

United States District Court,
E.D. Texas, Marshall Division.

PIONEER CORPORATION,
Plaintiff.

v.

SAMSUNG SDI CO., LTD., Samsung Electronics Co., Ltd., Samsung SDI America, Inc. and Samsung Electronics America, Inc,
Defendants.

Civil Action No. 2:06-CV-384 (DF)

Oct. 20, 2008.

Samuel Franklin Baxter, McKool Smith, Marshall, TX, Andrew E. Monach, Harold J. McElhinny, Minn Chung, Morrison & Foerster LLP, San Francisco, CA, Garret Wesley Chambers, Gary Scott Kitchen, McKool Smith, Dallas, TX, Hui Liu, Karen L. Hagberg, Kyle W.K. Mooney, Sherman William Kahn, Morrison & Foerster, New York, NY, for Plaintiff.

Iona Kaiser, Amanda Woodall, Elizabeth Durham, Larry Gene Spears, Michael A. Hawes, Mitchell D. Lukin, Scott F. Partridge, Baker Botts LLP, Houston, TX, Bryan K. Anderson, Sidley Austin LLP, San Francisco, CA, Dale Bruce Nixon, Sidley Austin, Dallas, TX, Daniel Richard Brown, Dan Brown Law Office, Keller, TX, David T. Miyamoto, Olivia M. Kim, Sandra S. Fujiyama, Edward G. Poplawski, Sidley Austin, Los Angeles, CA, Lance Lee, Young Pickett & Lee, Texarkana, TX, for Defendants.

SUPPLEMENTAL CLAIM CONSTRUCTION ORDER

DAVID FOLSOM, District Judge.

Before the Court is Samsung's Supplemental Claim Construction Brief Regarding "A Spacer ..." in Claim 1 of Pioneer's '489 Patent. Dkt. No 424. Also before the Court is Pioneer's Responsive Claim Construction Brief and Samsung's Reply. Dkt. Nos. 425 & 428. After considering the patent, and all other relevant pleadings and papers, the Court finds that the claim of the patent-in-suit should be construed as set forth herein.

I. BACKGROUND

Pioneer brings this patent infringement action against Samsung for the alleged infringement of United States Patent Nos. 5,182,489 ("the '489 Patent") and 5,640,068 ("the '068 Patent"). Dkt. No. 1. This Court entered its initial Claim Construction Order on December 27, 2007, in which it construed the disputed terms of the patents-in-suit. Dkt. No. 144.

On July 2, 2008, this Court granted Pioneer's Motion to Serve its Second Amended Disclosure of Asserted Claims and Infringement Contentions, in which Pioneer identified four additional Samsung products as allegedly infringing the patents-in-suit Dkt. No. 279. In response, Samsung sought leave to file a Supplemental Expert Report and Supplemental Summary Judgment Motion to address these "newly-accused products." Dkt. Nos., 312 & 320. This Court granted Samsung leave to file a Supplemental Expert Report to address the newly accused products, but explicitly limited that report to those products. Dkt. No. 364 This

Court also granted Samsung leave to file its Supplemental Summary Judgment Motion, which this Court eventually denied on the merits. Dkt. Nos. 366 & 407.

Samsung now contends that the briefing attached to that Supplemental Summary Judgment Motion and recent depositions of the parties' experts have "revealed that the parties have divergent interpretations" of certain claim language in the '489 Patent Dkt. No. 424 at 2. Specifically, the parties now have divergent interpretations of the following term: "a spacer having a partition wall in the form of a grid located between said first and second insulating substrates so as to partition said discharge space into a number of pixels." *Id.* (quoting '489, Claim 1) As such, Samsung requests that this Court provide a supplemental construction of the disputed term *Id.* (citing *O2 Micro Int'l Ltd. v. Beyond Innovation Tech Co. Ltd.*, 521 F.3d 1351, 1362 (Fed.Cir.2008) ("When the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it")).

II. LEGAL PRINCIPLES OF CLAIM CONSTRUCTION

A determination of patent infringement involves two steps. First, the patent claims are construed and second, the claims are compared to the allegedly infringing device. *Cybor Corp. v. FAS Techs, Inc.*, 138 F.3d 1448, 1455 (Fed.Cir.1998) (en banc) The legal principles of claim construction were recently reexamined by the Federal Circuit in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed.Cir.2005) (en banc) The Federal Circuit in *Phillips* expressly reaffirmed the principles of claim construction as set forth in *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995) (en banc), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), *Vitronics Corp. v. Conceptronc, Inc.*, 90 F.3d 1576 (Fed.Cir.1996), and *Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*, 381 F.3d 1111 (Fed.Cir.2004). Thus, the law of claim construction remains intact. Claim construction is a legal question for the courts. *Markman*, 52 F.3d at 979.

