United States District Court,
D. Massachusetts.

TELE-CONS, INC., Michael Moisin,
Plaintiffs.
v.
HARMONY LIGHTING, INC. Lights of America, Inc. Feit Electric Company, Inc., Technical Consumer Products, Inc., American Top Lighting, Inc,
Defendants.

Civil Action No. 03-11250-RCL

April 17, 2007.

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MEMORANDUM AND ORDER ON CLAIM CONSTRUCTION

LINDSAY**, District Judge.**

This patent infringement action was brought by the plaintiffs, Michael Moisin and Tele-Cons, Inc. (jointly "Tele-Cons"), initially against 13 corporate defendants. Presently only three defendants are actively litigating the case: Lights of America, Inc. ("LOA"), Technical Consumer Products, Inc. ("TCP") and Feit Electric Company, Inc. ("Feit"). FN1 Tele-Cons claims these defendants are infringing its patent No. 5,821,699 ("the '699 patent"), which discloses a ballast circuit for a 3-way compact fluorescent light bulb ("CFL").

FN1. At the *Markman* hearing the parties represented that Tele-Cons has either settled or is in the process of settling with all other defendants.

A patent infringement action consists of two steps: "construing the patent and determining whether infringement occurred." Markman v. Westview Instruments, Inc., 517 U.S. 370, 384, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The first is a question of law for the court; the second a question of fact for the fact-finder. *Id*. At issue now is the first step, commonly called "claim construction."

When construing claim terms, the court is directed to conduct a detailed analysis of the publicly available sources, which 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." Phillips v. AWH Corp. 415 F.3d 1303, 1314 (Fed.Cir.2005) (en banc); Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc., 381 F.3d 1111, 1116 (Fed.Cir.2004). "Properly viewed, the 'ordinary meaning' of a claim term is its meaning to the ordinary artisan after reading the entire patent." Phillips v. AWH Corp. 415 F.3d 1303, 1321 (Fed.Cir.2005).

With these principles in mind, I construe the disputed claims as follows.

1) "At least three discrete stages of light" (Claims 1, 4, 7, 10 & 11)

The dispute with respect to this term is whether the prosecution history imposes a limitation, not evident from the plain language of claim, that the low light setting is the minimum possible light output, and the high light setting is the maximum light output. "[W]here the claim language is unambiguous on its face ... consideration of the rest of the intrinsic evidence is restricted to determining if a deviation from the clear language of the claims is specified." Union Carbide Chemicals & Plastics Technology Corp. v. Shell Oil Co., 308 F.3d 1167, 1180 (Fed.Cir.2002).

The defendants' argument that this restriction is compelled by the prosecution history is unpersuasive, as the few references in the intrinsic record to "MAX light" or "the highest level of light output" in context appear to refer to the light output relative to the other settings on the switch as opposed to the maximum light the lamp could produce.

I therefore construe this term in accordance with its plaining meaning as "*at least a low, a medium and a high level of brightness*."

2) "First source voltage" (Claims 1, 4, 7 & 10)

The only dispute regarding this term is whether to include the limitation "without amplifying the input voltage." Tele-Cons argues that this limitation is improper because it is not derived from the plain meaning of the claim terms, and because the patentee never clearly and unambiguously added this limitation. The defendants counter that the claim language, the specification and prosecution history exclude "amplifying" as embraced within the meaning of this term.

Tele-Cons correctly notes that the "no-amplification" limitation may not be read in to the definition of "first source voltage" simply because, for other source voltages, the patent claims specify that they *are* amplified. *See* Resonate Inc. v. Alteon Websystems, Inc., 338 F.3d 1360, 1365 (Fed.Cir.2003). However, I must review the totality of the evidence before construing the claim terms, keeping in mind that the applicant may limit or change the ordinary meaning of a claim term "by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." Nystrom v. Trex Co., Inc., 374 F.3d 1105, 1111 (Fed.Cir.2004); Tex. Digital Sys., Inc. v. Telegenix, Inc., 308 F.3d 1193, 1204 (Fed.Cir.2002).

