

United States District Court,
N.D. Illinois.

BRITA WASSER-FILTER-SYSTEME GMBH and the Brita Products Company,
Plaintiffs.

v.

RECOVERY ENGINEERING, INC. Signature Brands, Inc. f.n.a Health O Meter, Inc., and Culligan International Company,
Defendants.

Aug. 7, 1998.

MEMORANDUM OPINION AND ORDER

KOCORAS, J.

The following opinion contains the Court's legal construction of the claims of the '996 patent which are at issue in this case.

BACKGROUND

Plaintiff Brita Wasser-Filter-Systeme ("Brita") owns the rights to United States Patent Number 4,969,996 ("the '996 patent"). The '996 patent is entitled "Water Purification Device with an Intake Funnel" and contains nine claims. The abstract for the patent describes a water purification device having an intake funnel, a sleeve which is sealingly connected to the funnel, a filter cover, and a filter bottom in which a granulate-type filter agent can be introduced.

According to the '996 patent, prior art devices of this type allegedly encountered interruption of water flow through the filter cartridge because of air or gas bubbles being entrained at the bottom of the cartridge. To address this water flow problem, the '996 patent provides a filter cartridge having an "air collecting space" for collecting accumulated gas from the filter outlets and diverting this gas away from the bottom of the cartridge. The gas is then directed up a chimney-like half-tube and vented out a hole in the sleeve.

In the present lawsuit, Brita asserts claims of patent infringement against Defendants Recovery Engineering, Inc. ("Recovery"), Signature Brands, Inc. ("Signature"), and Culligan International Company ("Culligan"). Each of the Defendants produces their own water filtration system device. Brita alleges that all three of these different water filtration devices infringe the '996 patent.

Claim 1 is the '996 patent's only independent claim. Each of the parties' disputes involves claim 1 of the patent, or language in a dependent claim that matches language in claim 1. Thus, these disputes can be resolved by construction of the terms in claim 1. This claim reads as follows, with the disputed terms highlighted in italics:

A water purification device comprising an intake funnel, *a sleeve* wherein said sleeve is sealingly connected to said funnel at an upper end of said sleeve, said sleeve further *having an opening formed therein*, an insert having approximately cylindrical side walls, a filter cover and a filter bottom for accommodating a granulate filter agent therein with *means defining an air collecting space*, located in at least a portion of the filter bottom, said means defining the air collecting space *extending upwardly at least partially towards the side wall and to the opening in said sleeve*, with said filter bottom having opening means to allow the passage of filtrate therethrough, and with said filter cover having opening means whereby fluid can be passed into the insert.

'996 patent, claim 1.

The Court conducted a *Markman* hearing on July 8, 1998. Prior to the hearing, each party submitted a brief outlining its proposed constructions of the disputed terms in the patent. At the hearing, each party was allowed to explain its constructions and answered questions from the Court concerning their respective positions. All parties agreed that the Court could construe the claim language without reference to any extrinsic evidence, and thus no such evidence was offered or received. The following discussion provides the Court's conclusions with regard to the claim construction issues raised at the hearing.

DISCUSSION

Claim construction is an issue of law for the court. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed.Cir.1995) (*en banc*), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). In interpreting the meaning of an asserted claim, a court should first refer to the following sources of intrinsic evidence—the claims, the specification, and the prosecution history. *Id.*; *see also* *Vitronics Corp. v. Conception, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). This intrinsic evidence alone will usually be sufficient to resolve any ambiguities in disputed claim terms. *Vitronics*, 90 F.3d at 1583. In such cases, the Court should not even consider any extrinsic evidence. *Id.*

In construing the meaning of disputed claim terms, the Court should first look to the words (both asserted and nonasserted) of the claims themselves. *Id.* at 1582. Words are generally given their ordinary and plain meaning, although a patentee may choose to be his own lexicographer and define a word in a way other than its ordinary meaning. *Id.* However, in order to ascribe a special definition to a claim term, this definition must be clearly stated in the patent specification or the file history. *Id.* (*citing* *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1578 (Fed.Cir.1996)).

