

United States District Court,
E.D. Missouri, Eastern Division.

LITECUBES, L.L.C., et al,
Plaintiffs.

v.

NORTHERN LIGHT PRODUCTS, INC,
Defendant.

No. 4:04CV00485 ERW

March 7, 2005.

Matthew L. Cutler, Rudolph A. Telscher, Jr., Molly B. Edwards, Kara R. Yancey, Harness and Dickey, St. Louis, MO, for Plaintiffs.

Northern Light Products, Inc., Attn: Robert Bryant, Victoria, BC, for Defendant.

ORDER

E. RICHARD WEBBER, District Judge.

This matter comes before the Court after a February 25, 2005 hearing held pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996) (holding that claim interpretation of disputed patent terms is "exclusively within the province of the court").

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

Litecubes developed and patented a sculpture in the form of a melting ice cube that lights and has refreezable gel. In November 2003 Litecubes notified Northern Light Products demanding that Defendant cease selling its LED ice cube, because Litecubes claimed that it infringed on its patent. Northern Light Products ceased offering the LED ice cube on its website. Later that year, Defendant began selling the "8 Mode Multi Cube" and the "3 Setting Flashing Lighted Ice Cube." Again, Plaintiff contacted Defendant and insisted that Defendant cease selling the products. Plaintiff sued Defendant alleging (1) Patent Infringement, (2) Copyright Infringement, (3) Unfair Competition, and (4) Trademark Infringement. Defendant has counterclaimed seeking (1) a declaratory judgment of invalidity and (2) a declaratory judgment of non-infringement.

II. STANDARD FOR CLAIM CONSTRUCTION

In patent litigation, it is the Court's obligation to construe, as a matter of law, the proper meaning of disputed claim terms prior to the trier of fact's consideration of infringement. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The Court must give meaning to all the words in the claims, *Exxon Chem. Patents, Inc. v. Lubrizol Corp.*, 64 F.3d 1553, 1557

(Fed.Cir.1995), and if possible, claims must be construed to uphold their validity. *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 296 F.3d 1106, 1114 (Fed.Cir.2002) (citing *Tate Access Floors, Inc. v. Interface Architectural Res., Inc.*, 279 F.3d 1357, 1367 (Fed.Cir.2002)).

It is presumed that the terms used in the claim mean what they say. *Riverwood Int'l Corp. v. R.A. Jones & Co., Inc.*, 324 F.3d 1346, 1357 (Fed.Cir.2003) (citing *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed.Cir.2002)). Thus, in construing the claims, the Court must first focus on the claim language. At all times, the "analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to 'particularly point[] out and distinctly claim[] the subject matter which the patentee regards as his invention.'" *Id.* (quoting *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed.Cir.2001)). The Court must give the terms their ordinary and accustomed meaning in the relevant technological area and must construe them from the viewpoint of a person of ordinary skill in the field of invention at the time of the invention. *Id.* *See also* *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed.Cir.1998).

In construing the claims, the Court may examine the intrinsic evidence. *Lacks Indus., Inc. v. McKechnie Vehicle Components USA, Inc.*, 322 F.3d 1335, 1341 (Fed.Cir.2003); *see also* *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576 (Fed.Cir.1996) (holding that the intrinsic evidence is the most significant source of the legally operative meaning of the claim terms). Intrinsic evidence consists of the claims, the patent specification, and the prosecution history. In light of the intrinsic evidence, the Court will not give terms in a patent claim their ordinary meaning where (1) the patentee has become "his own lexicographer" by setting forth a definition of the claim term in the patent specification, or (2) the term "so deprives the claim of clarity that there is no means by which the scope of the claim may be ascertained from the language used." *Prima Tek II, L.L.C. v. Polypap, S.A.R.L.*, 318 F.3d 1143, 1148 (Fed.Cir.2003). *See also* *CCS Fitness*, 288 F.3d at 1366-67 (setting forth four instances where a court may "constrict the ordinary meaning of a claim term").

