United States District Court,
N.D. Illinois.

BELDEN WIRE CABLE,
v.
CABLE DESIGN.

No. 99 C 752

March 26, 2001.

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99 C 0752

HOLDERMAN**, J.**

Based on the submissions of the parties on March 16, 2001 and March 23, 2001 respectively, pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996) and applying the law of claim construction enunciated by the United States Court of Appeals for the Federal Circuit, this court defines the following terms in the '122 patent and the '001 patent about which the parties are in dispute:

As to the '122 patent, "overlapping edges" means two edges of a continuous piece of copper foil aligned to completely encircle a layer of dielectric material where there is no discontinuity of copper along the equatorial direction or circumference of the copper, and there is only discontinuity of copper in the axial direction of the cable. *See* Column 3, lines 5-12. The final configuration being one that the beginning edge of the continuous piece of copper is completely covered by the body of the copper on top and the bottom of the beginning edge of copper is resting on the dielectric material, while the terminating edge of the copper is covered on its top by a metallic braid and the bottom of the terminating edge of copper is resting upon the continuous piece of copper. *See* Figures 2, 3.

As to the '001 patent, "disposed about" means that one substance completely surrounds and encircles a second substance. The resulting configuration being one where there are no gaps or discontinuity found in the circumference or the axial direction of the first substance said to be "disposed about" the second

substance. *See* Figures 1, 6, Column 2, lines 20-23.

As to the '001 patent, "bonding said braid and thin foil" means that the braid and foil are attached together by an outside agent resulting in the braid and foil being permanently affixed or attached to one another. *See* Column 2, lines 28-30, 42-44, 56-58. The language in Column 2, lines 58-63, quoted in part in plaintiff's brief filed on 3/23/01 page 8, articulates how the bonding agent is applied. That language in Column 2, lines 58-63 does not, however, define the term "bonding said braid and thin foil."

As to the '001 patent, the term "bronze" refers to the chemical composition of a particular metal and not how that metal conducts electricity. In the '001 patent, conductivity is only used to describe the central conductor and the bonding agent used in the '001 patent. *See* United States Patent and Trademark Office's Office action, page 4, May 18, 1993 (Defendant's Markman Brief A0085). The term "bronze" is used, in the '001 patent, to describe the type of metal allowed for use as the metallic braid or the metallic foil. In looking at the prosecution history, "bronze" is not any of the following: plated copper, copper covered steal, plated copper covered steel, copper alloy, or plated copper alloy. The intrinsic evidence of the '001 patent, however, offers little guidance in determining what chemical composition makes a particular substance in the '001 patent a "bronze."

Turning to the initial category of extrinsic evidence, technical treaties, which are "worthy of special note," *see* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1584 n. 6 (Fed.Cir.1996), this court will consider the Copper Development Association, Inc. ("CDA")'s handbook on standards for copper and copper alloys. The CDA handbook defines copper, copper alloy, and bronze solely for their chemical composition, and according to the CDA handbook, copper is a metal designated to have a minimum of 99.3% copper content. The CDA defines a high copper alloy as a metal containing less than 99.3% copper, but more than 96% copper, which does not fall into any other copper alloy group. The CDA defines a "bronze" as a particular copper alloy where the major alloying element is more than likely tin and a third element but is not zinc or nickel. CDA Standards Handbook-Wrought and Cast Copper and Copper Alloy Products, Sixth Edition, p. 7 (1994) (Defendant's Brief A0301).

This court declines to use the American Society of Metals ("ASM")'s handbook to define what metal is a "bronze" because the ASM's handbook defines copper, copper alloy, and bronze primarily as to conductivity. The ASM handbook offers very little guidance as to the distinctions between the chemical compositions of copper, copper alloy and bronze.

All dates previously set remain. The parties are once again encouraged to discuss settlement.

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