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

Robert YAQUINTO, Jr., as the Trustee of the Bankruptcy Estate of Renato Specialty Products, Inc., and as the Trustee of the Bankruptcy of Renato S. Riccio,
Plaintiffs.
v.
GODWIN GRUBER, LLP, Now Know as Godwin Pappas Langley Ronquillo, LLP, Godwin Gruber, P.C. and Arthur I. Navarro,
Defendants.

No. 3:06-CV-02086-P

July 31, 2007.

Paul Knisely, Jason M. Panzer, Thomas P. Prehoditch, Knisely & Prehoditch, Austin, TX, Jonathan T. Suder, Friedman Suder & Cooke, Fort Worth, TX, for Plaintiffs.

Mark Daniel Strachan, Richard A. Sayles, Shawn Long, Sayles Werbner, Dallas, TX, for Defendants.

ORDER

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

This is a legal malpractice case concerning allegations of professional negligence, gross negligence and breaches of fiduciary duty by Defendants Godwin Gruber, L.L.P. and Arthur I. Navarro (herinafter collectively referred to as "Defendants") in the course of their representation of Renato Specialty Products, Inc. and Renato S. Riccio (collectively, "the Riccio Claimants") in a patent infringement lawsuit in the United States District Court for the Eastern District of Texas against Wood Stone Corp (the "Wood Stone Lawsuit"). FN1 The Plaintiff is acting as Trustee for the Bankruptcy Estates of RSPI and Mr. Riccio. Plaintiffs and Defendants filed opening claims construction briefs on June 1, 2007. Plaintiffs and Defendants also both filed response briefs on June 20, 2007. 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.

I. Background Facts

The Riccio Claimants retained Godwin Gruber to represent them in prosecuting patent infringement claims against Wood Stone Corporation and several of its principals over U.S. Patent No. 5,605,092 ("the '092 patent"). Wood Stone filed a motion for partial summary judgment with one contention that the claims of the '092 patent were invalid due to prior art. The motion for partial summary judgment was eventually granted by District Judge Paul Brown. The legal malpractice claims arise out of Godwin Gruber's actions in the Wood Stone Lawsuit, and particularly out of the response to Wood Stone's motion for partial summary

judgment. To prevail on this legal malpractice case, Plaintiff must show that the Riccio Claimants would have prevailed on the infringement claims on the '092 patent. Therefore, the Court must construe the claims at issue within the '092 patent in order to ascertain whether the Riccio Claimants would have prevailed on the infringement claims. The asserted claims in the '092 patent are Claims 3, 4, 5, 9, 10, 11, 15, and 16.

Claim 3 of the '092 Patent states:

3. An oven for baking a food product, comprising: a bottom; at least one stone covering said bottom including a baking area in which the food product may be baked; a top connected to said bottom and constructed to form a chamber over the baking area; a constant heat source connected to said bottom to provide a constant heat within the chamber, said constant heat source disposed above said bottom; a supplemental heat source provided below said stone for supplying additional heat to the baking area; and control means connected to said supplemental heat source for regulating the temperature of an upper surface in the baking area of said stone.

9. An oven for baking a food product, comprising: a bottom; at least one stone covering said bottom including a baking area in which the food product may be baked; a top connected to said bottom and constructed to form a chamber over the baking area; a constant heat source connected to said bottom to provide a constant heat within the chamber, said constant heat source disposed above said bottom; a supplemental heat source provided below said stone for supplying additional heat to the baking area; first control means connected to said constant heat source for regulating ambient temperature within the chamber; and second control means connected to said supplemental heat source for regulating the temperature of an upper surface in the baking area of said stone.

15. An oven for baking a food product, comprising: a bottom; at least one stone covering said bottom including a baking area in which the food product may be baked; a top connected to said bottom and constructed to form a chamber over the baking area; a constant heat source connected to said bottom to provide a constant heat within the chamber, said constant heat source disposed above said bottom; a supplemental heat source provided below said stone for supplying additional heat to the baking area; a housing disposed around said supplemental heat source; and means for connecting said housing to said bottom.

II. 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), *reh'g en banc denied,* 1992 U.S.App. LEXIS 23811 (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. Markman, 52 F.3d 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. 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 words can be used in different ways throughout a patent document, generally a word is assumed to have the same meaning throughout the patent. *See* Pitney Bowes, Inc. v. Hewlett-Packard, Co., 182 F.3d 1298, 1311 (Fed.Cir.1999); Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1342 (Fed.Cir.2001).

III. Analysis

The Parties have submitted a Joint Claim Construction Statement, and by agreement the parties have narrowed the disputed claims to four. (Defs.' Br. 2.) The disputed terms are:

1. "A bottom;"

2. "At lease one stone covering said bottom;"

3. "Connected to said bottom;" and

4. "Means for connecting said housing to said bottom."

