

United States District Court,  
E.D. Michigan.

**AUTOMOTIVE TECHNOLOGIES INTERNATIONAL, INC,**  
Plaintiff.

v.

**TRW VEHICLE SAFETY SYSTEMS, INC,**  
Defendant.

**Aug. 4, 2004.**

Andrew Kochanowski, Sommers, Schwartz, Southfield, MI, Jeffrey A. Pine, Baniak, Pine, Michael H. Baniak, McDonnell, Boehnen, Chicago, IL, for Plaintiff.

**ORDER ACCEPTING AND ADOPTING SPECIAL MASTER'S REPORT AND  
RECOMMENDATION, AS SUPPLEMENTED BY HIS JULY 15, 2004 REPORT AND  
RECOMMENDATION CONCERNING CLAIM CONSTRUCTION**

**NANCY G. EDMUNDS, District Judge.**

This matter was referred to Special Master John Thomas for the purpose of claim construction. On June 18, 2004, the Special Master filed his Report and Recommendation with recommended claim construction. On July 2, 2004, Defendant TRW filed objections to the Special Master's Report. Defendant TRW's third objection was inextricably intertwined with a motion seeking to modify the Special Master's Report and a request that this Court refer the motion to the Special Master for consideration in the first instance. This Court granted TRW's request and referred the motion to modify to the Special Master for consideration in the first instance as allowed under Fed.R.Civ.P. 53(g)(1). The Special Master considered TRW's motion to modify and filed a Supplemental Report and Recommendation on July 15, 2004.

The Court now reviews the Special Master's June 18, 2004 Report and Recommendation, his July 15, 2004 Supplemental Report and Recommendation, and TRW's objections. Having conducted a *de novo* determination of those portions of the Reports and Recommendations to which objection is made, the Court ACCEPTS and ADOPTS the claim construction recommended by the Special Master in his Supplemental Report and Recommendation. *See* 28 U.S.C. s. 636(b)(1).

**I. Analysis-TRW Objections**

**A. Claim 1- "a plurality of sheets of material"**

TRW's first objection addresses the Special Master's recommended construction of the claim limitation "a plurality of sheets of material" found in Claim 1 of the '668 patent. The Special Master's recommended construction of

"a plurality of sheets of material" is:

"at least two pieces of material, with each piece having a fairly broad surface relative to its thickness"

TRW argues that the word "plurality" requires that the phrase be construed as:

"at least two *separate* pieces of material, each with a fairly broad surface relative to its thickness."

Conducting a *de novo* review, this Court rejects TRW's argument that the word "separate" should be included for the sake of clarity and accepts and adopts the Special Master's recommended construction of this phrase. The Special Master's declined to include the additional word "separate" within this claim construction because he could not identify any affirmative statement within the intrinsic evidence of record requiring that limitation. As TRW admits, this conclusion is supported by the record. TRW's argument that the word "separate" is necessary to clarify that "pieces" is plural is unpersuasive. This Court accepts and adopts the Special Master's conclusion that such a construction might be read to narrow the scope of the claim limitation; i.e., that the claim would not read upon two discrete sheets of material that had been physically attached. (7/15/04 Suppl. R. & R. at 2.)

## **B. Claim 26-**

TRW's second objection is to the Special Master's recommended construction of the following phrases in Claim 26 of the '668 patent:

(1) "a first material layer defining a front part of said inflatable element" as "a thickness of material that forms part or all of the front of the airbag"; and

(2) "a second material layer defining a back part of said inflatable element" as "a thickness of material that forms part or all of the back of the airbag."

TRW argues that these phrases should be construed as:

(1) "a *single* thickness of material" or

"one thickness of material" defining *the* front part of the airbag; and

(2) " " defining *the* back part of the airbag.

