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

OCEAN INNOVATIONS, INC., et al,
Plaintiffs.
v.
QUARTERBERTH, INC, et al,
Defendants.

Dec. 7, 2004.

Edward P. Simms, F. Thomas Vickers, Gordon D. Kinder, II, Ulmer & Berne, Mark C. Johnson, Renner, Otto, Boisselle & Sklar, Cleveland, OH, for Plaintiffs.

Edward F. McHale, Jr., McHale & Slavin, Palm Beach Gardens, FL, Jack E. Pierce, Pierce Law Firm, Minneapolis, MN, Daniel P. Carter, Heidi J. Milicic, Jeffrey W. Ruple, Buckley King, Cleveland, OH, for Defendants.

MEMORANDUM OF OPINION AND MARKMAN ORDER

PAUL R. MATIA**, Chief Judge.**

Plaintiffs Ocean Innovations, Inc. and Jet Dock Systems, Inc. (collectively, "Jet Dock") brought this action against nine (9) defendants. Defendants Quarterberth, Inc., Bill Lott, Teo Leonard, Gulf Coast Floating Docks, Inc., Diversified Wholesale Marine, Inc. dba Sailorman, James Alexander, and Roy Ahern filed a motion to dismiss (Doc. 24) for lack of personal jurisdiction and improper venue. The remaining defendants (ERA Marine Products, Inc. dba Versadock ("Versadock") and George Dabrowski dba PIC Marine) answered the complaint. Docs. 22 and 23. Jet Dock alleges that Versadock is the supplier of the infringing docks to all the other defendants. Plaintiffs also assert that the defendants have infringed U.S. Patent No. 5,529,013 ("the '013 patent"); U.S. Patent No. 5,682,833 ("the '833 patent"); U.S. Patent No. 5,947,050 ("the '050 patent"); U.S. Patent No. 6,431,106 ("the '106 patent"); and U.S. Patent No. 5,931,113 ("the '113 patent") FN1 in violation of 35 U.S.C. s. 271(a).

FN1. Collectively, the '013, '833, '050 and '106 patents are called the "Drive-on Patents" and the '113 patent is called the "Beam Patent." The Drive-on Patents share a common specification.

Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996) and Cybor Corp. v. FAS Techs., Inc., 138 F.3d 1448 (Fed.Cir.1998) (*en banc*), the Court held a hearing on February 12, 2004, to determine the meaning or construction of the patents' claims, as a matter of law. In advance of this hearing, the parties submitted: (1) a joint claim construction and prehearing statement, identifying areas of agreement and areas of dispute (Doc. 72), and (2) separate briefs urging a certain construction for each disputed claim (Docs. 79, 82, and 89). Defendants filed a notice of supplemental authority (Doc. 100) on February 25, 2004. The

parties subsequently submitted supplemental briefs regarding an order entered by U.S. District Judge Solomon Oliver, Jr. in *Ocean Innovations, Inc., et al. v. Archer, et al.,* Case No. 5:98CV1515 (N.D. Ohio June 16, 2004) (Docs. 102, 103, and 106). The Court has considered the parties' filings and sets forth its analysis and construction of the disputed terms below.

The '833 patent was the subject of a *Markman* order entered by Judge Oliver in *Ocean Innovations, Inc., et al. v. Archer, et al.,* Case No. 5:98CV1515 (N.D.Ohio Sept. 26, 2003) ("the *Zeppelin* case").FN2 The patents' specifications (four of the five in suit) and prosecution histories are the same in this case as in the *Zeppelin* case. The court in that case was asked to construe two claim elements from claim 1 of the ' 833 patent: "floatation units" and "flexible joints between the units." Judge Oliver concluded:

FN2. Plaintiffs and their counsel are the same in the *Zeppelin* case and the case at bar. Further, Edward F. McHale, Esq. represents Zeppelin Marine, Inc. (the remaining defendant in Case No .5:98CV1515) and the nine defendants in the case at bar.

A "floatation unit," as the term is used in the '833 patent is: an individual structural constituent of a whole (*i.e.,* the dry dock claimed in the '833 patent) which is buoyed on water. A "flexible joint between the units," as used in the '833 patent is: a point or position in the interval or position separating the floatation units of the dock, which point or position is capable of bending or flexing.
Id. at 16.
On June 16, 2004, Judge Oliver granted summary judgment in favor of Jet Dock finding that the '833 patent was not invalid and was literally infringed by the defendant in the *Zeppelin* case. *See* Notice (Doc. 102).

