United States District Court,
E.D. Texas, Sherman Division.

VARI-LITE, INC,
Plaintiff.
v.
Martin GRUPPEN a/s and Martin Professional a/s,
Defendants.

No. 4:98cv361

Aug. 9, 2000.

Douglas A. Cawley, McKool Smith, Dallas, TX, for Plaintiff.

Edward V. Filardi, Skadden Arps Slate Meagher & Flom LLP, New York, NY, Michael Arnold O'Neil, Michael A. O'Neil PC, Dallas, TX, for Defendants.

MEMORANDUM OPINION AND ORDER CONSTRUING CERTAIN CLAIMS OF U.S. PATENT NO. 4,392,187

PAUL N. BROWN**, District Judge.**

On June 30, 2000, the Court conducted a hearing pursuant to the requirements of Markman v. Westview Instruments, Inc., 116 S.Ct. 1384 (1996). Having carefully considered the parties' briefs, the testimony and exhibits admitted into evidence, including Patent No. 4,392,187 ("the '187 patent") and its prosecution history, and the argument of counsel, the Court now makes the following findings determining the meaning of the claim terms at issue in this case.

STANDARD FOR CONSTRUING CLAIM TERMS

In Markman v. Westview Instruments, Inc., 52 F.3d 967 (Fed.Cir.1995) (" *Markman I* "), the Federal Circuit held that claim construction is a matter of law. In affirming this decision, the Supreme Court in Markman v. Westview Instruments, Inc., 116 S.Ct. 1384 (1996) (" *Markman II* "), stated, "We hold that the construction of a patent, including terms of art within its claims, is exclusively within the province of the court," Id. at 1387, and "judges, not juries, are the better suited to find the acquired meaning of patent terms" Id. at 1395. In performing this task, this Court is guided by the following precepts. The claims should be construed in light of the ordinary meaning of the claim language, as well as the patent specification and prosecution history. Markman I, 52 F.3d at 979-80; *see also* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996).

"The duty of the trial judge is to determine the meaning of the claims at issue and to instruct the jury accordingly. (Citations omitted). In the exercise of that duty, the trial judge has an independent obligation to

determine the meaning of the claims notwithstanding the views asserted by the adversary parties." *Exxon Chemical Patents, Inc. v. Lubrizoll Corp.,* 64 F.3d 1533 (Fed.Cir.1995).

The Court should first look to the intrinsic evidence of record, that is, the patent itself, including the claims, the specification, and, if in evidence, the prosecution history. *See* Markman I, 52 F.3d at 979 and Vitronics Corp., 90 F.3d 1576. After consideration of all available intrinsic evidence, the Court may, if some genuine ambiguity in term claims remains, resort to extrinsic evidence such as expert testimony. As a general rule, patent claims must be interpreted to sustain their validity if possible. Quantum Corp. v. Rodime PLC, 65 F.3d 1577, 1584 (Fed.Cir.1995).

THE TERM CLAIMS AT ISSUE

The '187 patent is for a computer controlled lighting system having automatically variable positions, color, intensity, and beam divergence. The invention relates to the lighting of a stage or theater. The owner of the ' 187 patent, Plaintiff, Vari-Lite, Inc. ("Vari-Lite"), filed this suit against Defendants, Martin Gruppen A/S and Martin Professional A/S ("Martin"), alleging that Martin is infringing its '187 patent and has asserted independent claim 6 and dependent claims 7-8, 16-19 and 21 as being infringed.

The Court has concluded that the meaning of the following claim terms which are in dispute or are of a scientific or technical nature should be determined by the Court:

"First color wheel means ..." and "Second color wheel means"

"Dichroic filter"

"Optical bandpass structure"

"Means for controlling the rotation of said motor means..

"... to position dichroic filters across the light beam to provide permutations of color emanating from each light source"

"Coded address within the transmitted information ..."

"Dimmer mechanism"

"Mechanism for varying the divergence of the light beam"

"Gobo wheel"

"Means for rotating said gobo wheel ..."

"Light intensity wheel"

"Means for rotating said light intensity wheel ..."

The Court construes these claims terms as follows.

FIRST COLOR WHEEL MEANS ... AND SECOND WHEEL COLOR MEANS ... (Claim 6)

The parties agree and the Court finds that while these claim elements use the word "means," they are not written in means-plus-function format. They sufficiently recite a definite structure. The limitations of 35 U.S.C. s. 112, para. 6, do not apply.

Martin asserts that even though the claim element recites that the color wheel means should have at least one dichoric filter, the defining of the term limiting it to a wheel capable of holding a single filter would be inconsistent with the ordinary meaning of the term as it is described in the patent. The Court is not persuaded.

The jury should be instructed that "color wheel means is a generally wheel or disc shaped structure adapted to have one or more dichoric filter elements at or near the rim or periphery of the wheel. The wheel and filter or filters must be arranged and positioned so that rotation of the wheel can cause a filter to be positioned across the light beam or path. A color wheel means is shown in Figures 4 and 5b of the patent and described at Column 6, lines 9 to 39."

DICHORIC FILTER (Claim 6)

The parties have no dispute over construction of the term "dichoric filter."

The jury should be instructed that "a dichoric filter is an optical filter that passes only certain frequencies, or colors of light. The frequencies of light that are not passed are reflected rather than absorbed. A description of a dichoric filter may be found at column 4, lines 33 through 49 of the patent."