All of the disputed terms essentially dispute the meaning of the term "bottom" and the definition within the '092 Patent. Defendants assert that "a bottom" refers to "a lower portion of the oven" while Plaintiffs argue that it is "the lowest portion." (Pls.' Br. 9.) However, as pointed out by Defendants, "lowest portion" is vague because it begs the question of "lowest portion" of what? Hence, the court agrees that the phrase "lowest portion" has to be identified with some structure. Examination of the claims as written show that the "bottom" is not the lowest portion of the oven. The oven claimed is comprised, in part, of a "supplemental heat source" which is located below the bottom, so the bottom cannot be the lowest portion of the entire oven. On the other hand, the court finds that Defendants' proposed construction of "lower portion of the oven" creates some ambiguity as it becomes uncertain where the bottom is positioned in the oven. The intrinsic evidence, including the drawings, indicate the only portion of the oven below the "bottom" is the supplemental heat source and its components, the housing and a control means for regulating temperature in the baking area. The court thus construes "a bottom" as the lowest portion of the structure that forms the baking area and the chamber over the baking area.

The second disputed term is "at least one stone covering said bottom." Plaintiff proposes a construction of "one or more stones covering the bottom" and argues that the word "covering" is self-explanatory with no need of further construction. Defendants propose "one or more stones situated above at least a part of the bottom." Defendants assert that their proposed construction of "covering" "seeks to give purpose to its use." (Defs.' Open. Brief at 14.) However, the term "situated above ... the bottom" does not sufficiently convey what the term "covering said bottom" conveys since an item situated above another item may or may not be a covering. The court agrees with Plaintiff that the word "covering" is self-explanatory and does not need further construction. However, the drawings show that the stones may only cover a part of the bottom as Defendants urge. Thus, the court construes the claim "at least one stone covering said bottom" as "one or more stones covering at least a portion of the bottom."

The next disputed term is "connected to said bottom." Plaintiff proposes "joined or fastened to the lowest portion." Defendants propose "in association with the lower portion of the oven." The parties' dispute regarding this phrase stems in large part from the dispute as to the meaning of "bottom." The court has previously construed the term "bottom" and will not repeat that here. Defendants assert that there is nothing

in the evidence suggesting a "fastening" to the to the bottom. However, Plaintiff notes that the '092 Patent teaches how to construct an oven, and that "when a item is constructed, its constituent parts are put together or assembled. In order for those parts to hold together they must be joined or fastened to one another to prevent the structure from collapsing or falling apart." (Plf.'s Open. Brief at 16.) The court agrees and finds that construing "connecting" as joining or fastening comports with the intrinsic evidence examined as a whole and better conveys what is required to assemble the oven than use of the words "associated with." Further, construing "connected" to mean "associated with" would add more uncertainty to the meaning of the term, and appears to be inappropriate in the context of this patent since the intrinsic evidence conveys more than mere association between these structures. Lastly, the word "connected" should be given its ordinary meaning. The intrinsic evidence does not indicate a specialized meaning for the word. "It is well settled that dictionary definitions provide evidence of a claim term's ordinary meaning." Inverness Med. Switzerland GmbH v. Warner Lambert Co., 309 F.3d 1373, 1378 (Fed.Cir.2002) (internal citations and quotations omitted). The first dictionary definition for connected is "joined or linked together." *Webster's Collegiate Dictionary* 244 (1999). Thus, the court construes the phrase "connected to the bottom" as "joined or fastened to the bottom."

The last disputed term is "means for connecting said housing to said bottom." Here Plaintiff proposes "a device or method that joins or fastens the housing to the bottom." Defendants propose "bolts used to associate the housing to the lower portion of the oven." However, the Federal Circuit has rejected the contention that where a patent describes only a single embodiment, the construction of the patent must be limited to that embodiment. Inverness Med. Switzerland GmbH v. Warner Lambert Co., 309 F.3d at 1379 (Fed.Cir.2002). "Even when the specifications describes only a single embodiment, the claims ... will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using 'words or expressions of manifest exclusion or restriction.' " Liebel-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 906 (Fed.Cir.2004). Here the specifications identify the means of connecting the housing to the bottom "by conventional apparatus, such as bolts. ('092 Patent, Col. 5, ln. 16-18). Thus, there is no clear intent to limit the connection to bolts as proposed by Defendants. The court construes the phrase "means for connecting said housing to said bottom" as "a device or method that joins or fastens the housing to the bottom."

IV. Conclusion

For the foregoing reasons, the disputed claims of the '092 patent are construed as above.

IT IS SO ORDERED.

FN1. The patent infringement lawsuit is styled *Renato Specialty Products, Inc. and Renato S. Riccio v. Woodstone Corp., Keith W. Carpenter, and Keith R. Carpeter,* Cause No. 4:01cv317, in the United States District Court for the Eastern District of Texas

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