United States District Court,
D. Maryland.

TSAKANIKAS GLOBAL TECHNOLOGIES, INC., et al,
Plaintiffs.
v.
UNIDEN AMERICA CORPORATION,
Defendant.

May 10, 1996.

MEMORANDUM OPINION

WILLIAMS**, District Judge:**

Presently before the Court are the Defendant's Motion for Summary Determination of Claim Construction and Motion for Summary Judgment of Noninfringement. No hearing is deemed necessary. Local Rule 105.6 (D.Md.). For the reasons that follow, the Court will grant these motions.

Background

The Plaintiffs own Patent No. 4,427,848 ("the 848 patent"). This patent relates to the transmission of data using a telephone set. In particular, the modem/translator of the patent converts supervisory signals into a code that can be understood by a computer. Def's.Ex. A, col. 4, 11. 6-28 and Fig. 1. After receiving and processing the data, the computer and modem send a synthesized voice back through the telephone to the user. Def's.Ex. A, col. 4, 11. 25-30. The purpose of the patent is to allow a person to conduct certain business over the telephone (e.g., banking and credit card validation). Def's.Ex. A, col. 1, 11. 12-20.

The Defendant ("Uniden") produces cellular phones. Uniden's phones function as other cellular phones and can store and display numbers. Def's.Ex. C. A user can also use alphabetic characters (e.g., a name) so he can easily retrieve stored numbers. Of course, there are many similar phones on the market.

The Plaintiffs contend that the Uniden cellular phones infringe the 848 patent. In particular, they claim that these phones infringe claim 38 which states that the 848 patent is "a system for converting supervisory signals from a telephone set into a computer compatible code ..." Def's.Ex. A, col. 26, 11.53-55. They maintain that the Uniden phones are a complex, interactive systems that infringe its patent even though any stored data (telephone numbers, e.g.) are stored in the phones themselves. Uniden has moved for summary judgment.

Summary Judgment Principles

Summary judgment will be granted when no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The

movant must demonstrate that there is no genuine dispute of material fact. Celeotex Corp. v. Catrett, 477 U.S. 317, 323-25 (1986). While the Court views the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing summary judgment, Matsushita Electrical Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986), the mere existence of a "scintilla of evidence" is not enough to frustrate the motion. To defeat it, the party opposing summary judgment must present evidence of specific facts from which the finder of fact could reasonably find for him. Anderson, 477 U.S. at 252; Celeotex, 477 U.S. at 322-23.

Discussion

There are two distinct inquiries in a patent infringement case. First, the Court alone must construe the "claims" of the patent. Markman v. Westview, Inc., 116 S.Ct. 1384, 1996 WL 190818. Second, the Court must determine whether there has been an infringement. Of course, as explained above, if there is a no material factual dispute, the Court will enter summary judgment. Fed.R.Civ.P. 56.

I. ***Claim Construction***

In construing claims, a court first examines the patents' claims themselves, the patent specification, and the patent's prosecution history. Unique Concepts, Inc. v. Brown, 939 F.2d 1558, 1561 (Fed.Cir.1991). The owner of the patent is free to define a word in the patent however he desires; however, if he uses a special definition, he must clearly define the term in the patent. Intellicall, Inc. v. Phonometrics, Inc., 952 F.2d 1384, 1388 (Fed.Cir.1992). Here, the claim at issue (claim 38) includes the terms "telephone set" and "supervisory signals." As explained below, the Court finds that these terms must be given their plain meaning in this case.

A. ***Telephone Set***

The Court agrees with the Defendant that the term "telephone set" in the 848 patent has its ordinary meaning. First, the patent claim does not specifically define the term. Id. at 1388. Second, the Plaintiff's expert concedes that a keypad alone is not a "telephone set." Sykes Dep. at 100. Third, in claims not at issue in this case, the term "telephone set" refers to "audible feedback signals" (Def's.Ex. A, claim 3, col. 21, 11. 23-26; claim 49, col. 30, 11. 6-7) and a "synthesized speech signal" (claim 49, col. 30, 11.6-10; claim 50, col. 30, 11. 9-10). Consequently, the term cannot mean a keypad alone. *See* Kingsdown Medical Consultants, Ltd. v. Hoolistr, Inc., 863 F.2d 867, 874 (Fed.Cir.1988), *cert. denied,* 490 U.S. 1067 (1989) (claim construction requires analysis of all claims). Therefore, the Court will accept the Defendant's construction of "telephone set" as a "device that transmits and receives sounds" and keypad alone is not a telephone set. FN1

FN1. The Plaintiffs do not seriously challenge this construction, and they instead argue that a "keypad" is equivalent to a "telephone set." The Court addresses this argument below.

