

United States District Court,
W.D. Washington, at Seattle.

CORE INDUSTRIES, INC,
Plaintiff.

v.

ZURN INDUSTRIES, INC., et al,
Defendants.

No. C00-0364L

Oct. 15, 2004.

Robert E. Rohde, Rohde & Van Kampen, Steven A. Stolle, Martens Associates PS, Seattle, WA, for
Plaintiff.

Kent E. Baldauf, Jr., Paul M. Reznick, Russell D. Orkin, Webb Ziesenheim Logsdon Orkin & Hanson,
Pittsburgh, PA, Rex Bennett Stratton, III, Stratton Ballew, Vashon Island, WA, for Defendants.

ORDER CONSTRUING CLAIMS OF THE '888 AND '803 PATENTS

ROBERT S. LASNIK, District Judge.

Plaintiff Core Industries, Inc., is the owner of United States Patent No. 5,107,888 ("the '888 patent"), which relates to an "N pattern" backflow prevention device, and United States Patent No. 5,392,803 ("the '803 patent"), which relates to an installation system for high pressure liquid valves. Backflow prevention devices are designed to ensure that a flow through a conduit occurs only in a certain direction so that one fluid body does not flow back into another. A "setter," such as that described in the '803 patent, is used for alignment and spacing purposes when installing valves, such as the backflow prevention device described in the '888 patent. Plaintiff alleges that defendants have infringed the '888 and '803 patents by making, using, selling, or offering for sale without authorization backflow prevention devices and setters which embody at least one claim of the patents.

Determining whether a particular product or method infringes an existing patent involves a two-step analysis. The Court must first identify the proper construction of the asserted patent claim, an exercise which the Supreme Court has determined is a matter of law. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384-91 (1996). After the claim has been properly construed, the fact finder determines whether the accused device infringes the claim. Although there are numerous sources to which the Court may look for guidance when construing patent claims, the Federal Circuit has imposed restrictions on both the sequence in which the sources can be considered and their availability in certain circumstances.

It is well-settled that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record, *i.e.*, the patent itself, including the claims, the specification and, if in evidence, the prosecution

history. Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language.

First, we look to the words of the claims themselves, both asserted and nonasserted, to define the scope of the patented invention. Although words in a claim are generally given their ordinary and customary meaning, a patentee may choose to be his or her own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history.

Thus, second, 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 specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication. As we have repeatedly stated, "[c]laims must be read in view of the specification, of which they are a part." The specification contains a written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it. Thus, the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.

Third, the court may also consider the prosecution history of the patent, if in evidence. This history contains the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims. As such, the record before the Patent and Trademark Office is often of critical significance in determining the meaning of the claims. Included within an analysis of the file history may be an examination of the prior art cited therein.

In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence. In those cases where the public record unambiguously describes the scope of the patented invention, reliance on any extrinsic evidence is improper. The claims, specification, and file history, rather than extrinsic evidence, constitute the public record of the patentee's claim, a record on which the public is entitled to rely. In other words, competitors are entitled to review the public record, apply the established rules of claim construction, ascertain the scope of the patentee's claimed invention and, thus, design around the claimed invention. Allowing the public record to be altered or changed by extrinsic evidence introduced at trial, such as expert testimony, would make this right meaningless. The same holds true whether it is the patentee or the alleged infringer who seeks to alter the scope of the claims.

Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582-83 (Fed.Cir.1996) (citations omitted). There is a "heavy presumption" that claim language will be given its ordinary meaning as understood by one of ordinary skill in the art *Bell Atlantic Network Servs., Inc. v. Covad Communications Group, Inc.*, 262 F.3d 1258, 12655 (Fed.Cir.2001) (quoting *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 989 (Fed.Cir.1999)). One propounding a construction that is not the ordinary meaning of a claim term must show that the intrinsic evidence "clearly redefines" the term such that one reasonably skilled in the art would be on notice that the patentee intended to forego the ordinary meaning in favor of his or her own definition. *Elekta Instr. v. O.U.R. Scientific Int'l*, 214 F.3d 1302, 1307 (Fed.Cir.2000).

