United States District Court,
W.D. Texas, Austin Division.

CONNECTION F/X, INC,
Plaintiff.
v.
GASTITE, a Division of Titeflex Corporation,
Defendant.

No. A-03-CA-899-SS

Nov. 17, 2004.

Timothy O. Dudley, Dudley & Compton, Little Rock, AR, for Plaintiff.

Christine Y. Le Bel, Bulkley, Richardson And Gelinas LLP, Springfield, MA, James C. Duda, Mary R. Bonzagni, Holland & Bonzagni, P.C., Longmeadow, MA, Brittan L. Buchanan, Van Osselaer, Cronin & Buchanan LLP, Austin, TX, for Defendant.

ORDER

SAM SPARKS**, District Judge.**

BE IT REMEMBERED that on the 29th day of October 2004, the Court, in accordance with Markman v. Westview Instruments, Inc., 52 F.3d 967 (Fed.Cir.1995), held a hearing at which the parties appeared by representation of counsel and made oral arguments on their proposed claims construction for U.S. Patent No. 5,803,508 (the "'508 Patent"). After considering the briefs, the arguments of counsel, the case file as a whole, and the applicable law, the Court enters the following opinion and order.

I. Background

Monty Dale Lowell ("Lowell") filed a patent application with the Untied States Patent and Trademark Office ("PTO") on June 13, 1996 for a "Wall-Attached Plumbing Connector." '508 Patent. The PTO issued the '508 Patent to Lowell on September 8, 1998. According to the Abstract for the '508 Patent, it "relates to a wall plate terminal, providing a rigid through-wall plumbing connection" for which "[a] two degree pitch can be provided in the stem portions, providing drainage." Id. As described in the Background Art Section of the '508 Patent, the Wall-Attached Plumbing Connector was invented to address the "common practice in the plumbing industry" of running pipe "through a wall" by simply drilling a hole in the wall, or extending the pipe "past the framing members" far enough out to allow for sheathing at a later time. Id., col. 1, 11.15-20. According to the patent, the major drawback of "the conventional through-wall system" used at the time of the application was the "plumbing system" so installed did not provide solid support for the pipe or fixture passing "through the wall" against movement or vibration within the wall or structure. Id., col. 1, 11.26-33. The patent noted the problem was "[t]he plumbing system is not supported from one side of the

wall to the other." Id., col. 1, 11.33-34. FN1 Lowell has assigned the ' 508 Patent to Plaintiff Connection F/X, Inc. ("Connection F/X"). Id.

FN1. The Court notes the American National Standards Institute has required rigid wall connections for gas piping since 1989. Def.'s Br. at 4.

Connection F/X filed its complaint on December 8, 2003, against Defendant Gastite, a Division of Titeflex Corporation, ("Gastite"), a maker of flexible gas piping systems, alleging Gastite's XR-Series Appliance Stub-Out ("Stub-Out") infringes the '508 Patent. The Stub-Out is used for mounting gas hoses and pipes and providing fixed-point terminations for gas appliance connections. Def.'s Br. at 5. In Plaintiff's Statement of Infringement dated April 26, 2004, Plaintiff contends Gastite's Stub-Out infringes Claims 1, 7, 8, 10, 12, 13, 15, 16, 17, and 20 of the '508 Patent.

II. Principles for Claims Construction

The construction of claims, or the definition of the terms used in the claims, is a matter of law for the Court. When adopting a claim construction, the Court should first consider the intrinsic evidence, which includes the claims, the specification, and the prosecution history. *See* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996) (explaining intrinsic evidence is "the most significant source of the legally operative meaning of disputed claim language"). Not surprisingly, the starting point is always "the words of the claims themselves." *Id; see also* Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1186 (Fed.Cir.1998). The words of the claims are generally given their ordinary and customary meaning, unless the patentee intended to use a "special definition of the term clearly stated in the patent specification or file history." Vitronics, 90 F.3d at 1582. Thus, the Court must review the specification and file history to determine whether the patentee intended to use any such "special" definitions. *Id*. The specification and file history may also be consulted as general guides for claim interpretation. Comark, 156 F.3d at 1186.

