United States District Court,
S.D. New York.

YANOVA, INC and Yanova,
Ltd Plaintiff.
v.
Richard JOHNSON, Lite-Pop, LLC., Candy Manufacturer, Inc. and Five Star Bands, Inc,
Defendants.

No. 03 Civ.8671 HB

Jan. 12, 2005.

OPINION & ORDER

BAER**, J.**

On September 16, 2004, the United States Patent and Trademark Office (PTO) issued United States patent 6,619,816 ("the '816 patent), entitled " "Illuminated Novelty Confection," to Richard Johnson. The '816 patent relates to a "light up" lollipop. Plaintiff, Yanova, Inc, a Delaware corporation, and Yanova, Ltd. (collectively, "Yanova"), a corporation organized under the laws of Hong Kong, brought this action against defendants, Richard Johnson ("Johnson"), president of Lite-Pop, Lite-Pop, a California LLC, Candy Manufacturer, a corporation organized under the laws of Hong Kong, and Five Star Brands, a California corporation (collectively, "Defendants") for (1) declaratory judgment of non-infringement; (2) declaratory judgment of patent invalidity; (3) declaratory judgment of patent unenforceability; (4) declaratory judgment of patent mismarking; and, (5) tortious interference with prospective business relationships; (6) unfair competition; (7) state intent to deceive; and, (8) state deceptive acts and practices.

The parties dispute the meaning of certain terms in the claims. A *Markman* hearing was held on December 2, 2004 to discuss the meaning of these terms. *See* Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). The Court construes the terms in the context of the asserted claims as follows.

I. GENERAL CLAIM CONSTRUCTION STANDARDS

Claim construction is a matter of law. Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed.Cir.1995) (*en banc*), *aff'd* 517 U.S. 370 (1996). The process begins with the language of the claims itself, which is to be read and understood as it would be by a person of ordinary skill in the art. Dow Chem. Co. v. Sumitomo Chem. Co., 257 F.3d 1364, 1372 (Fed.Cir.2001); Hockerson-Halberstadt, Inc. v. Avia Group Internat'l, Inc., 222 F.3d 951, 955 (Fed.Cir.2000); *see also* Markman, 52 F.3d at 986 ("[T]he focus [in construing disputed terms in claim language] is on the objective test of what one of ordinary skill in the art at the time of the invention would have understood the term[s] to mean."). In construing the claims, the Court may examine both intrinsic evidence (*e.g.,* the patent, its claims, the specification and file history) and, if necessary, extrinsic evidence (*e.g.,* expert reports, testimony, and anything else). Pitney Bowes, Inc.

v. Hewlett-Packard Co., 182 F.3d 1298, 1309 (Fed.Cir.1999). In interpreting the disputed terms, it is well settled that a court should look first to the intrinsic evidence. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). Extrinsic evidence is considered only where the intrinsic evidence does not provide a sufficient description to resolve ambiguities in the scope of the claim. *See* Vitronics, 90 F.3d at 1583; Johnson Worldwide Assoc., Inc. v. Zebco Corp., 175 F.3d 985, 989 (Fed.Cir.1999). The definition of a claim term may be altered from its ordinary and accustomed meaning if "clearly and deliberately" set forth in the intrinsic evidence, such as the written description and prosecution history. *K-2 Corp.,* 191 F.3d at 1363. For instance, arguments made during the prosecution of a patent application to distinguish the claimed invention over the prior art may limit the scope of construction of the claim term, and should be given the same weight as claim amendments. Elkay Mfg. Co. v. Ebco Mfg. Co., 192 F.3d 973, 979 (Fed.Cir.1999); Southwall Techns., Inc. v. Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.1995).

III. DISCUSSION

The parties here seek claim construction of the term: (a) "light device," (b) "a light transmission element attached to the light device," and (c) "reflective inner coating," which are terms that appear throughout the '816 patent. Claims 2 through 5 are dependent upon Claim 1, FN1 and Claims 7 through 10 are dependent upon Claim 6. FN2 The first two terms, "light device" and "a light transmission element attached to the light device," appear in both independent claims 1 and 6, while the third term, "reflective inner coating," appears only in independent Claim 1 and dependent Claim 10.