I. Legal Standards for Claims Construction

The construction of a patent and the terms contained therein is an issue to be determined by the court as a matter of law. *See* Markman v. Westview Instruments, Inc., 52 F.3d 967, 976 (Fed.Cir.1995), *affd,* 517 U.S. 370, 372 (1996). In construing a claim, the court determines "the meaning and scope of the patent claims asserted to be infringed." *Id.*

To ascertain the meaning of the claims, a court should consider three things: the patent claims, the patent specification, and the prosecution history. See Insituform Techs., Inc. v. Cat Contracting, Inc., 99 F.3d 1098, 1105 (Fed.Cir.1996); Markman, 52 F.3d at 979. The claim language itself defines the scope of the claim, and "a construing court does not accord the specification, prosecution history, and other relevant evidence the same weight as the claims themselves, but consults these sources to give the necessary context to the claim language." Eastman Kodak Co. v. Goodyear Tire & Rubber Co., 114 F.3d 1547, 1552 (Fed.Cir.1997), abrogated on other grounds by Cybor Corp., 138 F.3d at 1454-55.

In addition to the claim language and intrinsic evidence, a court may consult dictionary definitions at any time in order to aid in establishing a claim term's ordinary meaning. *See* Texas Digital Sys., Inc. v. Telegenix, Inc., 308 F.3d 1193, 1202 (Fed.Cir.2002). The court should analyze the intrinsic evidence in view of the " 'heavy presumption' that claim terms carry their ordinary meaning as viewed by one of ordinary skill in the art." Altiris, Inc. v. Symantec Corp., 318 F.3d 1363, 1369 (Fed.Cir.2003) (citing CCS Fitness Inc. v. Brunswick Corp., 288 F.3d 1359, 1366 (Fed.Cir.2002)).

"Claim language is given its ordinary and accustomed meaning except where a different meaning is clearly

set forth in the specification or where the accustomed meaning would deprive the claim of clarity." Northern Telecom Ltd. v. Samsung Electronics Co., Ltd., 215 F.3d 1281, 1287 (Fed.Cir.2000). While a patentee can "act as his own lexicographer to specifically define terms of a claim contrary to their ordinary meaning, the written description in such a case must clearly redefine a claim term so as to put a reasonable competitor or one reasonably skilled in the art on notice that the patentee intended to so redefine that claim term." Elekta Instrument S.A. v. O.U.R. Scientific Int'l, Inc., 214 F.3d 1302, 1307 (Fed.Cir.2000) (quoting Process Control Corp. v. HydReclaim Corp., 190 F.3d 1350, 1357 (Fed.Cir.1999)) (internal quotation marks omitted). For purposes of construing the claim, the written description contained in the specification 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.

Although a claim should be read in view of its specification, *see* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996), the Federal Circuit has repeatedly cautioned against limiting the scope of a claim to the preferred embodiment or specific examples disclosed in the specification. *See* Ekchian v. Home Depot, Inc., 104 F.3d 1299, 1303 (Fed.Cir.1997) ("[w]hile examples disclosed in the preferred embodiment may aid in the proper interpretation of a claim term, the scope of a claim is not necessarily limited by such examples"); Intervet America, Inc. v. Kee-Vet Laboratories, Inc., 887 F.2d 1050, 1053 (Fed.Cir.1989) ("limitations appearing in the specification will not be read into claims, and ... interpreting what is *meant* by a word *in* a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper' ") (citation omitted) (emphasis in original). As the Federal Circuit has recently stated:

"That claims are interpreted in light of the specification does not mean that everything expressed in the specification must be read into all the claims." Raytheon Co. v. Roper Corp., 724 F.2d 951, 957, 220 USPQ 592, 597 (Fed.Cir.1983). In *SRI International v. Matsushita Electric Corp.,* we explained that our focus must be on the claims: "If everything in the specification were required to be read into the claims, or if structural claims were to be limited to devices operated precisely as a specification-described embodiment is operated, there would be no need for claims...."

Teleflex, Inc. v. Ficosa North America Corp., 299 F.3d 1313, 1326 (Fed.Cir.2002).

In construing the claims, the court may look to the patent's prosecution history if it is a part of the record in the case. *See* Markman, 52 F.3d at 980. "This 'undisputed public record' of proceedings in the Patent and Trademark Office is of primary significance in understanding the claims." *Id*. Although the prosecution history "can and should be used" when construing the claims, it "cannot 'enlarge, diminish, or vary' the limitations in the claims." *Id*. (citations omitted).

II. Claim Construction Analysis

A. Floating dock assembly

Plaintiffs argue that the term "floating dock assembly" should be construed as "a dock that floats that is assembled from parts." Doc. 79 at 10. Defendants contend that the common and ordinary definitions of "dry dock" and "floating dock" do not address what was actually invented by Jet Dock. Therefore, the specification must be consulted to determine whether the like terms "dry dock," "floating dock assembly," "floating dock assembly for water craft," and "floating drive-on dry dock" have been given a special meaning by the patentees. Defendants argue that the terms mean "a dock assembled from a combination of tall and short hollow airtight floatation units." Doc. 82 at 8.