Conducting a *de novo* review, this Court rejects TRW's argument that the limitation "defining a front part" and "defining a back part" means defining that surface in its entirety because the only relevant embodiments taught by the specification of the '668 patent incorporate layers that delineate the entire front and back parts of the airbag. The Court accepts and adopts the Special Master's recommended construction which "bears in mind the often-stated admonition of the Court of Appeals for the Federal Circuit that 'it is important not to import into a claim limitations that are not a part of the claim.' " (7/15/04 Suppl. R. & R. at 3 (quoting *SuperGuide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed.Cir.2004).) Because patents commonly include claims broader than the disclosed embodiments of the invention, it would be inappropriate to construe "defining a front part" and "defining a back part" as referring solely to the entire front or back part of the airbag. (7/15/04 Suppl. R. & R. at 3.) Nonetheless, as the Special Master observed,

the Federal Circuit counsels that a claim construction that does not include the preferred embodiment is "rarely, if ever correct." ( *Id.* at 4 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed.Cir.1996).) Accordingly, this Court accepts and adopts the Special Master's recommendation that "defining a front part" and "defining a back part" be construed to mean "that forms part or all of the front" and "that forms part or all of the back," respectively.

TRW also objects to the Special Master's construction of the term "layer" as "a thickness." TRW instead recommends that the term "layer" be defined as either "one thickness," a "single thickness," or an "identifiable thickness." Upon *de novo* review, this Court rejects TRW's objection and accepts and adopts the Special Master's recommended construction of the term "layer" as "a thickness." The Court agrees with the Special Master that "no further elaboration upon the term 'layer' is appropriate here." (7/15/04 Suppl. R. & R. at 5.)

In sum, the Court rejects TRW's objections and accepts and adopts the Special Master's recommendation that the claim limitation "a first material layer defining a front part of said inflatable element" be construed to mean "a thickness of material that forms part or all of the front of the airbag"; and that the limitation "a second material layer defining a back part of said inflatable element" be construed to mean "a thickness of material that forms part or all of the back of the airbag." ( *Id.* at 6.)

### **C. Claim 39- "a plurality of sections of material"**

Claim 39, in part, recites "a plurality of sections of material, said sections of material being made of film." In both its objections and its motion to modify, TRW argues that the limitation "a plurality of sections of material" should be construed to mean "at least two pieces of material."

There is no dispute that the term "plurality" means "at least two." (6/18/04 R. & R. at 23.) Rather the dispute centers on whether "sections" should be construed as "pieces." The Special Master recommends against such a construction. Upon *de novo* review, this Court rejects TRW's objection and accepts and adopts the Special Master's recommendation that "sections" not be construed as "pieces." First, contrary to TRW's arguments here, the Court is not obligated to adopt the litigants' proffered claim construction as its own. Rather, because claim construction involves a legal issue to be resolved solely by the Court, it may adopt a construction advocated by neither party. *See J.T. Eaton & Co. v. Atlantic Paste & Glue Co.*, 106 F.3d 1563, 1570 (Fed.Cir.1997). Second, because the term "piece" can be interpreted to mean "a part that has been separated from a whole," and thus introduces a limitation not conveyed by the term "section," the Special Master properly rejected TWR's argument that the term "sections" be construed to mean "pieces." (7/15/04 Suppl. R. & R. at 7.) Accordingly, this Court accepts and adopts the Special Master's recommendation that the limitation "a plurality of sections of material" be construed to mean "at least two sections of material."

## **II. Conclusion**

Having conducted a *de novo* determination of those portions of the Reports and Recommendations to which objection is made, the Court ACCEPTS and ADOPTS the claim construction recommended by the Special Master in his Supplemental Report and Recommendation. In Claim 1, the phrase "a plurality of sheets of material" is construed to mean "at least two pieces of material, with each piece having a fairly broad surface relative to its thickness." In Claim 26, the phrase "a first material layer defining a front part of said inflatable element" is construed to mean "a thickness of material that forms part or all of the front of the airbag"; and the phrase "a second material layer defining a back part of said inflatable element" is construed

to mean "a thickness of material that forms part or all of the back of the airbag." Finally, in Claim 39, the phrase "a plurality of sections of material" is construed to mean "at least two sections of material."

SO ORDERED.

E.D.Mich.,2004.

Automotive Technologies Intern., Inc. v. TRW Vehicle Safety Systems, Inc.

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