United States District Court,
N.D. Texas, Dallas Division.

JOOVY L.L.C. and Albert T. Fairclough,
Plaintiffs.
v.
BABY TREND, INC., Taiwan Charwell Enterprise Co. Ltd., and Target Corporation,
Defendants.

No. 3:06-CV-0616-P

July 31, 2007.

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ORDER

JORGE A. SOLIS**, District Judge.**

This lawsuit involves infringement claims by Plaintiffs Joovy LLC ("Joovy") and Albert T. Fairclough ("Fairclough") against Defendants Baby Trend, Inc., Taiwan Charwell Enterprise Co. Ltd., and Target Corporation (hereinafter collectively referred to as "Defendants") for infringement of U.S. Patent No. 5,622,375 ("the '375 Patent"). Now before the Court are the parties' briefs setting forth their proposed claims constructions. FN1 After reviewing the briefing, including the patents, drawings, and any relevant prior art, and the applicable law, the Court determines that a *Markman* hearing is not necessary and adopts the claims construction set forth below.

FN1. Plaintiffs and Defendants filed their claims construction briefs on June 7, 2007. Defendants filed a reply brief on June 21, 2007. Plaintiffs also filed a reply brief on June 21, 2007.

I. Claims Construction

A patent infringement analysis involves two steps: (1) construction of the claims; and (2) comparison of the allegedly infringing product to the claim under proper construction. Read Corp. v. Portec, Inc., 970 F.2d 816, 821 (Fed.Cir.1992). Claim construction, the first step, is a matter of a law for the court to decide. Markman

v. Westview Instruments, Inc., 52 F.3d 967, 971 (Fed.Cir.1995) (en banc), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). In order to properly construe the claim, the Court should look at, in order of significance: (1) the language of the claim itself, (2) the specification, and (3) the prosecution history. Id. at 979. These three types of evidence are referred to as "intrinsic evidence." *Id*. The Federal Circuit has termed all other evidence, including but not limited to dictionaries and expert testimony, as "extrinsic evidence." *Id*. The use of extrinsic evidence when the claims are clear from the intrinsic evidence is clear error. *Id*. at 981; Vitronics Corp. v. Conceptronic, Inc.., 90 F.3d 1576, 1582 (Fed.Cir.1996). Claim terms are presumed to have their ordinary meaning unless unequivocally defined otherwise in the claim. Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed.Cir.2005) (en banc), *cert. denied,* 546 U.S. 1170, 126 S.Ct. 1332, 164 L.Ed.2d 49 (2006). The ordinary meaning is what the term would mean to a person of ordinary skill in the art in question when reading the term in the context of the entire patent. Id. at 1313. Although terms can be used in different ways throughout a patent document, generally a term is assumed to have the same meaning throughout the patent. *See* Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1342 (Fed.Cir.2001); Pitney Bowes, Inc. v. Hewlett-Packard, Co., 182 F.3d 1298, 1311 (Fed.Cir.1999).

II. Means-Plus-Function Limitation

Any claim limitation that contains the word "means" is presumed to be a means-plus-function claim, and thus is subject to the provisions contained within 35 U.S.C. s. 112, para. 6. This statutory provision states:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. s. 112, para. 6 (2004). Only a specific recitation of the structure of the claimed object used to carry out the means will remove the limitation from the means-plus-function presumption. Cardiac Pacemakers, Inc. v. St. Jude Med., Inc., 296 F.3d 1106, 1113 (Fed.Cir.2002). When interpreting means-plus-function claim limitations, courts use a two-step process that involves: (1) articulating the function set forth in the claim; and (2) determining what the corresponding structure is, as disclosed in the patent's specification. JVW Enters., Inc. v. Interact Accessories, Inc., 424 F.3d 1324, 1330 (Fed.Cir.2005). Stated otherwise, "the function must be determined before the corresponding structure can be identified." *Id*.

