

United States District Court,
S.D. Florida, Miami Division.

ASPEX EYEWEAR, INC. and Contour Optik, Inc,
Plaintiffs.

v.

DESIGNER'S EYEWEAR STUDIO, INC., et al,
Defendants.

No. 02-20609-CIV

Dec. 22, 2006.

David Andrew Gast, John Cyril Malloy, III, Malloy & Malloy, Miami, FL, Jeffrey A. Lindenbaum, Jess M. Collen, Matthew C. Wagner, Collen Law Associates, Jenny T. Slocum, Collen IP, Ossining, NY, for Plaintiffs.

Richard Michael Saccocio, Fort Lauderdale, FL, for Defendants.

ORDER ON CLAIM CONSTRUCTION

JOSE E. MARTINEZ, District Judge.

THIS CAUSE came before the Court for claim construction. The Court has carefully considered extensive briefing by the parties and pertinent portions of the record. The Court also heard argument and received evidence at a hearing held in accordance with *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996) on November 1, 2006.

I. Factual and Procedural Background

Plaintiff Contour Optik, Inc. ("Contour") holds United States Patent Numbers 5,737,054 ("the '054 patent"), 6,012,811 ("the '811 patent"), and 6,092,896 ("the '896 patent") for eyeglasses which have primary and auxiliary frames which can be attached by magnets. The patents specifically involve the magnetic attachment of auxiliary eyeglasses, such as sunglasses, to primary eyeglasses, such as prescription glasses. Plaintiff Aspex Eyewear, Inc. ("Aspex") is an eyewear distributor and the exclusive licensee of all three patents. Plaintiffs have brought suit against Defendants Designer's Eyewear Studio, Inc. ("Designer's Eyewear"), Designer's Outlet, Inc. ("Designer's Outlet"), and Fortunato Farache ("Farache") alleging three counts of patent infringement for Defendants' Magnet-On Eyeglasses which are also primary eyeglasses to which an auxiliary eyeglass can attach magnetically. Defendants' products are rimless which means that they do not have rims surrounding the lenses but are instead held together by pins or screws. Defendant Designer's Outlet have counterclaimed against Plaintiffs for a declaration of non-infringement and/or invalidity of all patents.

II. Analysis

A. Claim Construction Standard

"A literal patent infringement analysis involves two steps: the proper construction of the asserted claim and a determination as to whether the accused method or product infringes the asserted claim as properly construed." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1581-82 (Fed.Cir.1996). At this stage, the Court is only construing the patent claims for the purpose of determining "what is and is not covered by the technical terms and other words of the claims." *Netword, LLC v. Centraal Corp.* 242 F.3d 1347, 1352 (Fed.Cir.2001). "It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*, 38 F.3d 1111, 1115 (Fed.Cir.2004). The words in a claim "are generally given their ordinary and customary meaning." *Vitronics*, 90 F.3d at 1582. "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips*, 415 F.3d at 1313. However, the ordinary meaning of a term as understood by a person skilled in the art is "often not immediately apparent and because patentees frequently use terms idiosyncratically courts should look to 'those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean.'" *Id.* at 1314. (quoting *Innova*, 381 F.3d at 1116). These sources include various forms of intrinsic evidence such as "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence," *Innova*, 381 F.3d at 1116, and extrinsic evidence such as "expert and inventor testimony, dictionaries, and learned treatises." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed.Cir.1995).

In construing a patent claim, the court first looks at the "intrinsic evidence of record ... [which is] the patent itself, including the claims, the specification and, if in evidence the prosecution history." *Vitronics*, 90 F.3d at 1582. Intrinsic evidence is the primary and most significant source of evidence in construing the patent claims. *Id.* The court begins its consideration of intrinsic evidence by considering the claim terms, which are the terms used to define " 'what it is that is patented.' " *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed.Cir.2005) (quoting *Merrill v. Yeomans*, 94 U.S. 568, 570, 24 L.Ed. 235 (1876)). The Court also looks at the context in which the claim term is being used. *See Phillips*, 415 F.3d at 1314 (stating that "the context in which a term is used in the asserted claim can be highly instructive."); *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed.Cir.2003) (stating that "the context of the surrounding words of the claim also must be considered in determining the ordinary and customary meaning of those terms."). The court also looks at other claims in the patent "[b]ecause claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims." *Phillips*, 415 F.3d at 1314. The Court also considers the specification of which the claims are a part.

