

EXHIBIT 2002

Nos. 2020-1046, 2020-2050

In the
United States Court of Appeals
for the Federal Circuit

KYOCERA SENCO INDUSTRIAL TOOLS INC., fka Kyocera Senco Brands Inc.,
Appellant,
v.
INTERNATIONAL TRADE COMMISSION,
Appellee,
KOKI HOLDINGS AMERICA LTD., fka Hitachi Koki U.S.A. Ltd.,
Intervenor.

KOKI HOLDINGS AMERICA LTD., fka Hitachi Koki U.S.A. Ltd.,
Appellant,
v.
INTERNATIONAL TRADE COMMISSION,
Appellee,
KYOCERA SENCO INDUSTRIAL TOOLS INC., fka Kyocera Senco Brands Inc.,
Intervenor.

Appeals from the United States International Trade Commission,
in No. 337-TA-1082.

RESPONSE AND REPLY BRIEF OF APPELLANT-INTERVENOR
KYOCERA SENCO INDUSTRIAL TOOLS INC.

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“volume of the cylinder.” But, Koki did not ask for a claim construction based on the “*displacement* volume of the cylinder,” though it certainly could have. It was aware of the specialized meaning of the word “displacement” since it is in the claims themselves. Instead, the Commission gave Koki the claim construction it asked for. This Court should not upset agreed-upon claim constructions just because a party did not foresee that the construction it agreed to would be taken literally as written.

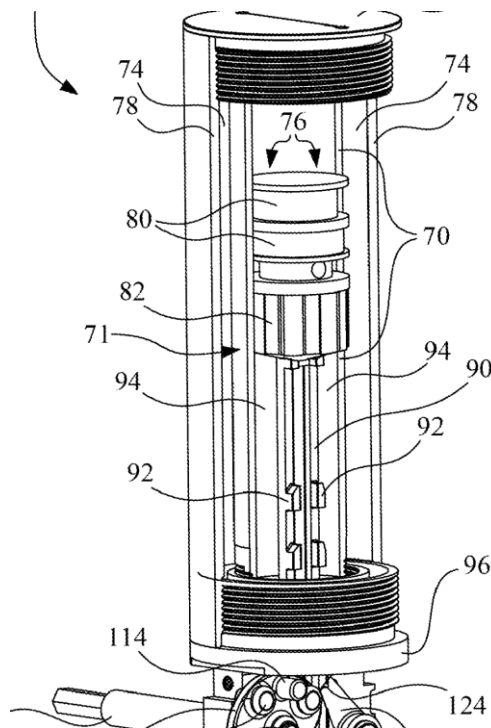
A. The Commission Applied the Claim Construction Koki Agreed To

The limitations at issue are:

(A) a hollow cylinder comprising a cylindrical wall with a movable piston therewithin, said hollow cylinder containing a displacement volume created by a stroke of said piston, and

(B) a main storage chamber that is in fluidic communication with said displacement volume of the cylinder, wherein said main storage chamber and said displacement volume are initially charged with a pressurized gas;

(Appx577.) The “main storage chamber 74” is shown below in this cropped image of Figure 2, while the hollow cylinder 71 is shown with the piston 80 therein:



(Appx515.) As can be seen from that image, and as described in the '718 patent:

On FIG. 2, the *working cylinder 71* includes a cylinder wall 70, and within this cylinder wall 70 is a piston 80, a movable piston stop 82, and a stationary piston stop 84 (see FIG. 3). Part of the piston mechanism of this embodiment includes a piston seal 86, a piston guide ring 88, and a piston scraper 89 (see FIG. 10). *Surrounding, in the illustrated embodiment, the cylinder wall 70 is a main storage chamber 74* (also sometimes referred to herein as a “pressure vessel storage space”) and an outer pressure vessel wall 78 (which corresponds to the “front” cover 24 of FIG. 1, along the left portion of this view).

