United States District Court,
W.D. Oklahoma.

DETOWIS AB,
Plaintiff.
v.
COBRA MANUFACTURING CO., INC,
Defendant.

No. Civ-03-1053-F

June 23, 2004.

Jeff L. Todd, John A. Kenney, William D. Hall, McAfee & Taft, Oklahoma City, OK, for Plaintiff.

Scott R. Zingerman, Steven J. Adams, Todd A. Nelson, Fellers Snider Blankenship Bailey & Tippens, Tulsa, OK, for Defendant.

ORDER

STEPHEN P. FRIOT**, District Judge**

1. ***Introduction.***

Plaintiff, Detowis AB, is the assignee of United States Patent No. 6,443,142 (the '142 Patent) issued by the United States Patent and Trademark Office on September 3, 2002. The patent relates to a sight device for an archery bow.

Plaintiff filed this action against the defendant, Cobra Manufacturing Co., Inc., on July 31, 2003. The matter is now pending on plaintiff's first amended complaint, filed on January 30, 2004.

As indicated by the fact that the first amended complaint makes reference to various agreements between the parties which predate the issuance of the ' 142 Patent, the plaintiff and the defendant are not strangers to each other. Consequently, the first two counts in the first amended complaint assert claims for breach of an exclusive license agreement (Count I) and for breach of nondisclosure and confidentiality agreements (Count II). Count III is a claim for unjust enrichment. In Count IV, Detowis asserts a patent infringement claim against Cobra on the basis of the '142 Patent. This order concerns only Count IV, for patent infringement, and only one aspect (claim construction) of that count.

As between the court and the jury, the task of construing the claims in the ' 142 Patent, to the extent that construction is necessary at all, falls to the court. Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). On May 26, 2004, the court held a hearing, commonly called a *Markman* hearing, for the purpose of receiving the parties' submissions and arguments on the claim construction issues, to the end that the court

may "find the acquired meaning of patent terms." *Id*. at 388. With the benefit of the parties' extensive written briefs and their very helpful presentations at the *Markman* hearing, the court now enters this order construing those claims which require construction, bearing in mind that disputed claim language need be construed "only to the extent necessary to resolve the controversy." Vivid Technologies. Inc. v. American Science & Engineering, Inc., 200 F.3d 795, 803 (Fed.Cir.1999).

2. ***Factual background.***

As has been noted, the '142 Patent relates to a sight device for an archery bow. The patent document shows the inventors to be Dennis Wiseby and Tony Wiseby of Svenljunga, Sweden; Detowis is shown to be the assignee. The application which led to the issuance of the '142 Patent on September 3, 2002 is a continuation in part of a previous application. The previous application was filed on January 8, 1999. The parent application which provided the platform for the continuation in part which led to the issuance of the ' 142 Patent also came to fruition as Patent No. 6,026,799, which issued on February 22, 2000. The '799 Patent, issued to Messrs. Wiseby, relates to a "device for a sight," as is the case with the '142 Patent.

As least for present purposes, the most notable difference between the '799 Patent and the '142 Patent is that the '142 Patent contains a new claim (claim 5 in the '142 Patent) and a new drawing (figure 14 in the '142 Patent). The two principal items of new material in the '142 Patent (claim 5 and figure 14) are interrelated. Plaintiff describes claim 5 as a "picture claim" in that claim 5 is, according to plaintiff, an attempt to describe in words that which figure 14 shows graphically. Figure 14 is beyond doubt, an illustration of an embodiment which was not depicted in the '799 Patent. Interestingly, and as befits the significant interactions between plaintiff and defendant which preceded the issuance of the '142 Patent, figure 14 in plaintiff's '142 Patent is a drawing of one of *defendant's* products. A photograph on which the drawing is apparently based was transmitted by defendant to plaintiff in early December, 1999, prior to the filing of the continuation-in-part application on December 30, 1999.

The '142 Patent is not a lengthy document, and the claims and specifications are not unusually prolix. Nevertheless, the words and illustrations in the '142 Patent have spawned numerous contested issues between the parties. Claim construction will lay to rest only some of those issues, and perhaps not even the most prominent issues. The court proceeds now with that task.

3. ***Rules governing claim construction.***

In construing disputed terms, the "focus is on the objective test of what one of ordinary skill in the art at the time of the invention would have understood the term to mean." Markman v. Westview Instruments, Inc., 52 F.3d 967, 986 (Fed.Cir.1995), *aff'd,* 517 U.S. 370 (1996).

A. *Extrinsic evidence*. The trial court may receive extrinsic evidence "to educate itself about the patent and the relevant technology." Mantech Environmental Corp. v. Hudson Environmental Services, Inc. 152 F.3d 1368, 1373 (Fed.Cir.1998). For that reason, the court did not hesitate to receive extrinsic evidence at the *Markman* hearing. But "the claims and the written description remain the primary and more authoritative sources of claim construction. Thus, they always must be considered and where clear must be followed." *Id*. In this case, the extrinsic evidence which has been received from both parties has served no purpose other than to provide an informative backdrop for the court's consideration of the claim construction issues before it. The extrinsic evidence has served that purpose well, but it has served no other purpose. The task of claim construction in this case will be accomplished on the basis of the intrinsic evidence, consisting of the claims and the specification in the patent itself, as well as the relevant prosecution history. Vitronics Corp. v.

Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). That intrinsic evidence is "the most significant source of the legally operative meaning of the disputed claim language." *Id*.

