United States District Court,
S.D. New York.

PLASMART INC,
Plaintiff.
v.
WINCELL INTERNATIONAL INC., et al,
Defendants.

No. 05 Civ. 10745(PKC)

Nov. 8, 2007.

MEMORANDUM AND ORDER

P. KEVIN CASTEL**, District Judge.**

Plaintiff PlaSmart Inc. seeks declaratory judgment that its product, the PlasmaCar, does not infringe certain patents allegedly owned by Wincell International Inc. ("Wincell"), Jar Chen Wang, and Hong Jiun Gu, namely, U.S. Pat. Nos. D448,430 (the "'430 Patent"), 6,431,566 (the "'566 Patent"), 6,722,674 (the "'674 Patent"), and 6,860,497 (the "'497 Patent"), and that those patents are invalid and unenforceable. Plaintiff also asserts causes of action for trade dress infringement, tortious interference with business relations and trade libel.

Defendants have answered and defendants Wincell and Wang have asserted counterclaims against plaintiff (and also named is a counterclaim defendant Timothy Kimber, plaintiff's president, founder and owner) for infringement of the '674 Patent, trade dress infringement, and violation of New York's anti-dilution statute, New York Gen. Bus. Law s. 360-1. FN1

FN1. Defendants' Answer and Counterclaims, which was filed on February 7, 2006, includes a counterclaim for infringement of the '430 Patent. That counterclaim is not included in the June 20, 2006 Answer and Second Amended Counterclaims, and Defendants have indicated that they do not intend to pursue it at this time. (*See* Def. Wincell's Claim Construction Br. at 1 fn. 1.)

Plaintiff filed a motion for preliminary injunction on June 1, 2006. The Court conducted a hearing and denied that motion by Memorandum and Order dated July 7, 2006, finding, among other things, a failure to demonstrate a likelihood of success of the tortious interference and Lanham Act claims. 442 F.Supp.2d 53 (S.D.N.Y.2006).

Subject Matter Jurisdiction

In the context of a recent discovery dispute, the parties submitted evidence and advanced arguments which

have given the Court reason to doubt whether it has subject matter jurisdiction over the declaratory judgment claims relating to the '430 Patent, the '566 Patent and the '497 Patent. A declaratory judgment claim may only be brought to resolve an "actual controversy." 28 U.S.C. s. 2201(a) (2006). The " 'actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.' " Preiser v. Newkirk, 422 U.S. 395 (1975) (quoting Steffel v. Thompson, 415 U.S. 452, 459 n.10 (1974)).

Defendants have not asserted claims against plaintiff for infringement of the '430 Patent, the '566 Patent or the '497 Patent (the "Unasserted Patents"). On or about October 12, 2006, defendants Wincell and Wang executed and delivered to plaintiff a covenant not to sue or otherwise hold it liable for infringement of those three patents. A covenant not to sue can have the effect of divesting the court of subject matter jurisdiction over declaratory judgment claims for non-infringement. *See, e.g.,* Benitec Australia, Ltd. v. Nucleonics, Inc., 495 F.3d 1340, 1346-49 (Fed.Cir.2007) (holding that the requisite showing of "sufficient immediacy and reality" to support declaratory judgment jurisdiction was not met when the patent infringement claims were withdrawn and a covenant not to sue was entered); Crossbow Technology, Inc. v. YH Technology, No. C03-4360SI, 2007 WL 2408879 at *4-*5 (N.D.Cal. Aug. 21, 2007) (holding that the covenant not to sue was sufficient to divest the court of subject matter jurisdiction). While it is true that defendant Gu was not a signatory to that covenant, it is unclear whether Gu would have standing to assert a claim for infringement of the Unasserted Patents and whether he has ever given plaintiff any indication, explicit or otherwise, that he has any inclination to do so.

The Supreme Court recently held that the party seeking declaratory judgment has the burden of proving that the facts alleged " 'under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.' " MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 S.Ct. 764, 771 (Jan. 9, 2007) (quoting Md. Cas. Co. v. Pac. Coal & Oil Co., 312 U.S. 270, 273 (1941)).