The Court, in accordance with the doctrines of claim construction which it outlined in its initial claim construction order, construes the disputed claim of the patent-in-suit below. *See* Dkt. No. 144 at 2-8.

III. THE PATENTS-IN-SUIT

The '489 Patent, entitled "Plasma Display Having Increased Brightness," which issued on January 26, 1993. The Abstract reads as follows:

A plasma display panel of the surface discharge type in which a maintaining discharge is generated between electrodes formed on the same substrate, includes first and second insulating substrates separated from each other to form a discharge space there between. A spacer having a partition wall in the form of a grid is located between the first and second insulating substrates so as to partition the discharge space into a number of pixels. Electrodes for maintaining discharge are provided on the first insulating substrate, and phosphor is located on the second insulating substrate within each of the pixels. The first insulating substrate is located at a display side

Plaintiff asserts Claim 1 of the '906 Patent, which reads as follows:

1 In a plasma display panel of the surface discharge type in which a maintaining discharge is generated between electrodes formed on the same substrate, said display panel including

first and second insulating substrates separated from each other to form a discharge space there between,

a spacer having a partition wall in the form of a grid located between said first and second insulating substrates so as to partition said discharge space into a number of pixels, each of said pixels being defined by said first and second insulating substrates and said partition wall of said spacer, said pixels being

separated from one another by said partition wall of said spacer; the improvement comprising:

a discharge gas filling said discharge space,

electrodes on said second insulating substrate for initiating a discharge of said discharge gas in said discharge space and extending in a first direction,

electrodes on said first insulating substrate for maintaining said discharge and extending substantially along said partition wall in a second direction intersecting said first direction,

each of said electrodes for maintaining said discharge including a combination of a transparent electrode and a metal electrode, and

phosphor located on said second insulating substrate and on said discharge initiating electrodes,

said first insulating substrate being located at a display side of said panel.

IV. CLAIM CONSTRUCTION

The parties disagree over the meaning of "a spacer having a partition wall in the form of a grid located between said first and second insulating substrates so as to partition said discharge space into a number of pixels." Dkt. No. 424 at 2

A. The Parties' Proposed Constructions

Samsung

a spacer is a single partition wall positioned between the first and second insulating substrates, the partition wall is in the shape of a grid which has evenly spaced horizontal and vertical walls that form pixels between the walls to provide an array of pixels that fills the discharge space

Pioneer

"a" means "one or more"

"grid" means "a network of horizontal and perpendicular lines"

B. The Parties' Positions

At the outset, Samsung argues that the limitation "a partition wall" requires a *single* partition wall. Dkt. No. 424 at 3 Samsung highlights the fact that both the claim language itself and portions of the specification define the spacer as having "a" partition wall. *Id.* (citing '489, 1:20, 2:27-28, 7:48-49). Samsung further contends that all embodiments in the '489 Patent have a spacer similar to that illustrated in Figure 3A, which illustrates a spacer with a single partition wall *Id.* at 3 n. 2 (citing '489, Figs. 1A, 3A, 3B & 4A).

In response, Pioneer argues that Claim 1 is an open-ended claim, in which the term "a" may mean "one or more than one" unless the patent evidences some other intent, Dkt. No. 425 at 3 Pioneer argues that Samsung's proposed construction would improperly limit Claim 1 to the preferred embodiments that are represented in the '489 Patent's Figures, *Id.* at 4. Finally, Pioneer contends that the Figures on which Samsung relies provide only a "partial" view of the claimed spacer-suggesting that a more complete view of the preferred embodiment might depict more than one such spacer. *Id.*

Next, Samsung argues that all of the "illustrated embodiments depict a grid with evenly spaced horizontal and vertical walls." Dkt. No. 424 at 4 (citing Fig. 1A, 3A & 4A). Samsung also argues the '489 patentee

seemingly adopted Samsung's construction during examination. *Id.* The PTO initially rejected Claim 1 as originally drafted over one prior art reference, U.S. Patent No. 4,692,662 (the "Wada" reference) *Id.* (citing 01/06/92 Office Action at p. 3, para. 10) Samsung argues that the '489 patentee did not attempt to distinguish the '489 Patent from Wada, which depicted an evenly spaced grid; instead, the '489 patentee merely added a limitation to address the PTO's rejection. *Id.*

Pioneer responds that Samsung's construction, which would limit the covered pixels to squares rather than rectangles, is not supported by the claim language or specification, Dkt. No. 425 at 4. Assuming that the preferred embodiment and the Wada reference suggest square pixels, Pioneer argues that it would nonetheless be improper to read such a limitation into the claim language. *Id.* In addition, the fact that the patentee did not dispute that the Wada reference had a grid "does not mean that a 'grid' is restricted to that one prior art example...." *Id.*

Finally, Samsung argues that specification describes the spacer as dividing the discharge space into an array of pixels, which *fills* that discharge space Dkt. No. 424 at 6 (citing '489, 1:20-22, 2:27-30, 4:35-37, Fig. 3A & 3B).

