United States District Court,
C.D. California.

YUPOONG INC,
v.
H C HEADWEAR INC.

No. SA CV 03-750-JVS (JWJx)

Aug. 13, 2003.

Attorneys Present for Plaintiffs, Not Present.

Attorneys Present for Defendants, Not Present.

(In Chambers) ORDER

JAMES V. SELNA**, Judge.**

Debra Beard: Courtroom Clerk.

On July 2, 2003 the Court conducted a Markman hearing. Court now rules in accordance with the attached amended tentative ruling.

Tentative Minute Order Re: Claim Construction for the '540 patent

Plaintiff Yupoong, Inc. ("Yupoong") is a headwear manufacturer located in Seoul, South Korea. One of Yupoong's most successful products is a line of self-adjusting baseball caps under the trademark FLEXFIT. Yupoong is the owner of U.S. Patent No. 5,715,540 ("'540 patent") which discloses and claims the self-adjusting design features of the FLEXFIT cap. Yupoong asserts that H & C Headwear, Inc. ("H & C") is infringing claims 1, 4, and 7 of the '540 patent.

This case is before the Court for determination of the meaning and scope of the claims of the '540 patent under Markman v. Westview Instruments. Inc., 52 F.3d 967 (Fed.Cir.1995)(en banc), *aff'd* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The Court has numerous sources at its disposal for guidance in the claim construction process. The sources may include both instrinsic and extrinsic evidence. Vitrionics Corporation v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). The Court need not resolve all claims, but only those necessary to resolve the dispute. *See, e.g.,* Vivid Techs., Inc. v. American Science & Engineering, 200 F.3d 795, 803 (Fed.Cir.1999).

I. Construction of Claim 1

Claim 1 of the '54-patent reads as follows:

A free size cap comprising:

a main body having a plurality of gores forming a crown portion having a lower peripheral edge, wherein at least some of said plurality of gores are composed of uniaxially stretchable fabric aligned to stretch only in a peripheral direction so that said main body has an appearance of being fitted rather than adjustable, said uniaxially stretchable fabric being woven fabric so that said main body is adjustable to fit a range of head sizes; and

a sweat band connected to said lower peripheral edge of said crown portion, said sweat band being a single unfolded sheet in structure, and is woven with a uniaxially stretchable fabric so that it is adjustable together with said main body to fit various head sizes.

A number of terms in Claim 1 must be construed for the resolution of this controversy. FN1

1. Interpretation of "Uniaxially"

Yupoong contends that the term "uniaxially" means "one axis." Yupoong's Opening Brief on Claim Construction, at 7. H & C argues that the term "uniaxially" does not refer to an axis, in the sense of Cartesian coordinates or x or y axis representing the horizontal or vertical axis in a coordinate system. Rather, H & C contend that the term "uniaxially" modifies "stretchable fabric" with the limitation that the fabric must stretch only in one direction and not in any other. H & C's Reply, at 4. H & C asserts that the specification of the '540 patent did not refer to an "axis." H & C additionally asserts that the specification of the continuation-in part application refers to "uniaxially" in what they characterize as an "entirely different context." H & C's Reply, at 4. H & C argues that because the original specification of the continuation-in-part application was changed from "uniaxially stretchable in the peripheral direction," to "uniaxially stretchable in the peripheral direction (also referred to hereafter as the chordial direction)", the prosecution history of the '540 patent equated chordial direction and peripheral direction. Because of this substitution, H & C contends that "uniaxially" modifies "stretchable fabric" by referring to a fabric that stretches in one direction to the exclusion of all others.

The Court interprets "uniaxially" to mean what it says: one axis. The equality of the terms chordial direction and peripheral direction does not, as H & C contends, imply that the term "uniaxially" must lose its ordinary meaning. Plaintiff's expert Professor Tushar Ghosh ("Ghosh") testified that a person ordinarily stilled in the art would assume that a woven fabric has two axes. Ghosh Tr., 56:13-17. It follows that a person ordinarily skilled would understand the term "uniaxially" to refer to one of these axes.

2. Interpretation of "Stretchable fabric"

Yupoong argues that "stretchable" refers to the stretch or elasticity provided by the use of an elastic material such as spandex. Thus, "uniaxially stretchable fabric" means that one of the two axes of the fabric, the warp or the weft, includes an elastic material such as spandex. Yupoong's Opening Brief, at 7. H & C contends that expansion and contraction is what the '540 patent contemplates as "stretchable." H & C Reply, at 3. At issue is whether the "give" exhibited by the woven fabric when pulled along an axis, diagonally, or in any direction, constitutes "stretching." The Court holds that in the context of the '540 patent, the term stretchable refers to the stretch or give provided by the use of an elastic material such as spandex.

3. Interpretation of "Aligned to stretch only in a peripheral direction"

Yupoong asserts that this term teaches how to orient or align the fabric in the finished cap. Essentially, Yupoong contends that the phrase teaches that the fabric of at least some of the gores is positioned on the cap so that the stretchable axis runs in the peripheral direction around the head. Yupoong's Opening Brief, at 7.

H & C contends that the word "only" in the claim must be given meaning. H & C asserts that Claim 1 limits stretchability to a single direction and use of all fabrics that stretch in anything other than a single direction are disclaimed by Yupoong. H & C Reply, at 6. H & C contends that the prosecution history prohibits Yupoong's construction of the phrase. Specifically, H & C argues that Yupoong argued that its claims differed from that of the Dalton prior art reference because Dalton's fabric stretched in two directions. Therefore, H & C argues, Yupoong may not be viewed as claiming that which it disclaimed in that argument. H & C Reply, at 7-8. H & C therefore contends that the proper interpretation of the phrase is "that the uniaxially stretched fabric making up at least some of the gores of the crown portion of the cap are cut and positioned so that the stretchable weft yarn of each of those gores is oriented substantially horizontally, and that the fabric expands and contracts in the fore and aft direction of the cap, and in no other direction." H & C Proposed Claim Construction, at 22.

