United States District Court,
N.D. Illinois, Eastern Division.

Jacob KRIPPELZ, Sr,
Plaintiff.
v.
FORD MOTOR COMPANY,
Defendant.

July 20, 2004.

Wallenstein Wagner & Rockey, Ltd., Bradford P. Lyerla, Marshall, Gerstein & Borun, Mark K. Suri, James D. Ryndak, Catherine Lee Gemrich, Ted Joseph Barthel, Ryndak & Suri, Chicago, IL, for, Plaintiff.

Bobby L. Ware, Jones, Ware & Grenard, Alfred M. Swanson, Jr., Greene & Letts, Chicago, IL, Thomas A. Lewry, Ernie L. Brooks, Seth E. Rodack, Brooks & Kushman, Southfield, MI, for Defendant.

MEMORANDUM OPINION AND ORDER

ZAGEL**, J.**

Ford has moved for claim construction for the following four additional terms of claim 2 of U.S. Patent No. 5,017,903 ("the '903 patent"): (1) "a conical beam of light," (2) "opening," (3) "directly impinging," and (4) "said side of said vehicle." FN1

FN1. To the extent I have already construed any of these terms or portions of them, Ford's motion is treated as a motion for reconsideration.

"***A Conical Beam of Light***"

The "source of light" limitation of claim 2 reads: "a source of light mounted within said housing for directing a conical beam of light downwardly through said opening along said side of said vehicle below said window so as to be visible from in front of and from behind said vehicle." Ford argues that the term "a conical beam of light" should be construed as "all light from the source that passes through the housing opening." FN2 Ford claims that this construction is consistent with Krippelz's use of the term "beam of light" in the '903 patent because the patent "teaches that all of the light from the 'source of light' is part of the 'beam of light." ' Unfortunately, I see no such limitation in the patent that all of the light from the "source of light" is part of the "beam of light." While the "source of light" does generate a "beam of light," there is no provision explicitly teaching that the "source of light" cannot produce any other light (*i.e.,* non-beam light), and I should not impose negative limitations on a claim that are not explicitly provided in the claim. *See* Omega Eng'g., Inc. v. Raytek Corp., 334 F.3d 1314, 1322 (Fed.Cir.2003) ("When construing the functional statement in a means-plus-function limitation, we must take great care not to impermissibly limit

the function by adopting a function different from that explicitly recited in the claim.") (quoting Generation II Orthotics, Inc. v. Med. Tech., Inc., 263 F.3d 1356, 1364-65 (Fed.Cir.2001)).

FN2. In its reply brief, Ford offers a "slight" modification, proposing that the term be construed as "the real-world beam light from the source of light that actually passes through a lensless housing opening." However, because Ford in the same breath "reserves its right to seek review of the Court's Orders on appeal," I will fully explain my rejection of Ford's initial proposal before offering my final construction, which adopts a portion of Ford's revised proposal.

Furthermore, the description of the term "light beam" by the Board of Patent Appeals and Interferences ("the Board") during reexamination does not support Ford's proposed construction.FN3 The key phrase from the Board's description is that light must have some "defined sweep range" in order to be a beam, but there is no limitation in the patent that the "source of light" may produce some additional light outside of this "defined sweep range."

FN3. I treat the terms "light beam" and "beam of light" synonymously.

Moreover, I reject Ford's argument that Krippelz is estopped from arguing that claim 2's "source of light" produces "non-beam light" based on the Board's holding that Krippelz is estopped from claiming that "a similar source, using an incandescent bulb, or other light source generating light which is not a 'beam,' infringes the instant claimed invention." There is a difference between a light source that exclusively generates non-beam light (one which Krippelz is estopped from arguing infringes its patent) and a light source that generates both beam and non-beam light (one which Krippelz may argue infringes its patent).

Finally, I reject Ford's argument that adopting the distinction between beam and nonbeam light would invalidate Krippelz's patent. Ford claims that patent would be invalid because it would fail to meet the statutory written description requirement of 35 U.S.C. s. 112 because neither the claim specification nor the prosecution history contains a "*disclosure* of how anyone would determine which light rays are critical 'beam light' and which the irrelevant 'non-beam light." ' (emphasis added). However, the relevant inquiry under the written description requirement is that the patent specification "must clearly *allow* persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed." Gentry Gallery v. Berkline Corp., 134 F.3d 1473, 1479 (Fed.Cir.1998) (emphasis added). The claim specification here does indeed *allow* a person of ordinary skill in the art to determine the nature of the light generated by the "source of light," although it does not explicitly *disclose* precisely how one goes about doing so. As noted by the Board, beam light must have some "defined sweep range," and by inference, it must be possible to measure this "defined sweep range" and thus distinguish between non-beam and beam light.

Accordingly, the term "a conical beam of light" will be construed as "a conical light beam from the source of light that actually passes through a lensless housing opening." FN4

FN4. I am confused as to what Ford's proposed "real world" term adds to this construction with the inclusion of its proposed term "actually passes through." Aside from the allure of some possible, but non-existent, connection to a long-running reality-based TV show, I see no need for this additional term.

