

Festo Corporation Urges Nation's Highest Court To Restore Patent Rights For Innovators

Hauppauge, New York – March 6, 2008. Festo Corporation by its attorneys, Charles R. Hoffmann, of Hoffmann & Baron, LLP, and Kenneth W. Starr, of Kirkland & Ellis LLP, has filed a Petition for Writ of Certiorari seeking the U.S. Supreme Court's review of a decision by the U.S. Court of Appeals for the Federal Circuit (Federal Court) which severely weakens the protections afforded innovators under the patent system.

Festo has previously successfully petitioned the Supreme Court in order to restore the rights of patent holders in the landmark case *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722 (2002) where the Supreme Court overruled the Federal Court's holding relating to the scope of prosecution history estoppel. However, this reprieve for patent owners has been short. The latest decision by the Federal Circuit undermines the Supreme Court's decision and reverses the victory won for inventors. The decision ultimately overturns a jury verdict finding that Festo's patents were infringed and an award of damages to Festo.

The present case involves the equitable doctrine of equivalents. For over 160 years, the Supreme Court has applied this doctrine to prevent one from avoiding the patent protection of another by making only insubstantial changes to the invention. Devices having such insubstantial changes are deemed to be equivalent to the patented invention, and a patentee can prevent such infringers from using their invention.

The recent decision by the Federal Circuit weakens the doctrine of equivalents, making it easier for companies to copy a patented invention by instituting insubstantial changes. Innovators who expend significant time and money in research and development to create a successful product are harmed by the decision. The decision is contrary to the law of the Supreme Court and Festo seeks to restore the rights of patent owners.

Any company or individual who supports Festo's conviction to maintain a strong patent system may file an amicus brief with the Supreme Court. Festo's petition was docketed in the Supreme Court on February 19, 2008. Parties wishing to file an amicus brief with the Court in support of Festo's petition have until March 20, 2008 to do so.

About Festo Corporation

Festo is a leading global manufacturer of pneumatic and electromechanical systems, components and controls for industrial automation, with more than 12,500 employees in 56 national headquarters serving more than 180 countries. For more than 80 years, Festo has continuously elevated the state of manufacturing with innovations and optimized motion control solutions that deliver higher performance, more profitable automated manufacturing and processing equipment. Our dedication to the advancement of automation extends beyond technology to the education of current and future automation and robotics designers with simulation tools, teaching programs, and on-site services.

About Charles R. Hoffmann

Charles Hoffmann is a senior partner at Hoffmann & Baron, LLP a leading full-service intellectual property law firm which specializes in the acquisition, protection, and strategic planning for patents, trademarks, copyrights, unfair competition, trade secrets, licensing, technology-related agreements, and due diligence. With offices in Syosset, New York and Parsippany, New Jersey, Hoffmann & Baron, LLP provides national and international clients in all major scientific and engineering fields a distinguished level of service due to the strong legal experience, technical and academic credentials of the partners and associates.

About Kenneth W. Starr

Kenneth Starr is currently the Dean of Pepperdine University School of Law and of counsel to Kirkland & Ellis LLP. Dean Starr has served as Counselor to U.S. Attorney General William French Smith, Judge for the U.S. Court of Appeals, D.C. Circuit, Solicitor General of the United States, and Independent Counsel on the Whitewater matter. As Solicitor General, he argued twenty-five cases before the Supreme Court.

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