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

LASERMAX, INC,
Plaintiff.
v.
Howie GLATTER,
Defendant.

No. 01CIV6500LMM

Aug. 17, 2005.

MEMORANDUM AND ORDER

MCKENNA**, J.**

LaserMax, Inc. ("LaserMax" or "plaintiff") is suing Howie Glatter ("Glatter" or "defendant") alleging willful infringement of United States Patent No. 6,025,908 (" '908 patent") under 35 U.S .C. s.s. 271(a), 284. Before the Court is the issue of claim construction. The parties briefed the issue, urging definitions of disputed claim terms, and appeared for a *Markman* hearing, held on July 21, 2005, in which oral argument was heard as to those terms which remained in dispute at the conclusion of the briefing.

Background

A. *Procedural History*

LaserMax brought the instant lawsuit in the Western Disrict of New York in February 2001, and it was subsequently transferred to this Court on July 18, 2001. On April 1, 2004, LaserMax moved for summary judgment on the issues of infringement and willfulness, or in the alternative, for a *Markman* hearing. On October 28, 2004, this Court denied plaintiff's summary judgment motion, and ordered briefing to determine whether a *Markman* hearing was necessary. *See* LaserMax, Inc. v. Glatter, No. 01 Civ. 6500, 2004 WL 2423801 (S.D.N.Y. Oct. 28, 2004).

B. *Brief Summary of the Technology*

The title of the '908 Patent is "Alignment of Optical Elements in Telescopes Using a Laser Beam with a Holographic Projection Reticle." Telescopes contain optical elements, which are usually lenses or mirrors, and sometimes prisms. The optical elements move out of alignment for a variety of reasons, including shifting during transport and movement due to temperature changes. As a result, they need to be realigned for the telescope to provide a clear image. The invention at issue is a method and apparatus for aligning the optical elements in a telescope. In the October 28 Memorandum and Order, this Court gave a brief description of the technology at issue as follows. FN1

FN1. Claim construction was not the subject of the October 28 Memorandum and Order. The above description is provided for background purposes and has no legal bearing on the discussion below.

The patented device, a "holographic collimator," is used in the alignment of a telescope's lense and mirror elements. The method and apparatus of the '908 patent use a laser beam to project a "reticle" image, preferably a crosshair with gradations and a bright center surrounded by a concentric ring, onto the elements of a telescope. Once projected onto an element, that image can be used to determine whether the element is centered and aligned. If an element is not properly centered or aligned, the components of the projected image serve as fixed coordinates for measuring and making the necessary adjustments.
Lasermax, 2004 WL 2423801, at *1 (citations omitted).

Discussion

A. *Claim Construction Procedure*

In evaluating a patent infringement action, a court must conduct a two-step analysis which involves: (a) "determining the meaning and scope of the patent claims asserted to be infringed;" and (b) "comparing the properly construed claims to the device accused of infringing." Markman v. Westview Instruments, 52 F.3d 967, 976 (Fed.Cir.1995). The instant opinion focuses on the first step, claim construction. *See id*.

This Court has the benefit of the Federal Circuit's recent decision, Phillips v. AWH, No. 03-1269, 2005 WL 1620331, at (Fed.Cir. Jul. 12, 2005) (en banc), as guidance in the process of claim construction. Claim construction begins with an objective "inquiry into how a person of ordinary skill in the art understands a claim term." Phillips, 2005 WL 1620331, at *5. If the "ordinary meaning of claim language as understood by a person of skill in the art [is] readily apparent even to lay judges," claim construction will involve "little more than the application of the widely accepted meaning of commonly understood words." *Id*. at *6. However, when the claim term is not "readily apparent," the court must look to " 'sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean." ' *Id*. (quoting Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1116 (Fed.Cir.2004)).

In interpreting a term in a patent claim, the court must first look to the patent itself, including the claims, specification, and prosecution history (if in evidence). *See* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). The court may also look at extrinsic evidence "concerning relevant scientific principles, the meaning of technical terms, and the state of the art ." Innova, 381 F.3d at 1116 (citations omitted). However, in *Phillips,* the Federal Circuit, sitting en banc, held that "while extrinsic evidence can shed useful light on the relevant art ... it is less significant than the intrinsic record in determining the legally operative meaning of the claim language." *Id*. at (internal citations omitted). Furthermore, although courts "must look to the language of the claims to determine 'what the applicant regards as his invention," ' *id*. at (quoting 35 U.S.C. s. 112), the *Phillips* court found that "the person of ordinary skill in the art is deemed to read the claim term not in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id*. at *5.

