United States District Court,
M.D. Florida, Tampa Division.

MARITRANS, INC., et al,
Plaintiffs/Counterclaim Defendants.
v.
PENN MARITIME, INC. and Penn Tug & Barge, Inc,
Defendants/Counterclaim Plaintiffs.
v.
Matthew D. Jones ("Dan Jones") and Schuller & Allan, Inc,
Counterclaim Defendants.

No. 8:03-CV-620-T-24EAJ

Oct. 20, 2004.

Arthur J. Volkle, Jr., Maritrans, Allen K. Von Spiegelfeld, Fowler White Boggs Banker P.A., Tampa, FL, Gary H. Levin, Kathleen Milsark, Woodcock, Washburn, Kurtz, Mackiewicz & Norris, Philadelphia, PA, for Plaintiffs/Counterclaim Defendants.

Arthur W. Fisher, III, Arthur W. Fisher, III, P.A., Tampa, FL, James M. Kenny, Kenny & Stearns, New York, NY, for Defendants/Counterclaim Plaintiffs.

Alton W. Payne, Law Office of Alton W. Payne, Houston, TX, John F. Ferrari, Law Office of John F. Ferrari, Katy, TX, for Counterclaim Defendants.

ORDER

SUSAN C. BUCKLEW**, District Judge.**

This cause comes before the Court for consideration of Penn Maritime, Inc. and Penn Tug & Barge, Inc.'s Opening Markman Brief (Doc. No. 143, filed September 1, 2004), Maritrans' Opening Brief Regarding Claim Construction of the Asserted Claims of the Patents (Doc. No. 144, filed September 1, 2004), and Parties' Joint Claim Construction Statement of the Asserted Claims of U.S. Patent No. 6,170,420 and U.S. Patent No. 6,357,373 (Doc. No. 153, filed September 17, 2004). In the Joint Claim Construction Statement, the parties narrowed the disputed claim construction issues to a single term ("topside deck plating") contained in claim 8 of patent 420. The Court held a claim construction (*Markman*) hearing on the construction of the disputed term on October 15, 2004.

I. Background of the Case

This case involves an alleged patent infringement. Both U.S. Patent No. 6,170,420 ("420") and U.S. Patent No. 6,357,373 ("373") name Plaintiff Maritrans Inc. as an assingee of the patents. Maritrans Inc., Maritrans

Transportation Inc., Maritrans Operating Company L.P., and Maritrans General Partner Inc. ("Plaintiffs") and Penn Maritime and Penn Tug and Barge, Inc. ("Defendants") are competitors in the marine petroleum transportation business. Defendants operate a ship named "Everglades," which Plaintiffs contend infringes on the patents at issue in this lawsuit.

II. Background of the Invention

In 1990, Congress enacted the Oil Pollution Act of 1990 ("OPA-90") in response to oil spills that had occurred during the transportation of oil and petroleum products by vessels in navigable waters. The relevant requirement of OPA-90 is that new tank vessels constructed pursuant to contracts awarded after 1990 had to be constructed with double hulls so as to avoid any oil spillage if the outer hull is breached. Further, any existing single hull vessels transporting oil and petroleum products had to be reconstructed with double hulls or retired from service sometime between 1995 and 2015 depending on the size of the vessel and other considerations.

The concept behind double hulling is that the structural integrity of the outer hull can be breached without affecting the inner hull and the petroleum cargo inside. Methods exist for the external fitting of a new hull outside the existing hull. However, the *external* hulling method of retrofitting vessels caused a variety of problems.

In order to obviate the problems created by externally retrofitting vessels, the present invention (420 and 373 patents) is a method of *internally* retrofitting a vessel. Here, a single hull vessel is rebuilt into a vessel with a double hull without changing the outer characteristics and dimensions of the vessel. The method of internally retrofitting an existing single hull vessel requires that the existing internal structure and deck of the vessel be cut out and removed from the interior of the existing hull. A new hull is designed and installed inside the existing outer hull to form the double hull design.