Particularly on point with respect to this issue is Watts v. XL Systems Inc., 232 F.3d 877 (Fed.Cir.2000). The *Watts* court examined the intrinsic evidence as a whole before construing the disputed limitation into the claim at issue in that case. *Id*. at 882-83. Significant factors in the construction included that the claim language was not clear on its face; the specification described a single embodiment, which contained the limitation; the specification stated "the present invention utilizes" the limiting feature; and in the prosecution history the patentee distinguished its invention based on that limitation. *Id*. Also instructive is Nystrom v. Trex Co., Inc., 424 F.3d 1136, 1142-46 (Fed.Cir.2005). In *Nystrom,* the court reviewed the totality of the

evidence before determining that the limitation in question should be read into the claim, despite the potentially broader claim language. The *Nystrom* court focused on the fact that "the written description and prosecution history consistently use the term" in the more limited sense. Id. at 1145.

In this case, the prosecution history specifically indicates that "in the present invention" the first source voltage is only rectified, not increased. Tele-Cons' argument that this reference is irrelevant because it refers to a different, cancelled claim is unpersuasive. The *Watts* court specifically rejected the argument that discussion of a term in the context of a cancelled claim should be disregarded. Watts, 232 F.3d at 883-84; *see also* Southwall Technologies, Inc. v. Cardinal IG Co., 54 F.3d 1570, 1579 (Fed.Cir.1995). ("[A]rguments made during prosecution regarding the meaning of a claim term are relevant to the interpretation of that term in every claim of the patent absent a clear indication to the contrary.") In addition, the specification, including diagrams, describe an invention in which the first source voltage is rectified, but not increased. There are no examples anywhere in the intrinsic record in which the first source voltage is amplified. The specification and prosecution history are useful tools, because they demonstrate how the inventor understood the invention before litigation began. Phillips v. AWH Corp. 415 F.3d 1303, 1315-17 (Fed.Cir.2005) (en banc).

Looking at the entire intrinsic record, I conclude that an ordinary person skilled in the art would understand that in this invention the first source voltage is not amplified.

Accordingly, I construe this term to mean "*a voltage obtained by converting the input voltage from alternating current (AC) to direct current (DC) without amplifying the input voltage when the 3-way switch is at the first (low) setting*."

3) "Second source voltage" (Claims 1, 4, 7 & 10)

The defendants' proposal as to the construction of this term more closely tracks the plain language of the claim terms. Each of the claims includes a reference to "doubling" the first source voltage, either by explicit references or by referring to a rectification and voltage doubling stage. That Tele-Cons initially took the position that the limitation "approximately double" should be part of the construction of "second source voltage" further supports that this is a natural construction of this term. The term "increasing," however, is clearer and closer to the initial language than the defendants' proposed term "amplifying."

I therefore construe this term to mean "*a voltage obtained by increasing the input voltage to a value approximately double the first source voltage when the 3-way switch is at the second (medium) or third (high) settings*."

4) "First controlled current" (Claims 1 & 4), "First output current" (Claims 7 & 10), "Second controlled current" (Claims 1 & 4), "Second output current" (Claims 7 & 10), "Third controlled current" (Claims 1 & 4), "Third output current" (Claims 7 & 10)

The defendants have a strong argument that "controlled current" and "output current" should not be construed to have the same meaning. There is a general presumption that, when a patentee uses different language in patent claims, that language should be construed differently. CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG, 224 F.3d 1308, 1317 (Fed.Cir.2000). Although this presumption may be overcome with contrary evidence, *see id.,* Tele-Cons has not provided such persuasive evidence. Therefore the word "controlled" must be given effect.

Tele-Cons argues that "controlled" has a more limited meaning to a skilled artisan than does "regulated" and complains that the defendants, in support of their construction, have supplied a definition of "regulated" rather than "controlled." Tele-Cons has provided no evidence, however, in support of its contention, and *The Authoritative Dictionary of IEEE Standards Terms* (7th ed.2000) provides no definition for "control" that would support Tele-Cons' claim. Because I find the defendants' evidence the more persuasive. I adopt the defendants' proposed definition of "controlled current" and define the claim terms as follows:

"First controlled current" *"A regulated current produced by the first source voltage when the 3-way switch is at the first (low) setting."*

"First output current" *"A current produced by the first source voltage when the 3-way switch is at the first (low) setting."*