The specification is a written description of the invention and the drawings which are submitted to the patent office. The claims previously discussed are the numbered paragraphs which appear at the end of the specification. Thus, the claims must be read in light of the specification and cannot be construed in a manner which is inconsistent with the specification. *See Markman*, 517 U.S. at 389 (stating that a "term can be defined only in a way that comports with the instrument as a whole."); *Merck & Co. v. Teva Pharms. USA, Inc.*, 347 F.3d 1367, 1371 (Fed.Cir.2003) ("A fundamental rule of claim construction is that terms in a patent document are construed with the meaning with which they are presented in the patent document. Thus claims must be construed so as to be consistent with the specification, of which they are a part.") (internal citations omitted).

In considering the specification, it is important to note that "the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess." Phillips, 415 F.3d at 1317. If a patentee does choose to act as his or her own lexicographer it is his or her own meaning which controls. *See Teleflex, Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325 (Fed.Cir.2002) ("The patentee may demonstrate an intent to deviate from the ordinary and accustomed meaning of a claim term by including in the specification expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope."); *Vitronics Corp.*, 90 F.3d at 1582 ("Although words in a claim are generally to be given their ordinary and customary meaning, a patentee may choose to be his 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."). "[T]he specification is always highly relevant to the claim construction analysis [and is] [u]sually ... dispositive ... [as] it is the single best guide to the meaning of a disputed term." *Id.*

In considering the intrinsic evidence, the prosecution history of the claim is also considered if it is in evidence. Phillips, 415 F.3d at 1317. The prosecution history is the "complete record of all the proceedings before the Patent and Trademark Office ("PTO"), including any express representations made by the applicant regarding the scope of the claims." *Vitronics*, 80 F.3d at 1582. "The purpose of consulting the prosecution history in construing a claim is to 'exclude any interpretation that was disclaimed during prosecution.'" *Chimie v. PPG Industries, Inc.*, 402 F.3d 1371, 1384 (Fed.Cir.2005) (quoting *ZMI Corp. v. Cardiac Resuscitator Corp.*, 844 F.2d 1576, 1580 (Fed.Cir.1988)). However, the Federal Circuit has cautioned that "because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes." Phillips, 415 F.3d at 1317.

Finally, after considering the intrinsic evidence, the Court may look to extrinsic evidence such as " 'expert and inventor testimony, dictionaries, and learned treatises.' " *Id.* (quoting *Markman*, 52 F.3d at 980). However, "[i]n most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term and [i]n such circumstances, it is improper to rely on extrinsic evidence." *Vitronics*, 90 F.3d at 1583. It is best if the court "focuses at the outset on how the patentee used the claim term in the claims, specification, and prosecution history, rather than starting with a broad definition and whittling it down." Phillips, 415 F.3d at 1321.

B. Disputed Claim Terms

The parties dispute the construction of terms in the '054 patent, the ' 811 patent, and the '896 patent. The parties dispute the construction of the term *frame* and the term *projection* in claim 1 of the '054 patent. Claim 1 of the '054 patent provides:

1. An eyeglass device comprising:

a primary spectacle *frame* for supporting primary lenses therein, said primary spectacle *frame* including a middle bridge portion,

a first magnetic member secured in said middle bridge portion of said primary spectacle *frame*,

an auxiliary spectacle *frame* for supporting auxiliary lenses therein, said auxiliary spectacle *frame* including a middle bridge portion having a *projection* extended therefrom for extending over and for engaging with said middle bridge portion of said primary spectacle *frame*, and

a second magnetic member secured to said *projection* of said auxiliary spectacle *frame* for engaging with said first magnetic member of said primary spectacle *frame* and for allowing said auxiliary spectacle *frame* to be attached to said primary spectacle *frame* with only one hand by a user.

