

United States District Court,
D. South Carolina, Columbia Division.

Guerry E. GREEN,
Plaintiff.

v.

SNAVELY FOREST PRODUCTS CO,
Defendant.

C/A No. 3:02-3440-24

Dec. 30, 2004.

Marcus Angelo Manos, William Y. Klett, III, Nexsen Pruet Jacobs and Pollard, Columbia, SC, for Plaintiff.

Craig N. Killen, Zoe Sanders Nettles, Nelson Mullins Riley and Scarborough, Columbia, SC, Mark A. Grace, Thomas C. Wettach, Cohen and Grigsby, Pittsburgh, PA, for Defendant.

ORDER

MARGARET B. SEYMOUR, District Judge.

Plaintiff Guerry E. Green brought this patent infringement action on October 16, 2002, against Defendant Snavely Forest Products Co. This matter came before the court on Wednesday, November 10, 2004 on the parties' request for construction of the following terms: "comprising," "solid," "substantially solid," and "made of" The parties have submitted *Markman* briefs setting forth their proposed definitions of these terms. *See* *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995); *see also* *Centillion Data Sys., Inc. v. Am. Mgmt. Sys., Inc.*, 138 F.Supp.2d 1117, 1118 (S.D.Ind.2001) (describing a *Markman* brief to be one that addresses claim construction and includes such information as the ideas and technology behind the patent, the law of claim construction, and the broad meanings of terms found in the claims of the patent). The court heard testimony at the hearing from Plaintiff, the inventor of the allegedly infringed product. The court concludes, however, that the terms "comprising," "solid," "substantially solid," and "made of" may be construed without reference to extrinsic evidence, including Plaintiff's testimony.

I. FACTS

Plaintiff is engaged in the business of manufacturing and selling solid core vinyl screen doors and products related to screen doors. Plaintiff applied for and received United States Patent No. 6,250,040 (the "040 patent"), which generally is directed to a screen door wherein the stiles and rails are constructed of foamed, closed-cell, solid-core polyvinyl chloride (PVC). Like a typical wooden screen door, Plaintiff's screen door can be manufactured in a standard size and then trimmed and cut at the work site using standard woodworking tools to fit a particular door frame. The solid foamed PVC can be molded with a wood grain to mimic the look and feel of painted wood. It needs little maintenance, will not split as wood does, and

accepts usual door hardware. *See generally* '040 Patent, Summary of the Invention.

The '040 patent contains four independent claims (*i.e.*, claims 1, 13, 27, 21) and nineteen dependent claims. The claims utilize, but do not define, the terms "comprising," "solid," "substantially solid," and "made of." Specifically, the '040 Patent provides:

What is claimed is:

1. A screen door, comprising;

two spaced apart stiles;

two spaced apart rails, said two rails and two stiles being connected together to form

a rectangle having an opening defined by the distances said rail and said stiles are spaced apart;

a screen dimensioned to cover said opening; and means for fastening said screen to said two rails and said two stiles,

said two rails and two stiles being made of solid foamed plastic.

2. The screen door as recited in claim 1, wherein said foamed plastic is closed cell foamed plastic.

3. The screen door as recited in claim 1, wherein said foamed plastic is foamed vinyl.

4. The screen door as recited in claim 1, wherein said foamed plastic is polyvinyl chloride.

5. The screen door as recited in claim 1, wherein said two rails and two stiles have edges and said edges are adapted to be trimmed and cut by at least one-eighth of an inch so that said screen door fits a doorway.

6. The screen door as recited in claim 1, wherein said two rails and two stiles have edges and said edges are adapted to be trimmed and cut by up to approximately one inch so that said screen door fits a doorway.

7. The screen door as recited in claim 1, wherein two rails and said two stiles are connected together using only screws and mortise and tenon joints.

8. The screen door as recited in claim 1, wherein said two rails and two stiles are connected together using only dowels and adhesives.

9. The screen door as recited in claim 1, wherein said two rails and two stiles are connected together using screws countersunk into said stiles by at least one inch, forming holes.

10. The screen door as recited in claim 9, further comprising foamed plastic plugs inserted in said holes.

11. The screen door as recited in claim 1, wherein said rectangle has a groove formed therein, said groove running continuously from rail to stile around said opening.

12. The screen door as recited in claim 1, wherein said fastening means is a spline, and said rectangle has a groove formed therein running around said opening and dimensioned [] to receive said spline.

