

United States District Court,
D. Nebraska.

INDEPENDENT TECHNOLOGIES, INC,
Plaintiff.

v.

THE SIEMON COMPANY, INC,
Defendant.

No. 896CV464

Dec. 31, 1997.

Joseph B. Bowman, Kyle L. Elliott, Kokjer, Kircher Law Firm, Kansas City, MO, Richard N. Berkshire, Berkshire, Burmeister Law Firm, Omaha, NE, for Plaintiff.

Keith J. Murphy, Michael A. Cantor, Philmore H. Colburn, II, William Cass, Fishman, Dionne Law Firm, Windsor, CT, Lon A. Licata, Broomfield, CO, Robert F. Rossiter, Jr., Fraser, Stryker Law Firm, Omaha, NE, for Defendant.

MEMORANDUM OPINION AND ORDER

CAMBRIDGE, **Chief J.**

This matter is before the Court for a determination of the proper construction of the patent claims at issue in this case, and specifically for a determination of whether the term "blade" in Plaintiff's patent encompasses the type of electrical contact used by the defendant. As more fully explained below, I conclude that Plaintiff's patent for a 110 block adapter containing "blade" contacts does not include the cylindrical pin contact used by Defendant.

BACKGROUND

Plaintiff filed this lawsuit against The Siemon Company alleging patent infringement and unfair competition. Each company has developed a device called a 110-type test adapter, which is used to connect modular jacks (usually of telecommunications devices) to 110-type wiring blocks. The particular point of disagreement has to do with the type of electrical contacts each device uses for mating with the 110-type block. Plaintiff's adapter utilizes "a plurality of upstanding conductive blades," while Siemon's adapter uses pin or probe contacts. Plaintiff argues that its patent for the 110-type adapter includes "blades" in geometric configurations beyond merely planar and rectangular.

Pursuant to the holding of *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), which explains that construction of patent terms, including any terms of art, is exclusively within the province of the court, this Court held a hearing on

October 28, 1997, and accepted evidence from the parties as to the proper interpretation of the term "blade" in Plaintiff's patent.

LAW

The Federal Circuit Court of Appeals held in *Markman* that "the court has the power and obligation to construe as a matter of law the meaning of language used in the patent claim." 52 F.3d at 979. The Supreme Court expatiated on this proposition, ruling that judges are especially suited for construing patent terms because of existing precedent, the likelihood that a judge's training and discipline will lead to a proper interpretation, and the importance of uniformity in the treatment of a given patent. 116 S.Ct. at 1393-96.

When interpreting a claim, the court is to look to the intrinsic evidence of the record (the patent itself, the specification, and the prosecution history), and to extrinsic evidence (expert testimony) if necessary. *Markman*, 52 F.3d at 979; *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582-83 (Fed.Cir.1996). When, after considering all the evidence, the court arrives at an understanding of the patent language, the court is obligated to pronounce as a matter of law the meaning of that language. *Markman*, 52 F.3d at 981.

DECISION

In the present matter, the Court has received the patent itself, the patent file, the parties' products, and the expert testimony of John Beehner and Maxwell Peel. The patent language refers at various points to "upstanding conductive blades" (Ex. 1, Claim 1), "planar contact blades" (Ex. 1, Claim 13(c)), and "an array of separated and specially parallel contact blades vertically mounted" (Ex. 1, Claim 14(c)). The drawings accompanying the patent generally illustrate flat, rectangular contact blades. The patent consistently refers to "blades," which term is not separately defined in the patent and which has the ordinary and common meaning of "a flat, thin part or section." Webster's II New Riverside University Dictionary 179 (1994). "Planar" is understood to mean flat, and "upstanding" as it is understood in Claim 1 indicates a flat part, as a cylindrical part cannot stand on edge.

The Court is at a loss to fathom how "planar contact blade," or any of the variations thereof in the patent, can reasonably be interpreted to encompass cylindrical pin contacts as used by the defendant. Moreover, the Court rejects as meritless Plaintiff's suggestion that the term "contact blade" as used in the patent should be broadly defined to include all electrical contacts regardless of specific configuration. Therefore,

IT IS ORDERED that for purposes of this case, the term "blade" as used in Plaintiff's patent does not include the cylindrical pin contacts used by the defendant in its 110-type test adapter device.

D.Neb.,1997.

Independent Technologies, Inc. v. Siemon Co., Inc.

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