

United States District Court,  
S.D. Florida.

**SENSORMATIC ELECTRONICS CORP,**  
Plaintiff.

v.

**The TAG COMPANY US, LLC, et al,**  
Defendants.

No. 06-81105-CIV

**July 31, 2008.**

Stephen Bernard Gillman, Shutts & Bowen, Miami, FL, Mark L. Levine, Mark S. Ouweleen, Sean Gallagher, Shayna S. Cook, Bartlit Beck Herman Palenchar & Scott, Chicago, IL, Sean C. Grimsley, Bartlit Beck Herman Palenchar & Scott, Denver, CO, for Plaintiff.

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### ***ORDER CONSTRUING DISPUTED CLAIM TERMS***

**DANIEL T.K. HURLEY, District Judge.**

**THIS CAUSE** is before the court upon plaintiff's motion to construe disputed claim terms of the patents-in-suit [DE # 233].

### **BACKGROUND**

The pleadings have been amended several times in this case, and two patents remain at issue: U.S. Patent No. 5,729,200 (filed Aug. 28, 1996) ("200 patent") and U.S. Patent No. 6,181,245 (filed Aug. 15, 1997) ("245 patent"). Plaintiff filed the instant motion to construe disputed claim terms on March 21, 2008. Plaintiff's motion identified eight disputed claim terms to be construed; defendants' response adds one. On May 14, 2008, the court conducted a hearing pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The parties have since stipulated to agreed constructions of some of the claim terms originally disputed, so that now only four disputed claim terms remain. The court now construes the disputed claim terms as set forth below.

### **DISCUSSION**

#### ***A. Standard of Review***

Claim construction requires that the claims be viewed "in the context of those sources available to the public that show what a person of skill in the art would have understood" the disputed language to mean. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed.Cir.2005) (en banc). Federal Circuit case law teaches that these sources should be classified into categories, each having different weight. First, the court must look to the words of the claims themselves, which are generally given their ordinary and customary meaning. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). The court must then review the patent specification to determine whether claim terms are used in a way inconsistent with their ordinary and customary meaning. If the patentee, acting as his own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning, the ordinary meaning must be rejected, and the supplied definition controls. *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1204 (Fed.Cir.2002). Next, the court may consider the prosecution history, which forms part of the "intrinsic evidence" that directly reflects how the patentee himself has characterized the invention. *MBO Laboratories, Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1329 (Fed.Cir.2007). Least important is "extrinsic evidence"-testimony, dictionaries, learned treatises, or other material not part of the public record associated with the patent. Such evidence may be helpful but is less significant than the intrinsic record in claim construction; and extrinsic evidence cannot alter any claim meaning discernible from intrinsic evidence. *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed.Cir.2004).

## ***B. Disputed Claim Terms***

### ***1. "fully magnetized"***

The phrase "fully magnetized" is used in claims 4, 6, 10, 11, 12, 14, 15, 17, 18, 19, 26, 27, 28, and 29 of the '200 patent; FN1 and in claims 7-10 of the '245 patent. The phrase is used to describe the state of a biasing element, after it is exposed to a DC magnetization field and before it is exposed to an AC demagnetization field under certain conditions, whereupon the biasing element reacts as described in the particular claim. Plaintiff suggests that the phrase be construed to mean that the biasing element exhibits *virtually no further increase* in its magnetization level when the applied magnetic field is further increased. Defendants argue that the phrase should be construed to mean that the biasing element exhibits *little or no further increase* in its magnetization level when the applied magnetic field is further increased.

The court is persuaded that plaintiff's construction of the phrase is accurate. Under defendants' proffered construction, a biasing element is "fully magnetized" even if its magnetization level is only 95% of another magnetization level that could be achieved through application of a stronger DC field. In the court's view, this is both inconsistent with the manner in which a person of ordinary skill in the art would understand the phrase, and contrary to the way the phrase is used in the patents. For example, the '200 patent includes a graphical representation of the material's magnetization level as a function of the applied DC magnetization field. *See* '200 patent Fig. 4. The magnetization level "Mra" is clearly depicted as the limiting magnetization level approached asymptotically by the element as increasingly strong DC fields are applied-in other words, the magnetization level beyond which an increase in the DC field produces no increase in magnetization of the element. It is this level that is referred to in the patent specification as representing a "saturation magnetization level," a phrase which the court interprets as interchangeable with "full magnetization level."

Because the material's magnetization approaches the limiting level Mra only asymptotically, and never actually reaches Mra, no material can be "fully magnetized" in the sense that application of a stronger DC field would have absolutely no effect on the material's magnetization level. No matter how strongly magnetized the material is, an increase in the strength of the applied DC field will have at least some effect,

however small, on the material's magnetization level. For this reason, it would be misleading to hold the description "fully magnetized" applicable only to a material that cannot be further magnetized at all. At the same time, use of the term "fully magnetized" plainly suggests the patentee's intent to describe a state in which, at least for all practical purposes, the magnetization level of the material cannot be increased any further. Plaintiff's proposed construction-which refers to "virtually no further increase-best reconciles these two points, and the court adopts it in this order.

## **2. " full magnetization level "**

The phrase "full magnetization level" is used in the same claims as the phrase "fully magnetized." The dispute between the parties over the phrase "full magnetization level" is essentially the same as the dispute over the phrase "fully magnetized." Plaintiff argues that the phrase should be construed to mean the "level of magnetization at which the biasing element is in its saturated condition," while defendants argue that it should mean the level of magnetization such that "the biasing element exhibits *little or no* further increase in its magnetization level retained after exposure to a magnetizing field resulting from increase of that magnetizing field to a higher value."

