refrigerator is in use. The USB ports on the accused MicroChill devices are always live, including when the microwave and/or refrigerator are in use. Accordingly, College Products clearly cannot infringe any claim of the '974 Patent.

The asserted claims of the '206 and '374 Patent include the following limitations:

- “wherein the smoke sensor is configured to be reset...to enable the microwave oven to deliver [/receive] cooking power in a next subsequent cooking session responsive at least in part to the ***smoke sensor no longer sensing the smoke indicative of the dangerous condition***” (claims 9-10 of the '206 Patent; claims 9-10 and 12 of the '374 Patent)
- “wherein the control circuit is configured to reset...to enable cooking power to again be available to the microwave oven in a next subsequent cooking session responsive at least in part to the ***smoke sensor no longer sensing the dangerous condition***” (claims 11-12 of the '206 Patent; claims 17-18 and 20 of the '374 Patent)

In sum, **all asserted claims** of the '206 and '374 Patents require the smoke sensor/control circuitry to enable the microwave **after the smoke sensor no longer senses a dangerous condition**. This is not how the accused MicroChill products work. The MicroChill smoke sensors do not enable the microwave. In the MicroChill products, when the smoke sensors sense smoke above a certain threshold (“smoke threshold”), the power to the microwave is shut off. But the user can immediately restart the microwave even if the smoke is above the smoke threshold, because upon microwave reset the microcontroller ignores the smoke sensor for a 90 second period. After 90 seconds, the microcontroller looks at the smoke sensor again, and if the smoke is above the smoke threshold the power is again shut off. In other words, in the MicroChill, “no longer sensing the dangerous condition” is not a condition that needs to be satisfied before restart of the microwave. Accordingly, College Products cannot infringe any asserted claim of the '206 or '374 Patents.

To the extent Intirion is considering a doctrine of equivalents argument on the above limitations, that argument would be baseless under the claim vitiation doctrine. An accused product that does not cut power to the USB ports could not infringe a claim that requires cutting power to the USB ports, as otherwise it would completely read the USB-power limitation out of the claim. Similarly, an accused product that does not enable the microwave based on a smoke sensor determination could not infringe a claim that requires enabling the microwave based on the smoke sensor no longer sensing a dangerous condition, as that would read the smoke sensing limitation out of the claim.

In light of the above, we do not believe Intirion has a basis to proceed with its infringement claims under the '974, '206, or '374 Patents. We ask that Intirion drop those allegations so that we can simplify the issues in dispute and save costs, including unnecessary early motions for summary judgment. Of course, I understand from your perspective that you may need some sort of proof to verify that the MicroChill USB products are always live and that a user can immediately restart the microwave regardless of smoke level. We assume you have not been able to access and test the accused product. As such, we are happy to offer Intirion a product inspection at a neutral site in Sioux City limited to testing the USB port power supply and smoke sensing function.

Please let me know if Intirion will agree to drop the '974, '206, and '374 Patents, or if it would like to test the MicroChill product as stated above so I can start making arrangements for an inspection.

Finally, please let me know when you are available for a meet and confer to discuss the possibility of an early resolution.

Thanks,

Domingo

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