"***Opening***"

In my February 24, 2003 Memorandum Opinion and Order, I provided a construction of the limitation "said housing having an opening in the bottom thereof." I noted that "[n]o particular type of housing opening is required" and that "this element is not disputed so further discussion is unnecessary." Because there was no particular significance to the term "opening" raised by Krippelz's summary judgment motion, I did not discuss or analyze the meaning of the term "opening" in the housing opening limitation. Ford now asks that the term "opening" in claim 2 be construed as "an unobstructed hole in the housing."

It is presumed that a claim term carries its ordinary meaning. CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 1366 (Fed.Cir.2002). To determine the ordinary meaning of claim terms, I may consult relevant dictionaries. Texas Digital Sys. v. Telegenix, Inc., 308 F.3d 1193, 1202-03 (Fed.Cir.2002). Ford claims that the ordinary meaning of "opening" is "an open space serving as a passage or gap;" "a breach or aperture." While Exhibit Q does define "opening" as a "breach" or "aperture," I do not see Ford's basis for "an open space serving as a passage or gap." This must be an inadvertent mistake. I do see the following definition: "something that is open."

Nonetheless, regardless of which definition one chooses, I see no basis for using Ford's additional term "unobstructed." More than merely adding an additional word, using the word "unobstructed" adds the additional meaning that an opening must be unobstructed in order to qualify as an opening under the claim. Under such a construction, even a partial obstruction of some type may prevent something from being considered an "opening" within the meaning of the term. Such a limitation, however, is not explicitly stated in the claim and, more importantly, goes beyond the ordinary meaning which Ford concedes I should use. Accordingly, the term "opening" will be construed as "something that is open; breach; aperture." FN5

FN5. As Ford acknowledges, my construction of the term "opening" has no effect on my previous holding that the lens in the opening of the Ford Lighting Device is an additional element. If, at some point during the course of this litigation, Ford argues that this construction has some effect on this ruling, then I will revisit the construction of the term as opposed to the ruling.

"***Directly Impinging***"

Ford also seeks a construction of the claim term "directly impinging" in the last clause of claim 2: "said opening and said source of light being positioned to prevent said beam of light from directly impinging on said side of said vehicle." I construed the last clause of claim 2 in my February 24, 2003 Order:

Correctly construed, preventing the "beam of light" from "directly impinging" means that no light directly from the source strikes the vehicle.

Ford argues that the term "directly impinging" should now be construed as "striking the vehicle without first reflecting off anything else." Krippelz argues that I should stick with my first construction.

The suggestions by Krippelz and Ford both have merit. Combining the two suggestions, I construe the term "directly impinging" as follows:

"Directly impinging" means that no beam light directly from the source strikes the vehicle. However, beam light from the source that strikes the vehicle as a result of any intervening optical elements that redirect the

light does not fall within this construction.

As I noted in my February Order, the term "directly impinging" is different from the term "impinging." This construction gives appropriate meaning to the word "directly."

One problem with Ford's analysis is that it infers that no light coming out of the housing opening may "directly impinge" on the side of the vehicle. However, as discussed above, there may be both beam and non-beam light that comes out of the housing opening, and if any non-beam light strikes the vehicle this would have no effect on the clause of claim 2 regarding "said opening and said source of light being positioned to prevent said beam of light from directly impinging on said side of said vehicle." In essence, Ford's analysis is too broad. It is critical to determine whether the light "directly impinging" on the vehicle, if there is any in the first place, is beam or non-beam light.

"Said Side of Said Vehicle"

Finally, Ford claims that the last clause of claim 2 contains a second phrase that requires construction: "said opening and said source of light being positioned to prevent said beam of light from directly impinging on said side of said vehicle." Ford contends that the correct construction of the phrase "said side of said vehicle" means "any part of the side of the vehicle, including the running boards and tires." Krippelz claims that the construction of the term should not include the running boards and tires.

After consulting the briefs on this issue, the term "side" as it pertains to the "side" of a vehicle remains ambiguous. More specifically, the intrinsic evidence is insufficient for determining whether the construction should include or exclude the running boards and tires on a vehicle, and extrinsic evidence would be helpful on this issue. *See* Apex Inc. v. Raritan Computer, Inc., 325 F.3d 1364, 1371 (Fed.Cir.), *cert. den.,* 540 U.S. 1073, 124 S.Ct. 922, 157 L.Ed.2d 742 (2003); Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576 (Fed.Cir.1996). A *Markman* hearing or at least additional extrinsic evidence and/or expert testimony on the construction of this term would be helpful. *See, e.g.,* Huang v. Auto-Shade, Inc., 945 F.Supp. 1307, 1308 (C.D.Cal.1996); Genentech, Inc. v. Boehringer Mannheim GmbH, 989 F.Supp. 359 (D.Mass.1997). Therefore, at the next status, the parties will discuss their preferred options for resolving this issue. In the meantime, I am staying any rulings on the pending summary judgment motions until this last claim term has been construed.

For the reasons above, Ford's Motion for Claim Construction is GRANTED in part, DENIED in part, and ENTERED AND CONTINUED in part as described above.

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