The *Phillips* court specifically addressed the role of a patent's specification in claim interpretation, holding that a court may "rely heavily on the [specification] for guidance as to the meaning of the claims." Phillips, 2005 WL 1620331 at *9. It reasserted that the specification is " 'the primary basis for construing claims," ' *id*. at (quoting Standard Oil Co. v. Am. Cyanamid Co., 774 F.2d 448, 452 (Fed.Cir.1985)), renouncing the methodology advocated in Texas Digital Sys., Inc. v. Telegenix, Inc., 308 F.3d 1193 (Fed.Cir.2002), which

had given greater emphasis to dictionary definitions as a source for determining the "ordinary meaning" of claim terms. FN2 *See id*. at *13. The rationale is that "[t]he claims ... do not stand alone. Rather they are part of a 'fully integrated written instrument,' consisting principally of a specification that concludes with the claims." *Id*. at (quoting Markman, 52 F.3d at 978-79). In particular, if the specification evidences a "special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess" or the specification "reveal[s] an intentional disclaimer, or disavowal, of claim scope by the inventor ... the inventor's intention, as expressed in the specification, is regarded as dispositive." *Id*. at *8. Thus, the claims must be read in view of, and construed so as to be consistent with, the specification. *See id*. at *7-8.

FN2. In Texas Digital Sys., Inc. v. Telegenix Inc., 308 F.3d 1193 (Fed.Cir.2002), the Federal Circuit held that recourse to dictionaries, treatises and encyclopedias should be conducted as a threshold step in the claim construction process, so that the court might obtain a list of ordinary and customary meanings from which an accurate meaning might be selected. *See* 308 F.3d at 1205.

While emphasizing the role of the specification, *Phillips* also reminds courts not to read undue limitations from the specification into the claims. "[T]he specification often describes very specific embodiments of the invention, [and the Federal Circuit has] repeatedly warned against confining the claims to those embodiments." *Id*. at *15. "To avoid importing limitations from the specification into the claims, it is important to keep in mind that the purposes of the specification are to teach and enable those of skill in the art to make and use the invention and to provide a best mode for doing so." *Id*. at *16. Courts must determine whether "the patentee is setting out specific examples of the invention to accomplish those goals, or whether the patentee instead intends the claims and the embodiments in the specification to be strictly coextensive." *Id*. at *16. By doing so, courts may best avoid "strictly limiting the scope of the claims to the embodiments disclosed in the specification," or "divorcing the claim language from the specification" altogether. *Id*.

In contrast to the role of the specification, the Federal Circuit placed less emphasis on the prosecution history, stating that it should be accorded limited weight because it "represents an ongoing negotiation ... rather than the final product of that negotiation" and "it often lacks the clarity of the specification." *Id*. The *Phillips* court held that, in claim construction, the prosecution history is only useful to the extent that it "inform[s] the meaning of the claim language" by demonstrating (a) "how the inventor understood the invention" or (b) "whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise need to be." *Id*. at (citing Vitronics, 90 F.3d at 1582-83).

Cognizant of the difficulties inherent in claim construction, *Phillips* suggests that courts may still look to extrinsic evidence while examining the patent itself, though limiting its influence to that of an abstract guide:

[T]here is no magic formula or catechism for conducting claim construction. Nor is the court barred from considering any particular sources or required to analyze sources in any specific sequence, as long as those sources are not used to contradict claim meaning that is unambiguous in light of the intrinsic evidence. For example, a judge who encounters a claim term while reading a patent might consult a general purpose or specialized dictionary to begin to understand the meaning of the term, before reviewing the remainder of the patent to determine how the patentee has used the term. The sequence of steps used by the judge in consulting various sources is not important; what matters is for the court to attach the appropriate weight to be assigned to those sources in light of the statutes and policies that inform patent law.

Id. at (citations omitted).

Using these principles of interpretation to inform its analysis, this Court proceeds with the claim construction at bar.

