

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

BRIGHT SOLUTIONS, INC,
Plaintiff.

v.

TIRE SEAL, INC., EF Products, L.P., and Ritchie Engineering Company, Inc,
Defendants.

Civil No. 5:06-CV-247-DF

Oct. 7, 2008.

Jeffrey Joseph Cox, Isaac Daniel Leventon, Hartline Dacus Barger Dreyer & Kern, Dallas, TX, C. Donald Stevens, Timothy C. Bickham, Steptoe & Johnson, Washington, DC, for Plaintiff.

Jerold Ira Schneider, Akerman Senterfitt, West Palm Beach, FL, for Defendants.

SUPPLEMENTAL CLAIM CONSTRUCTION ORDER

DAVID FOLSOM, District Judge.

Before the Court is Plaintiff's Opening Claim Construction Brief. Dkt. No. 81. Also before the Court is Defendant Tire Seal's Responsive Claim Construction Brief, Plaintiff's Reply Brief, and the Parties' Joint Claim Construction Chart. Dkt. Nos. 89, 101 & 109. After considering the patents, and all other relevant pleadings and papers, the Court finds that the claims of the patents-in-suit should be construed as set forth herein.

I. BACKGROUND

Plaintiff Bright Solutions, Inc. ("Bright Solutions") brings this patent infringement suit alleging that Defendants infringe United States Patent Nos. RE 35,370 ("the '370 Patent"), RE 35,395 ("the '395 Patent"), 6,590,220 ("the '220 Patent"), 6,355,935 ("the '5 Patent"), 5,174,906 ("the '906 Patent"), 5,674,000 ("the '000 Patent"), 5,959,306 ("the '306 Patent"), and 5,742,066 ("the '066 Patent"). Dkt. No. 1. Defendants Tire Seal, Inc. ("Tire Seal"), EF Products, L.P. ("EF Products"), and Ritchie Engineering Company, Inc. ("Ritchie") (collectively, the "Defendants") deny infringement and assert the affirmative defenses of invalidity, laches, estoppel, unclean hands, preclusion, standing, misuse, waiver, and failure to adequately mark. *See* Dkt. Nos. 20, 87 & 88. The Defendants also each assert counterclaims for a declaratory judgment of non-infringement and unenforceability, as well as for patent misuse and antitrust violations. *Id.*

Pursuant to the Court's Order limiting the number of asserted claims to ten claims, Plaintiff elected Claim 10 of the '370 Patent, Claim 28 of the '220 Patent, Claims 10 and 32 of the '5 Patent, Claim 12 of the '000 Patent, Claims 28 and 37 of the '306 Patent, and Claims 15, 17, and 19 of the '066 Patent. Dkt. No. 129; *See*

also Dkt. Nos. 117, 121 & 127. Defendants Ritchie Engineering and EF Products have now resolved their dispute with Plaintiff, leaving Tire Seal as the only remaining Defendant.

The dismissal of Defendants Ritchie Engineering and EF Products from the case mooted the controversy surrounding one of Plaintiff's ten elected claims, as claim 12 of the '000 Patent was only asserted against Ritchie Engineering. Accordingly, Plaintiff moved this Court for leave to amend its election of claims and requested the addition of claim 1 of the '906 Patent, which would again bring the number of asserted claims to ten. Dkt. No. 179. This Court granted that request. Dkt. No. 192.

The Court has previously construed the disputed terms connecting to the originally elected claims. Dkt. No. 187. The Court now enters this Supplemental Claim Construction Order to construe the terms of claim 1 of the '906 Patent.

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 (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 has outlined in the past, construes the claims of the patents in suit below. *See Pioneer v. Samsung*, Civ. No. 2:07-CV-170, Dkt. No. 94 at 2-8 (E.D.Tex. Mar. 10, 2008) (Claim Construction Order).