A person of ordinary skill in the art would understand the phrase "full magnetization level" to mean the biasing element's level of magnetization when it is fully magnetized, as that term is construed *supra*. This is consistent with the patents' specifications, which define the "Mra" magnetization level as representing the "saturation magnetization level"-a phrase which the court takes to be interchangeable with "full magnetization level." *See, e.g.*, ' 245 patent, col. 7, lines 33-35. Consistent with the court's earlier construction of the term "fully magnetized," the phrase "full magnetization level" as is construed as referring to the biasing element's level of magnetization when the biasing element is fully magnetized, as that term is earlier defined.

## **3. " DC magnetic field Ha required to achieve saturation "**

The phrase "DC magnetic field Ha required to achieve saturation" appears in claim 10 of the '200 patent and claim 7 of the '245 patent.FN2 The magnetic field Ha is explicitly defined in the patents' specifications as "the DC magnetic field strength required to induce saturation in the material." *See* ' 200 patent, col. 7, lines 22-23; ' 245 patent, col. 7, lines 35-36. Again, defendants would rather the court define Ha as the magnetic field such that "little or no further increase in the magnetization value is attained by the biasing element if the DC magnetic field were increased to a higher value." Because the patentee has clearly and unambiguously exercised his power to "act as his own lexicographer" by explicitly defining Ha in the specification, *see, e.g.*, *Sinorgchem Co., Shandong v. International Trade Comm'n*, 511 F.3d 1132, 1136 (Fed.Cir.2007), this court may not set aside the patentee's supplied definition and adopt defendants'. *See, e.g.*, *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed.Cir.2002). Accordingly, the court construes the term as referring to that magnetic field strength the application of which causes the biasing element to become fully magnetized, as that term is earlier defined in this order.

## **4. " deactivation-field-dependent resonant-frequency-shift characteristic having a slope that exceeds [100, 200] Hz/Oe "**

In their response to plaintiff's motion to construe disputed claim terms, defendants offered the phrase "deactivation-field-dependent resonant-frequency-shift characteristic having a slope that exceeds 100 Hz/OE" for the court's construction. The term appears in claims 1 and 2 of the '200 patent, and claims 1, 2, and 4 of the '245 patent. Plaintiff initially argued that the court, in its discretion, should not construe this

claim term, but has since offered a proposed construction in opposition to defendants' proposed construction.

One of the points of alleged novelty of the biasing element described in the patents-in-suit is that, when used in a magnetomechanical marker, the marker's resonant frequency experiences a greater increase in response to an demagnetizing AC field of a given strength, compared with markers based on the prior art. This claimed advance is represented graphically by the curve plotted in Fig. 3 of the '200 patent, which represents the resonant frequency of a marker using the described biasing element as a function of the strength of an applied demagnetization field. The maximum slope of the curve in Fig. 3 is higher than that of the curve in Fig. 2, which plots the same function for the prior art, indicating that the resonant frequency of the biasing element described in the '200 patent in a sense responds more strongly to the application of a demagnetizing field of a given strength. This is the "deactivation-field-dependent resonant-frequency-shift characteristic" referred to in the disputed claim term.

The parties' proposed constructions of the term described above are generally similar, except that defendants refer to the maximum value of the slope of a "graphical plot" showing the resonant frequency as a function of applied deactivation field, while plaintiff refers to a "curve properly fitted to data points." The problem with defendants' proposal is that the term "graphical plot" does not necessarily connote a smooth curve; a "graphical plot" could mean a disjointed set of line segments that abruptly changes slope at each data point. This has the potential to misdescribe the characteristics of the claimed invention because, as plaintiff pointed out at the hearing, a single data outlier might show, over a very small domain, a slope higher than any other in the plot. This would then become the "characteristic" referred to in the disputed claim term. A single extreme data point should not define the material's "resonant-frequency-shift characteristic"; the plain language and context make clear that the relevant value is the maximum slope attained generally over the entire relevant domain. For this reason, the maximum slope should be calculated based on a curve that is fitted to data points, rather than a graphical plot merely connecting the data points. The court thus concludes that plaintiff's interpretation is more accurate, and adopts a slightly modified version of it below.

## CONCLUSION

For the reasons given above, it is hereby **ORDERED** and **ADJUDGED** that plaintiff's motion to construe disputed claim terms [DE # 233] is **GRANTED**. The following claim terms used in U.S. Patent No. 5,729,200, as amended, and U.S. Patent No. 6,181,245, as amended, are hereby construed as follows:

1. "**fully magnetized**" means that the biasing element exhibits virtually no further increase in its magnetization level retained when the applied magnetic field is further increased;
2. "**full magnetization level**" means the level of magnetization at which the biasing element is "fully magnetized," as that term is defined above;
3. "**DC magnetic field  $H_a$  required to achieve saturation**" means that DC magnetic field strength, the application of which causes the biasing element to become "fully magnetized," as that term is defined above; and
4. "**deactivation-field-dependent resonant-frequency-shift characteristic having a slope that exceeds [100, 200] Hz/Oe**": the recited slope refers to the maximum value of the slope attained by a curve properly fitted to data points representing measured resonant frequency as a function of the peak amplitude of an

applied AC demagnetization field.

FN1. Claims 4 and 10 of the '200 patent were amended by the reexamination certificate issued by the U.S. Patent and Trademark Office on February 12, 2008. The phrase "fully magnetized" appears in the claims as amended. *See* Pl.'s Mot. Ex. A.

FN2. Claim 10 of the '200 patent was amended by the reexamination certificate issued by the U.S. Patent and Trademark Office on February 12, 2008. The phrase "DC magnetic field  $H_a$  required to achieve saturation" appears in the claim as amended. *See* Pl.'s Mot. Ex. A

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