

TRUDELL MEDICAL INTERNATIONAL INC. v. D R BURTON HEALTHCARE, LLC, Appeals Nos. 2023-1777 and 2023-1779 (Fed. Cir. Feb. 7, 2025). Before Moore, Chen, and Stoll. Appealed from E.D.N.C. (Judge Boyle).

Background:

Trudell sued D R Burton ("Burton") alleging that Burton's products infringe a patent owned by Trudell. During trial, Burton presented expert testimony directed to invalidity of the claims and non-infringement by Burton's products. The jury found the claims valid but not infringed. A critical part of Burton's defense was an expert report on non-infringement that was submitted three weeks after the close of discovery. Trudell sought Judgment as a Matter of Law (JMOL) on infringement or a new trial; however, both motions were denied. Trudell then appealed to the Federal Circuit arguing that the district court abused its discretion in admitting the testimony of the expert and for denying its motions for JMOL and a new trial.

Issues/Holdings:

Was admission of the expert's testimony proper? No, reversed. Was denial of JMOL proper? Yes, affirmed. Was denial of the motion for new trial proper? No, reversed.

Discussion:

Trudell argued that Burton did not submit a timely expert report and as such, the expert's testimony should have been excluded. The Federal Circuit agreed and held that Rule 26 of the Federal Rules of Civil Procedure requires parties to timely disclose the expert testimony for use at trial and the disclosure must be accompanied by a written report. As an exception to this Rule 26, the failure to timely disclose must be "*substantially justified or harmless.*" Burton's expert, Dr. Collins, submitted the expert report three weeks after close of discovery. Thus, Trudell could not depose Dr. Collins. Also, Dr. Collins' testimony exceeded the scope of his declaration. Consequently, the Federal Circuit held that the late submission of Dr. Collins' expert report was neither justified nor harmless, and therefore, this late submission was not in compliance with Rule 26. Further, the expert report was not consistent with the court's claim construction.

Nonetheless, the Federal Circuit affirmed the denial of JMOL. Even if the testimony was not admitted, the Federal Circuit held that the jury was still free to find that "Trudell failed to meet its affirmative burden to prove infringement." But because the Federal Circuit found persuasive Trudell's argument that they were not afforded an opportunity to depose Dr. Collins on the issues in the expert report, it held that the untimely, harmful, and prejudicial admission of Dr. Collins' testimony warrants a new trial on infringement.

Finally, the Federal Circuit further held that a new judge must be assigned to the case on remand because at trial the judge made several statements asserting that the trial had to finish by a certain date. The Federal Circuit held that the judge's statements "indicate that he did not intend to manage a fair trial with respect to the issues."