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

The BOLER Company,
Plaintiff.
v.
TUTHILL CORPORATION,
Defendant.

No. 2:04-CV-286

March 6, 2006.

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OPINION AND ORDER

FROST**, J.**

This is a patent infringement case involving The Boler Company ("Boler") and Tuthill Corporation ("Tuthill"). As part of that litigation, the parties have requested that the Court construe various patent language pursuant to Markman v. Westview Instruments, Incorporated, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). This claims-construction decision serves that function.

I. Background

Given the procedural posture of this litigation, the Court need not and shall not describe the facts in great detail here. Of import is the fact that Boler is the owner of U.S. Patent No. 6,073,947 ("the "7 patent"). The company applied for the patent on June 24, 1998, and the patent issued on June 13, 2000. The "7 patent is titled "Substantially Weld Free Frame Bracket Assembly" and involves technology for connecting a suspension to the frame rail of a heavy duty vehicle.

On April 15, 2004, Boler filed suit against Tuthill, claiming that Tuthill has infringed on the "7 patent. The parties' dispute at this juncture focuses on the following language contained within three independent claims set forth in the "7 patent: FN1

FN1. The independent claims are Claims 1, 9, and 22. According to the parties, Claims 2-8 are dependent claims related to Claim 1, Claims 10-15 and 17-21 are dependent claims related to Claim 9, and Claims 23,

24, 26, and 27 are dependent claims related to Claim 22. (Doc. # 28, at 6; Doc. # 55, at 1-2.)

[Claim 1.] A substantially weld free frame bracket for connecting a wheel-bearing axle suspension system to a frame member of a vehicle, said frame bracket comprising:
an elongated plate member having a first end for connection to said frame member of said vehicle and a second end opposite said first end;

a generally u-shaped cradle member including a pair of downwardly extending leg portions spaced laterally from each other and a laterally extending portion abridging the space between and connecting said spaced pair of leg portions one to the other; and

an attachment connecting said cradle member to said elongated plate member, said attachment being located proximal said second end of said elongated plate member; wherein said elongated plate member and each of said pair of downwardly extending leg portions of said cradle include at least one orifice therein, each of said orifices being aligned with respect to the others and of a sufficient size to retain a thru-bolt therein, and

wherein said attachment includes at least one bolt extending through said aligned orifices in said elongated plate member and said pair of downwardly extending leg portions of said cradle.

("7 Patent, col. 10, lines 38-61.)
[Claim 9.] A substantially weld free frame bracket assembly for connecting a wheel-bearing axle suspension system to a pair of laterally spaced, longitudinally extending frame members of a vehicle, said frame bracket assembly comprising:

a pair of elongated plate members laterally spaced one from the other, each plate member having a first end for connection to a respective frame member of said vehicle, and a second end; each said plate member having located proximal thereto a respective U-shaped cradle member; wherein

each said generally U-shaped cradle member includes a pair of downwardly extending leg portions spaced laterally from each other and a laterally extending portion abridging the space between and connecting said spaced pair of leg portions one to the other; and

a non-welded attachment connecting said cradle member to said elongated plate member, said attachment being located proximal said second end of said elongated plate member; and

wherein said bracket assembly further includes a cross-beam member having a first end and a second end each connected to a respective one of said plate members.

("7 Patent, col. 11, lines 53-67, col. 12, lines 1-8.)
[Claim 22.] In a wheeled vehicle having a longitudinally extended frame member and a frame bracket assembly attached to said frame member for connecting a wheel-bearing axle suspension system to the longitudinal frame member of said vehicle, said frame bracket assembly comprising:

a plate member connected to and extending downwardly from said longitudinally extending frame member of said vehicle, said plate member including a planar surface facing laterally of said vehicle;

a cradle member which includes a pair of opposing leg members extending downwardly with respect to said longitudinal frame member of said vehicle, said leg members having a laterally facing planar surface and being connected together by a laterally extending cross member, said cradle member being so located such that the planar surface of said leg member is proximal to and laterally faces said planar surface of said plate member;

at least one orifice in each of said plate members and said leg members wherein each said orifice is aligned with respect to the others, and

bolt means extending through said aligned orifices for connecting said cradle member to said plate member.

("7 Patent, col. 13, lines 21-43.) Having set forth the relevant language, the Court shall now turn to construing these claims.