(Appx562, 8:29–41 (emphasis added).)

The parties agreed to, and the Commission applied, the following claim construction of “main storage chamber”: “a chamber that is

distinct from the *volume of the cylinder* and contains part of the working air volume during operation.” (Appx229 (emphasis added).) That construction is fully consistent with Figure 2 and its description: the main storage chamber 74 is, in fact, distinct from the volume of the cylinder 71.

The '718 patent explains that, in operation, the movement of the piston within the cylinder creates a “displacement volume” or “gas pressure chamber” 76 that is smaller than, and separate from, the overall of volume of the cylinder:

In FIG. 2, the piston 80 is not quite at its uppermost or top-most position, and *a gas pressure chamber 76* can be seen above the top-most area of the piston, near the piston seal 86. It will be understood that the gas pressure chamber 76 and the main storage chamber (or storage space) 74 are in fluidic communication with one another. It will also be understood that *the portion to the interior of the cylinder wall 70 forms a displacement volume that is created by the stroke of the piston 80*. In other words, *the gas pressure chamber 76 is not a fixed volume, but this chamber will vary in volume as the piston 80 moves up and down* (as seen in FIG. 2). This type of mechanical arrangement is often referred to as a “displacement volume,” and *that terminology will mainly be used herein for this non-fixed volume 76*.

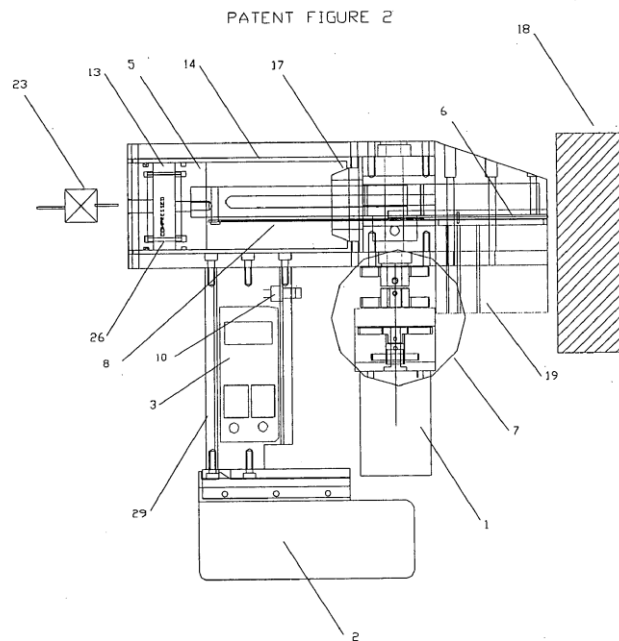
(Appx563, 9:57–10:3 (emphasis added).)

Additionally, Koki incorrectly states that the “volume of the cylinder” must refer to the “displacement volume” because “no other

cylinder volume is defined or mentioned in the claims or the specification.” (Koki Br., at 80.) Koki’s argument is misplaced. As the CALJ noted, “Indeed, the asserted claims recite separate elements for ‘main storage chamber,’ ‘displacement volume of the cylinder,’ and ‘hollow cylinder.’” (Appx139.) Thus, it is simply incorrect to say that “no other cylinder volume” is mentioned because—like any three-dimensional shape—the “hollow cylinder” intrinsically and naturally has a volume. To pretend that the “hollow cylinder” does not have its own volume is wrong as a matter of elementary geometry, whether the hollow cylinder’s volume is expressly called out for any purpose in the specification or not.

Thus, when Koki agreed to the claim construction of “main storage chamber” as “distinct from the *volume of the cylinder*,” Koki was well aware that the cylinder had its own fixed volume different from the “displacement volume.” Nevertheless, Koki *never* asked the Commission to construe the main storage chamber as distinct from the “*displacement* volume of the cylinder.”

resides upstream of the piston (numeral 5). (Appx139.) The “displacement volume,” on the other hand, is the volume displaced by the downstream movement of the piston:



(Appx2461, Appx2468.) Koki does not contest otherwise, and therefore pins its entire appeal on its request for a “do-over” on the claim construction it agreed to.