As a result, it is always necessary to secondly review the specification to determine whether any of the claim terms have been used in a manner inconsistent with their ordinary meaning. *Vitronics*, 90 F.3d at 1582. The specification can define terms either explicitly or by implication. *Id.* (*citing* *Markman*, 52 F.3d at 979). Though claims should always be read in view of the specification, the Federal Circuit has repeatedly cautioned that the scope of a claim should not be limited to specific embodiments disclosed in the specification. *See, e.g.*, *Ekchian v. Home Depot, Inc.*, 104 F.3d 1299, 1303 (Fed.Cir.1997); *Intervet America, Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed.Cir.1989). Nonetheless, the specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics*, 90 F.3d at 1582.

The third form of intrinsic evidence that should be considered in construing a claim is the prosecution history of the patent. This history provides a complete record of all proceedings, including all express

representations made by the patent applicant, before the Patent and Trademark Office. *Id.* As such, the file history can limit the scope of a claim term so as to exclude any interpretation that was disclaimed during the prosecution process. *Id.* at 1583 (*citing* Southwall Tech., Inc. v. Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.1995)). In addition, any prior art cited during the prosecution history may indicate what the patent claims do not cover. Vitronics, 90 F.3d at 1583 (*citing* Autogiro Co. of America v. United States, 181 Ct.Cl. 55, 384 F.2d 391, 399 (Ct.Cl.1967)).

The parties agree that the claim language of the '996 patent can be construed by reference to these three forms of intrinsic evidence, without consideration of any extrinsic testimony. During the *Markman* hearing, therefore, the Court did not receive any testimony and thus entertained only argument as to how the claims should be construed in light of the intrinsic evidence. The Court invited the parties to define the claim construction issues which they believed to be in dispute, and then permitted argument on each separate issue. Our analysis will track the discussion at the hearing, ending with the Court's conclusions as to the proper interpretation of each of these terms.

VI. "Means defining an air collecting space"

The first issue raised by the parties, one that cuts to the core of what the '996 patent was intended to disclose, involves the claim language "means defining an air collecting space." All three Defendants assert that this language defines what is referred to as a "means-plus-function" element, and thus should trigger the claim interpretation rules of 35 U.S.C. s. 112, para. 6. Brita, on the other hand, argues that this claim language is not "means plus function" language and should not be construed as such. Since the resolution of this dispute will color much of our construction for this claim term, the Court must first resolve whether Section 112, para. 6 should be applied.

Section 112, para. 6 provides that:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. s. 112, para. 6. This statutory provision thus allows a patent applicant to express a claim element as a means for performing a function without reciting any structure, material or acts in the claim's means-plus-function limitation. Valmont Industries, Inc. v. Reinke Mfg. Co., Inc., 983 F.2d 1039, 1042 (Fed.Cir.1993). Section 112, para. 6 then limits the broad language of a means-plus-function element to equivalents of the structures, materials or acts disclosed for that element in the specification. *Id.*; *see also* Fonar Corp. v. General Elec. Co., 107 F.3d 1543, 1551 (Fed.Cir.), *cert. denied* 522 U.S. 908, 118 S.Ct. 266, 139 L.Ed.2d 192 (1997). In addition to structural equivalence, the means described in the specification must also perform the exact function recited in the claim that corresponds to the means. Valmont, 983 F.2d at 1042; Micro Chemical, Inc. v. Great Plains Chemical Co., Inc., 103 F.3d 1538, 1547 (Fed.Cir.), *cert. denied* 521 U.S. 1122, 117 S.Ct. 2516, 138 L.Ed.2d 1018 (1997).

The import of having claim language construed as a means-plus-function element has been summarized as follows:

Section 112 thus permits means-plus-function language in a combination claim, but with a "string attached." The "attached string" limits the applicant to the structure, material, or acts in the specification or their

equivalents. Indeed the section operates more like the reverse doctrine of equivalents because it restricts the coverage of literal claim language.

Valmont, 983 F.2d at 1042 (*citing* Johnston v. IVAC Corp., 885 F.2d 1574, 1580 (Fed.Cir.1989). Seeking a broad construction of the '996 patent, Brita argues against application of Section 112, para. 6 and its limitation of the claim language to only those structures disclosed in the specification. The Defendants, of course, want the embodiments disclosed in the specification to strictly define the bounds of the patent claims.