B. ***Supervisory Signals***

Similarly, the Court finds that "supervisory signals" must be given its ordinary meaning. The term commonly means signals that control the operation of a telephone system and indicate such information as whether the phone is on or off the hook. Def's.Ex. B; Def's.Ex. C at 23. Furthermore, the 848 patent does not define the term. It does, however, specify that such signals are produced by a telephone set and transmitted

through a telephone line. Def's.Ex. A, col. 4, 11. 19-21. Thus, the Plaintiffs cannot now define the term to include "signals used to indicate the identity of a key actuation on a keypad." Paper 53 at 11. *See* Senmed, Inc. v. Richard-Allan Medical Indus., Inc., 888 F.2d 815, 819 n. 8 (Fed.Cir.1989) (when term given its ordinary meaning in specification, self-serving testimony giving it a different meaning is of little or no significance). Accordingly, the Court finds that this term means "signals which are produced by a telephone set and sent through a telephone line."

II. ***Infringement***

Having construed the claims of 848 patent, the Court must determine whether Uniden's cellular telephones infringe those claims. Johnston v. Ivac Corp., 885 F.2d 1574, 1575 (Fed.Cir.1989). The telephones must include every element (or a substantial equivalent) in the 848 patent for infringement. Id. at 1577. Summary judgment is appropriate when there is no material factual dispute. Fed.R.Civ.P. 56.

The Court finds that Uniden is entitled to summary judgment. To infringe claim 38 of the 848 patent, a product must be a system that receives supervisory signals from a telephone set and converts those signals into a code that can be understood by a computer. Def's.Ex. A, col. 26, 11.53-55. Here, Uniden's products are simply telephones; there is no system for the transmission of data from a telephone set to a modem/translator in a computer compatible code. Indeed, the preamble for claim 38 states that the system is comprised of, *inter alia,* "means for applying said first code word to said memory means" and "means ... for generating said strobe control signal." The Uniden phones do not have these and other elements. Therefore, there is no literal infringement of the 848 patent. Johnston, 885 F.2d at 1577.

Furthermore, the Uniden telephones do not infringe the 848 patent under the doctrine of equivalents. Under this doctrine, a product may infringe a patent if it makes only slight, insubstantial changes to the patented invention. Hilton Davis Chemical Co. v. Warner-Jenkinson Co., 62 F.3d 1512, 1516-17 (Fed.Cir.1995), *cert. granted,* 116 S.Ct. 1014 (1996) (citations omitted).

Here, there is no evidence that the Uniden telephones infringe the 848 patent under this doctrine. Again, the 848 patent relates to a system for providing transmission of alphanumeric data from a telephone set through a telephone line to a modem/translator. Synthesized speech is then transmitted back to the user. Def's.Ex. A. On the other hand, a person can use the Uniden telephones to enter and store alphanumeric data in the phone itself. The Uniden telephones, then, are not simply an insubstantial alteration of the 848 patent. Under these circumstances, the Court must enter summary judgment for the Defendant. Johnson, 885 F.2d at 1576 (conclusory opinions do not create a genuine issue of fact); Intellicall, 952 F.2d at 1389 (summary judgment appropriate when no evidence that accused product is functional equivalent of patented invention).

A separate Order consistent with this opinion will issue.

ORDER

In accordance with the Memorandum Opinion, it is this 10th day of May, 1996 ORDERED:

1. That the Defendant's Motion for Summary Determination of Claim Construction BE, and the same hereby IS, GRANTED; and

2. That the Defendant's Motion for Summary Judgment of Noninfringement BE, and the same hereby IS, GRANTED; and

3. That the judgment is ENTERED for the Defendant; and

4. That the Defendant's Motion for Leave to File Supplemental Briefing BE, and the same hereby, IS DENIED as moot; and

5. That the Clerk of the Court CLOSE this case and mail copies of this Order and the Memorandum Opinion to all counsel of record.

D.Md.,1996.
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