In this litigation, the parties have identified two terms in claims 15, 18, and 20 of the '888 patent which require construction, namely "valve" and "average streamline path." Claim 15 reads as follows:

15. A backflow preventor apparatus for connection to parallel, oppositely-flowing inlet and outlet conduits,

comprising:

a housing configured to accommodate first and second valves, and to receive fluid flow from said inlet conduit;

a first valve mounted in said housing having a scatable valve disc having an edge, moveable between a closed configuration preventing flow and an open configuration permitting flow through a first inlet port in a first direction, said first valve mounted to extend along an axis defined by said first direction;

a second valve mounted in said housing having a scatable valve disc having an edge, moveable between a closed configuration preventing flow and an open configuration permitting flow through a second inlet port in a second direction, said second valve mounted to extend along an axis defined by said second direction, said axis of mounting of said second valve being substantially perpendicular to said axis of mounting of said first valve;

said fluid flow having an average streamline path between said inlet and said outlet conduit, wherein the sum of changes in flow direction of said average streamline path is not substantially greater than about 180 degrees,

further comprising a first flange for coupling to said inlet conduit and a second flange for coupling to said outlet conduit wherein said first and second flanges are substantially horizontal.

Claims 18 and 20 are identical except for the last "further comprising" element, which is not at issue in this motion.

Having reviewed the memoranda, declarations, and exhibits FN1 submitted by the parties (including the Joint Claim Chart submitted on August 20, 2004, and Zurn's supplement thereto), and having heard the arguments of counsel and the additional evidence offered at the hearing on October 7, 2004, the Court finds:

FN1. The Court has considered the expert testimony produced by the parties only as it relates to what one of ordinary skill in the art would have understood at the time the patent issued.

(1) The term "valve" is not clearly defined in the specification and is therefore given its ordinary meaning, namely a mechanism for controlling flow through a conduit by opening and closing. Neither the specification nor the ordinary meaning of "valve" requires that the valve direct flow in a uniform direction as suggested by Zurn.

(2) The phrase "average streamline path" is clearly defined in the specification and means a path that passes "through the center of valve inlets, pass[es] along a direction from an upstream valve outlet to a downstream valve inlet and pass[es] along the centers of conduits elsewhere." Col. 3, ll. 54-58. This definition is entirely consistent with the claims and the specification. FN2 As shown by the discussion of Fig. 6, the calculation of the "average streamline path" is not dependant on the type of valve used.

FN2. The experts presented by the parties agree that the phrase "average streamline path" was not used in fluid mechanics at the time the patent application was filed and had no ordinary or customary meaning to persons skilled in the art.

Only one term in claim 13 of the '803 patent requires construction, namely "mates." Claim 13 incorporates all of the elements of claim 1, which reads as follows:

1. Apparatus for aligning pipe connections to accommodate installation of a high pressure liquid valve, wherein said apparatus is subjected to various pressures, the apparatus comprising:

first and second pipe connectors each having at least one inlet opening and one outlet opening;

a first alignment arm connected to said first pipe connector, said first alignment arm having a first surface and at least a first hole;

a second alignment arm, separate from said first alignment arm, connected to said second pipe connector and having a second surface and at least a first hole, wherein said first surface and hole of said first alignment arm firmly mates with said second surface and said hole of said second alignment arm; and

means for coupling said first alignment arm to said second alignment arm to place said first and second pipe connectors in a predetermined alignment and a predetermined space apart to accommodate various installations, wherein said means for coupling maintain said predetermined alignment and spacing under said various pressures exerted by said valve on said alignment arms.

The term "mates" is not clearly defined in the specification and is therefore given its ordinary meaning, namely to join closely or to pair. Although the use of the modifier "firmly" may require surfaces that abut each other in such a way as to limit movement of the two arms towards each other under pressure (especially in light of the patentee's attempts to distinguish the Gray patent), neither the specification nor the ordinary meaning of "mates" requires the imposition of the interlocking limitation suggested by Zurn.

It is so ORDERED.

W.D.Wash.,2004.

Core Industries, Inc. v. Zurn Industries, Inc.

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