(D.E. No. 111, Exh. H) (emphasis added).

The parties also dispute the construction of the term *frame* in claims 1, 22, 26, and 31 of the '811 patent and the term *retaining mechanisms* in claims 1, 26, and 31 of the '811 patent. Claim 1 of the '811 patent provides:

1. An eyeglass device comprising:

a first *frame* including

two *retaining mechanisms* for supporting a pair of lenses, and defining a frontal plane,

a bridge connecting the two *retaining mechanisms* and holding the two *retaining mechanisms* together, and

a first magnetic member at the bridge for magnetically coupling to another magnetic member at the bridge of a second *frame*;

such that when coupled,

the two *frames* are attached together,

due to the locations of the magnetic members, one of the *frames* is restricted from moving downwards relative to the other *frame*, and

the two magnetic members are coupled at a surface that is not parallel to the frontal phase.

(D.E. No. 111, Exh. I) (emphasis added). Claim 22 of the '811 patent provides:

22. An eyeglass device comprising:

a bridge connecting two *retaining mechanism* and holding them together, with the two mechanisms supporting a pair of lenses of a first *frame*; and

a magnetic member at the bridge for magnetically coupling to another magnetic member at the bridge of a second *frame*;

such that:

the two *retaining mechanisms* define a frontal plane;

and

when coupled,

the two *frames* are attached together,

due to the locations of the magnetic members, one of the *frames* is restricted from moving downwards relative to the other *frame*, and

the two magnetic members are coupled at a surface that is not parallel to the frontal phase.

Id. (emphasis added). Claim 26 of the '811 patent provides:

26. An eyeglass device comprising:

an auxiliary *frame* including

two *retaining mechanisms* for supporting a pair of lenses, and defining a frontal plane,

a bridge connecting the two *retaining mechanisms* and holding them together, and

a magnetic member at the bridge, and

a primary *frame* including

two *retaining mechanisms* for supporting a pair of lenses,

a bridge connecting the two *retaining mechanisms* and holding them together, and

a magnetic member at the bridge for magnetically coupling to the magnetic member at the bridge of the auxiliary *frame*;

such that when coupled,

the two *frames* are attached together,

due to the location of the magnetic members, the auxiliary *frame* is restricted from moving downwards relative to the primary *frame*; and

the two magnetic members are coupled at a surface that is not parallel to the frontal phase.

Id. (emphasis added). Claim 31 of the '811 patent provides:

31. An eyeglass device comprising:

a primary *frame* including

two *retaining mechanisms* for supporting a pair of lenses, and defining a frontal plane,

a bridge connecting the two *retaining mechanisms*, and holding them together, and

a first magnetic member at the bridge for magnetically coupling to a second magnetic member at the bridge of an auxiliary *frame*;

such that when coupled,

the two *frames* are attached together,

due to the location of the magnetic members, the auxiliary *frame* is restricted from moving downwards relative to the primary *frame*; and

the two magnetic members are coupled at a surface that is not parallel to the frontal phase.

Id. (emphasis added).

Finally, the parties dispute the term frame and the term retaining mechanisms in claim 1 of the '896 patent. Claim 1 of the '896 patent provides:

1. An eyeglass device comprising:

a first *frame* including

two *retaining mechanisms* for supporting a pair of lenses, and defining a frontal plane,

a bridge connecting the two *retaining mechanisms* and holding the two *retaining mechanisms* together, and

a magnetic member at the bridge for magnetically coupling to another magnetic member at the bridge of a second *frame*;

wherein:

the bridge of the first *frame* includes a cavity to receive a protrusion at the bridge of the second *frame* so as to further secure the attachment of the two *frames* when coupled;

and when the two *frames* are secured together, due to the locations of the magnetic members, one of the *frames* is restricted from moving downwards relative to the other *frame*.

(D.E. No. 61, Exh. C) (emphasis added). Each of the contested terms will be addressed below.

