

United States District Court,
C.D. California.

PENN FABRICATION (U.S.A.) INC,
Plaintiff.

v.

EL-COM HARDWARE, INC., Paul Zamberg and Elie Vrobel,
Defendants.

No. SACV99-422 DOC (EEX)

Dec. 27, 1999.

FINAL ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

CARTER, J.

The parties to this action are competitors in the hardware business. At issue in this case is the '834 patent of a latch, which is used to secure the lid of a case to the case body. Plaintiff claims that Defendants make and sell a latch that infringes the '834 patent. Defendants allege that summary judgment is appropriate because the accused El-Com latch does not infringe Claim 1. After considering the moving and responding papers, the report and examination of Dr. Geoffrey Shiflett, the Court-appointed expert, and oral argument, the Court DENIES Defendant's Motion for Summary Judgment.

I. Facts

At issue in this case is Claim 1, the sole claim of the '834 patent, which states as follows:

Apparatus for securing together a body and a lid of a case first and second members, comprising: first and second members; walls on said members which form a recess when said members lie adjacent to each other; a strike member configured for attachment to said first member; a support configured for attachment to said second member; an arm pivotally carried on said support to pivot toward and away from an initial arm position; a resilient element disposed between said arm and said support to urge pivoting of said arm away from said initial arm position; a bolt carried by said arm for reciprocal movement there along to engage said strike member when said arm lies in said initial arm position; and an abutment carried by said support and positioned in the path of said arm when it pivots away from said initial position, to abut said arm and prevent pivoting thereof past a ready position that is angularly spaced by less than 45 (deg.) from said initial position; said bolt having a strike-engaging lip that lies at least partially within said recess when said arm lies in said ready position and said first and second members lie adjacent to each other.

(emphasis added). The underlying facts are not in dispute; rather, the claim interpretation and the significance of the prosecution history is at issue.

II. Analysis

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party has the burden of demonstrating that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir.1978). A fact is material if it may affect the outcome of the suit. *See Anderson* at 248, 106 S.Ct. at 2510.

Where the moving party does not bear the burden of proof at trial, the moving party's burden is met by showing the Court that there is not enough evidence to support the non-moving party's case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325-26, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The Court presumes the non-moving party's version of any disputed issue of fact to be correct. *See T. W. Elec. Serv. v. Pacific Elec. Contractors Assn'n.*, 809 F.2d 626, 630-31 (9th Cir.1987). The opposing party in a motion for summary judgment must present more than a mere scintilla of evidence, more than merely colorable evidence. They must present significant probative evidence tending to support the complaint. *See Summers v. A. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir.1997). However, it is not the function of the Court to weigh the evidence, but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249; *see also Covey v. Hallydale Mobilehome Estates*, 116 F.3d 830, 834 (9th Cir.1997).

A. Issues of Fact as to whether El-Com's Latch Literally Infringes Claim 1

"Literal infringement of a claim exists when every limitation recited in the claim is found in the accused [product]." *Strattec Sec. Corp v. Gen. Automotive Specialty Co.*, 126 F.3d 1411, 1418 (Fed.Cir.1997). Analysis of patent infringement involves a two-part test: "(1) claim construction to determine the scope of the claims, followed by (2) determination of whether the properly construed claims encompass the accused structure." *Id.* at 1415.

1. Claim Construction

Claim construction is a purely legal question appropriate for the Court to decide on summary judgment. *See Cybor Corp. v. FAS Techs, Inc.*, 138 F.3d 1448, 1451 (Fed.Cir.1998). In conducting its claim construction, the Court considered the plain meaning of the words in Claim 1, the specification and the prosecution history. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996) (finding that the scope and meaning of a claim is determined by the language of the claim, the written description and the prosecution history of the patent). The Court's claim construction focused on the two key aspects of this action: (1) the meaning of the word "abutment" in the path of the latch arm and (2) the meaning of the word "prevent."

First, the Court interprets the word "abutment" under its ordinary and customary meaning. In *Webster's Third New International Dictionary*, abutment is defined as "the place where touching occurs" and "a fixed point from which resistance is obtained." Because "it is always necessary to review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning," the Court has reviewed the specification as well. *Vitronics Corp.*, 90 F.3d at 1582 (finding that the "specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication."). The specification teaches the Court that the abutment or dimples must be positioned

in the path of the arm and "extend laterally over the arm assembly where they are in position to abut it and restrict its rotation away from the floor." Specification at column 4, l. 2-4. Thus, the Court construes abutment to mean a dimple that protrudes into the path of the arm a sufficient amount so as to restrict motion, but not necessarily so much so as to extend over the entire arm like a bar or even to protrude out like tabs. Although the specification uses the word "tabs," the claim itself purposefully does not use the word "tab." Most importantly, although the specification describes the abutment as extending over the arm, the claim itself merely defines the abutment as "positioned in the path." FN1 If the patentee had intended the abutment to act as a bar or tab that truly extended over the path, he or she would have said so. The Court finds, however, that "in the path," is more specific and permits only a slight protrusion into the path.

FN1. Moreover, although the Court referred to Dr. Shiflett's report as merely a guide, he describes the purpose of the abutment or detents as the following: "As the arm *brushes* against the detents, the bracket shoulders flex away from one another causing a force to be exerted against them." (emphasis added). The foregoing language suggests that the abutment need not block the pathway, but, rather, it need only extend into the pathway far enough such that the arm brushes against the dimple. In fact, the word "brushes" implies that the dimple does not extend that far into the pathway.