"Second controlled current" *"A regulated current produced by the second source voltage when the 3-way switch is at the second (medium) or third (high) settings, and which lights the bulb at a high brightness when the 3-way switch is at the third (high) setting ."*

"Second output current" *"A current produced by the second source voltage when the 3-way switch is at the second (medium) or third (high) settings and which lights the bulb at a high brightness when the 3-way switch is at the third (high) setting."*

"Third controlled current" *"A regulated current produced by adjusting the second controlled current when the 3-way switch is at the second (medium) setting and which lights the bulb at a medium brightness when the 3-way switch is at the second (medium) setting."*

"Third output current" *"A current produced by the second source voltage when the 3-way switch is at the second (medium) setting and which lights the bulb at a medium brightness when the 3-way switch is at the second (medium) setting."*

5) "Stage" (Claims 4-10) FN2

FN2. The word "stage" is used in two very different ways in the patent. This definition of stage applies only to the second use of the word, as in "a rectification and voltage doubling stage" from Claim 4; "three discrete stages of light" is construed *supra*.

The defendants argue that the definition of "stage" should include language indicating that the stage changes the input. They propose as a construction of the term, "one or more components that acts on input to provide an output." This language is both confusing and unnecessary, as the action performed by the "stage" is sufficiently described in the claim language itself.

I thus construe this term to mean *"a component or group of components in an electrical device."*

6) "Connecting" (Claim 11) FN3

FN3. I find that the additional terms for which some of the parties have sought construction, including "adjusts," "creates," "providing," and "corresponding," do not have special meanings in the context of the '699 patent and therefore do not require construction. *See* Phillips, 415 F.3d at 1314 (noting that in some

cases "claim construction involves little more than the application of the widely accepted meaning of commonly understood words.")

The defendants propose the definition "joining together without any intervening components" but do not provide any substantive justification for this definition. Furthermore, the defendants' proposed definition interprets "connecting" in the mechanical sense rather than the electrical engineering sense. In the context of the claim language "connecting" means part of the same circuitry, rather than physically adjacent.

Accordingly, I construe this term to mean "*joining to make electrical contact*."

7) Claim 11 is not a Means-Plus-Function Claim

A slightly different rule of claim construction applies to claims in "means-plus-function" form. Under 35 U.S.C. s. 112, para. 6, an element of a claim "may be expressed a means or step for performing a specified function without the recital of structure, material, or acts in support thereof ...". This is known as "means-plus-function" form of claim. 35 U.S.C. s. 112, para. 6 (2000); Apex Inc. v. Raritan Computer, Inc., 325 F.3d 1364, 1371 (Fed.Cir.2003). Claims in means-plusfunction form are construed under s. 112, para. 6 and are interpreted narrowly. *Al-* Site Corp. v. VSI Intern., Inc., 174 F.3d 1308, 1320 (Fed.Cir.1999). "[W]hether a claim limitation is in meansplus-function format ... is a matter of claim construction and thus is a question of law." Apex, 325 F.3d at 1370; Kemco Sales, Inc. v. Control Papers Co., Inc., 208 F.3d 1352, 1360 (Fed.Cir.2000).

The defendants argue that Claim 11 is in means-plus-function or step-plus-function form. Because the claim does not use the language "means" or "steps for," there is a strong presumption that s. 112, para. 6 does not apply. Masco Corp. v. United States, 303 F.3d 1316, 1327 (Fed.Cir.2002). The defendants may only overcome this presumption by "showing that the [relevant] limitation contains nothing that can be construed as an act," *id.,* or by showing that the claim recites a function "without reciting sufficient structure for performing that function," Watts, 232 F.3d at 880. In this case, the claim recites structure in the form of electrical contacts and the fluorescent lamp, and recites the act of "connecting" those contacts to the lamp. The defendants thus have not produced evidence sufficient to rebut the presumption that s. 112, para. 6 should not apply to Claim 11. I find therefore that Claim 11 is not a means-plus-function claim.

Conclusion

The court will apply at trial the foregoing construction to the claims in dispute in this action.

SO ORDERED.

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Tele-Cons, Inc. v. Harmony Lighting, Inc.

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