The Federal Circuit has repeatedly opined that use of the word "means" in a claim element "triggers a presumption that the inventor used this term advisedly to invoke the statutory mandates for means-plus-function clauses." York Prods. Inc. v. Central Tractor Farm & Family Center, 99 F.3d 1568, 1574 (Fed.Cir.1996); *see also* Sage Prods., Inc. v. Devon Indus., Inc., 126 F.3d 1420, 1427 (Fed.Cir.1997). Because the '996 patent does employ the word "means", Brita faces an uphill battle to avoid mean-plus-function treatment. This hill, however, is not insurmountable. The presumption for means-plus-function treatment can be rebutted where a claim, though using the word "means," specifies no corresponding function for the "means" to perform. *See, e.g.,* York Prods., 99 F.3d at 1574 (construing "means" without reference to Section 112, para. 6). Alternatively, and more relevant to this case, a claim which recites "means," but then goes on to elaborate sufficient structure, material or acts within the claim itself (without referring to the specification) to perform the recited function, does not warrant means-plus-function analysis. *See, e.g.,* Cole v. Kimberly-Clark Corp., 102 F.3d 524, 531-32 (Fed.Cir.1996). Thus, though certainly indicative of a means-plus-function element, "mere incantation" of the word "means" is not dispositive that an element deserves such treatment. York Prods., 99 F.3d at 1574.

Brita asserts that the "means" language in the '996 patent is like those cases in which means-plus-function treatment has been found inappropriate. Rather than expressing a means "for performing a specified function without recital of structure" as required by the statute, Brita contends that the claim describes a physical structure defining "the air collecting space." The claim element goes on to specify that this space must be "located in at least a portion of the filter bottom" and "extend[] upwardly at least partially towards the side wall and to the opening in said sleeve." Since the structure which defines the "air collecting space" can be discerned from this subsequent claim language itself, Brita argues that it should not be treated as a means-plus-function element.

The Defendants note, however, that the inclusion of some structure in a "means" claim does not preclude the applicability of Section 112, para. 6. *See* Laitram Corp. v. Rexnord, Inc., 939 F.2d 1533, 1536 (Fed.Cir.1991). The phrases cited by Brita as purported examples of structural language are, according to the Defendants, merely "the place[s] where the function occurs"-limitations which do not serve to remove an otherwise covered claim from means-plus-function treatment. *See* O.I. Corp. v. Tekmar Co., Inc., 115 F.3d 1576, 1581 (Fed.Cir.1997) (court determined that the word "passage" should not be interpreted under s. 112 para. 6 but remainder of clause "means for passing the analyte slug through the passage" should receive means-plus-function treatment). Thus, the Defendants argue that the claim language following the clause "means defining an air collecting space" should not preclude this clause from being interpreted as a means-plus-function element.

The use of the words "means defining an air collecting space" does send mixed signals as to its proper construction. On the one hand, the drafter did not employ the prototypical language-"means *for* [performing a function]"-which normally epitomizes such claims; indeed, Brita acknowledges that an element claiming

"means for collecting air" would be a means-plus-function element. The claim language also goes on to describe some spatial limitations on this "means" claim, though it is debatable whether these limitations are structural or merely provide location and direction information. On the other hand, however, the Court must start with the presumption that the use of the word "means" should trigger application of Section 112, para. 6. Furthermore, the language "means defining" was added to the claim to satisfy an objection of the patent examiner, further indication that this term should be given means-plus-function treatment.

Though a close call, the Court believes that "means defining an air collecting space" should be construed as a mean-plus-function element. In our opinion, Brita has not overcome the presumption which use of the term "means" imposes upon it. The language used is admittedly not prototypical, but it does adequately describe a means for performing the specified function of collecting air as contemplated by Section 112, para. 6. The limitations which follow the "means" language in the claim recite no more than limited structure, such that reference to the specification is needed in order to sufficiently define the "means defining an air collecting space" limitation. At bottom, the patentee's use of the loaded term "means," without clearly intending that it not define a way of performing a specified function, compels our conclusion. Thus, the Court will construe the clause "means defining an air collecting space" as a mean-plus-function element under Section 112, para. 6.