B. '908 Patent ***Claim Construction***

In their briefs, as supplemented by the *Markman* hearing, the parties outlined four disputed claim terms. Specifically, the disputed terms were (1) "telescope;" (2) "optical element in a telescope;" (3) "a method of aligning an optical element in a telescope;" and (4) "projecting a reticle image having one of a series of lines, dots, or crosshairs onto the optical element." Claim 1 of the patent contains the four disputed terms:

A method of aligning an optical element in a *telescope,* comprising:

(a) projecting a *reticle image* having one of a series of lines, dots, or crosshairs onto the optical element; and

(b) *aligning* the optical element in response to the projected reticle image.

'908 Patent at 6:30-35. FN3

FN3. Citations to the '908 Patent specification herein will reference column and line numbers from the issued patent in the format "Column(s):Line(s)."

1. "Telescope"

The first term that the parties disputed was the word "telescope ." "Telescope" appears in every claim in the patent, either expressly or by reference. Id. at 6:29-8:22. As used in the '908 Patent, this Court construes the term "telescope" to include both "reflecting telescopes," which use mirrors as optical elements, and "refracting telescopes," which use lenses as optical elements. FN4

FN4. It is also noted that prisms have been used as optical elements in both reflecting and specialized refracting telescopes. (*See Markman* Hearing, Def. Ex. B, Isaac Newton, *Optics* 422-23 (1717); Def. Ex. C, John Texreau, *How to Make a Telescope* 107 (1957); *Markman* Tr. at 19:14-21.)

Plaintiff contends that the term "telescope" should be restricted to a "Newtonian telescope." FN5 (*See* Plaintiff's Reply Claim Construction Brief, Mar. 10, 2005, "Pl.'s Reply Br." at 3.) Defendant, in contrast, argues that "telescope" is much broader than plaintiff alleges, urging that the term be construed to include both "reflecting telescopes" and "refracting telescopes," thus comporting with the term's dictionary definition. (*See* Defendant's Brief Addressing Claim Construction, "Def.'s Opp. Br." at 3.) As discussed *supra,* a court must begin its claim construction analysis by analyzing the language of the claims themselves.

FN5. For the most part, Newtonian Telescopes are a subgroup of reflecting telescopes. (*Markman* Tr. at 4:9-11.)

a. Doctrine of Claim Differentiation

"The doctrine of claim differentiation ... creates a rebuttable presumption that each claim in a patent has a different scope." Dow Chem. Co. v. United States, 226 F.3d 1334, 1341 (Fed.Cir.2000). The doctrine is implicit in 35 U.S.C. s. 112, para. 4, which states that "a claim in dependent form shall contain a reference to a claim previously set forth and then specify a *further limitation* of the subject matter claimed." (emphasis added). Thus, under the doctrine, a dependent claim and a corresponding independent claim should not be construed to have the same scope; the dependent claim should have an additional limitation. The Federal Circuit recently reaffirmed the doctrine of claim differentiation, without using that title, in *Phillips,* when it stated that "[t]he presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." 2005 WL 1620331, at *7 (citing Liebel-Flarsheim Co. v. Medrad, Inc ., 358 F.3d 898, 910 (Fed.Cir.2004)). The doctrine precludes interpretations of claim language that render dependent claims too broad or independent claims too narrow, but it should not be used to interpret an independent claim too broadly either. *See* Tandon Corp. v. U.S. Int'l Trade Comm'n, 831 F.2d 1017, (Fed.Cir.1987) ("Whether or not claims differ from each other, one can not interpret a claim to be broader than what is contained in the specification and claims as filed.") (citation omitted).

b. Analysis

The doctrine of claim differentiation applies to this situation and resolves the dispute as to the definition of "telescope" in favor of defendant, *i.e.,* that "telescope" includes both reflecting and refracting telescopes rather than being limited to Newtonian telescopes. The term "Newtonian telescope" appears in claim 5 of the '908 Patent. '908 Patent at 6:42-43 ("The method of claim 1, further comprising locating the optical element in a Newtonian telescope."). Claim 5 is dependant on claim 1, which describes: "[a] method of aligning an optical element in a *telescope*." Id. at 6:30 (emphasis added). The "Newtonian" limitation on the word "telescope" in claim 5 would be unnecessary if a person of ordinary skill in the art would have understood "telescope," as used in claim 1, to be restricted to Newtonian telescopes. Based on the doctrine of claim differentiation, the term "telescope" should not be restricted to "Newtonian telescopes."