III. THE PATENTS-IN-SUIT

The '906 Patent, entitled "Flushing of Heating, Ventilating and Air Conditioning Systems Using Environmentally Safe Materials," issued on December 29, 1992. The Abstract reads as follows:

A solvent selected from the terpene hydrocarbon group and terpene alcohol group as a cleaning agent can provide effective cleaning of heating, ventilating and air conditioning systems which use hydrofluorocarbon or hydrochlorofluorocarbon or Freon refrigerants by using a solvent as described. Flushing through the refrigerant system condenser coils and evaporation coils removes any trace of excessive compressor lubricant which will be carried out with the solvent. The flushed materials carried out are biodegradable, thus are desirable from an environmental standpoint.

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

1. The process of flushing refrigerant from heating, ventilating and air conditioning systems that employ Freon, hydrofluorocarbon or hydrofluorochlorocarbon as a refrigerant, comprising the steps of:

preparing a solvent consisting of a mixture of materials selected from the terpene hydrocarbon group and the terpene alcohol group;

placing the solvent mixture in the reservoir of a recirculating pump;

connecting an output of said pump to an input of a system to be flushed;

connecting an output of said system to said recirculating pump reservoir;

operating said pump for a predetermined period of time;

circulating the solvent through said system to cleanse said system;

terminating operation of said pump;

draining all the solvent and refrigerant and other materials contained within said system into said reservoir;

blowing air through said system to evaporate any of said solvent remaining in said system.

IV. CLAIM CONSTRUCTION

A. Agreed Terms

The parties agree on the construction of two terms. Dkt. No. 109, Ex. 1. These constructions were set forth in the parties' Joint Claim Construction Chart Pursuant to Local Patent Rule 4-5(d):

<i>Claim Term</i>	<i>Agreed Construction</i>
terpene hydrocarbon group	one of a class of hydrocarbons with an empirical formula of C ₁₀ H ₁₆ , occurring in essential oils and resins, including D-limonene
terpene alcohol group	hydroxyl derivatives of hydrocarbons with an empirical formula of C ₁₀ H ₁₆ , occurring in essential oils and resins

Dkt. No. 109, Ex. 1 at 65-68.

In view of the parties' agreements on the proper constructions of each of the identified terms, the Court adopts the parties' Agreed Constructions. The agreed constructions shall govern this case.

B. Disputed Terms

1. "recirculating pump"

a. The Parties' Proposed Constructions

<i>Plaintiff</i>	<i>Defendant</i>
a pump that circulates a fluid through a system	pump that functions to recirculate fluid through a system, wherein fluid is discarded only after pumping ceases

b. The Parties' Positions

The main point of disagreement between the parties is whether the claimed pump must circulate fluid through the system repeatedly, or whether the pump may merely be capable of doing so.

Defendant argues that the intrinsic evidence of the patent requires the to pump circulate fluid through the system repeatedly. Dkt. No. 189 at 38 (citing '906, 3:32-37 ("After the solvent is pushed through the system, it is collected and returned to the pump reservoir what [sic] is then *recirculated* through the system until a satisfactory cleaning of all refrigerant and compressor oil and moisture." (emphasis added)). Defendant also argues that the cleaning fluid can only be discarded after pumping ceases, otherwise the fluid is not being recirculated. *Id.* (citing '906, 4:13-16 ("As soon as the solvent has been circulated through the system for the appropriate amount of time, the reservoir is emptied of solvent.")). Defendant believes the plain meaning of the term is thus straightforward, "fluid is recirculated through the system for a certain amount of time, then recirculation ceases and then the fluid is discarded, [] after but not before recirculation occurs." *Id.*

Plaintiff responds that the patent specification includes numerous descriptions of a "recirculating pump" that does not perform repeated circulation when performing the claimed process. Dkt. No. 101 (citing '906, 3:23-28, 3:67-4:3). In addition, the Plaintiff argues that the Defendants construction impermissibly reads a limitation into claim 1, which merely requires "circulating the solvent through said system" rather than recirculating solvent. *Id.* Lastly, Plaintiff contends that nothing in the specification or prosecution history indicates that a pump must have the ability to discard fluid only after pumping ceases. Dkt. No. 81 at 35 (citing '906, 3:33-37, 3:64-4:3).

c. Construction

The relevant portions of claim 1 read: "placing the solvent mixture in the reservoir of a recirculating pump" and "connecting an output of said system to said recirculating pump reservoir." The pump is then operated for a predetermined period of time and solvent is circulated through the system to be cleaned.

