

United States District Court,
D. Minnesota.

ELECTRONIC CONTROLLED SYSTEMS, INC,
v.
KVH INDUSTRIES, INC.

No. 05-CV-1027 (JMR/FLN)

July 27, 2007.

Aaron W. Davis, Eric H. Chadwick, Randall T. Skaar, Scott G. Ulbrich, Tye Biasco, Patterson Thuente Skaar & Christensen, PA, Minneapolis, MN, for Electronic Controlled Systems, Inc.

Brandon F. White, Brian C. Carroll, Jeremy A. Younkin, Michael V. Dowd, Foley Hoag LLP, Boston, MA, Mark D. Schuman, Thomas J. Leach, III, Anthony R. Zeuli, Merchant & Gould PC, Minneapolis, MN, for KVH Industries Inc.

PRELIMINARY CLAIM CONSTRUCTION

JAMES M. ROSENBAUM, Chief Judge.

The matter is before the Court on defendant's request for claim construction of Claim 5 of U.S. Patent No. 6,864,846 (the '846 patent).

I. Background

Pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), defendant seeks the Court's construction of the following terms in Claim 5 the '846 patent:

- a) "stored memory of previously located satellites";
- b) "controller";
- c) "current position corresponding to a valid satellite signal"; and
- d) "selected second position corresponding to the previously located satellites."

Defendant also requests the Court issue a negative construction regarding the final element of Claim 5. Defendant wishes the Court to construe that Claim 5 contains no requirement that the satellites correspond to one another in any way, nor that the satellites have the same service provider.

Plaintiff contends that none of the terms in Claim 5 need to be construed.

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.

The Court finds it unnecessary to define the following terms: (a) "stored memory of previously located satellites"; (c) "current position corresponding to a valid satellite signal"; and (d) "selected second position corresponding to the previously located satellites".

As to the remaining term:

b) Controller

The Court construes the term "controller" to mean "a mechanism or electronic program by which the device performs its intended function."

The Court declines to adopt defendant's proposed negative construction regarding the final element of Claim 5. Defendant's proposal does not construe a term of the Claim, nor is it a *Markman* issue, as the Court understands it. The Court assumes this proposal is offered as a note of levity. Parenthetically, the Court sees nothing in either the Claims or the Specifications which suggest a requirement that differing signals must emanate from "the same service provider."

IV. Responses

The parties shall respond to the Court's preliminary claim construction no later than 5:00 p.m. on July 31, 2007. A party objecting to the Court's construction of a claim is directed to suggest alternative language.

IT IS SO ORDERED.

D.Minn.,2007.

Electronic Controlled Systems, Inc. v. KVH Industries, Inc.

Produced by Sans Paper, LLC.