

United States District Court,
N.D. Illinois.

FILTERTEK, INC,

v.

MEDEX, INC.

Sept. 23, 2002.

MEMORANDUM OPINION AND ORDER

REINHARD, J.

Plaintiff, Filtertek Incorporated, filed this patent infringement and declaratory judgment action against defendants, Medex, Incorporated, Alaris Medical Incorporated, and Alaris Medical Systems Incorporated. Plaintiff alleges infringement by defendants of claim 23 of U.S. Patent 5,360,413 ("the '413 patent"), entitled "Needleless Access Device" issued November 1, 1994 on an application filed May 19, 1993, in the names of Michael H. Leason, Rick R. Ruschke and Ralph L. Davis and assigned to plaintiff. Jurisdiction is proper under 28 U.S.C. s.s. 1338(a) and 2201. On May 28, 2002, the court referred the matter to a special master for the construction of claim 23 pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). *See Fed.R.Civ.P. 53.* The special master's findings of fact and conclusions of law were filed with the court on August 2, 2002. Plaintiff urges their adoption and defendants object in part and seek an alternate construction.

The construction of phrases (a) and (c) of claim 23 were initially disputed. The parties have agreed to adopt the special masters construction of phrase (c). Only phrase (a) remains in dispute. Phrase (a) is as follows: "a housing having an inlet opening, an outlet opening, and a channel therethrough." Defendants seek a construction which adds to phrase (a) the following language: "the channel communicating the inlet opening with the outlet opening." Defendants contend this construction is necessary because claim 23 must be construed as calling for a device that protects the patient. (Def. Resp. *Markman* brief p. 8) They argue the term "channel" "can only be interpreted to mean a channel which communicates the inlet opening of the device with the outlet opening leading to the patient." (*Id.*) The special master rejected defendants proposed construction.

A special master's finding of fact are accepted unless clearly erroneous but conclusions of law are reviewed *de novo*. *See Cook v. Niedert*, 142 F.3d 1004, 1010 (7th Cir.1998); *Fed.R.Civ.P. 53(e)(2)*. There is a heavy presumption that claim terms carry their ordinary and customary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed.Cir.2002). In construing claims, the court "looks to the language of the claims, the specification, and the prosecution history." *Pall Corp. v. Micron Separations, Inc.*, 66 F.3d 1211, 1216 (Fed.Cir.1995), *cert. denied*, 520 U.S. 1115 (1997). The court concurs with the special master in concluding that "channel" need not be subject to the narrow construction advanced by defendants.

Accordingly, the court adopts the special master's finding of facts and conclusions of law in construing

claim 23. Phrase (a) is not altered. Phrase (c) is construed as follows: "a wiper seal, dimensioned so that it insures (i) sealing against bacterial contamination to maintain sterility and (ii) wiping so as to leave the wiped area in a clean state, formed on a top section of said piston for wiping the surface of the channel surrounding the piston during actuation and release of the piston."

N.D.III.,2002.

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