United States District Court,
W.D. Wisconsin.

Eugene BARATTO and Textures, LLC,
Plaintiffs.
v.
BRUSHSTROKES FINE ART, INC,
Defendant.

No. 08-cv-657-slc

July 10, 2009.

Peter M. Reinhardt, Bakke Norman, S.C., Menomonie, WI, for Plaintiffs.

Bradley W. Grout, Hunton & Williams LLP, Atlanta, GA, Gregory M. Murphy, Hunton & Williams, Richmond, VA, Angela J. Kujak, J. Donald Best, Michael Best & Friedrich LLP, Madison, WI, for Defendant.

ORDER

STEPHEN L. CROCKER**, United States Magistrate Judge.**

In this patent infringement lawsuit defendant Brushstrokes Fine Art, Inc. has requested the construction of 6 claim terms. Plaintiffs Eugene Baratto and Textures, Inc. oppose construction of any terms and contend that defendant has failed to explain why construction of each of the 6 terms is necessary to resolve a disputed issue concerning infringement or invalidity. *See* Prel. Pretr. Conf. Ord., dkt. 15 at 2-3 (moving party's burden to persuade court that construction and hearing are necessary). I agree.

Defendant states only that "construction of these terms can resolve issues of non-infringement" and the terms "present or will present fundamental disputes." Dkt. 22 at 6. Apparently recognizing that its reasoning is vague and conclusory, defendant asserts that the particular issues in dispute are unclear because plaintiffs have alleged only that defendant is "making, using, offering to sell, selling or importing into the United States Plaintiffs' patented art reproductions" and have not provided any claim charts or grounds for infringement. *Id*. at 5. Defendants are correct that the pleadings must identify each claim in each patent being asserted and each accused device. Prel. Pretrial Conf. ord, dkt. 15 at 2. However, plaintiffs have done this by alleging in their complaint that defendant's art reproduction product infringes claim 1 of the '041 patent. Compl., dkt. 1. If defendant had questions concerning the allegations, it should have filed a motion for a more definite statement or a similar request for relief before seeking claims construction.

Defendant's motion will be denied and the claims construction hearing currently set for July 24, 2009 will be cancelled. Defendant may present its construction of the 6 terms at summary judgment or trial.

ORDER

IT IS ORDERED that defendant's motion requesting claims construction, dkt. 22, is DENIED. No claims construction hearing will be held on July 24, 2009.

W.D.Wis.,2009.
Baratto v. Brushstrokes Fine Art, Inc.

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