

United States District Court,
D. Delaware.

MOORE NORTH AMERICA, INC., Plaintiff,
Counter-Defendant.

v.

POSER BUSINESS FORMS, INC., Defendant,
Counter-Claimant.

No. Civ.A. 97-712-SLR

Feb. 14, 2001.

MEMORANDUM ORDER

ROBINSON, J.

At Wilmington this 14th day of February, 2001, having reviewed papers submitted in connection therewith;

IT IS ORDERED that the disputed claim language identified by the above referenced parties shall be construed as follows:

1. The '798 patent-Claim 1.

a. "Printer." This phrase is not limited to the IBM 3800 printer. *See* Moore U.S.A. v. Standard Register Co., 229 F.3d 1091, 1111 (Fed.Cir.2000).

b. "Folded paper sheet." A sheet of paper that is folded. FN1

FN1. This proposed definition is not particularly helpful to the jury. The court only includes a definition in this order to inform both parties that, despite the proposals of both parties, this claim term means no more than the proposed definition.

c. "A distance sufficient to insure that the adhesive does not interfere with rollers." A distance sufficient so that the adhesive does not interfere with the rollers of the printer during processing. This distance must be, at minimum, greater than the impression area caused by the rollers of the particular printer used. *See id.* ("[T]here is nothing wrong with defining the dimensions of a device in terms of the environment in which it is to be used.")

2. The '464 Patent-Claim 1.

a. "Strips of adhesive." A narrow piece of glue of about even width. (D.I. 267 at 8-9)

b. "Majority." A number greater than half. *Webster's Third New International Dictionary* 1363 (1993) ("*Webster's*").

b. "Substantially less." The word "substantially" means "being that specified to a larger degree or in the main." *Webster's* at 2280. "Substantial" means "considerable in importance, value, degree, amount or extent." *The American Heritage Dictionary* 1213 (2d ed.1982). "Substantially less," thus, means considerably less in extent. The patentee has characterized differences of 10% as "slightly less." See col. 6, lns. 26-29.

c. "Longitudinally spaced." Disposed above or below in reference to the first and second opposite, parallel longitudinal edges.

d. "Means defining a line of weakness adjacent said transverse strip, on the opposite side thereof from said third and fourth strips, to allow ready separation of the paper at that line." Claim 1 requires that the third and fourth strips be "closer to one end of said ends than the other." For example, in Figure 1, the third and fourth strips are closer to end 15 than end 21. Thus, this element requires that the "means defining a line of weakness" must be next to the transverse adhesive on the side opposite the third and fourth strips. For example, in Figure 1, that would mean that line 22 must be on the same side of the transverse adhesive strip as end 21 is.

3. The '128 patent-claim 1.

a. "Pressure sensitive adhesive." A composition which allows adhesion to be initiated through the application of pressure.

b. "Natural rubber graft copolymerized with styrene and methyl methacrylate in the form of a latex." The court understands that graft polymerization requires that natural rubber form the backbone chain to which side chains of styrene or methyl methacrylate are attached. However, because the court seeks to ensure that its understanding of the technical aspects of the patent is not entirely at variance with the understanding of one skilled in the art, the court is currently unable to issue a full construction of this claim element. Thus, the parties shall present expert testimony FN2 regarding at least the following issues at the February 28, 2001 pretrial conference: (1) Must styrene and methyl methacrylate be in their "pure form?" (2) Must styrene and methyl methacrylate be present on the same side chain? (3) Must styrene and methyl methacrylate be attached to the same natural rubber backbone?

FN2. Extrinsic evidence may always be consulted to assist in understanding the underlying technology. See *Pitney Bowes Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1309 (Fed.Cir.1999) ("Consultation of extrinsic evidence is particularly appropriate to ensure that [the judge's] understanding of the technical aspects of the patent is not entirely at variance with the understanding of one skilled in the art."); *Mantech Envtl. Corp. v. Hudson Envtl. Servs., Inc.*, 152 F.3d 1368, 1373 (Fed.Cir.1998); *Vitronics Corp. v. Conceptronc Inc.*, 90 F.3d 1576, 1585 ("Had the district court relied on the expert testimony and other extrinsic evidence solely to help it understand the underlying technology, we could not say the district court was in error.").

IT IS FURTHER ORDERED that the parties shall present oral argument on all summary judgment motions outstanding at the time of the pretrial conference.

D.Del.,2001.

Moore North America, Inc. v. Poser Business Forms, Inc.

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