1. Retaining Mechanisms

First, the Court considers the term retaining mechanisms in the '811 patent and the '896 patent. Plaintiffs argue that the term retaining mechanisms in claims 1, 26, and 31 of the '811 patent and in claim 1 of the '896 patent should be construed as "structures that keep lenses in a fixed place or position, whether lens rims, screws, pins, or other mechanical means for securing lenses in a fixed place." Defendants argue that the term should be limited to rims as pictured in the specification because the term is a means-plus-function claim limitation. This Court agrees with Defendants' construction and will limit the term retaining mechanisms to "a structure that keeps the lenses in place using rims."

"Means-plus-function claiming applies ... to purely functional limitations that do not provide the structure that performs the recited function." Phillips, 415 F.3d at 1311. The significance of a means-plus-function claim limitation is that it limits the claim to the "structure, material, or acts described in the specification and equivalents thereof." 35 U.S.C. s. 112 para. 6. The absence of the word "means" creates a rebuttable presumption that a term is not a means-plus-function claim limitation. Phillips, 415 F.3d at 1311. However, such a presumption can be rebutted. In determining whether the presumption has been rebutted "the focus remains on whether the claim as properly construed recites sufficiently definite structure." Personalized Media Communications, LLC v. International Trade Com'n, 161 F.3d 696, 704 (Fed.Cir.1998). Here, the Court finds after examining the claim language that the presumption has been rebutted.

Each disputed claim states there are "two retaining mechanisms for supporting a pair of lenses, and defining a frontal plane." This description is purely functional. It states what the retaining mechanisms *do*, not what

the retaining mechanisms *are*. There is no indication of the nature of the structure of these retaining mechanisms. There is no evidence in the record that the term retaining mechanisms has a generally understood structural meaning in the art. Therefore, retaining mechanisms is a means-plus-function claim and pursuant to 35 U.S.C. s. 112, para. 6 the structure of the retaining mechanisms is limited to that pictured in the specification and will be construed as a "a structure that keeps the lenses in place using rims." FN1 *See, e.g., Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1213-14 (Fed.Cir.1998) (where the Court affirmed the district court's finding that the term "lever moving element" should be construed pursuant to section 112, para. 6 even though "means" was not used as the term was "drafted as a function to be performed rather than definite structure or materials."); *Aspex Eyewear, Inc. v. Altair Eyewear, Inc.*, 386 F.Supp.2d 526, 528-39 (S.D.N.Y.2005) (construing the term retaining mechanisms in the same patents at issue in this case and finding that section 112, para. 6 applied to it).

FN1. Plaintiffs argue that even if section 112, para. 6 applies pins and screws are "equivalent" to the rims pictured in the specification. However, the doctrine of equivalents is not an appropriate argument for the Court to address at the claim construction phase. *See Playtex Products, Inc. v. Procter & Gamble, Co.*, 400 F.3d 901, 906 (Fed.Cir.2005) (noting that claim construction is a matter of law whereas a determination of patent infringement either literal or under the doctrine of equivalents is a question of fact).

2. Frame

Next, the Court construes the term frame as used in all three patents. Plaintiffs argue that the term frame in claim 1 of the '054 patent, in claims 1, 22, 26, and 31 of the '811 patent and in claim 1 of the '896 patent should be construed as "the entirety of the primary or auxiliary devise with the exception of the lenses and including the lens rim (if provided), the magnetic members, the nose bridge, and the arms." More succinctly, Plaintiffs contend that the term "frame" includes both rimmed and rimless eyewear. In contrast, Defendants contend that the term "frame" only includes rimmed eyewear. The Court finds Defendants' construction to be more persuasive.