The next question is what the term "telescope" includes, if it is not limited to Newtonian telescopes. Plaintiff argues that if "telescope" is not limited to Newtonian telescopes, it should be limited to "reflecting telescopes," which would include Newtonian telescopes as a subgroup. (*Markman* Tr. at 6:12-13.) FN6 The doctrine of claim differentiation answers this question as well. The term "reflecting telescope" appears in claim 4. '908 Patent at 6:40-41. Claim 4 is "[t]he method of claim 1, further comprising locating the optical element in a *reflecting telescope*." Id. (emphasis added). Applying the doctrine of claim differentiation, the term "telescope," as used in claim 1, presumptively cannot be limited to "reflecting telescopes," which is the limitation added in claim 4. Therefore, this Court looks to the specification to determine whether the term "telescope" includes refracting telescopes, as defendant suggests.

FN6. Citations to the *Markman* hearing transcript reference the page and line numbers in the form Page(s):Line(s).

Plaintiff asserts that the specification "does not describe any method for using this invention to align a [refracting] telescope," and cites *Phillips* for the proposition that the claims must be consistent with the

specification. (*Markman* Tr. at 6:4-5.) Nonetheless, as plaintiff concedes, the specification expressly states that "the present invention may be used to align *refracting telescopes*." '908 Patent at 6:11, 19-21 (emphasis added). In fact, the specification even provides a diagram of the invention being used with a refracting telescope. Id. at Fig. 15. Since the patent mentions refracting telescopes in the specification, included a drawing for the invention with a refracting telescope, and uses "reflecting telescope" as the limitation in a dependent claim, it is clear from the intrinsic evidence that the term "telescope," as used in the claims, includes both reflecting and refracting telescopes.FN7

FN7. Claims 10, 15, 18, and 20 use the term "telescope" without any dependent claims that limit the term; however, this is of no consequence because claim terms are to be construed consistently across all claims. *See* Southwall Tech., Inc. v. Cardinal IG Co . 54 F.3d 1570, 1579 (Fed.Cir.1995); *accord* Phillips, 2005 WL 1620331 at *6 ("Because claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims.").

2. "Optical Element in a Telescope"

The term "optical element" appears, in either singular or plural form, in claims 1, 10, 15, 18 and 20. As used in the '908 Patent, the term "optical element(s)" includes mirrors, lenses, or prisms.

Plaintiff argues that "optical element in a telescope" should be restricted to "mirrors." (Pl.'s Reply Br. at 2.) In contrast, defendant contends that the phrase "optical element" is much broader, and includes "lenses," "mirrors," and "prisms," thus comporting with its dictionary definition. (Pl.'s Reply Br. at 3, para. 2.)

As a threshold matter, the term "optical element" must include both lenses and mirrors because this Court's construction of the term "telescope" includes both reflecting and refracting telescopes. However, "optical element" includes both mirrors and lenses based on other intrinsic evidence as well.

Looking to the patent claims, there are several places in which the doctrine of claim differentiation indicates that the term "optical element(s)" is not limited to mirror(s). The clearest example of this point is a comparison of claims 15 and 16. Claim 15 is an independent claim that is nearly identical to claim 1. *See* '908 Patent at 7:3-8. It describes "[a] method of aligning an optical element in a telescope, comprising: (a) projecting a holographic image onto at least a portion of an optical element to be aligned; and (b) aligning the optical element in response to the projected holographic image." Id. Claim 16 is "[t]he method of claim 15, further comprising *employing a mirror as the optical element*." Id. at 7:9-10. Since claim 16 is a dependent claim, which, by definition, must add a limitation, and the limitation it adds is that the optical element be a mirror, the doctrine of claim differentiation instructs that the term "optical element" is not limited to a mirror.

Claims 10 and 11 have a similar relationship. Claim 10, like claims 1 and 15, describes "[a] method of aligning an optical element in a telescope." Id. at 6:55 (emphasis added). Claim 11, which is dependent upon claim 10, is "[t]he method of claim 10, further comprising employing a *plurality of mirrors as the optical elements*." Id. at 6:61-62 (emphasis added). If the only "optical element" in a "telescope" could be a "mirror," then claim 11 would be redundant in requiring a "plurality of mirrors as the optical elements," since the only optical elements in a telescope would be "mirrors." Based on the doctrine of claim differentiation, the claim language evinces an intent that "optical elements in a telescope" should include more than "mirrors."