The specification and file history, however, are not substitutes for the plain language of the claims. The specification is not meant to describe the full scope of the patent-it includes only a written description of the invention, sufficient to enable a person skilled in the art to make and use it, as well as the invention's "best mode." 35 U.S.C. s. 112. Thus, the claims may be broader than the specification, and generally should not be confined to the examples of the invention set forth in the specification. Comark, 156 F.3d at 1187 ("Although the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims."). Indeed, the Federal Circuit has repeatedly emphasized "limitations from the specification are not to be read into the claims." Id. at 1186.

In addition to examining the intrinsic evidence the Court may, in its discretion, receive extrinsic evidence regarding the proper construction of the patent's terms. *See* Key Pharm. v. Hercon Labs. Corp., 161 F.3d 709, 716 (Fed.Cir.1998) ("[T]rial courts generally can hear expert testimony for background and education on the technology implicated by the presented claim construction issues, and trial courts have broad discretion in this regard."). The defendant has provided an expert affidavit and excerpts from several dictionaries and codes as extrinsic evidence concerning the construction of the terms of the '508 Patent.

III. Construction of Claim Terms

A. "plumbing connector"

This term is used in Claims 1 and 16 of the '508 Patent. Of the disputed terms, plumbing connector appears to be the most important. Plaintiff proposes the following definition: "includes distribution of liquid, gas, and air." J. Claim Constr. Chart at 1. Conversely, Defendant asks this Court to construe the term "plumbing connector" as "used in a water distribution system made up of water pipes and water fixtures." Id. The Court adopts Defendant's proposed definition for the following reasons.

The '508 Patent consistently illustrates and employs the term "plumbing" in connection with the transmission or distribution of water. The Objects of the Invention Section discusses the use of the patent in connection with "mounting plumbing fixtures, particularly shower heads, faucets, valves, and the like." ' 508 Patent, col. 1, 11.61-62. Likewise, the Preferred Embodiment Section of the patent discusses use of the disclosed device with a "shower arm," "shower head," "toilet supply valve," and "water supply tube to a toilet." Id. col. 4, 11.12-26. The patent also discusses use of the device in connection with outdoor water fixtures such as a "hose bib." Id., col. 3, 1.65 and col. 4, 1.2. Moreover, Figure 3 of the preferred embodiment of the patent illustrates the use of the device in connection with a hose bib. Id., fig. 3.

The claims themselves also illustrate the patented device is intended for water systems. For example, the preferred embodiment contemplates providing the connector tube with a two-degree pitch, and with marking the plate with arrows and/or other appropriate indicators showing the proper orientation of the plate so as to assure the tube is angled down and away from the plate on each side to provide "drainage." Id., col. 4, 11.1-10. Additionally, Claim 8 provides "[t]he plumbing connector of claim 1 formed of a material selected from the group consisting of: copper; chrome plate; brass; stainless steel; corrosion-resistant steel; and synthetic polymer." Id., col. 5, 11.38-41. Some of these materials are incompatible with gas distribution, e.g., copper and chrome plate; however, all of these materials are compatible with the distribution of water. Moreover, Defendant's plumbing and gas piping expert Richard Johnson testified at the hearing "slip-fits," appearing in Claims 7 and 16, cannot be used in the transmission of gas. In sum, there is nothing in the wording of the patent itself to suggest a different or broader meaning of the word "plumbing." The patent never mentions or suggests the word gas.

Further, individuals of ordinary skill in the art of plumbing, e.g., master plumbers, FN2 generally understood at the time the device was patented that "plumbing" and "plumbing system" referred to a system of pipes and fixtures concerned with the conveyance of water. FN3 This is apparent from dictionary definitions and codes in the field of plumbing available before June 13, 1996.

FN2. The parties agreed at the hearing that a master plumber is an individual of ordinary skill in the art of plumbing.

FN3. Defendant's expert testified it would be obvious to anyone reading the '508 Patent that the subject matter of the patent is limited to water distribution.