Consistent with this Court's construction of the term retaining mechanisms in the '811 patent and '896 patent, the Court construes the term frame in claims 1, 22, FN2 26, and 31 of the '811 patent and in claim 1 of the '896 patent as limited to rimmed eyewear. The Court will also construe the term frame in claim 1 of the '054 patent as limited to rimmed eyewear based on the language in the claim. Significantly, claim 1 states "a primary spectacle frame for supporting primary lenses therein, said primary spectacle frame including a middle bridge portion." (D.E. No. 111, Exh. H). The language is clear that the frame supports the "primary lenses therein." *Id.* (emphasis added). Thus, the lenses are in the frame. If a frame is composed of screws or pins which hold the lenses together as proposed by Plaintiffs, the lenses are not being supported inside the frame. In contrast, if a frame is composed of rims the lenses are supported inside these frames. In addition, all of the figures in the specification of the '054 patent show eyeglasses with rims. The Court is aware of the prohibition against importing limitations from the specification into the claims. The Federal Circuit has stated that the "specification may ... indicate that certain embodiments are preferred, [however,] particular embodiments appearing in a specification will not be read into the claims when the claim language is broader than such embodiments." *Electro Medical Systems, S.A. v. Cooper Life Sciences, Inc.* 34 F.3d 1048, 1054 (Fed.Cir.1994). Here, the Court finds that the claim language is not broader than the figures in the specification and thus, the Court finds these drawings are simply further support for the limitation to rimmed eyewear expressed in the claim language.FN3 *See Aspex Eyewear, Inc.*, 386 F.Supp.2d 526 (construing the same terms in the same patents in the same way for similar reasons).

FN2. The Court acknowledges that it did not previously construe the term retaining mechanism in claim 22 of the '811 patent however this claim contains similar language stating "a bridge connecting two retaining mechanism and holding them together, with the two mechanisms supporting a pair of lenses of a first frame" and stating that "the two retaining mechanisms define a frontal plane." The Court again notes that this language is purely functions as are all the reference to retaining mechanisms in the specification. Thus, the Court also construes retaining mechanism in claim 33 as rims.

FN3. The Court finds Plaintiffs' argument that the dual usage of lenses and frames in the specification is an indication that the claim includes rimless eyewear to be without merit. The term lenses is still an accurate description of the invention whether the lenses are framed with rims or rimless and the Court does not find any indication that Plaintiffs did not intend to limit their invention to rimmed eyewear by the dual usage of this language.

Plaintiffs have argued that a class definition expressed by the PTO supports their construction of the term frame. Specifically, frame is defined in the United States Patent and Trademark Office's class definitions for goods in the "optics: eye examining, vision testing and correcting class" as "[m]echanical parts, not including lenses, which serve to surround or support or which serve to interconnect elements of a frame." (D.E. No. 112, Exh. J). This definition does appear to encompass the Plaintiffs' construction of the word frame and could be viewed as extrinsic evidence of the common and ordinary meaning of the term frame in the art. However, the class definition provided to the Court indicates it is from the December 2004 edition. It is unclear to the Court exactly when the patent was applied for; however, the '054 patent was issued on April 7, 1998. Therefore, it is clear that the patent was applied for at some time before this date in 1998 and there is absolutely no indication in the record that the above definition was the class definition of the PTO some six or more years earlier, which is the relevant time of inquiry. See *Phillips*, 415 F.3d at 1313 (stating that "the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application."). More importantly, here, the claim terms have clearly indicated the patentee's limitation of the term frame. Thus, even if the term frame does have the ordinary meaning in the art of not requiring rims, the limitations in the claim would still supersede this meaning. See *id.* at 1317 (stating that "the specification may reveal a special definition give to a claim term by the patentee that differs from the meaning it would otherwise possess."). See also *Bell & Howell Document Management Products Co. v. Altek Systems*, 132 F.3d 701, 706 (Fed.Cir.1997) (stating that "[w]hen the intrinsic evidence is unambiguous, it is improper for the court to rely on extrinsic evidence).

Plaintiffs also argue that a drawing in the file history of the '054 patent and the patentee's reference to this drawing supports its proposed construction of the term frame. This drawing shows eyewear which is the subject of a German patent. This eyewear lacks rims and the patentee referred to the supporting skeleton of this eyewear as a frame. (D.E. No. 111, Exh. F, G). However, this art from another patent and Plaintiffs' vague reference to a frame does not explain the limitations stated in the claim as discussed above and the Court refuses to use this vague reference in the file history to nullify the claim language, which is the most important consideration.