Having concluded that Section 112, para. 6 applies, we must next consider how the claim language must be construed in light of this statutory section. As a means-plus-function element, the claim language "means defining an air collecting space" is restricted to (1) the identical function described in the specification, and (2) the specific corresponding structure described in the specification that performs the function. *See* Valmont, 983 F.2d at 1042. The parties dispute the scope of both the function and structure disclosed in the specification. Thus, the Court must delve into the specification to determine the proper construction of this clause.

The parties first dispute what function this mean-plus-function language actually claims. The Defendants contend that the specification makes clear that the "means defining an air collecting space" must perform the function of fixing the limits of a space that gathers or directs air bubbles from the different areas of the filter bottom and then exhausts them through the chimney section and out the sleeve opening. Brita argues that the function of this claim is much more mundane-that the function is not to collect air but simply to define a space. According to Brita, the "air collecting space" is just a space, and thus there is no requirement that the space gather and exhaust air from the filter bottom. It follows from Brita's assertion that, if this claim merely defines a space, the presence of air or gas bubbles is unnecessary to the function of the patent.

The Court agrees with the Defendants that this means-plus-function element claims the function of gathering and exhausting air bubbles entrained at the filter bottom. Defining a space is not a function; defining a space which collects air and then exhausts it out a chimney is a function. Indeed, the specification makes clear that the whole purpose of this claimed invention is to collect and vent air bubbles that would otherwise impede the flow of water from the filter bottom. For Brita to argue that the function of this means-plus-function element is to merely define a space defies common sense. Furthermore, the Court believes that the term "air collecting space" connotes more than merely a defined path for receiving air bubbles (as Brita would have us find). Instead, we find this claim language to require the presence of air bubbles, such that these bubbles are gathered by the "air collecting space" and removed via the chimney-portion of this space. Brita's assertion that this is merely a passive space, which just may so happen receive air bubbles and let them escape, is without merit.

The Court must also look to the specification to determine the corresponding structure for this mean-plus-function claim. As for the structural elements disclosed, the Defendants contend that the "air collecting space" must have not only a vertical component, but also a horizontal section extending along the filter bottom. Signature would seem to further argue that this horizontal component must also match the cross-shaped, half-tube air channel system specifically described in the specification. To the contrary, Brita argues that the specification discloses embodiments both with and without a horizontal component, and that therefore this component should not be read into the claim language. Thus, the Court must decide whether the "air collecting space" necessarily includes a horizontal portion along the filter bottom.

There is no dispute that the *preferred* embodiment of the claimed invention does include a horizontal component. Brita points out, however, that references to a preferred embodiment are generally not to be construed as claim limitations. *Laitram Corp. v. Cambridge Wire Cloth Co.*, 863 F.2d 855, 865 (Fed.Cir.1988), *cert. denied*, 490 U.S. 1068, 109 S.Ct. 2069, 104 L.Ed.2d 634 (1989); *see also* *Ekchian v. Home Depot, Inc.*, 104 F.3d 1299, 1303 (Fed.Cir.1997). The Court agrees with this general proposition. Nevertheless, because we are dealing with a mean-plus-function element, the "air collecting space" is limited to the corresponding structure disclosed in the specification and its structural equivalents. *Valmont Indus.*, 983 F.2d at 1042. Thus, although our construction may not be limited by the preferred embodiment of the invention, we are bound to those structures the specification discloses for accomplishing the function of this claim.

Brita argues that there is an embodiment in the specification which does not contain a horizontal component. Specifically, Brita refers to the first embodiment discussed in the specification which describes "the filter bottom has an air collecting space which is extended upwardly at least partially towards the side wall." Spec., col. 2, lines 4-6. Comparing this embodiment to others disclosed in the specification, Brita argues that this language dictates that the air collecting space may be comprised of only a vertical chimney portion without an accompanying horizontal section along the filter bottom. Thus, according to Brita, the "corresponding structure" includes embodiments both with and without horizontal sections.