In its description of the preferred embodiment, the specification refers to the "recirculating pump" used in the claimed process as a "simple electric recirculating pump capable of pumping a gallon of liquid a minute" '906, 3:22-24; *see also* 3:65-4:10. Moreover, the specification twice recommends using one gallon of solvent to fill the pump reservoir and additionally contemplates operating the recirculating pump for five to ten minutes. '906, 3:27-28, 3:37-38, 4:4-5.

Therefore, it follows logically that if the preferred embodiment contemplates a pump that circulates a gallon per minute for five minutes when only one gallon is placed in the reservoir, then that single gallon must pass through system repeatedly.

As discussed in this Court's initial Claim Construction, however, limitations from the specification should generally not be read into the claims. *See Phillips v. AWH Corp.*, 415 F.3d at 1323; *Kinik Co. v. Int'l Trade Com'n*, 362 F.3d 1359, 1364-65 (Fed.Cir.2004) ("the claims are generally not limited to the specific examples of the preferred embodiments unless that scope was limited during prosecution."). In particular, 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 at 1323 (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.*

Thus, although the "practical embodiment" operates for five minutes with one gallon of solvent circulating at a gallon per minute, every embodiment of the invention need not do so. The preferred embodiment should thus not limit the claim.

Similarly, the Defendant's proposed construction improperly limits the claim with regard to the disposal of the cleaning solvent. Dependent claim 7 claims the same process as in claim 1 but adds a further limitation: the "blowing step is followed by: emptying said reservoir and disposing of said solvent and said refrigerant." The concept of claim differentiation cautions against reading such a limitation into the independent claim when one is explicitly in the dependent claim. *Nazomi Commc'ns, Inc. v. Arm Holdings, PLC*, 403 F.3d 1364, 1370 (Fed.Cir.2005) (the concept of claim differentiation "normally means that limitations stated in dependent claims are not to be read into the independent claim from which they depend.>").

For these reasons and in accordance with legal principles discussed throughout this order, the Court construes the term "recirculating pump" to mean "a pump capable of recirculating fluid through a system."

2. "input of a system to be flushed"

a. The Parties' Proposed Constructions

<i>Plaintiff</i>	<i>Defendant</i>
a location where a material can be introduced into a system	any means by which or the point at which an input (as of energy, material, or data) is made for the purpose of flushing

b. The Parties' Positions

Plaintiff argues that Defendant's construction improperly introduces means-plus-function language into the claim. Dkt No. 101 at 32-33. Plaintiff contends that the plain meaning of the term "input" makes it unnecessary to introduce such language into the claim construction. *Id.* The Plaintiff also argues that the Defendant's construction improperly introduces the limitation "made for the purpose of flushing" into the claim. *Id.* at 33. Plaintiff claims that such a limitation is directly contradicted by the specification, which describes as a suitable input the refrigerant input valve, which clearly provides an input for refrigerant rather as well as flushing solvent. *Id.*

Defendant counters by arguing that because the intrinsic evidence is unclear, the term should be given its plain meaning. Dkt. No. 89 at 39. Defendant thus bases its construction on a dictionary definition. *Id.* Defendant also argues that the limitation "made for the purpose of flushing" is proper because the "Plaintiff does not suggest any other purpose for the 'input' of the system, and the entire thrust of the patent is to introduce a material into the system...." *Id.*

c. Construction

The relevant portion of claim 1 reads: "connecting an output of said pump to an input of a system to be flushed." In addition, the specification contemplates "placing an injector nozzle on the solvent output hose, [and] attaching the injector nozzle at the refrigerant input valve...." '906, 4:5-7. The patent thus explicitly contradicts a limitation that would restrict the process to an input "made for the purpose of flushing."