In light of *MedImmune* and recert Federal Circuit cases following it, *see, e.g.,* Benitec, 495 F.3d at 1343-49; Sony Electronics, Inc. v. Guardian Media Technologies, Ltd., 497 F.3d 1271, 1281-89 (Fed.Cir.2007), and given the facts of this case, the Court has invited the defendants' motion on whether there is subject matter jurisdiction over the declaratory judgment claims relating to the Unasserted Patents. The Court reserves decision on claim construction of the Unasserted Patents until it has had an opportunity to further consider the critical jurisdictional question.

I will construe the disputed terms of the '674 Patent, about which there is clearly an actual controversy worthy of immediate decision, and my conclusions are set forth below.

Claim Construction Standards

In an infringement action, the court first must determine the scope and meaning of the patent claims asserted and, then, the properly construed claims are compared to the allegedly infringing devices. *See* Cybor Corp. v. FAS Techs., Inc., 138 F.3d 1448, 1454 (Fed.Cir.1998). Claim construction presents a question of law to be decided by the Court. Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed.Cir.1995), *affd,* 517 U.S. 370 (1996).

The claims of a patent are the numbered paragraphs at the end of the patent that define the scope of the invention and thus the scope of the patentee's right to exclude others from making, using or selling the patented invention. *See* Astrazeneca AB v. Mutual Pharmaceutical Co., Inc., 384 F.3d 1333, 1336

(Fed.Cir.2004). The purpose of construing patent claims is to define the scope of the coverage of the claims by interpreting the language used as it would have been understood by one ordinarily skilled in the relevant art. "Claim construction is the judicial statement of what is and is not covered by the technical terms and other words of the claims." Netword, LLC v. Centraal Corp., 242 F.3d 1347, 1352 (Fed.Cir.2001) (citing United States Surgical Corp. v. Ethicon, Inc., 103 F.3d 1554, 1568 (Fed.Cir.1997)).

The Court of Appeals for the Federal Circuit had occasion to restate and clarify the standards for claim construction. Phillips v. AWH Corp., 415 F.3d 1303 (Fed.Cir.2005) (en banc), *cert. denied,* 546 U.S. 1170 (2006). *Phillips* emphasizes that "[i]t is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude.' " *Id.* at 1312 (citations omitted). The "words of a claim 'are generally given their ordinary and customary meaning,' " which "is the meaning that the 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 1312-13 (citations omitted). Because the meaning of a claim term is not always readily apparent, courts should look to " 'those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean.' " *Id.* at 1314 (citations omitted). "[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.* at 1313. The public sources to which the courts should look to interpret claim language include "intrinsic" evidence, such as "the words of the claims themselves, the remainder of the specification, [and] the prosecution history," as well as various forms of "extrinsic" evidence, including expert and inventor testimony, dictionaries and treatises. *Id.* at 1314.

In *Phillips,* the Federal Circuit instructed that courts should look, first and foremost, to the language of the claims themselves, considering the meaning of particular claim terms, the context in which terms are used in the asserted claims, and other claims of the patent in question. *Id.* at 1314-15. The court stressed that claims should be read in light of the specification, stating that the specification may be the " 'single best guide to the meaning of a disputed term.' " *Id.* at 1315 (citation omitted). In Teleflex, Inc. v. Ficosa North America Corp., 299 F.3d 1313, 1325 (Fed.Cir.2002), a case cited approvingly in Phillips, 415 F.3d at 1323, the Federal Circuit stressed the importance of examining the specification to determine if the patentee has limited the scope of the claims.

For example, an inventor may choose to be his own lexicographer if he defines the specific terms used to describe the invention 'with reasonable clarity, deliberateness, and precision.' ... The specification may limit the scope of the claims via other routes. The specification may assist in resolving ambiguity where the ordinary and accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone.... The patentee may demonstrate an intent to deviate from the ordinary and accustomed meaning of a claim term by including in the specification expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.

(quoting In re Paulsen, 30 F.3d 1475, 1480 (Fed.Cir.1994) (additional citations omitted)); *see also,* Phillips, 415 F.3d at 1316 ("[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess.... In other cases, the specification may reveal an intentiona disclaimer, or disavowal, of claim scope by the inventor").