A more thorough reading of the specification reveals, however, that Brita's purported example of a vertical-only embodiment actually does include a horizontal section. In describing this same embodiment in the same paragraph that Brita cites, the specification states that "[i]t is sufficient for only an e.g. tubular part of the region of the filter bottom to be extended radially outwardly to the size [sic] and then towards the filter cover." Spec., col. 2, lines 16-19. Though not entirely clear, the Court reads this sentence to require the air collecting space to extend (1) in a horizontal direction to the side wall, and then (2) vertically towards the filter cover. The use of the words "and then towards" between these directions indicates that some kind of discontinuity or change in direction is implied, and thus it is incongruous for Brita to assert that this embodiment extends only in a vertical direction. Therefore, contrary to Brita's contentions, the Court finds that all of the embodiments in the specification disclose "air collecting spaces" with both horizontal and vertical components.

In summary, the Court finds that the claim term "means defining an air collecting space" is a means-plus-function element and thus must be construed under Section 112, para. 6. The function disclosed for this element is a space which gathers and then removes air bubbles from the filter bottom. The corresponding structure for this element requires a space with both a vertical and horizontal component, though these components are not restricted by the precise structures disclosed by the preferred embodiment.

II "Sleeve" and "an opening formed therein"

The next disputed issues of claim construction deal with the term "sleeve" and its requirement that it have "an opening formed therein." Recovery is the only defendant to advance a position as to the proper constructions for these terms, while Brita has responded with its proposed interpretations. The Court will thus consider their two competing views on these terms.

A. "a sleeve"

Recovery asserts that the term "sleeve," based on its generally understood definition, connotes several important limitations. Recovery first argues that a "sleeve" *must* have two open ends, and that something with only one open end is not a "sleeve" as that term is commonly understood. Specifically, Recovery asserts that the ordinary definition of a sleeve is a tangible object-like a shirt sleeve (the first example given in *Webster's Collegiate Dictionary*)-that fits over something else. Recovery also notes that the *McGraw-Hill Dictionary of Scientific and Technical Terms* defines a "sleeve" as a "cylindrical part," with a "cylindrical surface" in turn defined as a shape with no closed ends. Thus, Recovery argues that the ordinary usage of the word "sleeve" refers only to objects with two open ends.

Brita, being the plaintiff in this action, understandably seeks a broader construction of the term "sleeve." Although acknowledging that sleeves may have two open ends, Brita asserts that an object with only one open end can also constitute a sleeve. As examples of sleeves having one closed end, Brita alludes to phonograph or book sleeves. *Webster's* also defines a "sleeve" as "a tube or tubelike part fitting over or around another part." Taking this a step further, Brita notes that certain forms of tubes-for example, tube socks or test tubes-can also be closed on one end. Thus, Brita contends that the ordinary usage of the word "sleeve" is not limited to objects having two open ends.

Recovery disputes whether the examples cited by Brita are, in fact, ordinary usages of the term "sleeve." For example, Recovery notes that phonograph records are on their way to obsolescence, arguing that usage of the term "sleeve" in this context is no longer ordinary. Similarly, Recovery points out that the term "sleeve" is never used to refer to test tubes or tube socks, and that therefore these purported analogs are also unavailing. Though conceding that the word "sleeve" *may* be used for objects with a closed end, Recovery contends that these are *extra* ordinary usages of the word which should not color our construction in this case.

As evidenced by the competing definitions cited by Recovery and Brita, it is debatable whether the plain meaning of the word "sleeve" dictates an object with two open ends. The term "sleeve" would seem to primarily apply to objects that have two open ends, but Brita has cited some relatively common examples where it is used to apply to something with only one open end. In such a case, where two competing definitions are arguably plausible for a claim element, the patent's specification should be used to determine how the inventor intended the disputed term to be used. *Vitronics*, 90 F.3d at 1582. In addition, the Court may also look to the patent's file history for guidance as to the intended meaning of this term.

