

United States District Court,
N.D. California.

mitsubishi kasei corporation, et al,
Plaintiffs.

v.

Virgle HEDGCOTH, et al,
Defendants.

No. C-95-20800-JW

April 17, 1996.

Richard D. Kelly, Oblon, Spivak, McClelland, Maier & Neustadt, Arlington, VA, James P. Kleinberg, McCutchen, Doyle, Brown & Enersen, San Jose, CA, Susan E. Stark, Edward V. King Law Offices, San Francisco, CA, Paul F. McCaul, Law Office of Paul F. McCaul, Manhattan Beach, CA, Keiichi Nishimura, Victor H. Okumoto, Majestic, Parsons, Siebert & Hsue, San Francisco, CA, Paul C. Valentine, Sacramento, CA.

ORDER RE: CONSTRUCTION OF PATENT CLAIMS

WARE, District Judge:

On April 5 and April 9, 1996, the Court conducted a hearing pursuant to the holding in *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) in order to determine the meaning of language used in the claims of the four (4) patents-in-suit. The patents at issue in this action are: (1) U.S. Patent No. 4,735,840; (2) U.S. Patent No. 4,894,133; (3) U.S. Patent No. 5,082,747; and, (4) U.S. Patent No. 5,316,864. The parties agree that with respect to the language which is in dispute the patents at issue contain the same specifications and include the same drawings such that the Court's interpretation of the language contained in the claims applies to all four (4) of the patents-in-suit.

In *Markman*, the Federal Circuit Court held that interpretation and construction of patent claims, which define the scope of the patentee's rights under the patent, is a matter of law exclusively for the court. *Id.* The court has the power and obligation to construe as a matter of law the meaning of language used in the patent claim. *Id.* As such, "[a] patent covers the invention or inventions which the court, in construing its provisions, decides that it describes and claims." *Id.*

"To ascertain the meaning of claims, we consider three sources: The claims, the specification, and the prosecution history." *Id.* (quoting *Unique Concepts, Inc. v. Brown*, 939 F.2d 1558, 1561 (Fed. Cir. 1991)). "Expert testimony, including evidence of how those skilled in the art would interpret the claims, may also be used." *Id.* (quoting *Fonar Corp. v. Johnson & Johnson*, 821 F.2d 627, 631 (Fed. Cir. 1987)).

During the hearing, the Court heard testimony from three experts presented by Plaintiff: Arthur Eltoukhy,

Dr. Verens and Dr. MacKintosh. The Court also heard testimony from three experts presented by Defendant: Paul Gardner, John Corbani, and Dr. Paul Albert. Plaintiff also presented the testimony of Bert Cook in rebuttal.

Based upon the claims, specifications, and file histories of the patents-in-suit, as well as on the testimony of the experts and the oral argument of counsel, the Court finds that the following definitions shall apply to the terms contained in the patents-in-suit.

1. Texture: "Texture" means scratches or grooves which are deliberately made in the surface of a hard disk during the manufacturing process.

2. Circumferential Texture: "Circumferential texturing" means the majority of the texture is in the circumferential direction, that is scratches or grooves which are parallel to the outer edge of the hard disk. Texture is to be considered circumferential even though it may include some unintentional or random crossing of the scratches or grooves on the surface of the disk.

3. Hill-to-Valley Distance: "Hill-to-valley distance" refers to the relative roughness of the texture on the disk surface. As used in the claims, it refers to the radial roughness as denoted by the arithmetic average, sometimes abbreviated Ra, of the disk surface. The degree of roughness is determined using the entire ANSI specification as described in the ANSI thin film specification and the underlying basic ANSI roughness standard.

4. Common Pressure: "Common pressure" means a unitary pressure throughout the sputtering machine. There may be variations of a few percent from the desired or target common pressure. If pressure is deliberately manipulated so that different sections of the sputtering machine are at different pressures the machine is not operated at a "common pressure".

5. Roughness: "Roughness" is measured on the textured substrate prior to the sputtering of any materials onto the substrate surface.

6. Switching Field Distribution (SFD): "Switching Field Distribution", or "SFD", is a number which is determined utilizing the formula illustrated in figure 13 of the patents-in-suit. The value ΔH is to be determined as illustrated on figure 13 of the patents-in-suit.

IT IS SO ORDERED.

N.D.Cal.,1996.

Mitsubishi Kasei Corp. v. Hedgcoth

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