

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

BRAGEL INTERNATIONAL, INC.,
Plaintiff-Appellee

v.

STYLES FOR LESS, INC.,
Defendant-Appellant

PPI APPAREL GROUP, INC.,
Defendant

2017-1328

Appeal from the United States District Court for the
Central District of California in No. 8:15-cv-01756-R-
FFM, Judge Manuel L. Real.

BRAGEL INTERNATIONAL, INC.,
Plaintiff-Appellee

v.

CHARLOTTE RUSSE, INC.,
Defendant-Appellant

PPI APPAREL GROUP, INC.,
Defendant

Panties Plus, Inc. v. Bragel International, Inc.

IPR 2017-00044

Patent Owner Exhibit 2017

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2017-1343

Appeal from the United States District Court for the Central District of California in No. 2:15-cv-08364-R-FFM, Judge Manuel L. Real.

ON MOTION

Before LOURIE, LINN, and TARANTO, *Circuit Judges*.
LINN, *Circuit Judge*.

O R D E R

Styles For Less, Inc. and Charlotte Russe, Inc. separately move for an order vacating and remanding the preliminary injunctions issued by the United States District Court for the Central District of California. Bragel International, Inc. opposes the motions. Styles For Less and Charlotte Russe reply.

Bragel and PPI Apparel Group, Inc. both design, manufacture, and distribute strapless bras and attachable breast-form systems, which are intended to be worn in lieu of a traditional bra.* PPI distributes its breast-form systems to retailers like Styles For Less and Charlotte Russe which then offer to sell them to consumers.

* Bragel filed two lawsuits, one against PPI and Styles For Less and one against PPI and Charlotte Russe. Because the fact patterns and orders are essentially identical and Styles For Less and Charlotte Russe are represented by the same counsel, the appeals have been consolidated.

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Bragel owns a patent on an improved backless, strapless breast-form system, U.S. Patent No. 7,144,296. Claim 1 of the patent, from which all the asserted claims depend, recites a pair of breast forms, wherein each breast form comprises a volume of silicone gel encased between thermoplastic film material; a concave interior surface facing towards a user's breast having a pressure-sensitive adhesive layer for securing the breast form to the user's breast; and a connector adapted to adjoin the breast forms together, wherein the connector is positioned between inner sides of each of the breast forms.

Bragel brought these suits alleging that PPI, Styles For Less, and Charlotte Russe infringed its patent. The parties each moved for summary judgment on a number of issues. Defendants sought, in relevant part, summary judgment declaring that the claims were obvious in light of a combination of several prior art references. Among other things, defendants argued that U.S. Patent No. 5,755,611 ("Noble") had disclosed each feature of claim 1 except for the use of a silicone gel for the bra cup and submitted an expert declaration explaining why it would have been obvious to combine Noble with a known silicone-containing breast form to create a self-adhesive silicone backless strapless bra with a center connector.

The district court granted summary judgment for Bragel on the issue of infringement and denied defendants' requests for summary judgment. Addressing the obviousness challenge, the district court stated that "[t]he obviousness argument is the same argument raised by the patent examiner during the prosecution of the parent application to the patent-in-suit. Ultimately, the patent examiner discarded such an argument and found the patent valid." On December 2, 2016, the court granted Bragel's motions for preliminary injunctions. On likelihood of success, the district court's injunction orders stated only that Styles For Less's and Charlotte Russe's "attempts to re-litigate issues previously decided in the

summary judgment order[s] are ineffective” and that “[t]his Court held that the . . . invalidity arguments have ‘no merit.’”

For an interlocutory injunction, the court “must . . . state the findings and conclusions that support its action.” Fed. R. Civ. P. 52(a)(2). “It is of the highest importance to a proper review of the action of a court in granting or refusing a preliminary injunction that there should be fair compliance with Rule 52(a) of the Rules of Civil Procedure” *Mayo v. Lakeland Highlands Canning Co.*, 309 U.S. 310, 316 (1940); *see also* *Diouf v. Mukasey*, 542 F.3d 1222, 1235 n.7 (9th Cir. 2008); *Nutrition 21 v. United States*, 930 F.2d 867, 869 (Fed. Cir. 1991) (“Sufficient factual findings on the material issues are necessary to allow this court to have a basis for meaningful review.”). Absent appropriate findings, the normal course is to vacate the district court’s decision and remand the matter for a proper analysis. *See Pretty Punch Shoppettes, Inc. v. Hauk*, 844 F.2d 782, 784 (Fed. Cir. 1988) (“[T]he trial court must provide sufficient factual findings such that we may meaningfully review the merits of its order.”).

This court has also applied that standard in summarily disposing of a preliminary injunction order that failed to satisfy the requirements of Rule 52(a). In *Sciele Pharma Inc. v. Lupin Ltd.*, for instance, the defendant argued that prior art references that had been before the patent examiner raised a substantial question of invalidity. 2012 U.S. App. LEXIS 2442 (Fed. Cir. Feb. 6, 2012). The district court rejected defendant’s argument and granted an injunction relying almost entirely on the presumption of validity. In vacating the injunction, this court noted that the district court “did not make any findings of fact or any conclusions of law regarding Lupin’s obviousness arguments.” *Id.* at *2–3. This court further explained that the “fact that prior art was before the PTO can not be the only reason to reject an obviousness defense,” and

that the defendant “is entitled to have the district court make an independent assessment of its defense and apply the proper burden of proof.” *Id.*

As in the injunction order in *Sciele*, the district court’s injunction orders in the instant cases make no more than passing references to Styles For Less’s and Charlotte Russe’s invalidity challenges, finding only that Styles For Less’s and Charlotte Russe’s “attempts to re-litigate issues previously decided in the summary judgment order[s] are ineffective.” The referenced summary judgment orders likewise do not address Styles For Less’s and Charlotte Russe’s obviousness arguments or make any findings regarding the asserted prior art references, whether it would have been obvious to combine those references, or make any findings as to any of the relevant secondary considerations of non-obviousness. The district court stated only that Styles For Less’s and Charlotte Russe’s challenges were the “same argument raised by the patent examiner during the prosecution of the parent application to the patent-in-suit” and that “[u]ltimately the patent examiner discarded such an argument and found the patent valid.” That finding, like the finding in *Sciele*, fails to satisfy Rule 52(a)’s requirements.

Because the district court’s failure to make adequate findings prevents this court from engaging in meaningful review of the obviousness issues, the court grants the motions to vacate and remand. On remand, the district court should provide findings of fact and conclusions of law on the obviousness arguments as well as Styles For Less’s and Charlotte Russe’s other defenses sufficient to satisfy Rule 52(a).

Accordingly,

IT IS ORDERED THAT:

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The motions are granted. The district court's grants of preliminary injunctions are vacated, and the appeals are remanded for further proceedings.

FOR THE COURT

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

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ISSUED AS A MANDATE: January 5, 2017