

United States District Court,
M.D. North Carolina.

REMINGTON ARMS COMPANY, INC,
Plaintiff.

v.

MODERN MUZZLELOADING, INC,
Defendant.

Feb. 8, 1999.

MEMORANDUM OPINION

OSTEEN, District J.

This matter comes before the court on Defendant's Motion for an interpretation of disputed claim language found in the Remington patent, as required by *Markman v. Westview Instruments, Inc.*, 116 S.Ct. 1384 (1996). (Def.'s Mot. Claim Interpretation.)

For the reasons discussed herein, the court will construe the disputed claim language in favor of Defendant.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 18, 1997, Plaintiff Remington Arms Company, Inc. (Remington), filed a complaint against Defendant Modern Muzzleloading, Inc. (Modern), alleging infringement of its U.S. Patent No. 5,606,817 ('817 patent), entitled Muzzle-Loading Firearm. (Compl.para.para. 6-10.) Defendant timely filed an answer denying infringement and asserting the affirmative defense of invalidity on the ground that the patent was obvious. (Answer & Countercl.) FN1 In addition, Defendant filed a motion to construe disputed claim language in the '817 patent. (Def.'s Mot. Claim Interpretation.) Specifically, Defendant requests that this court interpret the meaning of "forward longitudinal section" found in claim one of Plaintiff's patent.

FN1. Defendant also filed a motion for leave to amend its answer to add the affirmative defense of inequitable conduct, which this court denied. (Order dated December 17, 1998.)

Prior to the *Markman* hearing, each party submitted briefs in support of their proposed construction of the disputed patent terms. On December 10, 1998, the court held a hearing in accordance with *Markman v. Westview Instruments, Inc.*, 116 S.Ct. 1384 (1996) to construe the disputed claim language of the '817 patent. After reviewing the briefs and the testimony and evidence presented during the hearing, FN2 the court finds that "forward longitudinal section" should be construed as meaning a section which extends parallel to the longitudinal axis of the bolt.

FN2. At the hearing, the court heard testimony from Plaintiff's expert witness David E. Byron. (Tr.

II. DISCUSSION

A. Claim Construction-The meaning of "forward longitudinal section."

Plaintiff argues that "a [first] cam cut formed in the side of the bolt body having a forward longitudinal section" means that the cam cut has any section which affects forward or rearward movement of the bolt body. (Pl.'s *Markman* Br. at 4-5.) Defendant, however, alleges that the terms should be interpreted to mean "a section which extends parallel to the longitudinal axis of the bolt." (Def.'s Br. Supp. Claim Construction at 1.)

It is well settled that in patent cases, claim construction is a question of law to be decided by the court. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed.Cir.1995) (en banc), *aff'd*, 116 S.Ct. 1384 (1996). Moreover, in settling claim interpretation disputes, there is a hierarchy of evidence that courts should examine. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). While intrinsic and extrinsic evidence may be utilized in construing the meaning of disputed terms, "the court should look first to the intrinsic evidence of record, *i.e.*, the patent itself, including the claims, the specification, and, if in evidence, the prosecution history." *Id.* ("Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language."). The court, however, remains at all times cognizant of the fact that the claims measure the invention. *SRI Int'l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed.Cir.1985); *see also Abtox, Inc. v. Exitron Corp.*, 122 F.3d 1019, 1023 (Fed.Cir.1997) ("[T]he language of the claim frames and ultimately resolves all issues of claim interpretation."); *Eastman Kodak Co. v. Goodyear Tire & Rubber Co.*, 114 F.3d 1547, 1552 (Fed.Cir.1997) *abrogated on other grounds* by *Cybor Corp. v. Fas Tech., Inc.*, 138 F.3d 1448 (Fed.Cir.1998) ("[A] construing court does not accord the specification, prosecution history, and other relevant evidence the same weight as the claims themselves, but consults these sources to give the necessary context to the claim language."). With this framework in place, the court turns to the analysis of the disputed claim language.

1. The ordinary meaning of forward longitudinal section encompasses a parallel limitation.

The court is cognizant of the fact that "[c]laim limitations 'will be given their ordinary meaning, unless it appears that the inventor used them differently.'" *General Am. Transp. Corp. v. Cryo-Trans, Inc.*, 93 F.3d 766, 772 (Fed.Cir.1996) (Mayer, J., dissenting) (citation omitted); *see also Nike Inc. v. Wolverine World Wide, Inc.*, 43 F.3d 644, 646 (Fed.Cir.1994) ("In construing a claim, claim terms are given their ordinary and accustomed meaning unless examination of the specification, prosecution history, and other claims indicate that the inventor intended otherwise."). Absent any indication in the patent that the patentee intended "to be his own lexicographer," the court will first look to the words of the claim and construe them in light of their common and ordinary meaning. *Vitronics*, 90 F.3d at 1582.

While courts recognize that dictionaries are technically extrinsic evidence, it is firmly established that "they are worthy of special note." *Id.* at 1584, n.6 ("Judges are free to consult such resources at any time ... and may also rely on dictionary definitions when construing claim terms, so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents.").

