United States District Court,
D. South Carolina, Spartanburg Division.

MILLIKEN & COMPANY,
Plaintiff.
v.
MOHAWK INDUSTRIES, INC., Mohawk Carpet Corporation, Aladdin Manufacturing Corporation, and Mohawk Commercial, Inc,
Defendants.
Milliken & Company,
Plaintiff.
v.
Shaw Industries Group, Inc., Shaw Industries, Inc., and Shaw Contract Flooring Services, Inc. d/b/a Spectra Contract Flooring,
Defendants.
Milliken & Company,
Plaintiff.
v.
Interface, Inc., Interface Flooring Systems, Inc., RE: Source Americas Enterprises, Inc., Bentley Prince Street, Inc., and RE: Source South Carolina,
Defendants.

C.A. No. 7:02-3631-20

Dec. 17, 2003.

Lemuel Gray Geddie, Jr., Phillip Arthur Kilgore, Ogletree Deakins Nash Smoak and Stewart, Greenville, SC, Daniel S. Hulme, Douglas J. Gilbert, Eric C. Woglom, Gail A. Katz, Jeanne C. Curtis, Khue V. Hoang, Matthew A. Traupman, Michael P. Kahn, Natalie Ruth Kotzer, Paul B. Keller, Stephen T. Straub, Thomas J. Vetter, Ropes and Gray, John M. Hintz, Fish and Neave, New York, NY, Kenneth A. Genoni, Richard L. Rainey, William Z. Nakhleh, Ropes and Gray, Washington, DC, for Plaintiff.

William Alexander Coates, Roe Cassidy Coates and Price, Greenville, SC, Andrew J. Wilson, David M. Maxwell, Frank G. Smith, III, John D. Haynes, Robin McGrath, Alston and Bird, Atlanta, GA, for Defendants.

ORDER

HENRY M. HERLONG, JR., **District Judge.**

Following a *Markman* hearing on December 17, 2003, the court construes disputed claim terms as follows:

a. "primary carpet fabric": a carpet having a pile-forming portion and primary base. A primary base is a

single layer or a composite structure having primary backing layers and optional precoat layers.

b. "consisting essentially of at least one adhesive": "Consisting essentially of" excludes cushion carpet tiles having a functional nonadhesive stabilizing layer within the adhesive layer. The adhesive layer must include at least one adhesive but may also include other materials, other than functional nonadhesive stabilizing layers.

c. "directly bonded to": This term needs no further construction as the words speak for themselves.

d. "held in place by said adhesive at a fixed position below": This term needs no further explanation as the words speak for themselves. The court declines to read a functional or process limitation into this phrase.

e. "foam cushion layer": flexible, resilient foam cushion layer. The parties agree on this construction.

f. "at least partially embedded" or "at least a portion ... being embedded in": The stabilizing layer must be in physical contact with the foam cushion layer such that the polymer material will hold the stabilizing layer in place. This requires that at least some elements forming the lower surface of the stabilizing layer are disposed at a level below the surface of the foam layer. Milliken agrees to adopt the defendants' proposed construction.

g. "between about 0.43 and about 2.3": between and including 0.43 and 2.3.

IT IS SO ORDERED.

D.S.C.,2003.
Milliken & Co. v. Mohawk Industries, Inc.

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