II. Claim Construction

A. Standards Involved

The Federal Circuit has explained that " '[i]t is a "bedrock principle" of patent law that "the claims of a patent define the invention to which the patentee is entitled the right to exclude." " ' Varco, L.P. v. Pason Systems USA Corp., No. 05-1136, 2006 WL 229926, at (Fed.Cir. Feb.1, 2006) (quoting Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed.Cir.2005) (en banc) (quoting Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1115 (Fed.Cir.2004))). Consequently, the meaning and scope of a patent's claims lie at the heart of any patent dispute.

The purpose of a *Markman* hearing is to ascertain the meaning of a patent's claims so that it is clear precisely what has been patented and, by consequence, the protections the patent therefore affords the patent holder. *See* Phillips, 415 F.3d at 1312. *See also* Markman v. Westview Instruments, Inc., 52 F.3d 967, 978 (Fed.Cir.1995) ("When a court construes the claims of the patent ... the court is defining the federal legal rights created by the patent document"), aff'd, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). There is no "rigid algorithm for claim construction." Phillips, 415 F.3d at 1324. Rather, in construing the meaning of a patent's claims, the Court is guided by a set of principles that the Federal Circuit has described as follows:

The claim terms " 'are generally given their ordinary and customary meaning." ' *Id*. (quoting Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996)). "The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation." *Id*. "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only 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*. "In examining the specification for proper context, however, this court will not at any time import limitations from the specification into the claims." CollegeNet, Inc. v. Apply Yourself, Inc., 418 F.3d 1225, 1231 (Fed.Cir.2005) (citing Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1326 (Fed.Cir.2002)).

Varco, L.P., 436 F.3d 1368, 2006 WL 229926, at *4. The starting point in claim construction therefore lies with the language of the claims themselves. Purdue Pharma L.P. v. Endo Pharmaceuticals, Inc., Nos. 04-1189, 04-1347, & 04-1357, 438 F.3d 1123, 2006 WL 231480, at (Fed.Cir. Feb.1, 2006) (citing Phillips, 415 F.3d at 1312). In considering a patent's language, a court should apply the plain meaning rule, presumptively giving claim terms their ordinary, plain meaning. Teleflex, 299 F.3d at 1325. A court may, however, depart

from a term's plain meaning if the patentee has acted as a lexicographer or otherwise limited the scope of the invention through a clear disclaimer in the specification or prosecution history. Phillips, 415 F.3d at 1316-17.

Of considerable import to claim construction, then, is the intrinsic evidence-the claim language, the specification, and the prosecution history as applicable. World Kitchen (GHC), LLC v. Zyliss Haushaltwaren AG, 151 Fed. Appx. 970, 972 (Fed.Cir.2005) (citing Interactive Gift Express, Inc. v. Compuserve, Inc., 256 F.3d 1323, 1331 (Fed.Cir.2001)); Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). When this intrinsic evidence provides an unambiguous description of the scope of the invention, reliance on extrinsic evidence is improper. Vitronics Corp., 90 F.3d at 1582.

But although less significant than intrinsic evidence, extrinsic evidence is still of value to claim construction when necessary. Phillips, 415 F.3d at 1317. This latter category encompasses such things as expert and inventor testimony, as well as texts such as treatises and dictionaries. *Id.* (quoting *Markman,* 52 F.3d 980). A court may entertain expert testimony for numerous purposes, such as

to provide background on the technology at issue, to explain how an invention works, to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field.

Phillips, 415 F.3d at 1318. The value of expert testimony in regard to claim construction is qualified, however, as an expert cannot offer an opinion of any value that is at odds with the intrinsic evidence of a patent. *Id.* (quoting Key Pharms. v. Hercon Labs. Corp., 161 F.3d 709, 716 (Fed.Cir.1998)); Playtex Prods., Inc. v. Procter & Gamble Co., 400 F.3d 901, 908 n. 1 (Fed.Cir.2005).

Cognizant of these governing principles and having entertained argument, as well as having reviewed at length the briefing, the Court shall now address each claim-construction issue in turn.

B. Claim 1

The parties' dispute over the patent language starts with the first words of Claim 1: "A substantially weld free frame bracket for connecting a wheel-bearing axle suspension system to a frame member of a vehicle." ("7 Patent, col. 10, lines 38-61.) Also in dispute are the meanings of the "elongated plate member" and the "attachment" that connects the plate to a "u-shaped cradle member."