FN1. Claim # 1 reads as follows:
1. An illuminated confection assembly comprising the following

a light device
a light transmission element attached to the light device, the light transmission element including a *reflective inner coating;* and
an edible confection having an interior portion that is adapted and construed to receive light from the light device via the light transmission element;
whereby light from the light device passes from the interior portion of the confection to the ambient atmosphere.
FN2. Claim # 6 reads as follows:
6. An Illuminated confection assembly comprising the following:

a light device;
a light transmission element attached to the light device, the light transmission element including a hollow tube with a piece of indicia-bearing sheet material rolled up and slid inside the tube; and
an edible confection attached to the light transmission element, the confection having an interior portion that is adapted and constructed to receive light from the light device via the light transmission element;
whereby light from the light device passes from the interior portion of the confection to the ambient atmosphere.
A. "*Light device*"

Yanova contends, pursuant to the prosecution history, the ordinary meaning of the term, and text of the

Claim itself, "Light Device" should be defined narrowly:

[A] fully operative and self-contained equipment for generating light (e.g. as a flashlights or pen light) and not just a light source such as a bulb or LED.

Yanova's Memorandum in Support of Motion for Proposed Claim Construction ("Yanova Memo") at 15. Defendants argue that Yanova places multiple impermissible limitations on the ordinary meaning of the term when a broad construction of the term is necessary. According to Defendants, the term should be construed as:

[A] piece of equipment or mechanism that is a source of light perceptible to the human eye.

Defendants Memorandum In Opposition to Plaintiff and Counterclaim Defendants' Motion for Proposed Claim Construction ("Def's Memo") at 9-10.

The term "light device" is not limited to certain, specifically enumerated, devices such as flashlights or light bulbs or a switch and battery. The term consists of two parts, (i) light and (ii) device. First, Merriam Webster's Dictionary defines "light" as "[s]omething that makes vision possible; the sensation aroused by stimulation of the visual receptors; an electromagnetic radiation in the wavelength range including infrared, visible, ultraviolet, and X rays and traveling in a vacuum with a speed of about 186,281 miles (300,000 kilometers)." Merriam Webster's Dictionary at *http://www .m-w.com/cgi-bin/dictionary* (last visited at 12/02/2004). Similarly, the American Heritage Dictionary, Fourth Edition (2000), defines "light" as "electromagnetic radiation that has a wavelength in the range from about 3,900 to about 700 angstroms and that may be perceived by the unaided, normal human eye."

Second, the term, "device," as defines by Webster's II New Riverside University Dictionary (1994), means "[s]omething constructed or devised for a particular purpose, esp. a machine used to perform one or more relatively simple tasks." The America Heritage Dictionary (2000) similarly defines "device" as "a contrivance or an invention serving a particular purpose, especially a machine used to perform one or more relatively simple tasks." In addition, the McGraw-Hill Dictionary of Scientific and Technical Terms, Sixth Edition (2003), defines "device" as "[a] mechanism, tool or other piece of equipment designed for specific uses.

With the plain meaning of the terms "light" and "device" as guides, the term "light device" in the asserted claims of the patents-at-issue is construed to mean:

A piece of equipment or mechanism that is a source of light perceptible to the human eye."

(Taffert, Tr. 14:17-15:2). The definition is consistent with the claim language, which never disavows the nature or type of equipment or mechanism employed, or the means by which the device acts as a source of light.

B. "*A light transmission element attached to the light device*"

According to Yanova, pursuant to the prosecution history and the ordinary meaning of the phrase, "a light transmission element attached to the light device" should be construed as:

[A]n element that transmits the light from the light device outside the periphery of a confection to a point interior to the periphery of the confection, that element being attached to the light device at one end and the edible confection at the other end.

