United States District Court,
S.D. Florida.

AQUA MASSAGE INTERNATIONAL,
Plaintiff.
v.
Ella Frenkel LICHT, Alan Licht and Simulated Environmental Concepts, Inc,
Defendants.

No. 03-60493-CIV-COHN

April 2, 2004.

Wendell Terry Locke, Locke Law, Pembroke Pines, FL, Simeon Daniel Brier, Roma W. Theus, II, George W. Neuner, Edwards & Angell, Fort Lauderdale, FL, for Plaintiff.

Edward Fortune McHale, McHale & Slavin, Palm Beach Gardens, FL, Kevin Markow, Becker & Poliakoff, Fort Lauderdale, FL, for Defendants.

ORDER ON CLAIM CONSTRUCTION

JAMES I. COHN**, District Judge.**

THIS CAUSE is before the Court for claim construction with respect to Plaintiff's U.S. Patent Nos. 4,751,919 and 4,908,016. (Hereinafter Patent 919 and Patent 016). A hearing was held on March 26, 2004 to discern the meaning of the disputed claim language pursuant to Markman v. Westview Instruments, Inc., 52 F.3d 967 (Fed.Cir.1995).

Construction of a patent claim requires strict adherence to the intrinsic evidence: the claims, the specification, and the prosecution history. Apex Inc. v. Raritan Computer, Inc., 325 F .3d 1364, 1371 (Fed.Cir.2003). "[T]he analytical focus must begin and remain centered on the language of the claims themselves." Interactive Gift Express, Inc. v. Compuserve, Inc., 256 F.3d 1323, 1331 (Fed.Cir.2000).

Claim terms are afforded their ordinary meaning as understood by persons skilled in the relevant art. Texas Digital Sys., Inc. v. Telegenix, Inc., 308 F.3d 1193, 1202 (Fed.Cir.2002), *cert. denied,* 123 S.Ct. 2230 (2003). In order to ascertain such ordinary meanings, as well as to understand the technology at issue, courts may consult dictionary definitions and technical treatises. Texas Digital, 308 F.3d at 1202-03. Definitions ascertained from these sources should be accepted so long as they are consistent with the intrinsic record reflected in the patent and prosecution history. *Id.* The presumption in favor of such ordinary meaning definitions is only overcome when the specification clearly and explicitly sets out a different definition for a claim term, or when the prosecution history manifests a clear disavowal of the ordinary meaning. *Id.* at 1203. In all cases, care must be taken to avoid unnecessarily importing extraneous limitations into the claims, particularly including features drawn from the inventor's preferred embodiments described in the

specification. Generation II Orthotics Inc. v. Med. Tech., Inc., 263 F.3d 1356, 1367 (Fed.Cir.2001). Thus, a claim term should be afforded the full range of its ordinary meaning unless a clear inconsistency or disavowal in the intrinsic evidence compels otherwise, Riverwood Int'l Corp. v. Jones & Co., Inc., 324 F.3d 1346, 1357 (Fed.Cir.2003).

In sum, the scope of a claim term is ascertained by reading the claim language in view of relevant dictionaries and treatises, the patent specification, and the prosecution history. Intellectual Prop. Dev., Inc. v. UA-Columbia Cablevision of Westchester, Inc., 336 F.3d 1308, 1314 (Fed.Cir.2003). If the unambiguous meaning of the claim language at issue "is apparent from the totality of the intrinsic evidence, then the claim has been construed." Interactive Gift Express, 256 F.3d at 1332.

The parties dispute the meaning of various terms. Based on a review of the intrinsic evidence and the dictionary definitions provided by the parties, the disputed claims are construed as follows:

1. "Elongated water tight chamber" as used in the patents is a hollow water-tight chamber formed by the top, front, rear and side opposite walls and bottom wall of waterproof sheet material. The bottom wall is mounted in a water-tight condition to the lower perimeter of the walls of the lid, thereby forming the elongated, hollow water tight chamber within the lid.

2. "Waterproof sheet material" means a material that prevents water from passing through.

3. "Loosely overlying conformed to the top surface contour of the body" means to overlie the body without being tightly formed to it, but conforming to the body contour top surface.

4. "Impact jets of water under pressure directly against said flexible bottom wall sheet" means that the water exiting the water jet heads strike the flexible bottom wall sheet covering the user's body in a pulsating fashion.

5. "Covering substantially the entire body with closely contacting flexible sheet of water-proof material" means that the sheet of water-proof material covers the length of the body of the user except for the head when the top lid is closed over the user.

6. "Directing pulsating jets of water against the sheet of waterproof material" means that the water exiting the water jet heads strikes the flexible bottom wall sheet covering the user's body in a pulsating fashion.

DONE AND ORDERED.

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