Boler has proposed a fairly lengthy construction for the components of Claim 1 that need not be repeated here. (Doc. # 65, Ex. A.) But Boler's proposed construction fails to track the intrinsic record. For example, the company's proposed construction of a substantially weld-free U-shaped cradle would capture two legs welded to an optional arm that would function as the top wall of the "U." Tuthill thus disagrees with Boler's proposed construction. The former company asserts that, during the course of the patent prosecution, Boler limited where and when welds could exist in the hanger bracket contemplated in Claim 1. Thus, Tuthill asserts, the correct construction of these terms is defined in part by the specification set forth in the patent.

The cradle device described contemplates a singular, weld-free piece of material that is a U-shaped device attached *to* a top flange/arm member, rather than formed in part *by* that top flange/arm member. ("7 Patent, col. 5, lines 17-20.) A permissible weld could be found along the top of the existing, distinct wall of the U-

shaped cradle that attaches the cradle to the optional arm. This is a far cry from concluding that the weld can aid the creation of the U-shaped device.

In other words, the patent language and specification contemplate a singular U-shaped piece with opposing vertical side plates that join in a continuous, weld-free top wall, and it is that wall that *can* be welded to the arm- *but neither welds nor the arm create any component of the cradle*.FN2 ("7 Patent, col. 5, lines 17-37; col. 9, lines 26-33.) The cradle itself in Claim 1 is not welded to the attachment between the cradle and the vertical plate. Additionally, in instances where the single piece comprising the weld-free cradle is not joined with the optional caster adjusting mechanism, no welds of any sort are used. ("7 Patent, col. 9, lines 26-44.)

FN2. Boler overstates the distinction between "non-welded" and "substantially weld free" insofar as the company partially fails to credit the actual effect of these terms. The former term is wholly preclusive of welds used to create the individual apparatus components, while the latter term is simply a limitation that permits secondary welds that do not form the individual components of the assembled structure. The deletion of "non-welded" thus permits welding of the attachment, but not to configure the individual components of the attachment or the components it attaches.

The "elongated plate member" inquiry presents even more of a plain-language, ordinary-meaning inquiry. Tuthill's proposed construction generally tracks this approach. The company directs this Court to dictionary definitions for the relevant terms. Such research indeed supports Turthill's position. For example, the dictionary definition of "elongated" is "stretched out" or "having a form notably long in comparison to its width." FN3 *Webster's Third New International Dictionary* 737 (2002). The definition of "plate" includes "a smooth [usually] nearly flat and relatively thin piece of metal or other material." *Webster's Third New International Dictionary* 1734 (2002). One definition of "member" is "a constituent part of a whole." *Webster's Third New International Dictionary* 2459 (2002). Thus, an "elongated plate member" is "a smooth or nearly flat and relatively thin piece of metal that is notably long in comparison to its width and that is a constituent part of a whole." Nothing in the patent language suggests that Boler intended to adopt a contrasting or divergent meaning for any of the foregoing terms.FN4

FN3. The dictionary entry for "elongated" directs the researcher to the definition of "elongate." *Webster's Third New International Dictionary* 737 (2002).

FN4. Tuthill also proposes definitions for "first end" and "second end" by relying on the dictionary definition of "end." (Doc. # 33, at 14.) The patent tracks the ordinary meaning of "end" with no indication that any other meaning was intended or produced.

This leaves the meaning of the "attachment" that connects the cradle to the elongated plate member. The patent contemplates, as Tuthill recognizes, that the elongated plate member will feature at least one orifice. ("7 Patent, col. 10, lines 53-55.) This orifice, which aligns with the orifices on each of the cradle's legs, permits a bolt to pass through each piece (i.e., the plate and the cradle), thereby forming the attachment Claim 1 contemplates. Thus, the patent contemplates a weld free attachment that by using bolts attaches, or links, one distinct piece to another. The prosecution history reveals Boler's elective limitation to constitute an attachment consisting of three aligned bolts passing through three aligned orifices. Additionally, the patent language limits placement of the attachment to the second end of the elongated plate member.

Boler has thus limited Claim 1 to at least one bolt extended through holes in an elongated vertical plate member that align with holes in each of the downwardly projecting legs that constitute the U-shaped cradle, which is itself a distinct, single piece. Both embodiments of the invention mirror this basic construction. The limiting description of substantially weld free does not, of course, mean that the assembly lacks welds, but only that welds are not employed in fixing, or creating, the described configuration components. FN5 Other related welds are permissible as contemplated in the patent, such as a weld connecting the top of the U-shaped cradle to an optional caster mechanism and welds at each end of the bushing positioned between the cradle legs. ("7 Patent, col. 5, lines 30-37.) Accordingly, based on the rationale set forth above, the Court construes the foregoing terms as used in Claim 1 of the '237 patent as described below. Because these terms also inform much of the remaining claims, the parties should apply these constructions to the same terms in those claims as well.FN6 *See* Phillips, 415 F.3d at 1314 ("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").