Yanova Memo at 15. Conversely, Defendants contend that Yanova's definition impermissibly limits the ordinary meaning of the phrase and should be construed as:

[A] part of a composite entity that allows light to pass or be conveyed to the "light device."

Def's Memo at 13.

The term "a light transmission element attached to the light device," consists of three additional terms, (i) "transmission," (ii) "element," and (iii) "attached."

First, "transmission" means "an act process or instance of transmitting," "to cause or allow to be spread" and "to cause to pass or be conveyed through space or a medium [or] to send out (a signal) either by radio waves or over a wire." Webster's II New Riverside University Dictionary (1994). The root of the word transmission is "transmit." Transmit, as defined by American Heritage Dictionary, Fourth Edition (2000), means "[t]o cause to spread; pass on."

Second, the American Heritage Dictionary, Fourth Edition (2000), defines the term element as "[a] fundamental, essential, or irreducible constituent of a composite entity. Third, the American Heritage Dictionary, Fourth Edition (2000), and Webster's II New Riverside University Dictionary (1994), both define the term "attached" as "[t]o fasten, secure, or join."

Accordingly, it would be inapposite to limit the terms to include only the transmission of light from a point outside the confection to inside the confection. Consistent with the plain meaning of "light device," *see* supra at 3, "a light transmission element attached to the light device" in the asserted claims of the patents-at-issue is construed to mean:

[A] part of a composite entity that allows light to pass or be conveyed to the light device.

C. "*Reflective inner coating*"

Consistent with the Claim itself, the prosecution history and the ordinary meaning of the Claim terms, Yanova contends that "reflective inner coating" must be construed as:

[A] coating applied to the inside of a light transmission element that reflects light interiorly from a light device to prevent or minimize light dissipation as the light travels along the light transmission element to the edible confection.

Yanova Memo at 15. However, according to Defendants, the ordinary meaning of the claim language and intrinsic evidence when viewed as a whole requires that "reflective inner coating" be construed as:

[A] coating may be a texture or appearance of a surface, or may be a layer of a substance that is spread over a surface.

Def's Memo at 16-18.

"Reflective inner coating" consists of three parts: (i) reflective, (ii) inner, and (iii) coating. First, as defined by American Heritage Dictionary, Fourth Edition (2000), "reflective" means "[o]f, pertaining to, produced by, or resulting from reflection." As a verb, "reflective" means, "[t]o throw or bend back (light for example) from a surface." The form, direction, method, purpose, or style of reflection is never delineated and never limited.

Second, Claim 1 states that the "light transmission element" *include* a "reflective inner coating." ('816 Patent, Claim 1, col. 5, 24-26). Therefore, contained within the "light transmission element" is the "reflective inner coating."

Third, the term, "coating," as defined by the American Heritage Dictionary, Fourth Edition (2000), means "a layer of material covering something else." Analogous to the term "reflective coating," "mirror coating," as defined by McGraw-Hill Dictionary of Scientific and Technical Terms, Sixth Edition (2003), means "a thin film of highly reflective material spread over a correctly shaped glass surface to produce a mirror ... also known as reflective coating."

Consistent with its plain meaning, the term "reflective inner coating" in the asserted claims of the patents-at-issue is construed to mean:

[A] thin film of highly reflective material spread over a correctly shaped glass surface to produce a mirror contained within the light transmission element.

IV. CONCLUSION

The term "light device" in the asserted claims of the patents-at-issue is construed to mean "a piece of equipment or mechanism that is a source of light perceptible to the human eye." The term "a light transmission element attached to the light device" in the asserted claims of the patents-at-issue is construed to mean "a part of a composite entity that allows light to pass or be conveyed to the light device." The term "reflective inner coating" in the asserted claims of the patents-at-issue is construed to mean "a thin film of highly reflective material spread over a correctly shaped glass surface to produce a mirror contained within the light transmission element."

IT IS SO ORDERED.

S.D.N.Y.,2005.
Yanova, Inc. v. Johnson

Produced by Sans Paper, LLC.