The Court construes this phrase consistent with Yupoong's interpretation. H & C's construction would limit Claim 1 to exclude any fabric that stretches in any direction other than "fore and aft ." This interpretation imposes excessive limitations on the claim. Further, when read in conjunction with the specification of the '540 patent, it is clear that the alignment of the stretchable gores in the peripheral direction is critical to the claim, '540 Patent, 5:50-56. Professor Ghosh testified that a person of ordinary skill would understand that the potential for bias, or stretch resulting from application of sheer force to the woven threads, exists in virtually all woven material. Ghosh Tr., 56:18-25. The Court notes that attempts have been made to create a fabric that does not stretch by using threads in the warp and weft axes, as well as along the bias direction. This fabric is referred to as a "triaxially" manufactured fabric. A person ordinarily skilled in the art would understand that a triaxially manufactured fabric is not a woven fabric as specified in the '540 patent. Ghosh Tr., 56:2-12. The Court construes "aligned to stretch only in a peripheral direction" to mean that the fabric of at least some gores is oriented such that the stretchable axis runs in the peripheral direction around the head.

In reaching this conclusion, the Court finds that Wang Laboratories, Inc. v. Toshiba Corporation, 993 F.2d 858, 866-68 (Fed.Cir.1993), is inapposite. There the patent holder limited its claim to memory chips mounted "only in a single row." Here the claim that the material is stretchable "only" in one direction is not defeated by the fact that the material as a whole may be deformed by applying differential forces, each of which can only be applied the same direction. The material is still stretchable in a single direction. By contrast, memory chips cannot be mounted in a single row and not mounted in a single row at the same time.

4. Interpretation of "Unfolded"

Claim 1 also specifies that the referenced sweat band should be a "single unfolded sheet in structure." Yupoong argues that the phrase must be construed in light of specification of the '540 patent which distinguished the prior art Tabley '075 patent on the grounds that it disclosed a folded structure. Yupoong contends that the term "single unfolded sheet" therefore means that, rather than a two-layer structure or other multiple layer structure, the ' 540 patent discloses a single layer sweat band that does not fold to form two layers as in the Tabley '075 patent. Yupoong's Opening Brief, at 8.

H & C contends that the term "unfolded" refers to a sweatband without folds, regardless of the number of layers. H & C Reply, at 9-10. H & C constructs the claim as "a one piece layer that is not folded." H & C Memorandum, at 25.

The Court construes the term "single unfolded sheet" to mean a sweatband with a single layer, not folded to form two or more layers.

II. Construction of Claim 2

H & C originally asserted that Claim 2 must be construed because Claim 3, which is dependent on Claim 2, was being asserted by Yupoong. Yupoong is apparently now only asserting Claims 1, 4, and 7. The Court therefore does not reach construction of the terms in Claim 2.

III. Construction of Claim 7

Claim 7 reads as follows:

A multi-size cap adapted to accommodate wearers having a range of head sizes and including a multi-gore shell forming a crown portion yet having an appearance of being fitted, a visor portion secured to a forward edge of said shell and extending outwardly therefrom, said multi-gore shell including a pair of front gores fixedly secured to said visor, and a plurality of lateral and rear gores, each of said plurality of gores extending from a common apex point, said front gores being comprised of an unstretchable material which is sufficiently rigid to be self-supporting; the improvement comprising:

said lateral and rear gores being composed of a uniaxially stretchable material capable of being stretched only along a chordial axis of said multi-gore shell; wherein said uniaxially stretchable fabric having spandex yarn woven therein for weft and having yarn having no elasticity for warp and wherein said weft is disposed in a front and rear direction of said main body; and

a sweatband disposed along an interior circumference of said multi-gore shell, said sweatband being composed of a uniaxially stretchable material capable of being stretched only along a chordial axis of said multi-gore shell.

1. Interpretation of "Unstretchable Material"

Claim 7 states that the front gores of the cap are composed of an "unstretchable material." H & C contends that this phrase means that the material may not be expanded or contracted. H & C Memorandum, at 28. Yupoong argues that term indicates that the front gores may either be made of stretchable material rendered unstretchable by the addition of the visor or alternatively, be made of non-stretchable material. Yupoong Responsive Brief, at 10.

The Court interprets "unstretchable material" to mean material not including an elastic material such as spandex, or a stretchable material rendered non-stretchable by the addition of buckram or other material.

2. Interpretation of "Uniaxially Stretchable Material"

The Court construes this term consistent with the term "uniaxially stretchable fabric" as interpreted above.

3. Interpretation of "Stretched Only Along a Chordial Axis"

Claim 7 requires the uniaxially stretchable material be "capable of being stretched only along a chordial axis of said multi-gore shell." H & C construes this language to mean that "expansion and contraction only in the fore and aft or peripheral direction of the cap, and in no other direction." H & C Memorandum, at 30. The Court construes this language as it interpreted the language "aligned to stretch only in a peripheral direction," in Claim 1. The language refers to the orientation of the uniaxially stretchable material in the cap.

FN1. The Court construes those terms which are disputed and may be useful for the determination of infringement.

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