FN5. Boler's argument that the claim's failure to include a limiting adjective preceding "U-shaped cradle" controls the claim's meaning ignores the consistent limitation expressed by the patent that this component employs no welds. This limitation informs the claim language because "[a] person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." Phillips, 415 F.3d at 1313. In fact, reading the claims in the context of the specification is essential. Id. at 1315 (explaining that "claims 'must be read in view of the specification, of which they are a part" ' because "the specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term" ' (quoted cases omitted)).

FN6. With minor distinctions as to form, the patent uses cradle and plate member consistently in Claims 1, 9, and 22. The Court also recognizes that various dependent claims employ these terms and, at times, additional terms. Because the additional terms do not appear to be in dispute, the Court does not opine on the construction of these terms. (Doc. # 55, at 3-5.)

Claim 1	
Patent language	Construction
A substantially weld free frame bracket for	A frame bracket for connecting a wheel-bearing
connecting a wheel-bearing axle suspension	axle suspension system to a frame
system to a frame member of a vehicle, said	member of a vehicle, with the frame bracket
frame bracket comprising:	containing few welds and no welds in the
	locations expressed below, but permitting
	optional welds for connecting the cradle top
	to an arm and for the lower

	to an arm and for the lower bushing
	positioned between the cradle legs
an elongated plate member having a first end	a smooth, usually nearly flat and relatively
for connection to said frame member of said	thin piece of metal that is notably long in
vehicle and a second end opposite said first	comparison to its width and that is a
end;	constituent part of a greater whole, with
	opposite ends, the first of which connects to
	the vehicle frame, with an end containing at
	least one hole sized for a bolt that will pass
	through aligned holes in the U-shaped cradle
a generally u-shaped cradle member including	a generally U-shaped cradle that is a distinct
a pair of downwardly extending leg portions	single piece containing no welds, with two
spaced laterally from each other and a	laterally spaced legs protruding downward
laterally extending portion abridging the	from a top wall and an aligned hole in each
space between and connecting said spaced	leg sized for a bolt that will pass through the
pair of leg portions one to the other; and	aligned holes from the elongated plate
	member
an attachment connecting said cradle member	a connection between the cradle and the
to said elongated plate member, said	elongated plate member formed by at least
attachment being located proximal said	one bolt that passes through aligned holes in
second end of said elongated plate member;	the cradle and the elongated plate member,
wherein said elongated plate member and	with the attachment located at the second end
each of said pair of downwardly extending leg	of the elongated plate member
portions of said cradle include at	

least one orifice therein, each of said orifices being aligned with respect to the others and of a sufficient size to retain a thru-bolt therein,	
and	
wherein said attachment includes at least one bolt extending through said aligned orifices in said elongated plate member and said pair of downwardly extending leg portions of said cradle.	at least one bolt extends through a hole in the elongated plate member and through aligned holes in the downward legs of the U-shaped cradle

C. Claim 9

Much of the foregoing analysis of Claim 1 terms informs the construction of Claim 9 terms. As Boler correctly points out, however, Claim 9 includes the qualifying limitation "non-welded" in describing the attachment. ("7 Patent, col. 12, lines 1-2.) Boler argues that the inclusion of this term, deleted from Claim 1 during the prosecution of the patent, distinguishes Claim 9 from Claim 1. Claim 9 contemplates that the attachment be free of welds between the cradle and the elongated plate member. But even under the Claim 1 language, the attachment cannot contain welds at the point identified in Claim 9. Claim 1 requires at least one bolt; Claim 9 permits attachment by non-welded means, such as by pins or clips, but without requiring the use of one or more bolts. Claim 9 otherwise tracks (for present purposes) the language of Claim 1 so that the non-conflicting construction of Claim 1 set forth above informs the meaning of Claim 9.

