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

Scott CLARE, Neil Long, and Innovative Truck Storage, Inc,
Plaintiffs.
v.
FORD MOTOR COMPANY, General Motors Corporation, Royal Truck Body, Inc., and Dealers Truck Equipment Co., Inc,
Defendants.

No. 2:02-CV-325 (TJW)

Dec. 9, 2003.

Joseph D. Jamail, Jamail & Kolius, Houston, TX, Franklin Jones, Jr., Jones & Jones, Marshall, TX, Otis W. Carroll, Jr., Collin Michael Maloney, Ireland Carroll & Kelley, PC, Tyler, TX, for Plaintiffs.

Damon Michael Young, Young Pickett & Lee, Texarkana, TX, Ernie L. Brooks, Frank A. Angileri, Marc Lorelli, Brooks & Kushman PC, Southfield, MI, Scott D. Lassetter, David J. Healey, Russell Spencer Wheatley, Weil Gotshal & Manges, Houston, TX, Sidney Calvin Capshaw, III, Brown McCarroll, Longview, TX, for Defendants.

CLAIM CONSTRUCTION ORDER

T. JOHN WARD**, District Judge.**

After considering the submissions and the arguments of counsel, the court issues the following claim construction opinion:

I. INTRODUCTION

This is a patent infringement suit involving side panel storage systems for pick-up trucks. Plaintiffs Scott Clare, Neil Long, and Innovative Truck Storage, Inc., ("ITS") (collectively, "Plaintiffs") brought this patent infringement suit against the defendants Ford Motor Company ("Ford"), General Motors Corporation ("GM"), Royal Truck Body, Inc. ("Royal Truck"), Peters Chevrolet ("Peters") FN1, and Dealers Truck Equipment Co., Inc. ("Dealers Truck") (collectively, "Defendants") for infringement of U.S. Patent No. 5,567,000 (the " '000 Patent"), entitled "Hidden Storage/Utility System," and U.S. Patent No. 6,499,795 (the " '795 Patent"), entitled "Vehicle with Storage/Utility System." The Plaintiffs allege that Ford and GM used Royal Truck to upfit their trucks with Plaintiffs' patented side panel storage system without Plaintiffs' knowledge or consent and that, sometime in 2000, GM began using Plaintiffs' side panel storage system in its OEM-produced Chevrolet Avalanche trucks without Plaintiffs' knowledge or consent.

FN1. Peters Chevrolet has since been dismissed by the parties' agreement and leave of court.

Specifically, Plaintiffs allege that 1) Ford's allegedly infringing vehicles FN2 infringe at least one or more of Claims 1-8 and 10-16 of the ' 000 Patent and Claims 1-32 and 38-48 of the ' 795 Patent; 2) GM's allegedly infringing vehicles FN3 infringe at least one or more of Claims 1-8 and 10-16 of the ' 000 Patent and Claims 8, 9, 11, 13-16, 18, 20, and 21 of the ' 795 Patent; and that 3) Royal Truck and Dealers Truck made and sold articles FN4 that infringe at least one or more of Claims 1-8 and 10-16 of the ' 000 Patent and Claims 1-32 and 38-48 of the ' 795 Patent.

FN2. Lincoln Blackwood and Ford vehicles equipped with Royal Truck's Sculptured "Sport" Truck Body.

FN3. GMC Terradyne, GMC Sierra Pro Plus, Chevrolet Avalanche, and Cadillac Escalade EXT.

FN4. Vehicles and truck beds equipped with Royal Truck Body products and truck body parts such as the "GM Summit," Royal "Sport" Truck Body, and "Sculptured Bodies."

II. DISCUSSION

"A claim in a patent provides the metes and bounds of the right which the patent confers on the patentee to exclude others from making, using or selling the protected invention." Burke, Inc. v. Bruno Indep. Living Aids, Inc., 183 F.3d 1334, 1340 (Fed.Cir.1999). Claim construction is an issue of law for the court to decide. Markman v. Westview Instruments, Inc., 52 F.3d 967, 970-71 (Fed.Cir.1995) (en banc), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The court has thoroughly examined the patents and the record, conducted a claim construction hearing, and considered the relevant authorities FN5 cited by the parties. The court has considered the disputed terms in the light of the intrinsic record and rules as follows:

FN5. Combined Systems, Inc. v. Defense Tech. Corp. of America, 350 F.3d 1207, 2003 WL 22722891 (Fed.Cir. Nov.20, 2003); Omega Eng'g, Inc. v. Raytek Corp., 334 F.3d 1314, 1323 (Fed.Cir.2003); Texas Digital Systems, Inc. v. Telegenix, Inc., 308 F.3d 1193, 1202, 1204 (Fed.Cir.2002); Brookhill-Wilk, LLC v. Intuitive Surgical, Inc., 334 F.3d 1294, 1300-02 (Fed.Cir.2002); Rexnard Corp. v. Laitram Corp., 274 F.3d 1336, 1344-48 (Fed.Cir.2001); Bell Atlantic Network Services, Inc. v. Covad Communications Group, 262 F.3d 1258, 1277 (Fed.Cir.2001); Wang Laboratories, Inc. v. America Online, Inc., 197 F.3d 1377, 1382-83 (Fed.Cir.1999); Gentry Gallery, Inc. v. Berkline Corp., 134 F.3d 1473 (Fed.Cir.1998); Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1583 (Fed.Cir.1996).