In addition to the specification, the court, in *Phillips,* stated that, if it is in evidence, the prosecution history may also have important bearing on the meaning of a claim term, though it may lack the clarity of the specification and, hence, may be less helpful. *Id.* at 1317 (citations omitted). Finally, the Federal Circuit

confirmed that a court may resort to extrinsic evidence, though it is of less significance and less value to the claim construction process. *Id*. at 1317-18 (citations omitted). Extrinsic evidence " 'consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.' " *Id*. (citations omitted).

The parties have extensively briefed the meaning of the claim language. They have been afforded the opportunity to call live witnesses but have elected to rely upon the paper record supplemented by oral argument. With the teachings of the Federal Circuit in mind, I turn to the claim language at issue.

The '674 Patent

I note that the '674 patent at issue is far from a model of clarity, even allowing for technical language and jargon. For example at column 1, lines 63-67, the patent reads as follows: "It is unreasonable to let a young child in a risky or unsafe situation. However, we have to tolerate the above mentioned suffering drawbacks until an improved scooter that can provide an absolutely safe for the rider to play with the scooter is developed." Also, at column 4, lines 36-40, the following appears: "Therefore, when the twister member [ ] is driven to rotate, the safety wheel [ ] is capable of rotating with respect to the twister member [ ], so as to prevent the safety wheel [ ] being stunk [sic] when operating the scooter." Though I find these and similar errors troubling, it is not the Court's job to rewrite the patent, but rather, to construe the meaning of the claim terms as the patentee chose to draft them.

Claim 1 of the '674 Patent reads as follows:

A scooter, comprising: a scooter body; a pair of rear wheels rotatably supported at a rear portion of said scooter body; a transmission unit having an upper control portion positioned above said scooter body and a lower connecting portion extended underneath said scooter body; a steering means affixed to said control portion of said transmission unit for driving said connecting portion thereof to rotate in clockwise and anticlockwise directions; a twister member having a driven portion connected to said connecting portion of said transmission unit; a pair of driving wheels spacedly and rotatably mounted to said twister member wherein said two driving wheels are spaced apart from said driven portion of said twister member; and a safety driving equipment, comprising: a supporting arm frontwardly extended from said driven portion of said twister member; and a safety wheel which is rotatably mounted to a free end of said supporting arm to support a front portion of said scooter body and prevent said scooter from being flipped over.

Counsel in this case have agreed upon interpretations of most of the claim language or have agreed that the ordinary meaning is so clear that no interpretation is necessary. The disputed language is discussed below.

a safety wheel which is rotatably mounted to a free end of said supporting arm to support a front portion of said scooter body and prevent said scooter from being flipped over

The parties have asked the Court:o construe the phrase, "a safety wheel which is rotatably mounted to a free end of said supporting arm to support a front portion of said scooter body and prevent said scooter from being flipped over." The parties were able to reach an agreement at the claim construction hearing that the words, "to support a front portion of said scooter body and prevent said scooter from being flipped over," mean exactly what they say-that the safety wheel functions to (1) support the front part of the scooter and (2) prevent the scooter from flipping over.

The parties' disagreement over construction is limited to the first seven words of the phrase, *i.e*., "a safety

wheel which is rotatably mounted." Plaintiff, citing to the specification of the patent, contends that "a safety wheel which is rotatably mounted" is a wheel "which is 'capable of universal rolling.' " (Parties' Revised Joint Claim Charts 3 (citing, '674 Patent at col. 2, ln. 33-35).) The parties agree that a wheel which is "capable of universal rolling" is a caster wheel. Defendants' view is that a caster wheel is only one of numerous possible embodiments of the invention and thus, should not be read as a limitation of the scope of claim 1. Defendants urge that "a safety wheel which is rotatably mounted" encompasses any wheel that can turn on its axis and can perform the safety functions that are delineated in the claim.

Defendants' argument, which focuses on the language of the claim itself, is more faithful to the principles of claim construction outlined in *Phillips,* and is more persuasive to this Court. As the Federal Circuit instructed district courts to do at the outset of their claim construction analyses, I have considered the words, "a safety wheel which is rotatably mounted," in the context of the entire patent.