In this case, the specification clearly contemplates a "sleeve" to be something that is open at both ends; in fact, Brita concedes that there is nothing in the patent showing a close-ended sleeve. Though Brita attempts to argue that the patent's requirement that the sleeve "open downwardly" does not necessarily imply it be open on both ends, the Court is unpersuaded by this distinction. As disclosed in the patent, the sleeve has water flowing in one end and out the other. Furthermore, there are references in the prosecution history-notably to the Zika reference-in which the patentee indicated that his usage of the term "sleeve" implied an object open at both ends. Thus, as used in the '996 patent, the term "sleeve" is something which is open at

both ends.

The parties also fight over whether a "sleeve" can be two separate parts or must be a singular structure. This question is an easy one, and thus only a brief analysis is necessary. It is apparently Brita's position that a combination of parts can constitute a "sleeve." This Court, however, finds no support for this position either from the plain meaning of the word or the patent specification. A "sleeve" is a singular object-that is how *Webster's* conceives of the term, and that is how the '996 patent uses the term. Brita's position is therefore nothing more than a figment of its imagination, having no basis in the evidence before this Court.

Though the Court finds there to be competing definitions for the term "sleeve," the specification and the prosecution history make clear the inventor intended it to refer to an object with two open ends. Furthermore, the term "sleeve" refers only to singular structures, as no evidence has been presented demonstrating that a sleeve can be a multi-part object. The Court will therefore adopt Recovery's proposed definition of "a sleeve": "a single continuous structure with two open ends that fits over something else."

B. "an opening formed therein"

Brita and Recovery also lock horns as to what is meant when the patent requires the sleeve to have "an opening formed therein." Recovery asserts that the sleeve must have a *permanent* hole or aperture formed in its side wall. In response, Brita argues that the opening does not have to be formed during the molding of a plastic sleeve, as this patent does not claim a manufacturing process. Brita proposes a more amorphous construction, arguing that an "opening" need not be a permanently formed hole, but instead can also be some sort of space or gap that is created between the sleeve and other parts of the water filter.

Though the claim language does not limit how the "opening" can be "formed" in the sleeve, the Court believes that this opening must be a permanent part of the sleeve structure. As *Webster's* contemplates, an opening is "formed" when the material of an object has been worked on to create a void. An opening is not "formed," however, merely by having a gap between two separate parts of the filter assembly. Of course, the manufacturing process by which the opening is formed-be it during molding, by drilling a hole, or whatever-is not restricted by the claim language. What the claim language does require, however, is that the opening be a permanent part of the sleeve structure.

A final point of contention arises as to whether the claim "*an* opening" limits the number of openings the sleeve can have. The Federal Circuit has stated that "it is generally accepted in patent parlance that 'a' can mean one or more." *North American Vaccine, Inc. v. American Cyanamid Co.*, 7 F.3d 1571, 1575-76 (Fed.Cir.1993), *cert. denied* 511 U.S. 1069, 114 S.Ct. 1645, 128 L.Ed.2d 365 (1994) (*citing* Robert C. Faber, *Landis on Mechanics of Patent Claim Drafting* 531 (3d ed.1990)). However, the court in *North American Vaccine* also made clear that the articles "a" or "an" are ordinarily given a singular construction, and that a plural construction is only appropriate if the specification indicates that this was intended. *Id.* at 1576. In this case, the specification provides no embodiment which has more than a single opening in the sleeve. Thus, when the patent claims "an" opening in the sleeve, the Court reads this to disclose a single opening in the sleeve and no more.

III "to the opening in said sleeve"

The next claim construction issue, one that all the parties weigh in on, deals with how the word "to" is to be construed in the claim element "to the opening in said sleeve." Brita contends that this claim language merely requires that the chimney portion of the air collecting space extend in a direction towards, but not

necessarily reach the elevation of, the opening in the sleeve. The Defendants, on the other hand, assert that the direction "to" requires that the chimney terminate at or above the sleeve hole. Not only do the Defendants rely on the plain meaning of the word "to," but they also argue that the file history makes clear that the inventor intended the air collecting space to reach the hole.