Claim 9	
Patent language	Construction
A substantially weld free frame bracket assembly for connecting a wheel-bearing axle suspension system to a pair of laterally spaced, longitudinally extending frame members of a vehicle, said frame bracket assembly comprising:	A frame bracket for connecting a wheel-bearing axle suspension system to a pair of laterally spaced, longitudinally extending frame members of a vehicle, with the frame bracket containing few welds and no welds in the locations expressed below, but permitting optional welds for connecting the cradle top

	to an arm and for the lower bushing
	positioned between the cradle legs
a pair of elongated plate members laterally	smooth, usually nearly flat and relatively thin
spaced one from the other, each plate member	pieces of metal that are notably long in
having a first end for connection to a	comparison to their width and that are
respective frame member of said vehicle, and	constituent parts of a greater whole, each
a second end; each said plate member having	laterally spaced from the other and with
located proximal thereto a respective U-shaped	opposite ends, one of which connects to the
cradle member; wherein	vehicle frame
each said generally U-shaped cradle member	a generally U-shaped cradle that is a distinct
includes a pair of downwardly extending leg	single piece containing no welds, with two
portions spaced laterally from each other and	laterally spaced legs protruding downward
a laterally extending portion abridging the	from a top wall
space between and connecting said spaced	
pair of leg portions one to the other; and	
a non-welded attachment connecting said	a connection between the cradle and an
cradle member to said elongated plate	elongated plate member that does not contain
member, said attachment being located	welds and that connects at the second end of
proximal said second end of said elongated	the elongated plate member
plate member; and	
wherein said bracket assembly further	a crossbeam with two ends, which extends
includes a cross-beam member having a first	from one elongated plate member to the
end and a second end each connected to a	another elongated plate member and connects
respective one of said plate members.	to each elongated plate member

D. Claim 22

Portions of Claim 22 track language found in the preceding claims. Several notable differences exist, however. For example, Claim 22 does not expressly contain the substantially weld free limitation present on other patent claims. Thus, Claim 22 would contemplate permissible welding within its bracket assembly exceeding the various welds contemplated in Claims 1 and 9, but for the influence of the specification. *See* Doc. # 39, at 8-9. Claim 22 also dispenses with an "elongated plate member" in favor of a "plate member"; the same definitions described above for these terms would apply to the Claim 22 term. The claim also uses "planar" to describe the surface of the plate member. The ordinary definition of this term is "of or relating to a plane," "lying in one plane," or "having a flat two-dimensional quality." *Webster's Third New International Dictionary* 1730 (2002). Nothing in the intrinsic record supports that "planar" means anything other than "flat."

Claim 22	
Patent language	Construction
In a wheeled vehicle having a longitudinally	a wheeled vehicle having a longitudinally
extended frame member and a frame bracket	extending frame member and a frame bracket
assembly attached to said frame member for	assembly attached to said frame member for
connecting a wheel-bearing axle suspension	connecting a wheel-bearing axle suspension
system to the longitudinal frame member of	system to the longitudinal frame member of
said vehicle, said frame bracket assembly	said vehicle
comprising:	
a plate member connected to and extending	a smooth, usually nearly flat and relatively
downwardly from said longitudinally	thin piece of metal that (1) is a constituent
extending frame member of said vehicle, said	part of a greater whole, (2) has a flat surface
plate member including a planar surface	that faces laterally to the vehicle, and (3)
facing laterally of said vehicle;	connects to and extends downward from the
	vehicle frame member
a cradle member which includes a pair of	a distinct single piece, which is not
opposing leg members extending downwardly	necessarily confined to a U-shape, that
with respect to said longitudinal frame	contains no welds and that has two laterally

member of said vehicle, said leg members having a laterally facing planar surface and being connected together by a laterally extending cross member, said cradle member being so located such that the planar surface of said leg member is proximal to and laterally faces said planar surface of said plate	spaced legs with flat surfaces that protrude downward from a top wall, with the legs connected by a lateral cross member with a flat surface
member;	
at least one orifice in each of said plate members and said leg members wherein each said orifice is aligned with respect to the	there must be at least one hole in each cradle leg and in each plate, with all holes aligned with one another
others, and	
bolt means extending through said aligned orifices for connecting said cradle member to	a bolt extending through the aligned holes in each cradle leg and in the plate connects the
said plate member.	cradle to the plate

III. Conclusion

The Court concludes that the foregoing claim constructions control. The parties shall therefore proceed in a manner consistent with the conclusions of this Opinion and Order, and the Magistrate Judge shall schedule the remaining portion of the preliminary pretrial conference as soon as practicable.

IT IS SO ORDERED.

S.D.Ohio,2006.
Boler Co. v. Tuthill Corp.

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