Plaintiff asks the Court to construe the term "rotatably mounted," in this context, as, in effect, describing a wheel of the universal rolling or caster-type. In view of the plain meaning of the phrase and the way it and similar terms are used in claim 1 and in other claims in the patent, I reject plaintiff's proposed construction.

The Federal Circuit has advised that the context in which a term is used in a claim can be "highly instructive." Phillips, 415 F.3d at 1314 (citing examples of Federal Circuit cases in which "the use of a term within the claim provides a firm basis for construing the term"). The parties agree, as set forth in the Revised Joint Claim Charts, that "rotatably mounted," as used elsewhere in claim 1, refers to "wheels that are mounted ... and serve to propel the vehicle." (Revised Joint Claim Charts 2 (construing "a pair of driving wheels spacedly and rotatably mounted ...").) The parties also reached an agreement at the claim construction hearing that the phrase "rotatably supported," as used in claim 1, describes wheels that are able to rotate about their axles.

Further, the phrase "rotatably mounted" and similar phrases are used in other claims of the patent to describe wheel attachments that enable wheels to rotate, not specifically caster wheels. *See, e.g.,* '674 Patent, claim 4 ("rotatably connecting"), ("rotatably mounting"), claim 5 ("rotatably affixed"), claim 13 ("rotatably connecting"), ("rotatably mounting"), claim 14 ("rotatably supported"), ("rotatably mounted"). In *Phillips,* the Court noted that "[b]ecause claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims." 415 F.3d at 1314. I find that, consistent with its usage throughout the claims, the phrase "rotatably mounted," as it relates to the safety wheel, means mounted in a manner that allows for rotation.

Plaintiff shifted focus during the claim construction hearing to the term "safety wheel," as used in claim 1, urging the Court to construe the term to mean a wheel of the universal rolling or caster-type. Plaintiff relies primarily on the "Summary of the Present Invention," wherein the safety wheel is referred:o as "capable of making universal rolling mounted lively at the end of the wheel arm." ("674 Patent, col. 2, ln. 33-35.)

The Federal Circuit has repeatedly cautioned courts not to import limitations from the specification into the claims. *See* Philips, 415 F.3d at 1323; Teleflex, 299 F.3d at 1326 ("The claims must be read in view of the specification, but limitations from the specification are not to be read into the claims.") (citations omitted); Collegenet, Inc. v. Applyyourself, Inc., 418 F.3d 1225, 1231 (Fed.Cir.2005) ("In examining the specification for proper context, ... this court will not at any time import limitations from the specification into the claims." (citation omitted)). In order to avoid improperly limiting the claim terms, it is important to bear in mind that claim construction analysis must begin with the words of the claim. *See* Teleflex, 299 F.3d at

1324. The Federal Circuit, in *Teleflex,* held,

[c]laim terms take on their ordinary and accustomed meanings unless the patentee demonstrated an intent to deviate from the ordinary and accustomed meaning of a claim term by redefining the term or by characterizing the invention in the intrinsic record using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.

Id. at 1327. One of the ways in which a party can demonstrate intent to assign special meaning to a claim term is through the term's consistent use throughout the specification. *See, e.g.,* Bell Atlantic Network Services, Inc. v. Covad Communications Group, Inc., 262 F.3d 1258, 1273 (Fed.Cir.2001).

The Federal Circuit has noted that "[i]n 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." Phillips, 415 F.3d at 1314; *see also,* Acumed LLC v. Stryker Corp., 483 F.3d 800, 805 (Fed.Cir.2007) (applying widely accepted meaning of the word 'curved'), *petition for cert. filed,* 76 U.S.L.W. 3094 (U.S. Sep. 4, 2007) (No. 07-304). The term "safety wheel," as it is used in the '674 patent, is not a term that has a particular meaning in a field of art. I find that the ordinary, lay meaning, of "safety wheel" is a free-rotating wheel that performs safety functions. There is nothing in the claim language to suggest that the safety wheel is limited to a wheel of the universal rolling or caster-type.

