

United States District Court,  
D. Minnesota.

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

No. 05-CV-824(JMR/FLN)

**Aug. 30, 2006.**

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### **FINAL ORDER of CLAIM CONSTRUCTION**

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

The Court has considered the parties' responses to its Preliminary Claim Construction filed July 7, 2006 [Docket No. 150]. Plaintiff objects to the Court's construction, and asks the Court to rule that the term "in a fenestration unit" limits each of the claims of U.S. Patent No. 6,880,612 (the '612 patent). [Docket No. 168].

Upon consideration, the Court presently finds it appropriate to maintain its previous claim construction.

IT IS SO ORDERED.

### **PRELIMINARY CLAIM CONSTRUCTION**

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.*

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