B. *Prosecution history*. Prosecution history-the record of the proceedings before the United States Patent and Trademark Office, including any express representations made by the applicant as to the scope of the claims-may be considered in claim construction. *See, e.g.,* Vitronics Corp. 90 F.3d at 1582; Markman, 52 F.3d at 980; Medtronic, Inc. v. Intermedics, Inc., 799 F.2d 734, 742 (Fed.Cir.1986), *cert. denied,* 479 U.S. 1033 (1987).

C. *Claim differentiation*. Under the judicially-created doctrine of claim differentiation, each claim in a patent is presumptively different in scope. Wenger Mfg. Inc. v. Coating Machinery Systems. Inc. 239 F.3d 1225, 1233 (Fed.Cir.2001).

D. *Role of specification and embodiments*. Claims are not ordinarily limited to the preferred embodiment or embodiments disclosed in the specification. Interactive Gift Express, Inc. v. CompuServe Inc., 231 F.3d 859, 874 (Fed.Cir.2000); Northern Telecom Ltd. v. Samsung Electronics Co., Ltd., 215 F.3d 1281, 1293 (Fed.Cir.2000). As to the role of the specification in claim construction, the "twin axioms" which have been noted by the Federal Circuit must be borne in mind. On one hand, claims must be read in view of the specification of which they are a part. On the other hand, it is improper to read a limitation from the specification into the claims. Liebel-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 904 (Fed.Cir.2004).

E. *Ordinary meaning*. When the patent applicant is not deemed to be his own lexicographer, claim terms are given their "ordinary and accustomed meaning." Johnson Worldwide Associates. Inc. v. Zebco Corp., 175 F.3d 985, 989 (Fed.Cir.1999).

F. *Net effect of claim construction*. In construing claims for the benefit of the jury, the court must not draft better claims than the applicant drafted for himself. Chef America. Inc. v. Lamb-Weston, Inc., 358 F.3d 1371, 1374 (Fed.Cir.2004); K-2 Corp. v. Salomon S.A., 191 F.3d 1356, 1364 (Fed.Cir.1999). Any construction of a claim must be tied to the text of the claim. Interactive Gift Express, Inc., 231 F.3d at 865. The court's construction of a claim must not give the claim a broader or narrower scope than is discernable from the text before the court. *Id.;* Johnson Worldwide Associates. Inc.. 175 F.3d at 990.

4. *Construction of claims.*

The table which follows includes the claim language which is at issue (with the most sharply contested language emphasized in various ways) FN1 and the court's construction FN2 of that language.

FN1. By this order, the court construes only those claims as to which construction is in issue or otherwise appears to be necessary, given the purposes of claim construction under *Markman* and its progeny. Although passing reference was made to other claims at the May 26 hearing, the court has determined that construction is necessary only as to the claims set forth in the accompanying chart.

FN2. In patent law, "construction" and "interpretation" mean the same thing. Markman, 52 F.3d at 976, n. 6.

Claim language	Court's construction

Claim 1	
A sight device for a bow comprising:	A sight device for a bow which must include the following elements but may contain other elements, parts or components:
A holder adjustably secured to said sight arm and **[[** ***laterally adjustable*** **]]** with respect to said sight arm	a holder adjustably secured (the location to which it is secured can be changed or adjusted) to the sight arm and which provides for lateral or sideways adjustment with respect to the sight arm;
A support for a lens securely attached to said holder; wherein a first end of said support for a lens includes ***an [[angled part]] incorporating a [[threaded hole]]*** and a screw having a long threaded shaft received into said threaded hole	A support for a lens, securely attached to the holder. The first end of the support has a part that is at an angle to the adjacent part of the support. The angled part has a threaded hole and a long threaded screw received into the threaded hole ....
said support for a lens includes a lens holder secured to a second end of said support for a lens, wherein said lens holder includes a two-piece cylindrical clamp having a first end and ***a second end including two [[attachment lugs]],*** and wherein each lug includes an aligned hole for a clamping screw to secure said lugs together.	the support for the lens includes a lens holder secured to the other (second) end of the support. The lens holder includes a two-piece cylindrical clamp. The clamp has two attachment lugs with aligned holes for a clamping screw to secure the lugs together.

Claim 5	
a sight holder attachable to the sight arm by a first screw inserted through the vertical slot; the sight holder having a plurality of holes;	a sight holder attachable to the sight arm by a first screw inserted through the vertical slot; the sight holder having more than one hole;
a bracket attachable to the sight holder via a second screw in at least one of the plurality of holes;	a bracket attachable to the sight holder via a second screw in at least one of the holes in the sight holder;
a lateral extending arm attachable to the bracket by a third screw; **[[** ***the lateral extending arm having a first and a second end;*** **]]**	a laterally (sideways) extending arm with two ends. The arm can be attached to the bracket by a third screw.
[[***a threaded shaft screwed into the first end;*** **]]** the threaded shaft adjustable as a lateral movement stop for the lateral extending arm;	a threaded shaft is screwed into the first end of the laterally extending arm. The threaded shaft, when turned, provides lateral (sideways) movement of the arm;
the second end forming a circular sight holder with a pair of clamping lugs adapted to receive a clamping screw adjustable to hold a sight within the circular sight holder.	the second end of the laterally (sideways) extending arm forms a circular sight holder. The circular sight holder has a pair of clamping lugs adapted to receive a clamping screw adjustable to hold a sight within the circular sight holder.

5. ***Conclusion.***

It is hereby ordered that the claims in question will be construed for all purposes in this action as set forth above. Now that the claim construction phase of this matter has been concluded, this matter will proceed on

the basis of the schedule to be entered at the status and scheduling conference on June 30, 2004.

W.D.Okla.,2004.
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