A. "pickup truck"

The phrase "pickup truck" appears in independent claims 1, 8, 14, 22, 39 and dependent claim 30 of the '795 Patent. The Plaintiffs' proposed construction is: "A light truck having a cab and a bed, that is not a utility bed" or alternatively, " 'Pickup truck' is used in its ordinary sense and does not include a utility body truck." The Defendants' proposed construction is: "A conventional pickup truck having a cab and an open body that is not a utility bed."

The court has considered carefully the intrinsic record and further notes that the term "pickup truck" has a

well-understood meaning that is consistent with the intrinsic record. The court therefore defines "pickup truck" to mean **" 'Pickup truck,' is used in its ordinary sense, having an enclosed cab and a bed, that is not a utility bed."**

B. "within the bed"

The phrase "within the bed" appears in independent claims 1, 29, 39 and dependent claim 44 of the '795 Patent. The Plaintiffs' proposed construction is: "Located inside the bed where the bed is the space bounded by two opposing side panels, a bulkhead adjacent the cab, a tailgate, and a bed floor." The Defendants' proposed construction is: "The space above the floor of the bed, and below the top of the side panels of the bed."

The court has carefully evaluated the statements made by the patentee insofar as they relate to the prior art, including the Stahl patent, that was before the examiner. The court is persuaded that its construction is consistent with the ordinary meaning of these terms and the context with which they were used in the prosecution of the patent and the written description of the invention. The court defines "within the bed" to mean **"Located inside the bed where the bed is the space bounded by two opposing side panels, the bulkhead adjacent the cab, the tailgate, and the bed floor."** This construction is consistent with the arguments made in response to the Stahl patent, as the applicants urged that the side panel assemblies were mounted on each side of the floor assembly such that they were not "on the floor assembly" and "within the bed."

C. "adjacent"

The term "adjacent" appears in independent claims 1,8, 14, 22, 29, 39, and dependent claim 44 of the '795 Patent. The Plaintiffs' proposed construction is: "The storage box is close to or lying near a wheel well or side panel." The Defendants' proposed construction is more restrictive. They propose adjacent to mean that "The storage box is close to or lying near a wheel well, and there is no structure between the storage box and the wheel well or side panel." The Defendants' proposed construction is driven by comments made to the examiner during the prosecution of the patent to distinguish the Simnacher prior art reference.

Ordinary meanings of the term "adjacent" are found in Webster's Third New International Dictionary. That source defines "adjacent" as "1.a: not distant or far off: nearby but not touching b: relatively near and having nothing of the same kind intervening: having a common border: abutting, touching, c: immediately preceding or following with nothing of the same kind intervening."

The court's review of the relevant portions of the prosecution history compels a conclusion that "adjacent" in the context of these claims means **"Relatively near and having nothing of the same kind intervening."** The court is not persuaded that the patentee explicitly made the "no structure between" surrender advocated by the Defendants when addressing the Simnacher reference. The import of the statements related to the Simnacher reference was that the reference disclosed a storage system in which the boxes were *remote* from the side panels. It is true that there was some structure in between the side panels and the storage boxes; however, the presence of structure in between is not determinative of the issue whether a box is "remote" from the side panel. At the same time, however, the statements to the examiner suggest a more restrictive definition than some provided by the dictionary. As a result, the court's construction is consistent with the use of the term "adjacent" in the context of this record. At some point, the distance between the side wall or wheel well and the storage box will be so great that no reasonable juror could find the two "adjacent." That is an infringement question, however, to be determined at the appropriate time.

D. "hinged panel"

The phrase "hinged panel" appears in independent claims 8 and 14 of the '795 Patent. The Plaintiffs' proposed construction is: "A panel which is hinged and provides access to the storage box." The Defendants' proposed construction is: "Hinged side panel. A panel is a flat piece of metal that is stamped to create a body component such as a door panel."

The court has carefully considered the Defendants' position that the applicant impliedly defined "hinged panel" to include only hinged side panels. That position is not without force. Ultimately, however, the court is persuaded that at least one of the drawings illustrates a hinged panel that is something more than a "side panel." Figure 2, for instance, shows a hinge on the top rail of the pickup truck bed. It appears to the court that the embodiment illustrated by Figure 2 might be excluded by limiting the term to "side panels." It is equally significant that the language of the claims use the terms "side panel" and "hinged panel" in different ways. These facts distinguish this case from Bell Atlantic Network Services, Inc. v. Covad Communications Group, 262 F.3d 1258, 1277 (Fed.Cir.2001), and counsel the court to reject the Defendants' argument. Finally, the court is not persuaded that one skilled in the art would limit the composition of the term panel to those made of metal. As such, the court agrees with the Plaintiffs and defines "hinged panel" to mean **"A panel which is hinged and provides access to the storage box."**

III. GM'S MOTION FOR SUMMARY JUDGMENT

On August 5, 2003, GM filed a motion for summary judgment seeking to invalidate the '795 Patent under 35 U.S.C. s.s. 102(a) and (b) in light of a storage box for pickup trucks manufactured by Delta Consolidated Industries, Inc. ("the 1991 Delta box"), which GM asserts is structurally indistinguishable from the storage box on the Chevrolet Avalanche and its virtual twin, the Cadillac Escalade EXT. On November 6, 2003, the court issued an order deferring a ruling on GM's Motion for Summary Judgment until after the claim construction hearing. The court hereby **ORDERS** that, within fifteen (15) days after the entry date of this Order, GM and the Plaintiffs each file supplemental briefs, not to exceed fifteen (15) pages excluding exhibits, regarding the issues raised in GM's Motion for Summary Judgment and Plaintiffs' Cross Motion for Summary Judgment in light of the court's claim construction rulings in this Order.

ORDERED and **SIGNED** this *6th* day of December, 2003.

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