First, when articulating the function of the means-plus-function limitation within the claim, a court may not adopt a function different from that which was "explicitly recited in the claim." Micro Chem., Inc. v. Great Plains Chem. Co., 194 F.3d 1250, 1258 (Fed.Cir.1999). Second, a court errs "by importing the functions of a working device into the [ ] specific claims, rather than reading the claims for their meaning independent of any working embodiment." JVW, 424 F.3d at 1331 (citing Rodime PLC v. Seagrate Tech., Inc., 174 F.3d 1294, 1303 (Fed.Cir.1999)). Once the functions performed by the claimed means are identified, the court must "ascertain the corresponding structures in the written description that perform those functions." BBA Nonwovens Simpsonville, Inc. v. Superior Nonwovens, L.L.C., 303 F.3d 1332, 1343 (Fed.Cir.2002).

III. Analysis

Claim 1 of the '375 Patent, which is the only claim at issue in this litigation claims the following:

1. A push-chair for transporting a first child and a second child, comprising:

a frame to which is attached front and rear wheels and a seat for the first child;

a platform on which the second child can stand disposed at a lower rear position on the frame and including a substantially unobstructed trailing edge, the rear wheels being mounted adjacent to the trailing edge of the platform; and

means for mounting the seat to the frame at a position substantially forward of the platform; and

wherein a substantially unobstructed space is formed above the platform and behind the seat, and whereby the second child can step on and off the platform.

(Pls.' App. at 6.) The parties dispute the meaning of three phrases in the claim: (1) "a platform on which the second child can stand," (2) "substantially unobstructed trailing edge," and (3) "means for mounting the seat to the frame at a position substantially forward of the platform."

Plaintiffs assert that the first phrase, "a platform on which the second child can stand," should be construed exactly as written in the claim. (Pls.' Br. at 7.) The Defendants, however, argue that the proper construction is "a flat surface raised above the level of the surrounding area." (Defs.' Br. at 7.) Defendants ignore the language in the written description and the language within the claim and seem to unnecessarily narrow the scope of the '375 Patent's claim. Although the Defendants have ample extrinsic evidence, the intrinsic evidence is to be examined first and with greater weight, especially considering "platform" is hardly a technical term. Phillips, 415 F.3d at 1314. Additionally, the Defendants argue that the phrase "on which a child can stand" is a statement of intended use, and thus is not appropriate within a claim construction. (Defs.' Br. at 8.) However, their cited authority arose from *ex parte* appeals to the United States Patent and Trademark Office ("PTO") during examination of the patent application, concerning the preamble of the patent and thus they are less applicable to the current litigation. *See, e.g., Ex Parte* Masham, 2 U.S.P.Q.2d 1647 (Bd. Pat.App. & Int.1987)*;* In re Casey, 54 C.C.P.A. 938, 370 F.2d 576, 580 (C.C.P.A.1967)*;* In re Otto, 50 C.C.P.A. 938, 312 F.2d 937, 940 (C.C.P.A.1963). Therefore, based on the intrinsic evidence of the current claim and the written description, the court construes the disputed phrase as written, "a platform on which a child can stand."

In relation to the second disputed phrase, "substantially unobstructed trailing edge," Plaintiffs argue that no further construction is necessary and the phrase should be given its ordinary meaning. Alternatively, Plaintiffs propose that the phrase should be construed to mean a "largely unobstructed trailing edge." (Pls.' Br. at 13-14.) Defendants argue that the proper construction is, "no significant structure is close to the trailing edge of the platform in the area above, behind, and/or below the trailing edge." (Defs.' Br. at 15.) Plaintiffs base their argument on the assertion that "substantially" is not a measure of magnitude, but rather approximation. (Pls.' Br. at 9-11.) The Defendants argue that based on the figures depicted in the claim, only the areas above, behind and below the trailing edge of the chair are unobstructed, due to the wheels and brakes on either side of the trailing edge. (Defs.' Br. at 15. However, as Plaintiffs note, when the intrinsic evidence is considered as a whole, it becomes apparent that "substantially" is used to denote approximation of the lack of obstruction. The court finds the term "substantially unobstructed" together with the intrinsic evidence sufficiently conveys the intended meaning without the necessity of including terms not found anywhere in the patent as proposed by Defendants. The intrinsic evidence shows that the chair is primarily intended for use with two children with a structure "wherein a substantially unobstructed space is formed above the platform and b ehind the seat" "on which a second child can stand" or "may also be used to carry a shopping bag." The purpose of the "substantially unobstructed trailing edge" is consistent with and works

in conjunction with the above limitation in that it allows a child to "step onto and off the platform" without obstruction or impediment. Ultimately, the court finds that the phrase should be construed as written and having its ordinary meaning to a person of ordinary skill in the art. Thus, the court construes the phrase "substantially unobstructed trailing edge" as written with no further need of construction.