13. A screen door, comprising: two rails and two stiles connected together to form a rectangular frame that defines an opening, said rectangular frame having an outer edge; a screen dimensioned to cover said opening; and means for fastening said screen to said rectangle, said two rails and two splines made of foamed plastic and adapted to be trimmed and cut along said outer edge by up to approximately an inch.

14. The screen door as recited in claim 13, wherein said rectangular frame has a groove milled therein around said opening, and wherein said fastening means is a spline dimensioned to fit into said groove.

15. The screen door as recited in claim 13, wherein said rails and said stiles are connected together with dowels.

16. The screen door as recited in claim 15, wherein holes are formed in said stiles and said rails, and said dowels are inserted into said rails and said stiles along with an adhesive.

17. A screen door made by a process comprising the steps of: forming a rectangular frame of solid plastic rails and stiles, said rectangular frame having an opening;

drilling holes into said stiles;

connecting said rails and stiles by screws driven into said rails from said holes in said stiles;

forming a groove in said rectangular frame around said opening; pressing a screen into said groove [sic] with a spline; and

cutting said rectangular frame to fit a door frame.

18. The screen door as recited in claim 17, wherein said rails and stiles are made of polyvinyl chloride.

19. The screen door as recited in claim 17, wherein said rails and stiles are made of foamed, closed-cell plastic.

20. The screen door as recited in claim 19, wherein said plastic is polyvinyl chloride.

21. A screen door made by a process comprising the steps of: forming a rectangular frame of closed-cell, substantially solid plastic rails and stiles, said rectangular frame having an opening;

drilling holes into said stiles and rails;

connecting said rails and stiles by dowels driven into said rails and said stiles;

fastening a screen to said rectangular frame; and

cutting said rectangular frame to fit a door frame.

22. The screen door as recited in claim 21, wherein said plastic is polyvinyl chloride.

23. The screen door as recited in claim 21, further comprising the steps of: forming a groove in said rectangular frame around said opening; and pressing a screen into said groove with spline.

II. *DISCUSSION*

Infringement is based upon an interpretation of the patent claims, and this determination is ordinarily a question of law. *ALM Surgical Equip., Inc. v. Kirschner Med. Corp.*, 1990 WL 123996, (D.S.C.1990). In construing a disputed term, a court should:

begin with an examination of the intrinsic evidence, *i.e.*, the claims, the other portions of the specification, and the prosecution history (if any, and if in evidence). Additionally, dictionary definitions may be consulted in establishing a claim term's ordinary meaning. In analyzing the intrinsic evidence, we start with the language of the claims and engage in a heavy presumption that claim terms carry their ordinary meaning as viewed by one of ordinary skill in the art.

Altiris, Inc. v. Symantec Corp., 318 F.3d 1363, 1369 (Fed.Cir.2003). In most cases, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. *Vitronics Corp. v. Conceptrics, Inc.*, 90 F.3d 1576, 1583 (Fed.Cir.1996). 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." *Id.* at 1582. If, after reviewing all available intrinsic evidence, some genuine ambiguity still exists in the claim, the court may look to extrinsic evidence, *e.g.*, expert testimony and treatises, as an aid in construing the claim language. *Centillion Data Sys., Inc. v. Am. Mgmt. Sys., Inc.*, 138 F.Supp.2d 1117, 1118 (S.D.Ind.2001). In cases where the public record unambiguously describes the scope of the patented invention, reliance on any extrinsic evidence is improper. *Vitronics Corp.*, 90 F.3d at 1583. Ultimately, the interpretation of a term is only determined and confirmed with a "full understanding of what the inventors actually invented and intended to envelop with the claim." *Reinshaw PLC v. Marposs Societa' PerAzioni*, 158F.3d 1243, 1250 (Fed.Cir.1998) (stating that a correct construction is true to the claim language and most naturally aligns with the patent's description of the invention). The terms at issue are discussed separately below.

