United States District Court,
E.D. Texas, Marshall Division.

QINETIQ LIMITED,
v.
SAMSUNG TELECOMMUNICATIONS AMERICA, L.P.

Civil Action No. 2:03-CV-221

Aug. 17, 2004.

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ORDER

T. JOHN WARD**, District Judge.**

The court issues this order to resolve the areas of disagreement between the parties relating to claim construction.

1. Introduction.

The plaintiff in this case, Qinetiq Limited ("Qinetiq"), filed this case against the defendants, (collectively, "Samsung") contending that the defendants infringed certain claims of U.S. Patent No. 4,596,446 (the "'446 patent"). The patent involves technology related to supertwist nematic liquid crystal displays. The parties have filed briefs regarding their respective claim construction positions. The court held a claim construction hearing on August 10, 2004, and now issues this opinion to resolve the disputed terms.

2. Legal Principles Relevant to Claim Construction.

"A claim in a patent provides the metes and bounds of the right which the patent confers on the patentee to exclude others from making, using or selling the protected invention." Burke, Inc. v. Bruno Indep. Living Aids, Inc., 183 F.3d 1334, 1340 (Fed.Cir.1999). Claim construction is an issue of law for the court to decide. Markman v. Westview Instruments, Inc., 52 F.3d 967, 970-71 (Fed.Cir.1995)(en banc), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996).

To ascertain the meaning of claims, the court looks to three primary sources: the claims, the specification, and the prosecution history. Markman, 52 F.3d at 979. Under the patent law, the specification must contain

a written description of the invention that enables one of ordinary skill in the art to make and use the invention. A patent's claims must be read in view of the specification, of which they are a part. Markman, 52 F.3d at 979. For claim construction purposes, the description may act as a sort of dictionary, which explains the invention and may define terms used in the claims. *Id*. "One purpose for examining the specification is to determine if the patentee has limited the scope of the claims." Watts v. XL Sys., Inc., 232 F.3d 877, 882 (Fed.Cir.2000).

Nonetheless, it is the function of the claims, not the specifications, to set forth the limits of the patentee's claims. Otherwise, there would be no need for claims. SRI Int'l, v. Matsushita Elec. Corp., 775 F.2d 1107, 1121 (Fed.Cir.1985)(en banc). The patentee is free to be his own lexicographer, but any special definition given to a word must be clearly set forth in the specification. Intellicall, Inc. v. Phonometrics, 952 F.2d 1384, 1388 (Fed.Cir.1992). And, although the specifications may indicate that certain embodiments are preferred, particular embodiments appearing in the specification will not be read into the claims when the claim language is broader than the embodiments. Electro Med. Sys., S.A. v. Cooper Life Sciences, Inc., 34 F.3d 1048, 1054 (Fed.Cir.1994).

To assess the ordinary meaning of terms used in a patent claim, a court may properly rely on dictionary definitions. The Federal Circuit has noted that "[i]t has long been recognized in the precedent of our predecessor court, the Court of Customs and Patent Appeals, that dictionaries, encyclopedias and treatises are particularly useful resources to assist the court in determining the ordinary and customary meaning of claim terms." Texas Digital Systems, Inc. v. Telegenix, Inc., 308 F.3d 1193, 1202 (Fed.Cir.2002). The court reasoned that such sources are objective resources that serve as reliable sources of information on the established meanings that would have been attributed to the terms of the claims by those of skill in the art. Id. at 1202-03. According to the court, dictionaries, encyclopedias and treatises "constitute unbiased reflections of common understanding not influenced by expert testimony or events subsequent to the fixing of the intrinsic record by the grant of the patent, not colored by the motives of the parties, and not inspired by litigation." Id. at 1203.

One of the claim terms at issue in this case is conceded by the parties to be drafted in means-plus-function format; therefore, a discussion of the rules pertaining to such terms is appropriate. Title 35, section 112, paragraph 6 of the United States Code provides:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such 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.