In response, Pioneer argues that Samsung's construction creates confusion rather than clarity and does not comport with the plain meaning of the claim language Dkt. No. 425 at 5 Pioneer contends that the '489 Patent only uses the term "array" once and merely uses it to describe prior art. *Id.* Further, the specification and claim language do not suggest that any such array "fills the discharge space." *Id.* Instead, the open-ended claim does not exclude the possibility that structures other than pixels and partition walls may be present in the discharge space. *Id.*

C. Construction

The Federal Circuit has made it clear that when the specification discloses only a single preferred embodiment, limitations from that embodiment generally should not be imported into the claim language, *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed.Cir.2005) (rejecting the contention that "if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment"), Limitations from the specification may be imported into the claims where it is clear that the patentee intended for the "claims and embodiments in the specification to be strictly coextensive." *Id.* (citing *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1341 (Fed.Cir.2001)). Such intention is evidenced by the manner in which the patentee uses a term within the specification and the claims. *Id.* (citing *Snow v. Lake Shore & M.S. Ry. Co.*, 121 U.S. 617, 630, 7 S.Ct. 1343, 30 L.Ed. 1004 (1887) (it was clear from the specification that there was "nothing in the context to indicate that the patentee contemplated any alternative" embodiment to the one presented)).

This court finds that nothing in the specification suggests that the patent is limited to a single spacer having evenly spaced horizontal and vertical walls. Although the patent Figures generally depict pixels with a roughly square shape, nothing in the patent specification suggests that the patent was limited to square pixels. The specification merely defines the shape of the partition walls as being in "the form of a grid or lattice," being "etched into a pattern of [a] grid or lattice," or as "grid-shaped" '489, 1:34-35, 4:35-40.

In addition, nothing in the specification suggests that a single spacer, rather than multiple spacers, must be used. Moreover, the Federal Circuit "has repeatedly emphasized that an indefinite article 'a' or 'an' in patent parlance carries the meaning of 'one or more' in open-ended claims containing the transitional phrase 'comprising.'" *Baldwin Graphic Systems, Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed.Cir.2008) (citing *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed.Cir.2000)). Furthermore, the "claim term 'including' is synonymous with 'comprising,' thereby permitting the inclusion of unnamed components" *Hewlett-Packard Co. v. Repeat-O-Type Stencil Mfg. Corp.*, 123 F.3d 1445, 1451 (Fed.Cir.1997), *cert. denied*, 523 U.S. 1022, 118 S.Ct. 1304, 140 L.Ed.2d 470 (1998). Within such open-ended claims whether "

'a' or 'an' can mean 'one or more' is best described as a rule, rather than merely as a presumption or even a convention." Baldwin, 223 F.3d at 1356. In addition, "[t]he exceptions to this rule are extremely limited: a patentee must 'evinced [] a clear intent' to limit 'a' or 'an' to 'one.'" *Id.*

This Court finds that the disputed language within Claim 1 is sufficiently open-ended to require the application of the Federal Circuit's "rule" regarding the indefinite article. Thus, absent a showing of contrary intent within the patent, the term "a" will be construed as meaning "one or more." This Court finds that there is no evidence of such a limiting intent within the '489 Patent, as nothing in the specification suggests that a single spacer, rather than multiple spacers, must be used.

Given the open-ended nature of Claim 1, this Court also finds that the claimed discharge space need not be filled by pixels and partition walls. Even if the preferred embodiment suggested that the pixels and walls completely filled the discharge space, this Court would be reticent to limit the Claim language to such an embodiment.

For these reasons, the Court construes the term "a spacer having a partition wall in the form of a grid located between said first and second insulating substrates so as to partition said discharge space into a number of pixels" to mean "one or more spacers having a partition wall positioned between the first and second insulating substrates; each partition wall being a pattern of vertical and horizontal lines that form pixels between the walls."

V. CONCLUSION

Accordingly, the Court hereby **ORDERS** the disputed claim term construed consistent herewith.

E.D.Tex., 2008.

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