United States District Court,
N.D. West Virginia, at Martinsburg.

PLX, INC,
Plaintiff.
v.
PROSYSTEMS, INC., James L. Lyons and Patricia Lyons,
Defendants.

Civil Action No. 3:03CV32

Jan. 18, 2005.

Jeffrey I. Kaplan, Michael R. Gilman, Timothy X. Gibson, Kaplan & Gilman, LLP, Woodbridge, NJ, Tammy Mitchell Bittorf, Trump & Trump, Martinsburg, WV, for Plaintiff.

Alan M. Fisch, J. Jay Guiliano, Jason F. Hoffman, Jennifer R. Bagosy, Kelly A. Clement, Kenneth N. Hickox, Jr., Howrey, Simon, Arnold & White, LLP, Washington, DC, Wm. Richard Mccune, Jr., Wm. Richard McCune, JR.,, PLLC, Martinsburg, WV, for Defendants.

CLAIM CONSTRUCTION ORDER

W. CRAIG BROADWATER**, District Judge.**

I. Introduction

Plaintiff PLX, Inc., ("Plaintiff"), a New York corporation, filed this action in this court on April 15, 2003, against Prosystems, Inc., a Maryland corporation with a principal place of business in Kearneysville, West Virginia, ("Prosystems"), James J. Lyons, and Patricia Lyons ("Lyons" or collectively "Defendants"), alleging infringement of two United States patents owned by plaintiff. Pending before the Court is the issue of claim construction pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). The parties appeared before the Court for a Markman hearing on May 3, 2004. As set forth below, the Court hereby adopts the following claim construction.

II. Procedural and Factual Background

This action alleges that Defendants are infringing on two United States Patents owned by Plaintiff. Plaintiff's two patents, numbers 5,122,901 (the "901 patent") and 5,335,111 (the "111 patent") involve technology related to retroreflector assemblies and mounting assemblies. A retroreflector is a structure which is "composed of three reflective panels (mirror panels) adhered together at right angles to each other so that a light beam entering the retroreflector and the same, reflected light beam which then leaves the retroreflector, travel in directions essentially parallel to each other." (Pl's.Compl.para. 13.) Defendants filed a motion to dismiss on May 9, 2003 arguing that the complaint failed to state a claim upon which relief may be granted. On March 26, 2004, the Court granted in part and denied in part Defendants' motion to dismiss. Plaintiff

filed its opening brief on claim construction on March 15, 2004. On the same day, March 15, 2004, Defendants filed a motion for claim construction. On April 5, 2004, the parties filed responsive briefs to the motions for claim construction. The parties filed reply briefs on April 19, 2004. On May 3, 2004, the parties appeared for an oral argument on claim construction. The Court has considered the pleadings and the applicable law on point. Thus, the issue of claim construction is ripe for decision.

III. Applicable Law

"Determination of patent infringement requires a two-step analysis: (1) the scope of the claims must be construed; and (2) the allegedly infringing device must be compared to the construed claims ." C.R. Bard, Inc. v. U.S. Surgical Corp., 388 F.3d 858, 861 (Fed.Cir.2004) (quoting Mars, Inc. v. H.J. Heinz Co., 377 F.3d 1369, 1373 (Fed.Cir.2004)). "The interpretation and construction of patent claims, which define the scope of the patentee's rights under the patent, is a matter of law exclusively for the court." Markman v. Westview Instruments, Inc., 52 F.3d 967, 970-71 (Fed .Cir.1995). The Court must "[f]irst ... look to the words of the claims themselves, both asserted and nonasserted, to define the scope of the patented invention." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996) (citing Bell Communications Research, Inc. v. Vitalink Communications Corp ., 55 F.3d 615, 620 (Fed.Cir.1995)). "In the absence of an express intent to impart a novel meaning to claim terms, an inventor's claim terms take on their ordinary meaning." Teleflex, Inc. v. Ficosa North America Corp., 299 F.3d 1313, 1325 (Fed.Cir.2002) (citing York Prods. Inc. v. Cent. Tractor Farm & Family Ctr., 99 F.3d 1568, 1572 (Fed.Cir.1996)). The Court should also "indulge a 'heavy presumption' that a claim term carries its ordinary and customary meaning." *Id*. (quoting CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 1366 (Fed.Cir.2002)). However, should an inventor choose to be his own lexicographer, those specifically defined terms are permissible as long as the "special definition of the term is clearly stated in the patent specification or file history." Vitronics Corp., 90 F.3d at 1582 (citing Hoechst Celanese Corp. v. BP Chems. Ltd., 78 F.3d 1575, 1578 (Fed.Cir.1996)). Next, the Court should "always ... review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning." *Id*. Hence, "[c]laims must be read in view of the specification, of which they are a part." *Id*. (quoting Markman, 52 F.3d at 979). "[S]pecification is always highly relevant to the claim construction analysis." Id Finally, the Court "may also consider the prosecution history of the patent, if in evidence." *Id*. (citing Markman, 52 F.3d at 980). In most claim construction decisions, "an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term." *Id*. at 1583. "In such circumstances, it is improper to rely on extrinsic evidence." *Id*. (citations omitted).

