United States District Court,
D. Massachusetts.

J. COLASSI,
v.
CYBEX INTERNATIONAL, INC.

No. Civ.A. 02-11909-RWZ

Feb. 27, 2004.

Christopher P. Sullivan, Lisa A. Furnald, Marc N. Henschke, Robins, Kaplan, Miller & Ciresi, L.L.P., Boston, MA, David M. Quinlan, David M. Quinlan P.C., Princeton, NJ, Frederick C. Laney, Timothy J. Haller, Niro, Scavone, Haller & Niro, Chicago, IL, for Plaintiff.

Peter T. Cobrin, Richard K. Milin, Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., Newark, NJ, for Defendant.

MEMORANDUM OF DECISION AND ORDER

ZOBEL**, J.**

Plaintiff Gary J. Colassi built a better, shock-absorbing treadmill. He alleges that defendant Cybex International, Inc., has infringed his patent for a "Treadmill Belt Support Deck," United States Patent No. 6,123,646 ("the '646 patent"). In Colassi's invention, the support deck, which lies underneath the rolling belt, has three components: a "rigid planar member," an anchor that fastens the planar member to the treadmill frame ("anchor means"), and a "flexible hinge" that resiliently connects the planar member to the anchor means. Defendant argues in its motion for claim construction that the rigid planar member, anchor means, and flexible hinge must be "structurally separate."

The construction of patent claims is a matter of law for this Court to decide. Markman v. Westview Instruments, Inc., 517 U.S. 370, 388-89, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). Normally, "there is a strong presumption that the ordinary and accustomed meaning of a claim term governs its construction." Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp., 320 F.3d 1339, 1347 (Fed.Cir.2003). However, the presumption may be overcome if the patent specification or prosecution history "clearly and deliberately set[s] forth" a different meaning. K-2 Corp. v. Salomon S.A., 191 F.3d 1356, 1363 (Fed.Cir.1999); Boehringer, 320 F.3d at 1347. Such a circumstance arises where "the patentee has chosen to be his or her own lexicographer by clearly setting forth an explicit definition for a claim term" or "where the term or terms chosen by the patentee so deprive the claim of clarity that there is no means by which the scope of the claim may be ascertained from the language used." Johnson Worldwide Associates, Inc. v. Zebco Corp., 175 F.3d 985, 990 (Fed.Cir.1999). If the intrinsic evidence fails to resolve ambiguity in the claim language, evidence extrinsic to the patent file and history such as expert and inventor testimony, dictionaries, and technical treatises and articles may be considered "to help the court come to the proper

understanding of the claims; it may not be used to vary or contradict the claim language." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1584 (Fed.Cir.1996). A "means-plus-function" claim "shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof." 35 U.S.C. s. 112 para. 6.

Although the preferred embodiment of the invention at issue involves a support deck with structurally separate components, "claims of a patent are not limited to a preferred embodiment, unless by their own language." Anchor Wall Systems, Inc. v. Rockwood Retaining Walls, Inc., 340 F.3d 1298, 1308 (Fed.Cir.2003). The first claim of the '646 patent describes "a deck," and nowhere does the patent require that this singular entity consist of structurally separate components. As long as a single deck includes components equivalent (as would be required pursuant to 35 U.S.C. s. 112 para. 6) to the preferred embodiment, it does not matter if the components are structurally separate-one imagines that such a deck would be not unlike a diving board. Accordingly, having considered in light of the applicable legal standard the parties' written submissions as well as the argument of counsel at a hearing held on October 14, 2003, the Court holds that the three components of the support deck need not be structurally separate. The disputed claim terms are construed as follows:

Term	Court's Construction
Rigid Planar Member	The part of the deck that is flat, stiff and extends under and adjacent to the upper course of the belt.
Means Adapted to Anchor the Planar Member on the Treadmill Frame	Having (1) the function of securing the deck to the treadmill frame; and (2) the corresponding structure described in the patent specification, or its equivalent. The patent specification discloses a portion of wood ("an anchor board 14 ... preferably of one inch birch plywood, with [its] upper, belt-supporting surfaces sanded, polished and waxed," col. 2, ll. 2-4) that is fastened at its lateral

	ends to the treadmill frame by bolts, and is transverse to the longitudinal axis of the treadmill frame.
Flexible Hinge	The part of the deck between the anchor means and rigid planar member that allows the rigid planar member to give way under physical force (i.e., the forces caused by a user's full tread motion).

D.Mass.,2004.
Colassi v. Cybex Intern., Inc.

Produced by Sans Paper, LLC.