Extrinsic evidence consists of evidence external to the patent and file history. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1308 (Fed.Cir.1999). It includes "expert testimony, inventor testimony, dictionaries, and technical treatises and articles." *Id.* The Court can consider extrinsic evidence in construing claim language to educate itself about the patent and the relevant technology and "to ensure that the claim construction it is tending to from the patent file is not inconsistent with clearly expressed, plainly apposite, and widely held understandings in the pertinent technical field." *Mantech Envtl. Corp. v. Hudson Envtl. Serv., Inc.*, 152 F.3d 1368, 1373 (Fed.Cir.1998); *Pitney Bowes*, 182 F.3d at 1309. In fact, "dictionary definitions, although extrinsic, may be used to establish a term's ordinary meaning." *Lacks Indus.*, 322 F.3d at 1341 (citing *Vitronics*, 90 F.3d at 1584 n. 6) (stating that "[j]udges are free to consult [technical treatises] at any time ... and may also rely on dictionary definitions when construing claim terms"). The Court may not, however, rely on extrinsic evidence to "contradict the meaning of claims discernable from thoughtful examination" of the intrinsic evidence. *Pitney Bowes*, 182 F.3d at 1308; *see also* *Pickholtz v. Rainbow Tech., Inc.*, 284 F.3d 1365, 1373 (Fed.Cir.2002) (stating that only if the meaning of the claims cannot be resolved based upon the plain meaning and the intrinsic evidence of record may the Court rely on extrinsic evidence in construing the claims).

III. DISCUSSION

The only dispute by the parties relating to the construction of '198 patent claims are in reference to the phrase in claim limitation (1)(f) that states "filler within said cavity, said filler adapted to retain heat when

said device is heated" and claim limitation (16)(f) that states "filler within said cavity, said filler adapted to retain cold when said device is cooled." Pursuant to an Order issued by this Court, the parties each filed a proposed construction of the phrases. The Defendant submitted the following interpretation: "a filler that is a material uniquely designed for the purpose of retaining heat or cold." The Plaintiff's proposal is much broader, "the filler is a material that is capable of maintaining heat if device is heated and maintaining cold if the device is cooled."

Plaintiff suggests that the Court use dictionary definitions from www.dictionary.com to interpret the ordinary meaning of the disputed claims. A "filler" is anything "that fills," as in "something added to augment weight or size or fill space." "Retain" is defined as either "[t]o maintain possession of" or "[t]o keep or hold in a particular place, condition, or position." Defendant seemed to argue in its briefing that relying on dictionary definitions is inappropriate; however, during oral argument at the Markman Hearing, Defendant submitted its own proposed dictionary definitions.

After reading all of the claim construction briefing and listening to oral argument at the Hearing, this Court is convinced that the crux of the construction depends on how the word "adapt" is defined. Plaintiff did not define the term in its briefing. During the hearing, the Court submitted to the parties the definition "[t]o make suitable to or fit for a specific use or situation" to see if there was any objection. This particular definition, like all of Plaintiff's other proposed definitions, is from www.dictionary.com. Neither party voiced any objection to this particular definition of the term.

IV. CONCLUSION

Having considered the claims, the patent specification, the prosecution history, dictionary definitions of the terms, arguments of the parties and the claim construction standards, the Court concludes that "filler within said cavity, said filler adapted to retain cold when said device is cooled." means:

filler within said cavity, said filler made suitable to or fit for the specific use of retaining cold when said device is cooled.

The phrase "filler within said cavity, said filler adapted to retain heat when said device is heated." means:

filler within said cavity, said filler made suitable to or fit for the specific use of retaining heat when said device is heated.

The Court did not rely upon proffered expert opinions in construing the disputed claims.

SO ORDERED,

E.D.Mo., 2005.

Litecubes, L.L.C. v. Northern Light Products, Inc.

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