United States District Court,
D. Minnesota.

ANDERSON CORP,
v.
PELLA CORP. and W.L.

No. 05-CV-824 JMRFLN

July 7, 2006.

Ana D. Johnson, Becky R. Thorson, Robins Kaplan Miller & Ciresi LLP, Minneapolis, MN, for Plaintiff.

Calvin L. Litsey, Chad Drown, James W. Poradek, Kevin P. Wagner, Faegre & Benson LLP, William J. Tipping, Andrea Kiehl, Flynn Gaskins & Bennett, Minneapolis, MN, Nina Y. Wang, Faegre & Benson LLP, Denver, CO, Allan M. Wheatcraft, W L Gore & Associates, Inc., Newark, DE, David H. Pfeffer, Morgan & Finnegan, Harry C. Marcus, Jessica L. Copeland, Locke Lord Bissell & Liddell LLP, New York, NY, for Defendants.

PRELIMINARY CLAIM CONSTRUCTION

JAMES M. ROSENBAUM**, Chief District Judge.**

This matter is before the Court on the parties' motions for claim construction of U.S. Patent No. 6,880,612 (the '612 patent).

I. *Background*

Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996), the parties seek the Court's construction of the following disputed terms in the ' 612 patent:

a) "has/having a transmittance of light of at least [stated value] and a reflectance of light of [stated value] or less," from Claims 22 and 76;

b) "insect screening," from Claims 22 and 76.

II. *Analysis*

In construing claims, the Court "focuses at the outset on how the patentee used the claim term in the claims, specification and prosecution history," which are the intrinsic evidence of record. Phillips v. AWH Corp., 415 F.3d 1303, 1321 (Fed.Cir.2005) (en banc). Terms are presumed to carry "the meaning that the term would have to a person of ordinary skill in the art at the time of the invention." Id. at 1313. The specification is the "single best guide to the meaning of a disputed term." Id. at 1315. The Court must guard against importing limitations from the specification into the claim. Id. at 1322-23. Furthermore, the claims

are to be construed without regard to the accused product. Jurgens v. McKasy, 927 F.2d 1552, 1560 (Fed.Cir.1991).

The Court must further consider whether any material was surrendered in the patent process. *See* Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 535 U.S. 722, 733-34 (2002) (prosecution history estoppel is a "rule of patent construction that ensures that claims are interpreted by reference to those that have been cancelled or rejected.") (internal quotations omitted.) A patentee who narrows a claim to obtain a patent disavows patent protection for the broader subject matter. Id. at 737. The relevant inquiry is whether a competitor would reasonably believe, based on the applicant's position before the PTO, that the applicant had surrendered the broader subject matter. Cybor Corp. v. FAS Tech., Inc., 138 F.3d 1448, 1454 (Fed.Cir.1998) (en banc).

III. ***Claim Construction***

With the Federal Circuit's approach firmly in mind, the Court turns to the construction of the disputed claim terms.

a) *has/having a transmittance of light of at least [stated value] and a reflectance of light of [stated value] or less*

The Court considers it unnecessary to define the term.

b) *insect screening*

The Court determines "insect screening" to be "a mesh of thin linear elements permitting ventilation while excluding insects."

IV. ***Responses***

Any party objecting to the Court's preliminary claim construction shall submit alternative language on or before August 7, 2006.

IT IS SO ORDERED.

D.Minn.,2006.
Anderson Corp. v. Pella Corp.