The language of the other claims of the patent provide further support for this construction. Federal Circuit caselaw dictates that, "different words or phrases used in separate claims are presumed to indicate that the claims have different meanings and scope." Karlin Tech., Inc. v. Surgical Dynamics, Inc., 177 F.3d 968, 972 (Fed.Cir.1999); *see* Phillips, 415 F.3d at 1314 ("Differences among claims can also be a useful guide in understanding the meaning of particular claim terms.... For example, the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." (citing Laitran Corp. v. Rexnord, Inc., 939 F.2d 1533, 1538 (Fed.Cir.1991); Liebel-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 910 (Fed.Cir.2004)). In other claims of the '674 Patent, the inventors recite the requirement of a safety wheel of a caster-type, stating, "said safety wheel is arranged to self-rotating 360 degrees with respect to said free end of said supporting arm...." ('674 Patent, claims 3, 8, 12.) Because these claims are dependent on claim 1, if the limitation that the safety wheel must be a caster were already present in claim 1, there would be no reason to repeat it, and no reason to describe it as an "arrange[ment]" of the safety wheel. *See* Tandon Corp. v. U.S. Int'l Trade Comm'n, 831 F.2d 1017, 1023 (Fed.Cir.1987) ("To the extent that the absence of such difference in meaning and scope would make a claim superfluous, the doctrine of claim differentiation states the presumption that the difference between claims is significant.") The Court acknowledges that there are additional features described in the dependent claims, such as the integral extension of the supporting arm, which might resolve the duplicity problem. The precise language used to describe the caster wheel in these claims, versus the broad language used in claim 1, is telling nevertheless.

In addition to the claims, there are other indications in the specification that the caster wheel is only one example of an acceptable safety wheel. The term "safety wheel" appears in several places throughout the patent exactly as it appears in claim 1, *i.e.,* without any reference to universal rotation. (*See, e .g.,* '674 Patent col. 3, ln. 41; col. 4, lns. 27, 55-56, 60.) The specification describes one of the features of the invention as "a safety wheel rotatably connected" to the supporting arm. (Id . at col. 3, ln. 41.) At column 4, line 30, the term "safety wheel" is described not as a universal wheel, but as a "free rotating wheel." When

the specification does refer to the "universal rolling" feature, it is within the description of the preferred embodiments- "*[a]ccording to the preferred embodiment, ...* [t]he safety wheel is capable of making universal rolling." (Id. at col. 3, lns. 45-53.) At column 4, lines 25-44, again within the purview of the phrase, "*according to the preferred embodiment ...,*" the specification provides further details about the qualities of a safety wheel of one particular type, *i.e.,* the caster-type. In describing the second preferred embodiment, the specification describes the added benefits of a "universal" safety wheel. (Id. at col. 5, lns. 11-15 ("Furthermore, the safety wheel is a universal wheel, so either because of automatic movement, under force or wobbling operation, the safety wheel will move ilong to any direction without encountering the obstacle caused by the angle of proceeding.").)

Turning to the prosecution history, I find that it, too, suggests that the safety wheel is not limited to one of the universal rolling or caster-type. Claim 1 was initially rejected on obviousness grounds because of prior art which leaches "wheel elements" on a scooter. (Office Action 2-5, citing U.S. Patent No. 4,323,258.) In connection with other claims, the PTO acknowledged that the cited prior art does not teach a "safety wheel adapted to rotate 360 degrees." (Office Action 6, 7.) In response to the Office Action, the inventors did not amend the "safety wheel" language or raise objections urging that the safety wheel of claim 1 has different rolling capabilities than the "wheel elements" of the prior art. (*See* Nov. 7, 2003 Response to the Office Action at 2, 7.) One would expect that if the inventors meant for the "safety wheel" in claim 1 to mean a wheel of a universal rolling or caster-type, they would have brought this to the PTO's attention because it would have cured the obviousness problem.

Plaintiff argues that the Federal Circuit's decision in Verizon Services Corp. v. Vonage Holdings Corp., Nos.2007-1240, 2007-251, 2007-1274, 2007 WL 2781869 (Fed.Cir. Sept. 26, 2007), a case decided just weeks before the claim construction hearing in this case, is dispositive of the questions before this Court. In *Verizon,* the court concluded that the district court had erred in its interpretation of the term "localized wireless gateway system," because it failed to require that the system is limited to one that can perform the functions described in the specification. *See id*. at *10-*11.

