

Design Patent Case Digest

Anderson v. Kimberly-Clark Corporation



Decision Dates: September 25, 2013 and July 10, 2014

Court: W.D. Washington and Federal Circuit

Patent: [D401,328](#)

Holding: Defendant's Motion for Judgment on the Pleadings GRANTED; Complaint DISMISSED; Grant of Motion for Judgment on the Pleadings AFFIRMED

Opinion:

Plaintiff Muffin Anderson sued Defendant Kimberly-Clark Corporation for infringement of U.S. Design Patent No. D401,328 ("the '328 patent"), entitled "Absorbent Disposable Undergarment." Kimberly-Clark sells consumer products for personal care, including facial tissue, feminine hygiene products, and diapers. Anderson, proceeding pro se, alleged in her initial complaint that several of Kimberly-Clark's products infringed the '328 patent. After Kimberly-Clark reviewed the list of products, Kimberly-Clark informed Anderson that it did not produce or sell several of the accused infringing products. Of the accused products, Kimberly-Clark made five: four varieties of "Depend" brand adult disposable undergarments ([Depend for Women Underwear](#), [Depend Silhouette Briefs for Women](#), [Depend Real Fit Briefs for Men](#), and [Depend for Men Underwear](#)) and one "[GoodNites](#)" brand boxer-shorts-style disposable undergarment for children that is no longer available. Kimberly-Clark moved for judgment on the pleadings.

A motion for judgment on the pleadings is authorized by Rule 12(c) of the Federal Rules of Civil Procedure. It is the functional equivalent of a Rule 12(b)(6) motion to dismiss for failure to state a claim. As such, a plaintiff must have sufficient factual support in the pleadings such that the claim is plausible on its face. Courts typically cannot consider evidence outside of the complaint but may rely on a document to which the complaint refers if it is central to a party's claims and the authenticity is not in question. For this reason, the court relied on both the '328 patent and photographs of the accused products for its analysis.

In evaluating the motion for judgment on the pleadings, the court first described the '328 patent. The court noted that the drawings in the '328 patent depict a "bloomers"-style undergarment that extends to cover each leg substantially below the crotch. Additionally, the hems at the waist and leg opening fit closely and the openings would be parallel to the ground if the person wearing the undergarment stood upright. The court also discussed the distinctive inverted-U-shaped section shown in the '328 patent.

Turning to Kimberly-Clark's products, the court first looked at the four "Depend" products. The court described the "Depend" product as a "briefs"-style undergarment, that is, an undergarment with no leg covering. The leg openings of the "Depend" product are at an approximate 45 degree angle to the waist of the wearer when the wearer is standing. Finally, the "GoodNites" product is not a unitary undergarment but is instead composed of a briefs-style inner member with a boxer-shorts-style layer over it.

The court held that these products did not infringe the '328 patent. According to the court, the differing styles of the undergarment—briefs, bloomers, and boxers—make it clear that the accused products do not infringe. The court also noted that the distinctive inverted-U-shaped section shown in the '328 patent was absent from the allegedly infringing products. While the court relied only on these most striking differences, it also indicated that many more differences could be recounted.

Kimberly-Clark's motion also directed the court to WIPO Publication No. [WO 96/03950](#) ("Rosch"). Rosch was filed in July 1994 by Kimberly-Clark to cover the design for the "GoodNites" product. The court determined that Rosch is therefore prior art to the asserted '328 patent, which was filed in September 1997. Thus, the court held that if it found the "GoodNites" product to infringe the '328 patent, it would also have to declare the '328 patent invalid as anticipated by Rosch.

Concluding, the court granted Kimberly-Clark's motion for judgment on the pleadings and dismissed the complaint. The court also preemptively denied any attempt by Anderson to amend. Interestingly, the court commented in a footnote that Anderson's actions during the trial "arguably merit sanctions" under Rule 11 of the Federal Rules of Civil Procedure. The court urged Anderson to reconsider her approach to litigation if she continued to assert the '328 patent.

Anderson appealed her case to the Federal Circuit, arguing that the court improperly considered evidence not attached to the pleadings, failed to consider that a scheduling conference had not occurred, and improperly granted Anderson's motion to file a second amended complaint. The Federal Circuit affirmed the district court on the issue of non-infringement in a per curiam opinion and approved its use of the '328 patent, photographs of the accused products, and Rosch because these documents were central to Anderson's claims and Anderson had not challenged the authenticity of the photographs. As to Anderson's other two arguments, the Federal Circuit dismissed them as without merit and as failing to provide a reason for disturbing the judgment below. Finally, the Federal Circuit declined to analyze the issue of patent validity noting that it was unnecessary.

Accordingly, the Federal Circuit affirmed the district court's grant of judgment on the pleadings.

If you have any questions or would like additional information on this topic, please contact:

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Special thanks to Associate Stephen A. Merrill for his role as a contributing author of this digest.

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