Next, looking to the specification, the introduction states that "[t]he present invention generally relates to the alignment of optical elements, and more specifically to the alignment of mirrors in a telescope." Id. at 1:6-8, 11. If the term "optical elements" were restricted to "mirrors" then the introduction to the specification would be redundant by using the phrase "the alignment of mirrors in a telescope." The presence of the second clause of the sentence indicates that the term "optical elements," alone, is not sufficient to specify mirrors. Moreover, as discussed *supra,* the specification asserts that the invention can be used with a "refracting telescope." *See* id. at 6:11, 19-21. Refracting telescopes contain lenses rather than mirrors. (*See Markman* Hearing, Def. Ex. A.) Accordingly, the meaning of "optical elements in a telescope" should at the very least, include both "mirrors" and "lenses."

Plaintiff might argue that the introduction to the specification is a disclaimer limiting "[t]he present invention ... more specifically to the alignment of *mirrors in a telescope*." *Id*. at 1:6-8, 11 (emphasis added). According to *Phillips,* "the specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor. In that instance ... the inventor has dictated the correct claim scope, and the inventor's intention, as expressed in the specification, is regarded as dispositive." 2005 WL 1620331, at *8. However, as previously discussed, the plain language of the claims, as well as other parts of the specification, do not evince any attempt to limit the scope of the term "optical element." Given *Phillips*' insistence on maintaining the line "between using the specification to interpret the meaning of a claim and importing limitations from the specification into the claim," *id*. at *15, language in the specification will not be used to limit claim scope unless that language conveys a clear intent to use the term narrowly. Given the amount of intrinsic evidence in this case demonstrating a broader definition, the introduction to the specification cannot be given such a preclusive effect. The term "optical elements" must be construed to include both "mirrors" and "lenses."

What is less clear is whether the phrase "optical elements in a telescope" should include "prisms." As discussed *supra,* the claims may be interpreted such that the disputed term includes other "optical elements" besides a "plurality of mirrors;" however, the specification neither mentions, nor provides a diagram demonstrating the invention's use with a telescope containing a prism. *Phillips* specifically warns against confining claims to specific embodiments of the invention described within the specification. *See id*. Therefore, a lack of intrinsic evidence is not dispositive. The issue is whether a person of ordinary skill in the art would interpret the phrase "optical element in a telescope" to include "prisms." In ascertaining how a person of ordinary skill in the art understands a claim term, a court may look at extrinsic evidence where the intrinsic evidence is ambiguous. *See id*. at *16. Both the prior art as well as technical dictionaries make it clear that a prism may be used as an "optical instrument" within a "telescope." (*See Markman* Hearing, Def. Exs. B, C; Def.'s Opp. Br. at 3, para. 2.) Therefore, this Court will not exclude "prisms" from the definition of "optical elements in a telescope." In sum, this Court rejects plaintiff's definition limiting the term "optical elements in a telescope" to "mirrors," in favor of a broader definition which includes "mirrors," "lenses," and "prisms."

3. "A method of aligning an optical element in a telescope"

The next dispute concerns the phrase "[a] method of aligning an optical element in a telescope." The phrase appears in every claim in the '908 patent, either expressly or by reference. It appears twice in claim 1, once in the preamble and once in subpart (b).

The key term in this phrase is the word "aligning." As used in the '908 patent, the term "aligning" is

construed to mean moving an optical element toward a collimated position in response to a projected reticle image.

Glatter argues that "aligning" means "moving an optical element in a telescope to its *optimal* position and angular orientation specified in the telescopes' [sic] design." (Def.'s Opp. Br. at 3.) LaserMax contends that "aligning" meant "moving an optical element in a telescope to a *desired* position." (Pl.'s Reply at 2.) The difference between the terms "optimal" and "desired" is a difficult one to parse. The language of the claims themselves offer little guidance as to the meaning of "aligning," as used therein. The tautological nature of claim 1 makes it difficult to discern a contextual definition of aligning. It claims a "method of *aligning* an optical element in a telescope" wherein the second step in the method is "*aligning* the optical element." '908 Patent at 6:29, 33. Thus, the claim itself offers little guidance in discerning a definition. Other claims, however, demonstrate that the choice of the word "aligning" may have been intended to mean more than simply moving or adjusting an element. Claim 18, for example, has "aligning" in the preamble, but uses the term "adjusting," in subpart (c), when indicating that one following the method would move an optical element. Id. at 7:13, 21-23. Therefore, it is unclear based on the claims alone, whether "aligning" means more than simply "moving to a desired position."