IV. Claim Construction

The parties have identified the following claims requiring construction from the 901 patent: claim numbers 1 and 27. The parties have also identified the following claims requiring construction from the 111 patent: claim numbers 1, 25, and 41.

A. ***The 901 Patent***

Claim number one of the 901 patent states as follows:

A retroreflector assembly, comprising:

a retroreflector comprising three plates having optically flat reflecting faces disposed at right angles to each other, wherein each of said plates has first and second sides at right angles to each other, said first side of

each of said plates abutting and being joined to said reflecting face of said plate adjacent to said abutting plate; and

a receptacle adapted for placing said retroreflector therein having a substantially conically configured interior, said conical interior having three radially extending grooves, each of said grooves for receiving said first side of one of said abutting plates and said second side of said adjacent plate for maintaining said reflecting faces of said plates at right angles to each other.

Plaintiff contends that the Court should construe the claim such that "a receptacle adapted for placing said retroreflector therein" is defined as "one that is suited for receipt therein of a retroreflector." Plaintiff asserts that "having a substantially conically configured interior" should be defined as "possessing an interior which is caused to conform in large part, but not wholly, to the shape of a cone." Plaintiff claims that "said conical interior having three radially extending grooves" should be defined as "the above defined interior having three radially extending long narrow channels or depressions." Defendants counter that "receptacle" should be defined as a "prefabricated receiving structure" and "groove" should be defined as a "three walled channel."

After reviewing the claim terms and the patent specification, the Court concludes that the inventor here has not expressed an intent to impart a novel meaning to the claim terms such that the Court could construe "receptacle" to mean a "prefabricated receiving structure" and "groove" to mean a "three walled channel." As stated above, the Court should "indulge a 'heavy presumption' that a claim term carries its ordinary and customary meaning." Teleflex, 299 F.3d at 1325. Therefore, the Court holds that receptacle and groove shall be given their ordinary and customary meanings. Hence, a "receptacle" is defined as "one that receives and contains something: container, repository." Webster's Third New International Dictionary, Merriam-Webster 1894 (1986). A "groove" is defined as "a long narrow hollow or channel made artificially in a surface." *Id.* at 1001. "A receptacle adapted for placing said retroreflector therein" is not limited to a "prefabricated structure" nor is "groove" limited to a three walled channel, as Defendants urge.

Claim number 27 of the 901 patent states as follows:

For a retroreflector having three plates having optically flat reflecting faces disposed at right angels to each other, a receptacle adapted to receive said retroreflector, said receptacle comprising a member having a substantially conically configured interior, said conical interior having three radially extending grooves and three radially extending substantially flat surfaces wherein each of said flat surfaces is located between two of said grooves for maintaining said reflecting faces of said plates right angels to each other.