The third disputed phrase, "means for mounting the seat to the frame at a position substantially forward of the platform," invokes interpretation under 35 U.S.C. s. 112, para. 6 through use of the word "means." Micro Chem., 194 F.3d at 1257. There is no description of the structure that would be used to carry out the means for mounting the seat to the chair, and it does not remove the phrase from interpretation under 35 U.S.C. s. 112, para. 6. *Id*. As discussed earlier, the first step in a 35 U.S.C. s. 112, para. 6 interpretation is determining the function claimed in this limitation. *BBA,* 305 F.3d at 1343. Here, the two parties dispute the extent of the means-plus-function interpretation. Plaintiffs assert the function of the claim to be "mounting the seat to the frame" while Defendants seek to extend the function to "mounting the seat to the frame at a position substantially forward of the platform." (Joint Ex. 1 at 9.) As the two parties dispute the function of the claim, their corresponding structures also differ substantially. The Federal Circuit, as this Court, has difficulty teasing out the function within a means-plus-function limitation from a separate limitation not subject to the constraints of 35 U.S.C. s. 112, para. 6. The Court must not narrow or broaden the specifics of the claim due to a means-plus-function interpretation. Although Plaintiffs assert that the phrase "at a position substantially forward of the platform" is indicative of the location of such means, this Court views it as an essential part of the function of that device. Here, the novel aspect of this chair is not the ability to mount a seat to a frame, something included in nearly all strollers, but the ability to mount that seat forward of the platform to allow a child to stand on or placing a bag on it. Therefore, the Court construes the function of the '375 Patent as "mounting the seat to the frame at a position substantially forward of the platform."

Next, the Court must determine the structure that corresponds to the asserted means. The corresponding structure "must not only perform the claimed function, but the specification must clearly associate the structure with the performance of the structure." JBW, 424 F.3d at 1332. Defendants argue that the corresponding structure is comprised of the auxiliary bars, the forward projections of horizontal bar 29"; and the crossbars at attachment points '18 and 32"/37". By seeking this construction, Defendants apparently seek to limit the patent claim to the embodiment shown in Fig.2. However, within the written description of the patent, the structure in Fig. 2 is described as resulting in "the seat being located further forward than shown in Fig. 1, thus effectively increasing the room available for a shopping bag or child." (Patent '375, col. 4, ll. 39-42.) The structure identified in Fig. 2 seems to be a modification available to increase space, and not the structure necessary to mount the seat forward of the platform. Therefore the corresponding structure is not necessarily the auxiliary cross bars, the horizontal bars projecting forward of the side frames, or the cross bars as asserted by the Defendant but the generalized structure for attaching the seat forward of the platform. The court finds that the corresponding structure is "the seat attached at points on forward projections of the horizontal bars projecting beyond the side frames and attached at points that may be on the side frames or may be on auxiliary bars."

In light of all of these considerations, the Court construes Claim 1 of the ' 375 Patent as follows:

1. A push-chair for transporting a first child and a second child, comprising:

a frame to which is attached front and rear wheels and a seat for the first child;

a platform on which the second child can stand disposed at a lower rear position on the frame and including a substantially unobstructed trailing edge, the rear wheels being mounted adjacent to the trailing edge of the platform; and

means for mounting the seat to the frame at a position substantially forward of the platform; and

Function: "mounting the seat to the frame at a position substantially forward of the platform"

Structure: "the seat attached at points on forward projections of horizontal bars projecting beyond the side frames and attached at points that may be on the side frames or may be on auxiliary bars forwardly mounted on upper portions of the side frames."

wherein a substantially unobstructed space is formed above the platform and behind the seat, and whereby the second child can step on and off the platform.

IV. Other Motions

Also pending before the court is Defendants' motion for leave to file limited Markman briefing filed on June 26, 2007. Plaintiffs responded on July 6, 2007. Because the court found it unnecessary to rely on the arguments on which Defendants seek to file supplemental briefing, Defendants' motion is denied.

It is so ordered.

N.D.Tex.,2007.
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