III. Claim Construction

It is well settled "that the construction of a patent, including terms of art within a claim, is exclusively within the province of the court." Markman v. Westview Instruments, Inc., 517 U.S. 370, 372 (1996). In order to ascertain the meaning of a claim, the court should consider three sources of intrinsic evidence: (1) the claim, (2) the specification, and (3) the prosecution history. *See* Markman v. Westview Instruments, Inc. 52 F.3d 967, 979 (Fed .Cir.1995), aff'd, Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). These three sources are "the most significant source of the legally operative meaning of the disputed claim language." *See* Vitronics Corporation v. Conceptonic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996).

The court begins any claim construction analysis with the words in the claim. The words are generally given their ordinary meaning absent an express intent to impart a novel meaning to a claim term. *See* Teleflex, Inc v. Fiscosa North America Corp., 299 F.3d 1313, 1325 (Fed.Cir.2002).

Second, the court must review the specification to determine if the inventor has used any terms in a manner inconsistent with their ordinary meaning. The specification contains a description of the invention, and "[f]or claim construction purposes, the description may act as a sort of dictionary, which explains the invention and may define terms used in the claims." Markman, 52 F.3d at 979. Often the specification "is the single best guide to the meaning of a disputed term." Vitronics, 90 F.3d at 1582. While courts refer to the patent specification and preferred embodiments, courts should not read a limitation into a claim simply because it is referenced in the preferred embodiment. *See* Burke, Inc. v. Bruno Independent Living Aids,

Inc, 183 F.3d 1334, 1341 (Fed.Cir.1993).

Third, the court should consider the prosecution history, FN1 if in evidence. The prosecution history contains the record of the proceedings before the Patent and Trademark Officer, "including any express representations made by the applicant regarding the scope of the claims." *Id*.

FN1. The prosecution histories for the 420 and the 373 patents do not shed any light on the issue of construction of the term topside deck plating. *See* Doc. No. 144 at 7-10.

IV. Discussion

The issue before the Court is the construction of the term "topside deck plating" contained in claim 8 of the 420 patent.

Claim 8 provides:

The vessel of claim 1 wherein said cargo carrying volume further comprises:

a forward transverse bulkhead attached to a forward end of said inner hull to form a forward end of said cargo carrying volume;

an after transverse bulkhead attached to an after end of said inner hull to form an after end of said cargo carrying volume; and

topside deck plating disposed laterally over said inner hull to form a top of said cargo carrying volume, ...

(Doc. No. 144, Exhibit A, patent 420, 16 :18-27)(emphasis added) FN2

FN2. Citations to the patents will take the form "X:Y" where "X" is the column and "Y" is the line number.

Plaintiffs' proposed construction of the term "topside deck plating" of claim 8 is "metal plates forming a top of the cargo carrying volume." (Doc. No. 153 at 3). Defendants' proposed construction is "metal plates forming a top of the cargo carrying volume *connected to the original single hull structure*." *Id*. at 4 (emphasis added). The sole issue before the Court is whether the term topside deck plating of claim 8 of the 420 patent should be construed to included the additional phrase *connected to the original single hull structure*.

The term "topside deck plating" is not specifically defined in the claim. Therefore, Plaintiffs contend that this Court should give the term its plain and ordinary meaning. Plaintiffs, citing Webster's Dictionary, state:

The term "topside" refers to "the top portion of the outer surface of a ship on each side above the waterline." (Webster's, Ex. 3 at 1244). The term "deck" refers to "a platform in a ship serving usu. as a structural element and forming the floor for its compartments." (id. at 330). The term "plating" is defined above with reference to claim 2 and refers to a coating of metal plates. The phrase 'topside deck plating' refers to the metal plates at the top boundary of the cargo carrying volume."

(Doc. No. 144 at 24).

Plaintiffs contend that their proposed construction of "topside deck plating" is consistent with the plain and ordinary meaning of the words. However, if the ordinary meaning of the disputed term lacks clarity, the Court must use the specification to try to resolve the ambiguity. *See* Teleflex, 299 F.3d at 1325.