Plaintiff contends that (1) "a receptacle adapted to receive said retroreflector" should be defined as "one which is suited for receipt of a retroreflector"; (2) "said receptacle comprising a member" should be defined as "the one composed of or constituting a structure"; (3) "having a substantially conically configured interior" should be defined as "the one/structure possessing an interior which is caused to conform in large part but not wholly, to the shape of a cone"; (4) "said conical interior having three radially extending grooves" should be defined as "the above defined interior having three radially extending long narrow channels or depressions"; (5) "three radially extending substantially flat surfaces" should be defined as "the above defined interior having three radially extending surfaces which are in large part, but not wholly, smooth and even"; and (6) "wherein each of said flat surfaces is located between two of said grooves" should be defined as "each one of the above defined surfaces having a long narrow channel or depression on either side."

Defendants counter that the Court should limit Claim 27 "to require a structure whereby one side of a retroreflector plate is joined to the reflective face of another plate." (Defs'. Br. Supp. Claim Constr. at 8.) Specifically, Defendants urge the Court to "limit Claim 27 to require a structure whereby one side of a retroreflector plate is joined to the reflective face of another plate." (*Id*.) Defendants also maintain that "receptacle" should be defined as a "prefabricated receiving structure" and "groove" should be defined as a "three-walled channel."

After reviewing the claim terms and the patent specification, the Court concludes that the inventor here has not expressed an intent to impart a novel meaning to the claim terms such that the Court could construe "receptacle" to mean a "prefabricated receiving structure" and "groove" to mean a "three walled channel." The Court should "indulge a 'heavy presumption' that a claim term carries its ordinary and customary meaning." Teleflex, 299 F.3d at 1325. Therefore, as defined above, the Court holds that receptacle and groove shall be given their ordinary and customary meanings. Moreover, there is no indication that the inventor intended to limit the scope of claim 27. Thus, the Court holds that "retroreflector having three plates having optically flat reflecting faces disposed at right angles to each other" means simply that. Defendants' argument that the Court should add the phrase "said first side of each of said plates abutting and being joined to said reflecting face of said plat adjacent to said abutting plate" to the claim definition is rejected.

B. ***The 111 Patent***

Claim number one of the 111 patent states as follows:

A retroreflector assembly comprising:

a retroreflector comprising three plates having optically flat reflective surfaces disposed at right angles to each other, wherein each of said plates has first and second sides disposed at right angles to each other, said first side of each of said plates abutting and being joined to said reflective surface of said plate adjacent to said abutting plate; and

a mounting member adapted for mounting said retroreflector thereon, comprising first and second receiving surfaces disposed at right angles to each other, wherein said first receiving surface has adhered thereto a portion of said first side of one of said plates and said second receiving surface has adhered thereto a portion of said second side of said one of said plates.

There appears to be little dispute with this claim. The parties' definitions are very similar to one another. Indeed, Plaintiff concedes that "PLX agrees that these limitations are to be read as Prosystems states." (Pl's. Br. Resp. at 15.) Thus, the Court adopts the construction offered by Defendants. The phrase "said first receiving surface has adhered thereto a portion of said first side of one of said plates and said second receiving surface has adhered thereto a portion of said second side of said one of said plates" shall be defined as "the first contact surface is attached to one side of a retroreflector plate and the second contact surface is attached to a second side of the same retroreflector plate."

Claim number 25 of the 111 patent states as follows:

For a retroreflector having three plates having optically flat reflective surfaces disposed at right angles to

each other, a mounting member adapted for mounting said retroreflector thereon along one of said three plates, said mounting member comprising first and second receiving surfaces for mounting said one of said plates and means for attaching said mounting member to a support.

Plaintiffs assert that the phrase "a mounting member adapted for mounting said retroreflector thereon along one of said three plates" should be defined as "a retroreflector is attached to a structure using only one of the retroreflector's three plates." Plaintiff further asserts that the phrase "said mounting member comprising first and second receiving surfaces for mounting said one of said plates" should be defined as "and the structure has a first contact surface and a second contact surface onto which the single plate of the retroreflector is attached." Defendants counter that the phrase "retroreflector having three plates having optically flat reflective surfaces disposed at right angles to each other" should be defined as "a reflecting structure comprising three plates having optically flat reflecting faces disposed at right angles to each other, wherein each of said plates has first and second sides at right angles to each other, said first side of each of said plates abutting and being joined to said reflecting face of said plate adjacent to said abutting plate." Defendants also contend that the phrase "mounting member adapted for mounting said retroreflector thereon along one of said three plates" should be defined as "a structure to position a retroreflector thereon using only one of three retroreflector plates." Finally, Defendants contend that the phrase "comprising first and second receiving surfaces for mounting said one of said plates" should be defined as "having a first contact surface and a second contact surface for attachment to only one of the three retroreflector plates."