It is first important to look at the disputed claim language in the context in which it was used. The entire clause reads: "... said means defining the air collecting space extending upwardly at least partially towards the side wall and to the opening in said sleeve ..." First off, Brita asserts that the adverb "partially" modifies not only "towards the side wall" but also "to the opening in said sleeve." Under this reading of the claim, the air collecting space would only need to extend partially toward the sleeve opening but not necessarily all the way to the opening.

The Court finds Brita's first argument wholly without merit. Not even under the most tortured reading of this claim could the Court agree that the word "partially" was intended to modify "to the opening." The only reasonable construction of this clause finds that "partially towards" describes how the air collecting space extends in the direction of the side wall, while "to" specifies the chimney location in relation to the sleeve opening. If the inventor wanted to have the chimney only extend "partially" in the direction of the opening, he could have either (1) inserted the word "partially" before "to", or (2) eliminated the word "to" entirely. The claim was not written in this way, however, and thus the Court refuses to read "partially" as modifying "to the opening."

The Court also does not buy Brita's argument that "to" should be construed as meaning "towards." The inventor knew how to use the word "towards"-in fact, he did so five words earlier in describing the air collecting space's position relative to the side wall. Instead of again using the word "towards" in describing its direction relative to the sleeve opening, however, the inventor chose to have the claim require that the chimney extend "to" the opening. When two different words are used in such close proximity to one another, the Court believes that they were intended to have different meanings. *See, e.g., Hoffman v. Joint Council of Teamsters No. 38, 230 F.Supp. 684, 690 (N.D.Cal.1962)*. When read in context, therefore, the word "to" clearly requires the air collecting space to reach all the way to the hole in the sleeve. Other definitions of the word "to" may be reasonable in other contexts, *see Cybor Corp. v. FAS Technologies, Inc., 138 F.3d 1448, 1459 (Fed.Cir.1998)* (noting that "to" can be construed to mean "in a direction toward"), but they are not befitting in the instant context. Thus, the Court finds that the chimney portion of the air collecting space must reach the elevation of the sleeve opening, and not merely extend in a direction toward the opening.

If there was any doubt that this construction was the correct one, it is dispelled by a review of the file history for the '996 patent. The file history reveals that the inventor had to endure several rejections from the Patent and Trademark Office (PTO) before the '996 patent was finally issued. These initial rejections were based on the PTO examiner's failure to understand how the invention worked; for example, he stated that it was "unclear how the air can leave [the opening] as it appears to be blocked by a wall." Much of this confusion arose from a drawing-Figure 4 in the patent-which seemed to show the filter and the sleeve flush against one another at a point below the sleeve opening. In response to these rejections, the inventor chose to modify Figure 4 to show the chimney extending to an elevation *above* the sleeve opening, rather than arguing to the PTO that there was in fact space between the filter and the sleeve. In subsequent communications with the PTO, the inventor argued that it was "obvious" from Figure 4 that the chimney terminates above the opening. Later, the words "to the hole" were added to the claim in order to assuage the examiner's continuing concerns. Finally, after all of these concessions had been made, the PTO issued the '996 patent.

The file history thus reveals that, in order to obtain the patent, the claim language was modified to require the chimney to extend to the elevation of the opening. It is a basic tenet of patent law that a patent holder cannot seek claim coverage for that which he has conceded during the prosecution of the patent. *Vitronics*, 90 F.3d at 1583. When the examiner raised his initial objections, the inventor could have corrected the drawing to show that air could still escape even if the chimney did not reach the hole. But, instead of choosing this path, the inventor modified both the patent drawings and the claim language to reflect a chimney portion which did reach all the way to the sleeve opening. In doing so, this requirement became part of the patent, and the Court will not allow Brita to now reclaim this prior concession. Thus, the file history illustrates, with crystal clarity, that the chimney portion of the air collecting space was intended to, and therefore must for claim construction purposes, extend to the elevation of the sleeve opening.

CONCLUSION

The Court finds it unnecessary to consider any extrinsic evidence in construing the disputed terms of the '996 patent. The patent claims shall thus be construed in a manner consistent with the conclusions of this opinion.

N.D.Ill.,1998.

Brita Wasser-Filter-Systeme GmbH v. Recovery Engineering, Inc.

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