Finally, Plaintiffs cite three other district court decisions that have construed the term frame in a way in which they argue is favorable to their position. See (D.E. No. 111, Exh. A, *Aspex Eyewear, Inc. v. Concepts*

in *Optics, Inc.*, Case No. 00-7067 (S.D. Fla. June 9, 2005)); (D.E. No. 111, Exh. D, *Aspex Eyewear, Inc. and Contour Optik, Inc. v. E'Lite Optik, Inc.*, Case No. 00-CV-1116 (D.Nev. May 28, 2004)); (D.E. No. E, *Aspex Eyewear, Inc. v. Miracle Optics, Inc.*, Case No. 01-CV10396 (C.D.Ca. Feb. 14, 2003)). The Court has considered these cases; however, these cases are only persuasive authority and this Court is not persuaded by them.FN4 The Court also notes that these cases were decided before the Federal Circuit decided *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed.Cir.2005),FN5 one of the most recent and comprehensive clarifications of claim interpretation principles which highlighted the importance of the language used in the claims. *See Aspex*, 386 F.Supp.2d at 535 (stating the same regarding two of these cases and the court's contrary construction of the term frame). Thus, the Court will adopt the Defendants' construction of the term frame and will construe it as "an eyeglass device that includes rims."

FN4. Another case, *Aspex Eyewear, Inc. v. Altair Eyewear, Inc.*, 386 F.Supp.2d 526 (S.D.N.Y.2005) also construed the patents at issue in this case and some of the same terms. Although neither party cited this case to the Court in their *Markman* briefs, the Court did find this case persuasive and his cited to it throughout this Order.

FN5. *Phillips* issued on July 12, 2005.

3. Projection

Finally, the Court construes the term projection as used in the '054 patent. Plaintiffs argue that the term projection in claim 1 of the '054 patent should be construed as "any portion of the auxiliary bridge which comprises a portion extended toward the primary bridge for going over and engaging or resting on top of the primary bridge." In contrast, Defendants contend that the projection is a separate component from the bridge. The specific language of the claim regarding projection states: "an auxiliary spectacle frame for supporting auxiliary lenses therein, said auxiliary spectacle frame including a middle bridge portion having a projection extended therefrom" (D.E. No. 111, Exh. H). Upon examination of these terms and the rest of the claim terms, it is clear that nothing in the claim requires the projection to be a separate component which is not a part of the bridge. The fact that the middle bridge has a "projection extended therefrom" does not indicate that the projection is required to be a separate component. Thus, the Court finds that the claim terms support Plaintiffs' construction.

Defendants argue that the figures included in the specification show the projection as a component separate from the bridge. However, upon examination of these figures it is clear that the projection is in fact pictured as a part of the bridge. *See* (D.E. No. 111, Exh. H). Defendants also argue that the prosecution history supports their argument that the projection is a separate component. Defendants vaguely state without citation or analysis that "[i]n responding to the Patent officer rejection of the original claim presented in the '054 patent, the patentee stated 'Also, Sadler does not teach or suggest Applicant's claimed projection at the auxiliary frame.' " (D.E. No. 110 at 12). FN6 This vague statement is not "prosecution estoppel [sic]" which "requires the term projection to mean that the bridge includes a separate portion or projection that extends rearward from the bridge proper" as argued by Defendants. *Id.* Therefore, the Court will construe the term projection to mean "any portion of the auxiliary bridge which comprises a portion extended toward the primary bridge for going over and engaging or resting on top of the primary bridge."

FN6. After examining the record, the Court has found the statement and was able to consider it in context.

See (D.E. No. 61, Exh. O).

III. Conclusion

For all the reasons stated herein, it is

ORDERED AND ADJUDGED that the claim terms of United States Patent Number 5,737,054, United States Patent Number 6,012,811, and United States Patent Number 6,092,096 are construed as follows:

1. "Retaining mechanisms" means "a structure that keeps the lenses in place using rims."
2. "Frame" means "an eyeglass device that includes rims."
3. "Projection" means "any portion of the auxiliary bridge which comprises a portion extended toward the primary bridge for going over and engaging or resting on top of the primary bridge."

DONE AND ORDERED in Chambers at Miami, Florida, this 21 day of December, 2006.

S.D.Fla.,2006.

Aspex Eyewear, Inc. v. Designer's Eyewear Studio, Inc.

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