Judge Oliver, however, specifically rejected the argument that the flotation units must be "hollow," stating:

... [the defendant] is *not* asking the court to look to the specification to clarify the meaning of the term "floatation unit" as it is used in the context of the entirety of the invention claimed in the '833 patent. It is simply asking the court to look to the specification to limit the phrase to one embodiment of the invention. As the Federal Circuit has explained, using the specification in this way does not aid in a court's interpretation of a claim term as it does not "shed[ ] light on either the meaning of the term to the inventor, or the common meaning of the term to one of skill in the art." Accordingly, the court does not find that the term "hollow" is necessary in order to clarify the meaning of "floating unit."

Ocean Innovations, Inc., et al. v. Archer, et al., Case No. 5:98CV1515, slip op. at 12 (N.D.Ohio Sept. 26, 2003) (citation omitted) (emphasis in original). The Court will give deference to Judge Oliver's prior legal conclusion in the *Zeppelin* case. *See* Mendenhall v. Cedarapids, Inc., 5 F.3d 1557, 1570 (Fed.Cir.1993) ("deference should be given by one court to prior decisions of other tribunals on the same legal issue").

The Court adopts Jet Docks' construction. "Floating dock assembly" means a structure for docking a water craft assembled from individual structural constituents. *See* Doc. 72 at 2.

B. First group (set) of float (flotation) units Second group (set) of float (flotation) unitsFN3

FN3. Alternative phrasings of terms are included in parenthesis to simplify the number of terms to be construed.

The parties dispute the meaning of these terms which appear in claim 14 of the '013 patent and claim 1 of both the '833 patent and '113 patent. The relevant portion of claim 14 reads as follows:

a first group of the float units having bottom surfaces located substantially as far below the pivotable connection as their top surfaces are above the pivotable connection whereby they can rotate downward to the same extent that they can rotate upward before the respective facing side walls come into contact with each other,

a second group of float units having bottom surfaces located substantially closer to the pivotable connection whereby they can rotate downward substantially without limitation,

Plaintiffs maintain that these terms mean "a number of individual flotation units assembled together." Doc. 79 at 11. The Court finds that these terms refer to type; and adopts the defendants' proposed construction. "First group (set) of float (flotation) units" means the tall flotation units and the "second group (set) of float (flotation) units" are the short flotation units. *See* Doc. 82 at 11.

C. Tall unit Short unit

Defendants argue that "tall unit" should be construed as

a hollow airtight roughly cubical flotation unit about 16.25 inches in height having tabs projecting from each vertical edge about 5.5 to about 7.5 inches down from the top planar surface

and "short unit" means

a hollow airtight roughly cubical flotation unit about 10 inches in height having tabs projecting from each vertical edge about 5.5 to about 7.5 inches down from the top planar [surface].

Doc. 82 at 12-13. Plaintiffs contend that these terms need no interpretation and do not require any specific dimension. Doc. 79 at 11. The Court agrees. There is no reason to require any particular height whatsoever other than the tall units are taller than the short units. The Federal Circuit has considered and dismissed reading dimensions from the specification into a claim. "[W]hen a claim term is expressed in general descriptive words, it typically will not be limited to a numerical range that may appear in the written description as referring to a preferred embodiment or in other, narrower claims." RF Delaware, Inc. v. Pacific Keystone Techs., Inc., 326 F.3d 1255, 1263 (Fed.Cir.2003) (citing Modine Mfg. Co. v. U.S. Intl. Trade Commn., 75 F.3d 1545, 1551 (Fed.Cir.1996)).

D. Pair of (axially extending) arms

The Court also adopts Jet Docks' construction of this term. "Pair of axially extending arms" means two corresponding parts of the dock projecting axially from the base. *See* Doc. 72 at 13. Defendants' contend that this term means "two spaced apart rows of descending sized flotation units separated by an area open to the water between the arms" Doc. 82 at 17. The Court finds the defendants' contention unpersuasive and lacking in merit. Taken together the common ordinary meanings of "pair" and "arm" say nothing about an area between the arms being open to the water. Nor do the dictionary definitions say anything about rows of descending sized flotation units.