The specification provides some guidance in construing the term. Glatter originally construed "aligning" as "moving an optical element to *an optimal position,*" but changed his asserted definition during the *Markman* hearing to "moving to an optical element in a telescope to *its collimated position*." (*See* Hearing Tr. at 33:6-11.) "Collimated" is a term of art in the field of optical devices that would be understood by a person of ordinary skill in the art. The specification uses variations of the word "align" several times. At one point, the specification uses the terms "properly aligned" and "collimated" as synonyms. First, the specification states that "Newtonian type telescopes are subject to misalignment of the optical elements.... A misaligned Newtonian telescope will exhibit an image of a star that looks like a comet with a tail. " '908 Patent at 1:36-40. In describing how to determine whether the optical elements are aligned, the specification uses the phrase "[i]n a properly aligned or collimated telescope." Id. at 1:43-46. According to the specification, the term "collimate" means "properly aligned," as opposed to "misaligned," and in a Newtonian telescope is characterized as an arrangement of the optical elements wherein "a laser beam is projected through an emission aperture to reflect off of the secondary mirror which directs it to the center of the primary mirror. The primary mirror reflects the beam back to the secondary mirror which then reflects it back to the emission aperture of the laser." Id. at 1:43-49. In other words, "[t]he complete return of the emission aperture assures that the telescope is correctly aligned." Id. at 1:49-51. Thus, the specification indicates that "properly aligned" means "collimated." Aligning, therefore, means moving toward a collimated configuration.

Nonetheless, use of the word "collimated" should not be unduly limited to a single appropriate arrangement for the elements in a telescope. First, although the specification's description of "properly aligned" uses the components of a reflecting telescope as an example, refracting telescopes can also be collimated. *See* id. at 6:19-21. Second, at the *Markman* hearing, plaintiff and defendant agreed that there can be more than one "collimated position," depending upon the setup of the telescope, for example, collimation for use with a camera may be slightly different from collimation for use with the eye alone. (*See Markman* Tr. at 43:18-25.) Since the claims pertain to "optical element(s) *in a telescope,*" the meaning of a claim term should not be limited based on potential uses that differ from one another due to a component that lies *outside of the telescope,* like the viewer's eye or a camera. Therefore, the word "collimated" restricts the term "aligning" to arrangement of the optical elements for use in a telescope (usually centering the elements along a line formed by the beam's center), but does not connote a single, objectively accurate position.

4. Reticle Image or Pattern

The final disputed claim term is "reticle image" or "reticle pattern," which appears in claims 1-14, 17-19, and 22 either expressly or by reference. As used in the '908 Patent, the term "reticle image" or "reticle pattern" means one of a series of lines, dots or crosshairs, capable of serving as a reference for centering or otherwise adjusting an optical element in a telescope.

The parties' dispute over this term concerned Glatter's assertion that the reticle image was required to be "axially symmetric." (Def.'s Opp. Br. at 3.) It was initially unclear what Glatter meant by "axially symmetric," whether he meant symmetric about one axis FN8 or two, and if it were two whether those reference axes had to be at right angles to one another. It appears that Glatter meant the last possibility, the sort of two-dimensional crosshair images that appear in Figures 6-8 and 12-15: two lines lying at right angles to one another, or a shape that is symmetric about each of those lines. (*Markman* Tr. at 35:10-14.) Such images, especially when they contain spaced gradations, function well as a reference tool for (1) determining the center of an optical element, (2) determining whether an optical element's angular orientation is perpendicular with the laser beam's path, and (3) measuring the difference made by a particular adjustment. However, there is an issue as to whether or not "reticle image," as used in the patent, is limited to such a specific image.

FN8. Plaintiff called "axial symmetry" "line symmetry," which means having the quality of being equally distributed on either side of a single dividing line in two dimensions. (*Markman* Tr. 35:15-18.)