OPTICAL BANDPASS STRUCTURE (Claim 6)

The parties are in sharp disagreement on how this term should be construed. Martin argues that the "optical bandpass structure" term was added to claim 6 because of a disavowal by Vari-Lite of arrangements in which the filter(s) are partially or fully disposed across the light beam, "optical bandpass structure" should be constructed to require that substantially all unfiltered, white light is prevented from bypassing the filter or filters. The Court disagrees. In determining whether an applicant for a patent has limited the scope of a claim by assertions made in support of patentability, "the relevant inquiry is whether a competitor would reasonably believe that the applicant had surrendered the relevant subject matter." Cybor Corp. v. Faz Technologies, Inc., 138 F.3d 1448, 1457. The Court has carefully reviewed the prosecution history and cannot find that the applicant for the '187 patent made a deliberate, unequivocal surrender of subject matter that would disclaim coverage of color-changing devices that were capable of fully or partially disposing a dichoric filter in the light beam. Any statements made by the applicant were not for the purpose of distinguishing Weisglass as prior art.

The jury should be instructed that "an optical bandpass structure is a structure that attenuates, or blocks, certain wavelengths of variable light while allowing other wavelengths to pass, which changes the color of the light beam."

MEANS FOR CONTROLLING THE ROTATION OF SAID MOTOR MEANS ... (Claim 6)

The parties have no disagreement over the definition of this term. The Court construes this claim element as

a means-plus-function element. The jury should be instructed that "means for controlling the rotation of said motor means encompasses motor drivers, and equivalent structures that perform the function of controlling the rotation of the electric motors."

... TO POSITION DICHROIC FILTERS ACROSS THE LIGHT BEAM TO PROVIDE PERMUTATIONS OF COLOR EMANATING FROM EACH LIGHT SOURCE (Claim 6)

Martin argues in opposition to Vari-Lite's requested construction that because of statements made by Vari-Lite with reference to the Weisglass patent in the prosecution history, this term means a finite set of discrete colors. The prosecution history does not support this conclusion.

The jury should be instructed that this claim element means "the rotation of the color wheels must provide the ability to change the color of the light beam."

CODED ADDRESS WITHIN THE TRANSMITTED INFORMATION ... (Claim 6)

Martin contends that this term should be constructed as requiring transmission of an explicit address within the transmitted information. The Court finds no basis for limiting the claim to explicit addresses contained in the transmitted information as opposed to other types of addresses. The Court finds nothing in the prosecution history that would indicate that the type of addressing was ever an issue during the prosecution of the patent application.

The Court has concluded that there is no need to further construe this terminology.

DIMMER MECHANISM (Claim 7)

Claim 7 is dependent on Claim 6. Martin contends that even through the word "means" is absent from the element, the claim is written in means-plus-function format. Vari-Lite argues that it is not. The Court has concluded that this element is written in means-plus-function format. No definite structure is defined. The structural language "dimmer mechanism" only defines the function.

The jury should be instructed that "dimmer mechanism" is limited to the structures described in the patent at column 6, line 52 to column 7, line 33 and equivalents thereof."

MECHANISM FOR VARYING THE DIVERGENCE OF THE LIGHT BEAM (Claim 8)

Claim 8 is dependent on claim 6. The parties agree, and this Court finds, that this term should be construed as a means-plus-function claim pursuant to 35 U.S.C. s. 112, s. 6.

The jury should be instructed that "mechanism for varying the divergence of the light beam" is limited to the structure described in the patent at column 7, line 34-43 and equivalents thereof.

GOBO WHEEL (Claim 18)

Claim 18 is dependent on claim 6. The parties are in agreement on the meaning of this term.

The Court construes the term "gobo wheel" as follows: "a generally circular wheel or disc having one or more appertures containing designs or silhouettes that can be projected onto the stage." The jury should be

instructed accordingly.

"MEANS FOR ROTATING SAID GOBO WHEEL ..." (Claim 18)

The parties agree, and the Court finds, that the means for rotating said gobo wheel element is a means-plus-function clause. The corresponding structure in the specification is an electric motor which is disclosed in column 6, lines 49-51.

The jury should be instructed that "means for rotating said gobo wheel" covers an electric motor that performs the function of rotating the gobo wheel and is limited to the structure described in the patent at column 6, lines 49 to 51, and equivalents thereof.

LIGHT INTENSITY WHEEL (Claim 19)

Claim 19 is dependent on claim 6. The claim adds a light intensity wheel plus means for rotating the light intensity wheel. The term "light intensity wheel" is construed by the Court to mean "a generally circular structure in which the outer periphery is formed of a material permitting a percentage of the light to be transmitted which varies as a function of the angle of rotation." The jury should be instructed in accordance with this construction.

MEANS FOR ROTATING SAID LIGHT INTENSITY WHEEL ... (Claim 19)

The Court finds this to be a means-plus-function clause.

The jury should be instructed that this term is limited to an electric motor and equivalents that perform the function of rotating the light intensity wheel as shown in column 7, lines 21-23 of the patent.

In construing these claim terms, the court has relied only on the intrinsic evidence. The court has considered any extraneous evidence admitted into the record only for background purposes.

IT IS SO ORDERED.

E.D.Tex.,2000.
Vari-Lite, Inc. v. Martin Gruppen A/S

Produced by Sans Paper, LLC.