United States District Court,
C.D. California.

TOKYO KEISO COMPANY,
v.
SMC CORP.

No. SACV 06-0374 JVS (RNBx)

March 27, 2007.

Darryl M. Woo, David D. Schumann, Evan R. Bennett, Michael J. Sacksteder, Fenwick and West LLP, San Francisco, CA, for Tokyo Keiso Company.

Thomas J. Fisher, Arthur I. Neustadt, Barry J. Herman, Oblon Spivak McClelland Maier and Nuestadt, Alexandria, VA, Russell I. Glazer, Troy and Gould, Los Angeles, CA, for SMC Corp., SMC Corporation of America.

Proceedings: (In Chambers) ***Order re Claim Construction***

Present: The Honorable JAMES V. SELNA**.**

Karla J. Tunis, Deputy Clerk

I. *BACKGROUND*

Plaintiffs Tokyo Keiso Company, Ltd. and Krohne Messtechnik GMBH & Co. KG (collectively "Tokyo Keiso") bring this patent infringement action against Defendants SMC Corporation and SMC Corporation of America (collectively "SMC"). Tokyo Keiso contends that SMC has infringed U.S. Patent No. 5,458,004 ("the '004 patent"). The '004 patent claims a volume flow meter that utilizes acoustic signals to measure the volume of fluid flowing through the meter per unit of time (*i.e.,* gallons per hour or milliliters per second). The instant claim construction hearing involves a single disputed term in Claim 1 of the '004 patent. FN1

II. *LEGAL STANDARD*

It is well settled that claim construction is "exclusively within the province of the court." Markman v. Westview Instruments, Inc., 517 U.S. 370, 372, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). Such construction "begins and ends" with the claim language itself, Interactive Gift Express, Inc. v. CompuServe, Inc., 256 F.3d 1323, 1331 (Fed.Cir.2001), but extrinsic evidence may also be consulted "if needed to assist in determining the meaning or scope of technical terms in the claims." Pall Corp. v. Micron Separations, Inc., 66 F.3d 1211, 1216 (Fed.Cir.1995).

In construing the claim language, the Court begins with the principle that "the words of a claim are generally given their ordinary and customary meaning." Phillips v. AWH Corp., 415 F.3d 1303, 1312

(Fed.Cir.2005) (internal quotation marks omitted). Further, this ordinary and customary meaning "is the meaning that the [claim] term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." Id. at 1313. "[T]he 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 some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. In such circumstances general purpose dictionaries may be helpful." *Id*. at 1314. In other cases, "determining the ordinary and customary meaning of the claim requires examination of terms that have a particular meaning in a field of art." *Id*. In those cases, "the court looks to those sources available to the public that show what a person of skill in the art would have understood the disputed claim language to mean." *Id*. These sources include "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Id*. (internal quotation marks omitted).

The claim terms are not presumed to have the meaning that a person of ordinary skill in the relevant art would ordinarily attribute to them if (1) the patentee acts as his own lexicographer, or (2) the claim term is too vague for an accurate meaning to be ascertained from the language used. Novartis Pharms. Corp. v. Abbott Labs., 375 F.3d 1328, 1334 (Fed.Cir.2004). All that is required for a patentee to act as his own lexicographer is that a different meaning is set out in the specification in a manner sufficient to provide notice of the meaning to a person of ordinary skill in the art. In re Paulsen, 30 F.3d 1475, 1480 (Fed.Cir.1994).

With these principles in mind, the Court now turns to the construction of the claim language at issue.

III. *DISCUSSION*

Claim 1 of the '004 patent discloses:

A volume flow meter for measuring the flow volume of a fluid by determining the difference in the travel times of at least two pulsed acoustic signals, said meter being of the type including a measuring line, a first measuring head, and a second measuring head, wherein

a first sharp, precisely definable leading edge of the pulsed acoustic signal transmitted by one of the measuring heads is used for the direct time measurement, FN2

the two acoustic signals are transmitted through the fluid as a measuring signal as well as through the material of the measuring line as an interfering signal at least partially interfering with the measuring signal, and

the measuring line is made of a material that transmits an acoustic signal at a slower sound velocity than the fluid transmits said signal.

('004 Patent, 5:2-16 (internal references omitted).)

The parties dispute the meaning of the first element of Claim 1.

Tokyo Keiso's Construction	SMC's Construction
The plain, ordinary language of this phrase is sufficient and it does not require further clarification by the Court.	This language should be construed to require that only the first part of the signal (the leading edge) is used for the measurement.

In essence, the parties' dispute focuses on whether "a ... leading edge" means " *only* a ... leading edge." SMC argues that the invention relies upon the "leading edge" method described in the background section of the specification, which makes clear that only the leading edge of the pulsed acoustic signal is used. FN3 Tokyo Keiso argues that the plain language of the claim is sufficient and that SMC is attempting to import a limitation from the specification.

The Court finds that no interpretation is required under *Phillips*. The claim language is clear and does not preclude using other portions of the acoustic signal in addition to the "first sharp, precisely definable leading edge" to perform the time measurement.

IV. *CONCLUSION*

The following summarizes the Court's construction:

Disputed Term	Court's Construction
a first sharp, precisely definable leading edge of the pulsed acoustic signal transmitted by one of the measuring heads ('004 Patent, Claim 1)	No interpretation required.

FN1. Although the parties initially disputed a number of terms in Claims 1, 2, and 5, they have reached agreement as to the construction of all but the one term discussed in the instant order. (*See* Schumann Decl., Exh. B; Def.'s Opening Claim Construction Brief, Exh. 2.) The Court adopts the parties, proposed constructions as to the other terms.

FN2. Unless otherwise indicated, the disputed claim language is marked with underlined text.

FN3. In describing the existing state of the art, the patent states:
in the state of the art, direct time measurement by the "leading edge" method is used for the time difference method. For this, a precisely defined, pulsed acoustic signal is sent from a first measuring head to a second measuring head, wherein to measure the time t_1, *only the first sharp, precisely defined, pulsed acoustic signal is used*. At the same time, an acoustic signal is sent from the second measuring head to the first measuring head and the time t_2 is measured in the same way. The time difference t_2-t_1 is directly linearly proportional to the average flow speed; other parameters like, for example, the temperature-dependent density and viscosity, are not included in the measurement.

('004 Patent, 2:4-16 (emphasis added).)
C.D.Cal.,2007.
Tokyo Keiso Co. v. SMC Corp.

Produced by Sans Paper, LLC.