E. Guiding surface, guide surface

Plaintiffs argue that these two terms have the same meaning and should be construed as "a surface of the dock that engages the bottom of the watercraft and guides it." Doc. 79 at 14. Defendants contend that these terms are limited by the prosecution history of the '050 patent. They argue that the proper definition for the term "guiding surface" or "guide surface" should be "[t]he surface defined by the planar uppermost surface of the flotation units constituting the spaced apart arms and the planar top surface of the member connecting the spaced apart arms." Doc. 82 at 15.

The Court rejects the defendants construction of these terms. As Jet Dock points out:

Claim 3 of the '050 patent was amended by changing the description of the guiding surface that engages the bottom of the water craft from being "contoured to guide the water craft lengthwise as it is driven onto the dock" to having "a non-linear contour when viewed [looking] lengthwise of the assembly to guide the water craft lengthwise as it is driven onto the dock." The comments made to the examiner pointed out that the reference he relied on was entirely flat and so could not guide the craft as it was docked.

Doc. 89 at 7; *see also* Doc. 82 at Ex. G. "Guiding surface, guide surface", therefore, means that portion of the dock that engages the water craft and guides the water craft. *See* Doc. 72 at 17.

F. Pair of spaced apart support arms

The Court finds that the plaintiffs' proposed construction of this term is correct. "Pair of spaced apart support arms" means two corresponding parts of the dock projecting from the base and spaced apart. *See* Doc. 72 at 20. Defendants' argue that this term has the same meaning as "pair of axially extending arms."

The defendants' proposed definition of this phrase fails for the same reasons as their proposed definition of "pair of axially extending arms."

G. Member Bridging unit

Plaintiffs argue that these two terms have the following meanings:

Member: "an element connected between the arms to keep them parallel."

Doc. 79 at 16.

Bridging Unit: "an element between the arms that provides a pathway for, *e.g.,* a water craft."

Doc. 89 at 11. Defendants contend "member" is "a constituent part of a whole;" FN4 and "bridging unit" is "the upside down short floatation unit." Doc. 82 at 19.

FN4. *Webster's Third New International Dictionary* 1408 (1986).

Plaintiffs agree that the proper dictionary definition of "member" is "a constituent part of a whole." They argue, however, that a review of the text surrounding the claim is necessary. *See* Altiris, 318 F.3d at 1374. Claim 2 of the '833 patent includes the following step which defines the function of the member:

providing a connecting member between the arms to keep the arms a selected distance apart at said one end of the dock.

The Court concludes that "member" means an element connected between the arms to keep them parallel. *See* Doc. 72 at 21.

As Judge Oliver noted at page 10 of his *Markman* order in the *Zeppelin* case, *Webster's II New Riverside University Dictionary* defines "unit" as: "[a]n individual, group, structure, or other entity regarded as an elementary structural or functional constituent of a whole." *Webster's II New Riverside University Dictionary* 1262 (1994). The definition of "bridge" is "a structure carrying a pathway or roadway over a depression or obstacle." *Merriam-Webster's Collegiate Dictionary, available at* http://www.MerriamWebster.com. As applied to the patents in suit, "bridging unit" means an element connected between the arms to keep them parallel to each other. *See* Doc. 72 at 8.

H. Craft receiving surface

Plaintiffs argue that the final claim term pending consideration by this Court, *i.e.,* "craft receiving surface," should be construed as "that portion of the dock that engages the water craft on opposite sides of its keel to stabilize the craft against rocking movement." Defendants contend that this term means "the surface defined by the planar uppermost surfaces of the combined flotation units." The Court adopts Jet Docks' construction. *See* Doc. 72 at 20 and Doc. 79 at 17.FN5

FN5. The Court will, therefore, consider the V-shaped units during the trial on the merits. *See* Memorandum of Opinion and Order entered on December 7, 2004, granting in part plaintiffs' motion for leave to refile first amended complaint and Doc. 102 at 2.

This construction is in agreement with Judge Oliver's opinion in the summary judgment ruling in the *Zeppelin* case. While the defendant in his case did not dispute this element of the claim, Judge Oliver concluded that a craft receiving surface has "a slot or trough into which craft having a V-shaped hull may be driven." *Ocean Innovations, Inc., et al. v. Archer, et al.,* Case No. 5:98CV1515, slip op. at 11 (N.D. Ohio June 16, 2004). In his discussion on the doctrine of anticipation, Judge Oliver also rejected the notion that a dock assembled to form a solid square without such a slot or trough has a craft receiving surface. *See id.* at 22.

III. Conclusion

Having construed the claims, the next step in this litigation is to determine validity and infringement. The parties and lead counsel of record are reminded that the dispositive motion deadline is *December 28, 2004, i.e.,* three (3) weeks from the issuance of the within *Markman* Order. *See* Order (Doc. 101) entered on February 27, 2004.

IT IS SO ORDERED.

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