Claim elements drafted under this statutory section are commonly referred to as means-plus-function or step-plus-function limitations. Through use of means-plus-function limitations, patent applicants are allowed to claim an element of a combination functionally, without reciting structures for performing those functions. Envirco Corp. v. Clestra Cleanroom, Inc., 209 F.3d 1360, 1364 (Fed.Cir.2000). The trade-off, however, for the use of this technique, is that the applicant is limited to the structure disclosed in the specification and equivalents. The statute specifically provides its own rule of claim construction when it states that "such 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.

Once it is determined that a particular limitation is drafted in means-plus-function form, claim construction of the element is a two-step process. First, the court must identify the claimed function. *Telemac Cellular Corp. v. Topp Telecom, Inc.,* 247 F.3d 1314, 1324 (Fed.Cir.2001). The court must construe the function to include only the limitations contained in the claim language. Lockheed Martin Corp. v. Space Sys/Loral, Inc., 249 F.3d 1314, 1324 (Fed.Cir.2001). General principles of claim construction govern the interpretation of claim language used to describe the function.

After the court identifies the claimed function, the court must then determine what structure, if any, disclosed in the specification corresponds to the claimed function. *Id.* To qualify as corresponding structure, the structure must not only perform the claimed function, but the specification must clearly associate or "link" the structure with the performance of the function, Medtronic, Inc. v. Advanced Cardiovascular Systems, Inc., 248 F.3d 1303, 1311 (Fed.Cir.2001). The court undertakes this task from the perspective of a person of ordinary skill in the art. Amtel Corp. v. Info. Storage Devices, Inc., 198 F.3d 1374, 1378-79 (Fed.Cir.1999). The determination of what constitutes corresponding structure can be difficult. Corresponding structure, it must be remembered, need not include all things necessary to enable the claimed invention to work. But corresponding structure must, however, include all structure that actually performs the recited function. Asyst Techs., Inc. v. Empak, Inc., 268 F.3d 1364, 1371 (Fed.Cir.2001). Bearing these standards in mind, the court will construe the disputed terms in the three patents in suit.

3. Disputed Terms

A. "Means for selectively absorbing transmitted light depending on the molecular orientation of the liquid crystal material."

After carefully considering the parties' arguments and the record, the court holds that the function recited by this claim element is "selectively absorbing transmitted light depending on the molecular orientation of the liquid crystal material." The structure corresponding to the function is (1) two polarizers; (2) a pleochoric dye; and (3) a pleochoric dye and one polarizer. Pursuant to the statute, the claim also covers equivalents of these structures. The court rejects the defendants' argument that cell thickness, birefringence, and polarizer orientation are also corresponding structures. The patent specification clearly links features of cell thickness and birefringence, for example, to the function of guiding, not selectively absorbing, the transmitted light. Necessarily, therefore, the court rejects the defendants' broadening argument based on the correction to Example 4.

B. "With a sharp transmission/voltage characteristic without substantial hysteresis."

The court construes the term "with a sharp transmission voltage characteristic" to mean that the OFF voltage (V1) may be only slightly lower than the ON voltage (V2), which indicates that the liquid crystal device may be highly multiplexed (i.e. have a high value of n). The phrase "without substantial hysteresis" means that the liquid crystal device is structured such that its state is, at a given voltage, substantially independent of whether the device is being switched from a light transmission state to a nontransmissive state, or vice versa."

The court has carefully considered the defendants' argument that the patentee improperly broadened the scope of the claims in the second reexamination proceeding. The court has reviewed the pertinent portions of the prosecution history and is not persuaded that the statements in Dr. Sage's declaration in connection with the first reexamination proceeding constitute a clear disavowal of claim scope to the effect that "highly

multiplexed" meant at least 64-way multiplexing. Cordis Corp. v. Medtronic Ave, Inc., 339 F.3d 1352, 1363 (Fed.Cir.2003). Neither is the court persuaded that the patentee's failure to comment on the examiner's statement of reasons for allowance of the claims constitute a clear disavowal of claim scope between 32 and 64-way multiplexing. The court observes that the same examiner was involved in both reexamination proceedings. The court presumes that the examiner performed her duties in good faith and correctly. There is insufficient evidence to overcome that presumption in this case, and the court rejects the defendants' broadening arguments that are to the contrary.

So **ORDERED.**

E.D.Tex.,2004.
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