A. " *Comprising* "

The parties agree that, in the context of claim drafting, "comprising" is a term of art. The term "comprising" permits the inclusion of other steps, elements or materials in addition to the elements or components specified in the claims. *In re: Baxter*, 656 F.2d 679, 686 (C.C.P.A.1981). The term "comprising" indicates an open-ended construction. *Vehicular Tech. Corp. v. Tital Wheel Int'l, Inc.*, 212 F.3d 1377, 1382 (Fed.Cir.2000) (citing cases). "In simple terms, a drafter ... uses the term 'comprising' to mean 'I claim at least what follows and potentially more.'" *Id.*

In this case, the '040 Patent claims consist of the elements or processes listed, but could also include other elements or components. The court finds that the word "comprising" when used as a term of art to mean "I claim at least what follows and potentially more" is true to the claim language and most naturally aligns with the patent's description of the invention.

B. " *Solid* "

Merriam-Webster's Collegiate Dictionary 1118 (10th ed.1993) defines "solid" to mean, among other things,

as "being without an internal cavity"; "of uniformly close and coherent texture"; "of one substance or character." Webster's II New College Dictionary 1050 (1995) defines "solid" as "not hollowed out"; "being of the same substance or color throughout"; "being without gaps or breaks." The American Heritage Dictionary of the English Language (4th ed.2000) defines "solid" as "not hollowed out"; "being the same substance or color throughout"; "having no gaps or breaks."

The '040 Patent references a screen door made from "solid foamed plastic" and "solid plastic." Because the term "solid" modifies "plastic," the term "solid" should be construed to mean "being of the same substance throughout." Such a definition is consistent with the '040 Patent, which stresses that the solid foamed, closed-cell PVC can be worked with standard woodworking machinery, trimmed, sanded, painted, and fastened with standard screws or dowels, and hung with standard hardware "because there re no hollow cores or regions formed inside them." '040 Patent, col. 3. These are characteristics typical of wood frame screen doors, which clearly "are of the same substance throughout." The court finds that the word "solid" when used in its ordinary and common manner as "being of the same substance throughout" is true to the claim language and most naturally aligns with the patent's description of the invention.

C. " *Substantially Solid* "

The Encarta World English Dictionary (2004) defines "substantially" as "considerably: in an extensive, substantial, or ample way"; "essentially: generally or in essence." The Cambridge Dictionary of American English (2004) defines "substantially" as "to a large degree." The Online Plain Text English Dictionary ([http://www.onelook.com/?other=web1913 & w=Substantially](http://www.onelook.com/?other=web1913&w=Substantially)) defines "substantially" as "in a substantially manner; in substance; essentially." "Substantially" also is defined as "largely but not wholly that which is specified." Webster's New Collegiate Dictionary 1176 (9th ed.1983).

The court concludes that "substantially solid" should be defined as "generally being of the same substance throughout." The '040 Patent addresses the possibility that the centers of the extruded product "may be less dense than the outside-and at most there may be a slender 'dog bone'-shaped hole left as a result of the inwardly-forming plastic cells and small variations in the amount of material and foaming agent in the initial composition but otherwise, they are solid." '040 Patent, col. 3-4. In other words, the '040 Patent recognizes the possibility that the extruding process may occasionally result in inconsistent density through the center of the foamed, closed-cell, solid-core PVC, but not to such a degree as to jeopardize the unique properties of the invention. The court finds that the words "substantially solid" when used in their ordinary and common manner as "generally being of the same substance throughout" are true to the claim language and most naturally align with the patent's description of the invention.

D. " *Made Of* "

The term "made" is past tense of "make," which generally means "to create by forming, combining, or altering materials." Webster's II New College Dictionary 661 (1995). "Of" is defined, among other things, as "derived or coming from"; "composed or made from." *Id.* p. 759.

The court concludes that "made of" should be defined as "formed from." The '040 Patent discusses a screen door frame "made of foamed, closed cell polyvinyl chloride instead of wood or other material." '040 Patent, col. 1. It recites that "[t]he present invention is a screen door made of foamed plastic, preferably foamed, closed-cell polyvinyl chloride (PVC) having certain structural features to give it useful properties; namely, strength, durability, and an attractive appearance." *Id.*, col. 3. The '040 Patent describes the process of feeding ingredients into an extrusion machine and thereafter cutting the extruded product into lengths "for

manufacturing into the various elements of the screen door[.]" Id. The court finds that the words "made of" when used in their ordinary and common manner as "formed from" are true to the claim language and most naturally align with the patent's description of the invention.

III. *CONCLUSION*

Accordingly, the court construes the terms as discussed hereinabove.

IT IS SO ORDERED.

D.S.C.,2004.

Green v. Snavelly Forest Products Co.

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