Second, the Court finds that "prevent pivoting" means to *hinder* FN2 pivoting from the initial position to the ready position, by less than 45 degrees. Because the customary meaning of "prevent" can be to stop or to hinder, the Court turned to the specification for guidance because "it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics Corp.*, 90 F.3d at 1582. To begin, the specification defines the initial position as the locked position and the ready position as the position where the arm is secure and abutting the dimples. When describing the term "prevent pivoting," the specification states that the abutment is positioned such that "further rotation would be *restricted* ..." within 45 degrees from the initial position to the ready position. Specification at column 4, l. 39 (emphasis added). In the *Webster's Third New International Dictionary*, restrict is defined as "to hamper or to diminish." Indeed, the specification uses the word "restrict" several times to describe what the abutment does to the arm.

FN2. Even the definition of "prevent," provided by the Defendants, in the Third College Edition of *Webster's New World Dictionary* defines prevent as to "hinder."

Finally, the Court considered the prosecution history and the prior art. In considering the prosecution history, the Court notes that Plaintiff surrendered coverage of latches that do not hinder the latch from pivoting by more than 45 degrees as a condition of receiving its patent and in order to fall outside of the Wolf patent .FN3 Thus, an abutment that restricts or hinders rotation beyond 45 degrees is the key delineation between the prior art and Plaintiff's '834 patent. The Court has specifically construed this claim in such a way so as to preserve the validity of the claim. *See Modine Mfg. Co. v. I.T.C.*, 75 F.3d 1545, 1557 (Fed.Cir.1996).

FN3. The Wolf patent required an abutted latch arm that pivoted past 45 degrees.

In connection with the prosecution history and the prior art, the Court has considered the purpose of the patent. The specification described the purpose of the limitation on the rotation of the arm beyond 45 degrees as a means to prevent a "hazard to adjacent equipment and/or personnel." Specification at column 1,

1. 45-46. While the Court acknowledges that the intent of this patent's design was to hinder rotation beyond 45 degrees in order to reduce the possibility that somebody will be hurt by an arm on the latch that could easily rotate 145 to 165 degrees, such a purpose does not mean that the arm must *stop* at 45 degrees. Rather, the Court interprets the claim and its intent to mean that the abutment *hinders* movement beyond 45 degrees from the ready position, as a safety mechanism, but does not stop a full rotation of the arm. Therefore, the Court hereby finds that the scope of the '834 patent includes two key limitations: (1) an abutment positioned in the path of the latch arm, even if only slightly and (2) this abutment hinders the arm from pivoting more than 45 degrees from its initial position.

2. Whether Claims Encompass El-Com's Product

First, Defendants argue that although the El-Com latch has a dimple on each sidewall of the support bracket, these dimples do not extend over the latch arm and are not positioned in the path of the latch arm. Plaintiff, however, argues that the dimples, or protrusions, do extend from the sidewalls of the support bracket over the latch arm and are positioned in the path of the latch arm as it pivots away from the floor of the latch in the initial or locked position. Based on the foregoing arguments, a visual inspection of El-Com's product and discussions with Dr. Shiflett,^{FN4} the Court finds that there is a material issue of fact as to the first key element of Claim 1 of the '834 patent: whether there is an abutment or dimple positioned in the path of the latch arm.

FN4. Dr. Shiflett's report found dimples on the bracket shoulders that "*protrude* from the shoulder inward toward one another ... so as to allow the arm to rotate approximately 15 (deg.) under the action of the secondary torsion spring." Report at 2 (emphasis added).

Second, Defendants argue that the El-Com latch lacks an abutment that prevents (or, as the Court construes the claim, hinders) pivoting past a ready position less than 45 degrees from the initial position. The El-Com latch arm, Defendants argue, pivots by approximately 120 degrees past an initial position. FN5 Dr. Shiflett reported to the Court that both Plaintiff and Defendants' products hit the abutment in the arm, from the initial position to the ready position, within less than 45 degrees. The diagram below, prepared for the Court's guidance by Dr. Shiflett, illustrates that the abutment on the El-Com product hinders movement from 14 to 30 degrees from the initial position.

FN5. It is, however, irrelevant that Plaintiff admits that the arm of the El-Com latch is capable of pivoting to at least 120 degrees. For the full range that each arm can pivot (Dr. Shiflett found Plaintiff's arm can pivot 165 degrees and Defendants' arm can pivot 145 degrees) is not the issue before this Court. Rather, the issue before the Court is whether the abutment hinders the rotation of the arm past a ready position, which is within 45 degrees from the initial position.

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Indeed, Plaintiff presents evidence to suggest that Defendants' dimples hinder the latch arm from pivoting more than 45 degrees away from the initial position. Plaintiff shows that, in operation, Defendants' arm is not able to pivot at least 120 degrees from the initial position unless a force much greater than gravity, which is not encountered in ordinary use, is applied. Thus, the Court finds that there is a material issue of fact as to the second key element of Claim 1 of the '834 patent: whether the abutment hinders the arm from pivoting more than 45 degrees from the initial position.

III. Disposition

For the foregoing reasons, the Court finds there is a material issue of fact as to whether El-Com's latch literally infringes Plaintiff's U.S. Patent No. 5,511,834, entitled "Automatically Positioned Latch Assembly." Specifically, there is a material issue of fact whether El-Com's latch contains an abutment in the path of the arm that hinders pivoting thereof past a ready position that is angularly spaced by less than 45 degrees from the initial position. Because the Court finds a material issue of fact as to whether there is literal infringement (whether both limitations are found in the El-Com product), the Court does not reach the issue of whether summary judgment is appropriate under the Doctrine of Equivalents. Defendants' Motion for Summary Judgment is hereby DENIED.

IT IS SO ORDERED

C.D.Cal.,1999.

Penn Fabrication (U.S.A.) Inc. v. El-Com Hardware, Inc.

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