

United States District Court,
W.D. Oklahoma.

FLEX-ABILITY CONCEPTS, LLC,
Plaintiff.

v.

RADIUS TRACK CORPORATION,
Defendant.

No. CIV-05-755-T

Jan. 23, 2007.

Charles L. McLawhorn, III, John A. Kenney, Michael D. McClintock, McAfee & Taft, Oklahoma City, OK,
for Plaintiff.

Dana W. Hobson, G. Neal Rogers, Joseph P. Titterington, Michael A. Schade, Dunlap Coddling & Rogers
PC, Oklahoma City, OK, for Defendant.

ORDER

RALPH G. THOMPSON, District Judge.

On January 18-19, 2007, the Court conducted a hearing on claim construction issues pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995) (en banc), *aff'd*, 517 U.S. 370 (1996). This case concerns U.S. Patent No. 6,625,942, "Apparatus and Methods of Forming a Curved Structure," which Plaintiff alleges has been infringed and Defendant alleges is invalid. The Court's task at this point is to determine the legal meaning of claim terms that are in dispute.

The parties agree the only patent claim at issue is Claim 56; they disagree slightly as to which terms need construction. Neither party presents any argument, however, directed to the issue of whether or not a particular term should be construed. *See Vivid Technologies, Inc. v. American Science & Engineering, Inc.*, 200 F.3d 795, 803 (Fed.Cir.1999) ("only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy). Absent any basis to rule that a particular term does not need construction, the Court will undertake to define all terms for which a party proposes a definition. In so doing, the Court will adhere to principles recently summarized in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-24 (Fed.Cir.2005), and other controlling principles established by Federal Circuit case law, which governs the patent law issues. *See Midwest Industries, Inc. v. Karavan Trailers, Inc.*, 175 F.3d 1356, 1359 (Fed.Cir.1999) (en banc).

The standard of decision is well established: "[T]he words of a claim are generally given their ordinary and customary meaning.... [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 (internal quotations and citations omitted). The primary source of information for claim construction is intrinsic evidence, namely, the claims themselves, the remainder of the specification (the descriptive text and drawings of the patent), and the prosecution history or file wrapper (the complete record of proceedings before the Patent and Trademark Office). The specification usually " 'is dispositive; it is the single best guide to the meaning of a disputed term.' " *Id.* at 1315; *quoting* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). The prosecution history is less useful "because it represents an ongoing negotiation between the PTO and the applicant ... [and] often lacks the clarity of the specification." Phillips, 415 F.3d at 1317. "Nonetheless, the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of the prosecution, making the scope of the claim narrower than it would otherwise be." *Id.* The doctrine of prosecution disclaimer may be applied when the inventor disavowed a particular interpretation of a claim term in prosecuting claims of the patent in suit or in prosecuting a parent application. *See* Omega Engineering, Inc., v. Raytek Corp., 334 F.3d 1314, 1334 (Fed.Cir.2003). FN1

FN1. The application for the "2 patent was a continuation of the inventor's application for U.S. Patent No. 6,000,181.

In the exercise of its discretion to admit extrinsic evidence, the Court received testimony and exhibits at the hearing concerning Plaintiff's "Flex-C Trac" product, Defendant's "Ready Track" product, and an exemplar made using a prior method of forming curved walls disclosed by the United States Gypsum Company in a copyrighted brochure entitled "Interior Remodeling Systems." FN2 Both parties used exemplars as demonstrative aids in their presentations and arguments, which the Court found to be very helpful for this purpose and useful to its understanding of the technology at issue and the field of the invention. Mindful of the limited role that extrinsic evidence should play in interpretation of claim terms, however, the Court finds these materials to have little, if any, relevance to the claim construction issues. FN3 Also, although both parties refer to dictionaries in their briefs, no dictionary definitions were submitted at the hearing for the Court's consideration, and thus none will be considered.

FN2. Specifically, Plaintiff introduced testimony of its corporate representative, David Young, that its product is manufactured in standard lengths, each formed from a single sheet of metal into sections that are pivotally connected without using a screw, rivet, brad or other separate pivot means.

FN3. No evidence was presented that the parties' products or methods existed on the effective filing date of the application for the "2 Patent.

Each party has submitted its proposed definitions of disputed terms. A combined chart of both parties' proposals was received at the hearing as Plaintiff's Exhibit 25. Research reveals, however, the Court is not bound to adopt either party's proffered construction but has "an independent obligation to determine the meaning of the claims, notwithstanding the views asserted by the adversary parties." *Exxon Chemical Patents, Inc. v. Lubrizol Corp.*, 64 F.3d 1553, 1555 (Fed.Cir.1995). Thus the Court will utilize the parties' proposals as a starting point but will not limit itself to adopting a proposed definition of a term if neither litigant's proposal adequately conveys the inventor's intended meaning as found by the Court.

Given these parameters, the Court solicits the advice of its technical advisor, Dr. Egle, on the following issues:

(1) As to each term or phrase in Claim 56 for which a party requests an interpretation, which of the party's proposed constructions best states the intended meaning of the term or phrase to a person of ordinary skill in the art when read in the context of the entire patent, including the specification and, if appropriate, the prosecution history? Please state reasons for selecting this proposal or rejecting the competing proposal.

(2) If the proposed construction that you select could be modified to convey more accurately or clearly the inventor's intended meaning, please provide a modified proposal that better defines the term or phrase.

Dr. Egle should respond by submitting a written report, which may be in the form of a letter mailed to the undersigned at the following address:

Judge Ralph G. Thompson

United States Courthouse

200 N.W. Fourth Street, Suite 4301

Oklahoma City, OK 73102.

The Court anticipates the report could be completed within two weeks. If additional time is needed, however, Dr. Egle should so inform the Court, either orally or in writing. Upon receipt of the report, the Court will direct that it be electronically filed in the case record.

The parties may comment on Dr. Egle's report by simultaneously filing concise briefs, not to exceed five pages in length, directed solely to why they agree or disagree with his views. Prior arguments and authorities need not be repeated. The parties shall file their respective briefs within seven days after the date on which Dr. Egle's report is filed.

IT IS SO ORDERED.

W.D.Okla.,2007.

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