United States District Court,
N.D. Texas, Dallas Division.

POLY-AMERICA, INC,
Plaintiff-counterdefendant.
v.
SERROT INTERNATIONAL, INC,
Defendant-counterplaintiff.

No. Civ.A. 3:00-CV-1457D

Dec. 5, 2002.

MEMORANDUM OPINION

FITZWATER**, J.**

Plaintiff-counterdefendant Poly-America, Inc. ("Poly-America") and defendant-counterplaintiff Serrot International, Inc. ("Serrot") ask the court to construe the term "plug" used in claims 1 and 2 of U.S. Patent No. 5,804,112 ("the '112 patent"). FN1 Poly-America also asks the court to construe the meaning of the phrase "to partially block the extrusion of said molten thermoplastic material from said first [second] side passage." The court construes this term and passage as set forth below.

FN1. In the draft of the court's jury charge, it has reserved a place to insert claim constructions that are necessary to assist the jury in deciding defendant's invalidity defenses. The parties are directed to confer before the charge conference and, in view of the claim constructions made today and in earlier rulings of the court, to agree to the language that should be inserted in the charge. It will assist the court if one party will prepare the agreed language in WordPerfect format and submit the language on a diskette.

Claim 1 of the '112 patent (the sole independent claim of the patent) claims:

1. A method for forming a blown-film textured liner, comprising the steps of:

a) extruding molten thermoplastic material through a central passage of a blown-film extrusion die;

b) extruding molten thermoplastic material containing a blowing agent through a first side passage of a blown-film extrusion die; and

c) extruding molten thermoplastic material containing a blowing agent through a second side passage of a blown-film extrusion die;

wherein said molten thermoplastic material extruded through said first and second side passages is merged

with said molten thermoplastic material in said central passage;

wherein a textured portion of the blown-film textured liner is formed by action of said blowing agent; and

wherein a first plug is disposed in said first side passage to partially block the extrusion of said molten thermoplastic material from said first side passage.

Claim 2, a dependent claim, claims:

2. A method for forming a blown-film textured liner according to claim 1, wherein a second plug is disposed in said second side passage to partially block the extrusion of said molten thermoplastic material from said second side passage.

Poly-America maintains that the term "plug" should be construed to mean "an object that prevents, rather than one that merely throttles or constricts, extrusion of thermoplastic flow at the location where it is disposed in the first side passage." FN2 Serrot contends that the term "plug" should be construed to "mean any of various devices or masses of material, resembling or functioning as a stopper, which can be placed by any means in an extrusion passage to partially block the extrusion passage and prevent the extrusion of material in the area intended to yield a smooth surface." Concerning the phrase "to partially block the extrusion of said molten thermoplastic material from said first side passage," Poly-America urges that, read in conjunction with the term "plug," the phrase means "the plug is disposed, and prevents extrusion, only along a part of the circumference of the first side passage, so that molten thermoplastic material is extruded through the side passage except at the portion of its circumference where the plug is positioned."

FN2. This construction, although addressed to claim 1 and the "first side passage," would also control claim 2, the dependent claim that pertains to the second side passage.

Having considered the parties' briefs and the intrinsic evidence and appropriate extrinsic evidence, the court concludes that one of ordinary skill in the art at the time of the invention would have understood the term and phrase in question to mean the following: FN3

FN3. The request that the court construe the term "plug" arose at the November 26, 2002 pretrial conference. The court received briefing on the construction of that term, and of the phrase in question, on December 3 and 4, 2002. In order to provide the parties sufficient advance notice of its rulings before the commencement of trial on December 9, 2002, the court is filing a memorandum opinion that sets out its construction, but it reserves the option of elaborating on the ruling if necessary to facilitate appellate review.

As used in claim 1 of the '112 patent, the term "plug" means an object located in the first side passage that prevents extrusion of molten thermoplastic material through the location where the object is disposed in the first side passage. As used in claim 2 of the '112 patent, the term "plug" means an object located in the second side passage that prevents extrusion of molten thermoplastic material through the location where the object is disposed in the second side passage.

As used in claim 1 of the '112 patent, the phrase "to partially block the extrusion of said molten thermoplastic material from said first side passage" means that the plug prevents the extrusion of molten

thermoplastic material through the first side passage only at the location on the circumference of the first side passage where the plug is disposed. As used in claim 2 of the '112 patent, the phrase "to partially block the extrusion of said molten thermoplastic material from said second side passage" means that the plug prevents the extrusion of molten thermoplastic material through the second side passage only at the location on the circumference of the second side passage where the plug is disposed.

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