For example, according to the McGraw-Hill Dictionary of Scientific and Technical Terms from 1994, plumbing or plumbing system is "[t]he system of pipes and fixtures concerned with the introduction, distribution, and disposal of water in a building." Def.'s Br., Ex. F. The Webster's Ninth New Collegiate Dictionary from 1988 provides a similar definition of the word plumbing: "the apparatus (as pipes and fixtures) concerned with the distribution and use of water in a building." Id., Ex. G. Neither of these

dictionary definitions contemplates plumbing as encompassing gas conveying systems or any system distributing a substance other than water.

As discussed by Defendant's expert, this understanding of the word plumbing was also reflected in plumbing codes applicable in 1996. The International Plumbing Code of 1994 defined plumbing as:

The practice, materials and fixtures utilized in the installation, maintenance, extension and alteration of all piping, fixtures, plumbing appliances and plumbing appurtenances, within or adjacent to any structure, in connection with sanitary drainage or storm drainage facilities; venting systems; and public or private water supply systems.

Id., Ex. H. This code similarly defined, and continues to define, other terms utilizing the word plumbing solely with respect to water supply and drainage systems. Id. Similarly, the Standard Plumbing Code of 1991 defined plumbing as:

the practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping fixtures, appliances, and appurtenances in connection with any of the following: Sanitary drainage or storm drainage facilities, the venting system and the public or private water supply systems, within or adjacent to any building, structure, or conveyance; also the practice and materials used in the installation, maintenance, extension, or alteration of storm water, liquid waste, or sewage, and water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal.

Id., Ex. L. The exclusion of gas piping from the term plumbing is made explicit in the Building Officials and Code Administrators National Plumbing Code-"[n]ot included in this definition [of plumbing] are installations of gas piping." Id., Ex. K.

For the reasons set forth above, the Court adopts the following as its claim construction of the term "plumbing connector": "used in a water distribution system made up of water pipes and water fixtures." In light of the fact that Plaintiff's brief was only three pages, Plaintiff had no opening statement at the hearing, Plaintiff offered no exhibits, and Plaintiff did not intend to give a closing statement until one was requested by the Court, the Court would be hard pressed to hold otherwise.

B. "connector tube"

This term is used in Claims 1 and 16 of the '508 Patent. The plaintiff contends this term is clear on its face. J. Claim Constr. Chart at 1. The defendant argues the term should be defined as "having a non-corrosive or corrosion-resistant opening therethrough ." Id.

The Court agrees with the defendant. Essentially, all of the materials listed in the '508 Patent are either non-corrosive or treated to render them corrosion-resistant, as required for water-based systems. '508 Patent, col. 3, 11.7-11. Further, Defendant's expert averred plumbers and others involved in the plumbing trade have long understood that pipes carrying water must be non-corrosive or corrosion-resistant on their interior surfaces. Plumbing codes, likewise, reflect this requirement. Def.'s Br., Ex. L. Accordingly, the Court adopts the defendant's definition of "connector tube" and will construe that term as "having a non-corrosive or corrosion-resistant opening therethrough."

C. "wherein said plate element and said connector tube are integrally formed"

This term is used in Claim 17 of the '508 Patent. In briefing, Defendant sought construction of the phrase "wherein said plate element and said connector tube are integrally formed" as "wherein said plate element and said connector tube are integrally formed in a single part." However, the Court agrees with Plaintiff that the above phrase is clear on its face. FN4 Accordingly, this phrase will not be construed by this Court.

FN4. These terms can be readily understood by the lay reader (of which this Court is one).

IV. Undisputed Terms

Finally, at the hearing, the parties stipulated to the construction of the following terms:

1. "means on said plate element for connection of said plate element to said framing member prior to application of said sheathing to said framing member;" ('508 Patent, Claim 1);

2. "said inside portion of said connector tube defining a first bore having a first predetermined diameter, and" ('508 Patent, Claims 1, 16); and

3. "said plate element defining a plurality of openings for placement of fasteners therethrough for penetration into said framing member" ('508 Patent, Claim 16).

The Court will therefore adopt these stipulated constructions, solely for the purpose of this lawsuit.

V. Conclusion

Accordingly, the Court enters the following orders:

IT IS ORDERED that the above construction of the patent claims will be incorporated into any jury instructions given in this cause and will be applied by the Court in ruling on the issues raised in summary judgment.

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