Plaintiffs further argue that their proposed construction of this term is consistent with the two embodiments described in the specification.FN3 One embodiment describes when the topside deck plating that was removed is reconnected to the topside deck plating that was left in place. The second and preferred embodiment is where "a new trunk structure is added between the topside deck plating that was removed and the topside deck plating that was left in place." (Doc. No. 153 at 3). Plaintiffs argue claim 8 is broad enough to cover both embodiments described in the specification, and it is improper to construe the term topside deck plating with the additional phrase *connected to the original single hull structure* as proposed by Defendants. Plaintiffs argue that adding this additional phrase would improperly limit claim 8 to just one of the embodiments disclosed in the specification.

FN3. The following is the portion of the specification that describes the two embodiments:

The cut out section of topside deck plating 13a and internal vessel structure 7 that was cut and removed is adapted to be re-installed and connected to the new inner hull 6 and the cut portion of the topside deck plating 13b that was left in place defining an opening in the topside decking. The topside deck plating 13a and internal vessel structure 7 that was cut and removed may be adapted such that the topside deck plating 13a that was cut and removed is reconnected to the cut topside deck plating 13b that was left in place, forming a rebuilt topside deck that is substantially the same as the topside deck 13 of the original single hull vessel 1, or preferably, a new trunk structure 53 is added extending between the cut 25a in the topside deck plating 13b that was left in place and the topside deck plating 13a that was removed, resulting in a raised deck 13d, as shown in FIGS 5A, 5B, and 5D. (Exhibit A, 10:15-30).
Defendants argue that construction of the term "topside deck plating" in claim 8 should contain the additional phrase *connected to the original single hull structure*. Defendants agree that the specification in the 420 patent describes two embodiments for reusing the portion of the topside deck plating after it is cut away from the original topside deck. The parties also agree that claim 18 FN4 specifically refers to the embodiment where a new trunk structure and a raised deck form an additional volume area for the vessel. However, Defendants argue that since claim 18 specifically refers to the embodiment describing the new trunk structure and raised deck, claim 8 should be limited to referring only to the other embodiment, describing the topside deck plating that is reconnected to the original single hull structure. The Court finds that Defendants' argument imposes an improper limitation on claim 8.

FN4. Claim 18 reads:
The vessel of claim 1 further comprising a trunk structure disposed between a top edge of said inner hull proximate an opening formed by a cut in a topside deck plating of said single existing hull vessel and an outer peripheral edge of a cut out section formed by said cut in said topside deck plating, said cut out section of topside deck plating thereby defining a raised deck, said trunk structure and raised deck forming an additional volume of said cargo carrying volume.

In the patent, Plaintiffs did not specifically define "topside deck plating;" therefore, the term must be given its ordinary and customary meaning interpreted in light of the specification. The specification in patent 420 describes two embodiments. Furthermore, the specification section of 420 states that the patent is not to "be limited to the particular embodiment disclosed as the best mode contemplated for carrying out this invention, but that the invention will include all embodiments falling within the scope of the appended claims." (15:45-49). Defendants' argument that the construction of "topside deck plating" in claim 8 should contain the additional phrase "connected to the original single hull structure" is an improper limitation on the claim. The Court agrees with Plaintiffs that the language of claim 8 does not require that the topside deck plating be connected to the original hull structure, and as written, is broad enough to encompass both embodiments described in the specification. Therefore, this Court construes the term topside deck plating of claim 8 as "metal plates forming a top of the cargo carrying volume."

Accordingly it is **ORDERED AND ADJUDGED** that the term topside deck plating contained in claim 8 of the 420 patent means "metal plates forming a top of the cargo carrying volume."

DONE AND ORDERED.

M.D.Fla.,2004.
Maritrans, Inc. v. Penn Maritime, Inc.

Produced by Sans Paper, LLC.