After reviewing the claim terms, the patent specification, and the prosecution history, the Court concludes that the inventor here has not expressed an intent to impart a novel meaning to the claim terms such that the Court could construe the terms "adapted" as Defendants urge. Accordingly, the term "adapted" shall be defined using its customary and ordinary meaning. The Court adopts Plaintiff's definition: "adapted" shall mean "to make suitable or fit (as for a particular use, purpose or situation)." Webster's Third New International Dictionary, Merriam-Webster at 23. Plaintiff agrees, moreover, with Defendants definition of the term "receiving surfaces." (See Pl's. Br. Claim Constr. at 12 (stating "plaintiff agreed with defendants regarding the ordinary meaning of the following terms ... 'receiving surface(s)' ")). Thus, "receiving surface" shall mean "contact surface" and the phrase "comprising first and second receiving surfaces for mounting said one of said plates" shall mean "having a first contact surface and a second contact surface for attachment to only one of the three retroreflector plates."

Claim number 41 of the 111 patent states as follows:

A method of assembling a retroreflector assembly, comprising the steps of:

assembling a retroreflector by disposing three plates having optically flat reflective surfaces, at right angles to each other, said plates further having first and second perpendicular sides;

adhering said retroreflector to a mounting member by:

a) attaching a portion of said first side of one of said plates to a first receiving surface of said mounting member; and

b) attaching a portion of said second side of said one of said plates to a second receiving surface of said mounting member, said second receiving surface being perpendicular to said first receiving surface.

Plaintiff asserts that the phrase "attaching a portion of said first side of one of said plates to a first receiving surface of said mounting member" should be defined as "a structure for mounting the retroreflector has a first contact surface that through adhesion is attached to a portion of a first side of one of the reflective plates of a retroreflector." Plaintiff also claims that the phrase "attaching a portion of said second side of said one of said plates to a second receiving surface of said mounting member, said second receiving surface being perpendicular to said first receiving surface" should be defined as "the above structure for mounting the retroreflector also having a second contact surface, which is perpendicular to the first contact surface, the second contact surface through adhesion being attached to a portion of a second side of the same reflective plate of the retroreflector." Defendants counter that the phrase "assembling a retroreflector by disposing three plates having optically flat reflective surfaces, at right angles to each other" should be defined as "assembling a reflecting structure comprising three plates having optically flat reflecting faces disposed at right angels to each other, wherein each of said plates has first and second sides at right angles to each other, said first side of each of said plates abutting and being joined to said reflecting face of said plate adjacent to said abutting plate." Defendants also counter that the phrases "attaching a portion of said first side of one of said plates to a first receiving surface of said mounting member" and "attaching a portion of said second side of said one of said plates to a second receiving surface of said mounting member, said second receiving surface being perpendicular to said first receiving surface" should be defined as "affixing by contact a region of a second side of the same particular retroreflector plate to a second contact surface of the positioning structure, whereby the second contact surface is perpendicular to the first contact surface."

After reviewing the claim terms, the patent specification, and the prosecution history, the Court concludes that the inventor here has not expressed an intent to impart a novel meaning to the claim terms such that the Court could construe the terms as Defendants urge. Thus, the Court adopts the definition of "receiving surface" as outlined in claim 25 above.

V. Decision

It is therefore **ORDERED** that

1. The disputed claims shall be defined as described in the text of this decision, and

2. The parties shall appear for a Scheduling Conference on Monday, February 7, 2005 at 2:30 p.m.

It is so **ORDERED.**

The Clerk is directed to transmit true copies of this Order to all counsel of record herein.

N.D.W.Va.,2005.
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