United States District Court,
W.D. Pennsylvania.

The SOLLAMI COMPANY,
Plaintiff.
v.
KENNAMETAL INC,
Defendant.

Oct. 17, 2006.

Jeffrey T. Morris, The Cook Law Group, P.C., Pittsburgh, PA, for Plaintiff.

Alan G. Towner, Eric G. Soller, Pietragallo, Bosick & Gordon, Pittsburgh, PA, for Defendant.

SUPPLEMENT TO SPECIAL MASTER'S REPORT AND RECOMMENDATIONS TO THE COURT CONCERNING CLAIM CONSTRUCTION

ARTHUR J. SCHWAB**, District Judge.**

Background

By order of the court dated April 19th, 2006, I was appointed Special Master for the purpose of submitting recommendations to the court on the issue of claim construction for disputed terms in the patent claims asserted in this case. I filed a Special Master's Report and Recommendations to the Court Concerning Claim Construction with the court on August 29, 2006. By order of the court dated October 12, 2006, I have been directed to file a supplemental report if required in light of issues raised in defendant's Motion to Modify Special Master's Report and Recommendations to the Court Concerning Claim Construction, and supporting memorandum, filed with the court on September 18, 2006, and plaintiff's response filed on September 28, 2006.

Disputed Terms

Defendant's motion requests clarification of three claim terms that were construed in the original Special Master's Report:

a) "generally frustoconical" (claim term number 2 in the Special Master's Report);

b) "generally cylindrical" (claim term number 3 in the Special Master's Report); and

c) "groove extending radially outward through said forward surface" (part of claim term number 39, and also considered with claim term number 38, in the Special Master's Report).

Defendant raises the concern that terms a) and b) as construed in the Special Master's Report are not mutually exclusive. While I agree with that assessment, I don't agree with defendant's view that these terms must not be analogous in any way. In patent claim drafting it is permissible, and indeed is not unusual, to use similar adjectives in describing distinct elements in a claim. It is not a requirement of patent law that every adjective used to define a claim element must be mutually exclusive of adjectives used to describe other elements in the claim.

In the instance case, the term "generally cylindrical" technically is subsumed by the term "generally frustoconical". This is so because the frustum of a cone that has a very large aspect ratio (i.e., the ratio of the height to the diameter of the cone) resembles a cylinder; in fact, as the aspect ratio of a cone approaches infinity, the cone approaches a true cylinder. Although the converse in not true ("generally cylindrical" does not subsume "generally frustoconical"), the line of demarcation is a question of fact not of law.

If view of the foregoing, the Special Master's Report requires no modification of the claim construction recommended for "generally frustoconical" or "generally cylindrical" (claim term numbers 2 and 3 in the report).

With respect to claim term c), however, it appears that the Special Master's Report was incorrect in stating on p. 38, lines 5-6, that the "the meaning of these phrases is no longer in dispute". At the hearing, my understanding of the dispute regarding these phases as found in claim 8 of the United States Patent No. 6,585,327 B2 ("the '327 patent") was that the parties had been in disagreement only about the location ("forward surface") and terminus ("side surface") of the "groove". However, the papers subsequently filed with the court by the parties indicate there remains a dispute concerning the geometry and orientation of the "groove" and perhaps a renewed disagreement about the site of the groove.

Consequently I supplement my original report with the following findings to replace the original discussion for claim terms 38 and 39.

38. " *said forward surface having at least one groove therein* "

The parties seemingly agree that this phrase means that "a groove is formed in the forward surface of the tool retainer" but disagree as to the meaning of the term "groove". Defendant argues in its memorandum in support of its Motion to Modify, without citing specific authority, that the term "groove" means a "long narrow channel formed in a surface having a length, a width and a depth". In response, plaintiff argues that the term "groove" as used in the '327 patent does not include "any limitation on relative length, depth or specific location."

I find that the plain and ordinary meaning of the term "groove" as may be determined, for example, by reference to *Webster's New Universal Dictionary,* is "a long narrow indentation formed in a surface". Thus, the "groove" is longer than it is wide and it "extends" in its lengthwise dimension; however, no depth limitation relative to length or width attaches to the term "groove". In order to avoid any doubt concerning what would appear to be agreement as to the site of the groove, I also find that this phrase requires that "the groove is formed in the forward surface of the tool retainer" ("forward surface" is construed in claim term 31 of the Special Master's Report). This construction is based upon the ordinary meaning of the phrase and additionally finds support in the specification of the '327 patent at column 10, lines 5-6 which describes "grooves 142-142 in the foreword surface 88'." It is further is supported by Fig. 12 of the drawing.

39. " ***(said) groove extending radially outward through said forward surface to said side surface of said tool retainer*** "

The parties disagree about the meaning of this phrase as used in Claim 8 of the '327 patent. Defendant argues that the phrase means "the length of the groove formed in the front surface extends radially outwardly in the front surface to the side surface of the tool retainer". Plaintiff counters as above that there is no limitation in the '327 patent on "length, depth or specific location" of the groove.

I find that this phrase means the "groove is formed in the front surface and is oriented with its lengthwise dimension extending radially (relative to the axis of the cylindrical aperture in the forward surface)." (The axis of the "cylindrical aperture" must be used as a reference point in order to give meaning to the team "radially". The relationship between the axis of the "cylindrical aperture" and the "forward surface" is defined in the construction of claim term 37 in the Special Master's Report). Additionally claim term 39 requires that the groove extends from an unspecified location on the forward surface to the "side surface" (claim term 32 in the Special Master's Report).

This construction of claim term 39 is based upon the ordinary meaning of the phrase and finds support in the '327 patent in Fig. 12 of the drawing and at column 10, lines 5-6 of the specification.

This concludes the Supplement To Special Master's Report And Recommendations To The Court Concerning Claim Construction.

W.D.Pa.,2006.
Sollami Co. v. Kennametal Inc.

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