

United States District Court,  
C.D. California.

**ULTRADENT PRODUCTS, INC., a Utah Corporation,**  
Plaintiff and Counterclaim Defendant.

v.

**Robert G. HAYMAN, William M. Dorfman, and Kenneth L. Rosenblood, individuals, Discus Dental, Inc., a California Corporation, and Spectrum Dental, Inc., a California Corporation,**  
Defendants and Counterclaim Plaintiffs.

No. CV-00-13402 MRP (CTx)

**Aug. 24, 2001.**

Adina L. Witzling, Adrian L. Barton, Dean J. Zipser, Morrison and Foerster LLP, Irvine, CA, Brent P. Lorimer, David R. Todd, Sterling A. Brennan, Thomas R. Vuksinick, William R. Richter, Workman Nydegger & Seeley, Salt Lake City, UT, for Plaintiff and Counterclaim Defendant.

Brian K. Brookey, Charles R. Halloran, David A. Dillard, Pasadena, Ca, Leigh O. Curran, Bingham McCutchen LLP, Los Angeles, CA, for Defendants and Counterclaim Plaintiffs.

### **ORDER RE: PARTIAL CLAIM CONSTRUCTION**

**MARIANA R. PFAELZER, District Judge.**

Pursuant to the Stipulated Claim Construction Schedule, each party has submitted papers in support of its proposed construction of each patent claim at issue and in opposition to the constructions proffered by the opposing party. In these papers, the parties have identified no fewer than twenty-four allegedly disputed limitations appearing in the claims of United States Patents numbered 5,376,006 ("the '006 patent"), 5,725,843 ("the '843 patent"), 5,746,598 ("the '598 patent"), and 5,759,038 ("the '038 patent"). The parties do not dispute the construction of any limitations in the claims of Patent No. 5,759,037.

Having carefully considered the papers filed in support of and in opposition to the parties' respective proposals, along with the other pleadings and papers on file, the Court finds that only eleven disputed limitations possibly require oral argument and/or the presentation of additional evidence. The Court is preparing a memorandum of decision explaining the reasons for limiting the *Markman* hearing to these eleven limitations, and for deciding that the thirteen limitations enumerated below require no oral argument and/or no presentation of evidence at the *Markman* hearing. Because the memorandum will be issued after the hearing, the Court briefly states:

1. The phrase "OR AN EQUIVALENT THERETO," as used in the relevant claims of the patents in suit (including claims 1 and 11 of the '006 patent), simply refers to any equivalents to which the plaintiff may be entitled under the doctrine of equivalents; the phrase does *not* affect the literal scope of the claims.

2. The phrase "TO RETAIN AND HOLD," as used in the relevant claims of the patents in suit (including claims 1, 3 and 11 of the '006 patent), means "**to support.**"
3. The phrase "INCLUDING ... WATER," as used in the relevant claims of the patents in suit (including claim 3 of the '006 patent), means "**water is present.**"
4. The phrase "ADAPTED TO BE LOADED INTO A DENTAL TRAY," as used in the preambles of the relevant claims of the patents in suit (including claim 11 of the '006 patent), does *not* constitute a limitation on those claims.
5. The phrase "INCLUDING ANY CARBOXPOLYMETHYLENE THAT HAS BEEN NEUTRALIZED," as used in the relevant claims of the patents in suit (including claims 1 and 14 of the '843 patent), means "**including any carboxypolymethylene that has been rendered less acidic.**"
6. The phrase "A PORTION OF THE CARBOXPOLYMETHYLENE HAS BEEN NEUTRALIZED WITH A QUANTITY OF A BASE," as used in the relevant claims of the patents in suit (including claim 11 of the '843 patent), means "**a portion of the carboxypolymethylene has been rendered less acidic by the addition of a base.**"
7. The phrase "A DESIRED PERIOD OF TIME," as used in the relevant claims of the patents in suit (including claims 1 and 14 of the '843 patent), means "**any period of time.**"
8. The phrase "REMAINING ACTIVE," as used in the relevant claims of the patents in suit (including claims 1 and 14 of the '843 patent), means "**remaining capable of bleaching teeth.**"
9. The phrase "ANY REACTION PRODUCTS OF CARBOXPOLYMETHYLENE," as used in the relevant claims of the patents in suit (including claims 1 and 21 of the '598 patent), means "**any products of reactions between carboxypolymethylene and other compounds.**"
10. The phrase "ALLOWING THE BLEACHING AGENT TO CONTACT THE TOOTH SURFACES WHILE THE DENTAL TRAY IS HELD IN PLACE BY THE DENTAL COMPOSITION," as used in the relevant claims of the patents in suit (including claims 1, 13 and 21 of the '598 patent), means "**allowing the bleaching agent to contact the tooth surfaces while the dental tray is supported by the dental composition.**"
11. The phrase "ADAPTED TO BE DELIVERED BY A SYRINGE," as used in the relevant claims of the patents in suit (including claim 10 of the '598 patent), means "**made suitable for delivery by a syringe.**"
12. The word "THIN," as used in the relevant claims of the patents in suit (including claims 1 and 13 of the '038 patent), requires no construction.
13. The word "FLEXIBLE," as used in the relevant claims of the patents in suit (including claims 1 and 13 of the '038 patent), requires no construction.

Accordingly, the Court will hear oral argument and/or receive evidence at the *Markman* hearing concerning only the following eleven remaining limitations disputed by the parties:

- > DENTAL TRAY ('006)
- > CARBOXYPOLYMETHYLENE
- > A QUANTITY OF ... SUCH THAT ('006)
- > WITHOUT ANY SIGNIFICANT MECHANICAL PRESSURE ('006)
- > DENTAL TRAY ('843)
- > COMPRISES A MIXTURE WHICH/THAT INCLUDES ... AND HAS/HAVING ('843)
- > WITHOUT SIGNIFICANT ORTHODONTIC PRESSURE ('843)
- > WITHOUT SIGNIFICANT PRESSURE ('598)
- > MATRIX MATERIAL COMPRISES ... WHEREIN ('598)
- > POLYETHYLENE GLYCOL ('598)
- > KIT ('038)

IT IS SO ORDERED.

C.D.Cal.,2001.

Ultradent Products, Inc. v. Hayman

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