Looking first to the claims, claim 1(a) provides "a reticle image having one of a series of lines, dots, or crosshairs." '908 Patent at 6:31-32. Glatter's brief cites an online dictionary definition for "reticle" as "a network of fine lines, dots, cross hairs, or wires in the focal plane of the eyepiece of an optical instrument." (Def. Opp. Br. at 3) (citing http:// www.hyperdictionary.com.) Glatter comments that in light of his definition of the word reticle, the phrase "reticle image having one of a series of lines, dots, or crosshairs" in claim 1 is redundant. (Id.) The Court agrees with Glatter's comment, which indicates that claim 1 contains the definition of "reticle image," as used in the patent. Therefore, the patent contains a clear definition of the term in claim 1, which contains no limitation of "axial symmetry."

Next, the term "axially symmetric" does not appear anywhere in the '908 Patent. However, figures 6-8 and 12-15 in the '908 Patent contain reticle images that happen to be "axially symmetric" by Glatter's definition. Additionally, the only references to specifically shaped reticle images are to images that happen to be axially symmetric. '908 Patent at 2:21-27, 3:13-6:27. Nonetheless, the figures and descriptions are limited to the preferred embodiment, and courts should "avoid the danger of reading limitations from the specification into the claim[s]." Phillips, 2005 WL 1620331, at *15. There are examples of common geometric images, "composed of one of a series of lines, dots, or crosshairs" that are not "axially symmetric," according to Glatter's definition.FN9 Therefore, the problem with imposing "axially symmetric" on the term "reticle image" is the danger that it unduly limits the scope of the patent by "confining the claims to [the preferred] embodiments." *Id*. There is nothing in the patent's specification that limits term "reticle image" to "axially symmetric" images.

FN9. The most glaring example would be a triangular pattern or crosshair with three lines, equally spaced from one another in a two-dimensional plane, coming from a center point. Such an image would not be

"axially symmetric"-having lines spaced at ninety degrees from one another, or shapes symmetric about such lines-but could serve the same function according to the patent. (The same would be true of any crosshair with an odd number of equally spaced lines stemming from its center.) Other examples of common patterns that are not "axially symmetric," or symmetric about any line, are those that only exhibit point symmetry-shapes wherein all of the components can be reflected through a center point and form the same image. These can include shapes that are not axially symmetric, like the letters "Z" and "S," and any geometric shape with a single diagonal line (that does not run along an axis of symmetry existing in the shape alone) passing through it, *e.g.,* a rectangle with a diagonal passing from one corner to he opposite corner through its center.

Nonetheless, Glatter argues that a person of ordinary skill in the art would interpret the term "reticle image" to be limited to "axially symmetric" images. (*Id*. at 1-2.) It is clear that a person of ordinary skill in the art would be familiar with the term reticle. In fact, some definitions of the term reticle reference telescopes. *The Oxford English Dictionary* (2d ed.1989), for example, defines "reticle" as "[a] set of parallel wires, threads, etc., with others intersecting them at right angles, or of lines similarly ruled upon a sheet of glass, placed in the object-glass of a telescope, in order to facilitate accurate observations." However, *Webster's Third New Int'l Dictionary* 1938 (1986), similar to Glatter's proffered dictionary definition, *supra,* defines "reticle" as "a system of lines, dots, cross hairs or wires in the focus of the eyepiece of an optical instrument (as a gunsight, microscope, telescope, or transit) used typically for estimating speed or distance, for measuring or counting, or as a centering or aiming device." The issue is whether one of ordinary skill in the art would understand the term reticle to be limited to "axially symmetric" patterns or images. The above dictionary definitions of "reticle" differ on the issue, because one presents examples that are "axially symmetric," as Glatter uses the term, while the other is silent as to that limitation. Thus, there is no clear indication that one of ordinary skill in the art would presume that limitation. Since there is no limitation in the claims, no limitation in the specification, and no mention of axial symmetry in the patent or the dictionary definition, this Court will not impose that limitation on the term "reticle."

Conclusion

For the foregoing reasons, the disputed terms are construed in the manner stated above. This constitutes the Decision and Order of this court.

SO ORDERED.

S.D.N.Y.,2005.
Lasermax, Inc. v. Glatter

Produced by Sans Paper, LLC.