Claim language is also generally given its "ordinary and customary meaning" unless the term has no generally accepted meaning, the patentee has given the term a specific meaning, or the patentee has disavowed all or part of the scope otherwise encompassed by the ordinary meaning. Phillips, 415 F.3d at 1313, 1316-17. This Court finds that the term "input" has such a plain and ordinary meaning, which corresponds to the Plaintiff's proposed construction.

For these reasons and in accordance with legal principles discussed throughout this order, the Court construes the term "input of a system to be flushed" to mean "a location where material can be introduced into the system."

3. "output of said system"

a. The Parties' Proposed Constructions

<i>Plaintiff</i>	<i>Defendant</i>
a location where a material can be discharged from a system	the means of generating output of a system, including the output hose of a pump

b. The Parties' Positions

Plaintiff once again argues that Defendant's construction improperly introduces means-plus-function language into the claim. Dkt No. 101 at 33-34. In addition, the Plaintiff argues that the Defendant's construction seeks to improperly import an example from the specification into the claim term itself. *Id.* at 34.

The Defendant argues that the specification includes the use of an output hose. Dkt. No. 89 at 39-40. The Defendant, however, concedes that the output "includes, *but is not limited to*, an output hose." *Id.* at 40 (emphasis added).

c. Construction

Given the Defendants concession and the general rule that limitations from the specification should not limit the claim, this Court finds that an output hose limitation should not be read into the claim. This Court additionally finds that the term "output" has a plain and ordinary meaning, which corresponds to the Plaintiff's proposed construction.

For these reasons and in accordance with legal principles discussed throughout this order, the Court construes the term "output of said system" to mean "a location where material can be discharged from the system."

4. "predetermined period of time"

a. The Parties' Proposed Constructions

<i>Plaintiff</i>	<i>Defendant</i>
an appropriate amount of time to flush the system	a period determined beforehand, including 5-20 minutes

b. Construction

For the same reasons explained in this Court's prior claim construction order in this case (*see* Dkt. No. 187 at 20), the Court construes the term "predetermined period of time" to mean "a period of time sufficient to flush the system, the period of time determined in advance based on the size and strength of the system."

5. "other materials contained within said system "

a. The Parties' Proposed Constructions

<i>Plaintiff</i>	<i>Defendant</i>
any materials other than solvent and refrigerant	any matter in the system including trace of the old refrigerant

b. The Parties' Positions

Plaintiff argues that because the entire claim term reads "draining all the solvent and refrigerant and other materials contained within said system," the term "other materials" is explicitly distinguished from "solvent and refrigerant." Dkt. No. 101 at 34-35.

Defendant argues that such an interpretation is required by the specification, which states that "it was crucial and absolutely essential that all of the Freon refrigerant be completely completely [sic] removed before recharging the system" and that "[a]ny trace of the old refrigerant which is left beyond will cause catastrophic failure of the compressor system." Dkt. No. 89 at 41 (citing '906, 1:32-37). Thus, Defendant argues that the specification requires flushing "all traces of refrigerant."

Plaintiff argues that the quoted specification language may limit the claims but it does not necessarily limit this disputed term. Dkt. No. 101 at 35.

c. Construction

The relevant portion of claim 1 reads: "draining all the solvent and refrigerant and other materials contained within said system into said reservoir."

As mentioned above, claim terms should be given their plain and ordinary meaning where possible. Phillips, 415 F.3d at 1313, 1316-17. The claim language itself provides substantial guidance as to the meaning of particular claim terms. *Id.* at 1314 (citing *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed.Cir.2003) ("While certain terms may be at the center of the claim construction debate, the context of the surrounding words of the claim also must be considered in determining the ordinary and customary meaning of those terms.")).

Since the claim separately recites the removal of refrigerant and other materials, this Court finds it improper to commingle those terms. The context of the term "other materials" within the claim makes it clear that it contemplates materials other than solvent and refrigerant.

For these reasons and in accordance with legal principles discussed throughout this order, the Court finds that the term "other materials contained within said system" does not require further construction.

V. CONCLUSION

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

E.D.Tex.,2008.

Bright Solutions, Inc. v. Tire Seal, Inc.

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