C. If Koki's Construction Were Correct, It Would Read a Limitation out of the Claims by Combining Three Limitations into Two

Koki’s argument cannot be correct for another reason. Were Koki correct, it would read the separate “hollow cylinder” limitation out of the claim.

The CALJ properly noted that, as relevant here, the claims recite three “*separate* elements for ‘main storage chamber,’ ‘displacement volume of the cylinder,’ and ‘hollow cylinder.’” (Appx139 (emphasis added).) The ’718 patent plainly differentiates among those three. The “displacement volume” is referenced as a “*portion*” of the “hollow cylinder.” (Appx563, 9:57–10:3 (emphasis added).) In Koki’s view, the “main storage chamber” is distinct from that *portion*, *i.e.*, the “displacement volume,” even though, in Pedicini, they are both located in the *same* hollow cylinder.

The problem with that analysis is it renders the hollow cylinder as a “separate” element a nullity. As Koki’s drawing of Pedicini demonstrates, the “displacement volume” is the volume to the right of the piston, while the “main storage chamber” is the volume to the left of the piston. (Appx137–138.) The claims state that the hollow cylinder has two items inside it: a piston and a displacement volume. (Appx577, 37:62–64) (the hollow cylinder “comprising a cylindrical wall with a movable piston therewithin” and “containing a displacement volume”). Because Koki locates the “main storage chamber” upstream of the piston in the same cylinder, if Koki were right, the “hollow cylinder”

would contain a *third* element—the “main storage chamber.” But, that is not how the claims are written. Claim 1 (for example) recites:

said fastener driving mechanism including:

(A) a hollow cylinder comprising a cylindrical wall with a movable piston therewithin, said hollow cylinder containing a displacement volume created by a stroke of said piston, and

(B) a main storage chamber that is in fluidic communication with said displacement volume of the cylinder, wherein said main storage chamber and said displacement volume are initially charged with a pressurized gas[;]

(*Id.*) Koki’s reading eliminates the “hollow cylinder” as a distinct element because, the way Koki interprets Pedicini, it only has a “main storage chamber” and a “displacement volume,” notwithstanding that, in Pedicini, both are in the same cylinder. If Koki were correct, the claims would not recite a separate “hollow cylinder” element.

Koki’s interpretation must be wrong. Koki acknowledges that it asked the CALJ to interpret the “main storage chamber” as “a chamber that is *distinct* from the *volume of the cylinder*.” It is that “distinctness” requirement—that Koki agreed to—that spoils Koki’s interpretation. The only way Koki can achieve a “main storage chamber” being “distinct” from the volume downstream of the piston (which it

characterizes as the “volume of the cylinder” but which really just refers to the “displacement volume”) is to collocate it *within the volume of the cylinder itself*. That construction reveals the issue—the claims require two separate chambers: the main storage chamber, and the volume of the hollow cylinder. Pedicini, on the other hand, only has *one* chamber. If Koki is incorrect, Pedicini lacks a “main storage chamber.” But, even if Koki is *correct*, Pedicini lacks the required, separate “hollow cylinder.”

Koki’s arguments are too late. It should have known that the cylinder would have a fixed total volume, not just as a by-product of basic geometry, but also because—despite Koki’s arguments—the ’718 patent specifically says so. The Commission was correct to apply the claim construction it did and hold Koki to it, and Koki waived any opportunity to alter it. *Digital Vending Servs. Int’l, Inc. v. Univ. of Phoenix, Inc.*, 672 F.3d 1270, 1278 (Fed. Cir. 2012) (holding that party who stipulated to claim construction below waived right to challenge it on appeal). Pedicini does not disclose a “main storage chamber” as construed, and the claims are therefore not obvious.