The Court, in *Verizon,* looked to the specification to guide its interpretation of the claim language. *See id*. at *10. The summary of the invention included a description of functions that were critical to the invention. *See id*. The Court read the claim term at issue to include the functional limitations outlined in the specification, even though those limitations were not included in the claim. *See id*. The Court explained that when "a patent thus describes the 'features' of the 'present invention' as a whole, this description limits the scope of the invention." *Id*.

As discussed above, reading the patent as a whole, the ability of the wheel to roll universally is not a "feature of the present invent on," but rather one preferred embodiment. While I agree with plaintiff that the reference to the "safety wheel, capable of making universal rolling" as "the invention herein" may be some evidence that the inventors intended to narrow the scope of claim 1, there is stronger conflicting evidence indicating that the ability of the safety wheel to roll universally is but one preferred embodiment. I do not read *Verizon* to mean that, when presented with magic words such as "present invention" or "the invention herein," district courts should disregard contrary indications in the language of the claims, as well as other language of the specifications. The *Verizon* court gave no indication that it was announcing such a new watershed rule.

The Court finds Honeywell Int'l, Inc. v. ITT Indus., 452 F.3d 1312 (Fed.Cir.2006) and Andersen Corp. v. Fiber Composites, LLC, 474 F.3d 1361 (Fed.Cir.2007), two post- *Phillips* cases relied upon by the Court in

Verizon, to be instructive. In *Honeywell,* the Federal Circuit affirmed the district court's ruling that the "fuel injection system component" described in the patent was limited to a "fuel filter." *Id*. at 1317-20. The written description of the invention referred to the fuel filter as "this invention" or "the present invention" at least four times. *Id*. at 1318. Furthermore, unlike the patent here, there was nothing in the specification to indicate that the fuel filter was merely a preferred embodiment of the invention. *Id*. The only fuel component disclosed and claimed in the patent was a fuel filter. *Id*. The specification's description of the prior art further supported the conclusion that the patentee limited the scope of the patent claims to a fuel filter. *Id*.

In *Andersen,* the patentee challenged the district court's construction of the terms "composite composition" and "composite structural member." 474 F.3d at 1365. The Court affirmed the district court's finding that the term "composite composition" was limited to "a solid pellet or a solid linear extrudate, which may subsequently be remelted and extruded to make a structural member," Id. at 1366, and vacated the district court's conclusion that the term "composite structural member" was not similarly limited, id. at 1371-73. In its opinion, the Federal Circuit reiterated its "warn[ing] against importing limitations from the specification into the claims absent a clear disclaimer of claim scope" and its "recogni[tion of] the difficulty faced by district courts in trying to walk that tightrope." Id. at 1373. The Federal Circuit observed that the patentee intended to narrow the claim scope, because it was clear from the specification that the steps of linear extrusion or pelletization are "required," "essential" and "critical" features of the "composite composition" and "composite structural member." Id. at 1367. Unlike the limitations at issue in *Verizon*. *Honeywell* and *Andersen,* the limitation urged by plaintiff here does not apply to the invention as a whole, but rather to one preferred embodiment. Furthermore, the patentee here has not made clear statements of intent to narrow the scope of claim 1. Absent such clear statements, I adopt the plain meaning of the claim language.

I conclude that "safety wheel" in claim 1 of the '674 patent is not limited to a wheel of the universal rolling or caster-type. Neither claim 1 nor any of the other claims contain language that would so limit the claim. Additionally, neither the specification nor the prosecution history includes an "expression of manifest exclusion or restriction demonstrating an intent to limit" the safety wheel to a universal rolling or caster-type. Teleflex, 299 F.3d at 1327. The term "safety wheel" is not redefined in the specification and there are no clear statements of scope limiting the term. The "capable of making universal rolling" language of the specification merely describes one preferred embodiment of the invention. I therefore construe the phrase "a safety wheel which is rotatably mounted to a free end of said supporting arm to support a front portion of said scooter body and prevent said scooter from being flipped over" as, a wheel, which is mounted to said supporting arm in a manner that allows the wheel to rotate, to support a front portion of said scooter body and prevent said scooter from being flipped over.

SO ORDERED.

S.D.N.Y.,2007.
Plasmart Inc. v. Wincell Intern. Inc.

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