According to Webster's Third New International Dictionary, the ordinary and common meaning of "longitudinal" is "extending in length; placed or running lengthwise-opposed to transverse." Webster's Third

New Int'l Dictionary 1333 (1986). Further, the word "length" is defined as "the longer of the 2-straight line dimensions of a surface ... extent from end to end." *Id.* 1293. Although Plaintiff maintains that the "dictionary definitions indicate that there is no limitation that 'longitudinal' mean only that it pertains to the lengthwise dimension of an object in a fashion parallel to the axis of the object," the court finds this argument unpersuasive. (Pl.'s *Markman* Br. at 9.) While the court recognizes that "[a]ny path that runs in the lengthwise direction is [technically] longitudinal, regardless of whether or not the path is in a line parallel to the longitudinal axis," FN3 (Pl.'s *Markman* Br. at 9 n.7) the ordinary and common understanding of longitudinal encompasses a path that is on a line parallel to the longitudinal axis. Moreover, it is the court's conclusion that for a layman the ordinary meaning of "longitudinal" would be associated with a straight line. The dictionary definition of length further suggests a parallel requirement since the length of an object is generally measured in a straight line.

FN3. Plaintiff provides "[a] common sense example [] that, when a basketball player runs the length of a basketball court, it does not necessarily mean that the player's course of travel was parallel to the sidelines. Instead, the player could have traveled lengthwise (read longitudinally) in any kind of angular or circuitous route. Any path that runs in the lengthwise direction is longitudinal, regardless of whether or not the path is in a line parallel to the longitudinal axis." (Pl.'s *Markman* Br. at 9 n.7.)

Perhaps most persuasive of all the evidence is the claim language itself. Independent claim one of the '817 patent expressly states: "[A] first cam cut formed in the side of the bolt body having a forward longitudinal section and rearwardly extending transverse section." (Def.'s Br. Supp. Claim Construction, Ex. A ('817 patent), col. 4, 11.14-17.) The court agrees with Defendant that the patentee limited the claim by requiring that the cam cut have two distinct sections (longitudinal and transverse) and by deliberately choosing specific words to describe each section. (Def.'s Br. Supp. Claim Construction at 5.) Therefore, since the claim language distinguishes longitudinal from transverse, longitudinal cannot mean transverse. Any other construction of "longitudinal" would render "transverse" superfluous. *See United States v. Teletronics, Inc.*, 857 F.2d 778, 783-84 (Fed.Cir.1988) (Holding that a court must avoid construing claims too similarly so as to render the claims superfluous.).

The language used in dependent claims 3, 4, and 5 further suggest that longitudinal must mean parallel to the axis of the bolt. Claim 3, which is dependent on claim one, reads, "the transverse section of the first cam cut extends rearwardly to a final section substantially perpendicular to the axis of the bolt." (Def.'s Br. Supp. Claim Construction, Ex. A, col. 4, 11.26-28.) Claim 4 reads, "the transverse section of the first cam cut has a transitional section extending at an angle connecting with the final section." *Id.* 11.29-31. Claim 5 reads, "the transverse section of the first cam cut has a transitional section extending arcuately connecting with the final section." *Id.* 11.32-34. The specific words used in the dependent claims indicate that longitudinal cannot mean transverse, substantially perpendicular to, at an angle, or extending arcuately. *See Wright Med. Tech., Inc. v. Osteonics Corp.*, 122 F.3d 1440, 1445 (Fed.Cir.1997) (The terms used in the independent claims must not be interpreted in a way that is inconsistent with the terms in claims which depend on them.); *see also Teletronics, Inc.*, 857 F.2d at 783 (There is "presumed to be a difference in meaning and scope when different words or phrases are used in separate claims.").

Therefore, the plain language of the patent establishes that the longitudinal section can only extend parallel to the long axis of the bolt and still remain consistent with the other terms in the '817 patent.

2. The patent specification further reinforces that forward longitudinal section must extend parallel to

the axis of the bolt.

In construing disputed claim language, "[c]laims must be read in view of the specification, of which they are a part." *Markman*, 52 F.3d at 979; *see also* *E.I. Du Pont de NeMours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed.Cir.1988) ("It is entirely proper to use the specification to interpret what the patentee meant by a word or phrase in the claim."). Furthermore, courts, in relying on the specification, have held that in claim construction, "[u]sually [the specification] is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics*, 90 F.3d at 1582; *see also* *Wright*, 122 F.3d at 1443.

In the present case, the "Detailed Description of the Invention" portion of the specification refers to the forward longitudinal section with regard to Figure 3. (Def.'s Br. Supp. Claim Construction, Ex. A.) Specifically, the relevant language states: "[t]he first cam cut comprises longitudinal section 10, connected to transverse section 11 by angular or arcuate section 12." *Id.* col. 2, 11.63-65. Thus, the specification and the drawings teach that the forward longitudinal section must be parallel to the axis of the bolt.

While this court acknowledges that the specification does not ordinarily limit the claims, the court finds that in the present case "[t]his is not just the preferred embodiment of the invention; it is the *only* one described." *See* *General Am. Transp. Corp.*, 93 F.3d at 770; *see also* *SRI Int'l*, 775 F.2d at 1139 (Kashiwa, J., dissenting) ("It is axiomatic that claims of a patent must always be interpreted in light of the specification.").

Unlike the other cases relied upon by Plaintiff, the '817 patent specification does not suggest that another embodiment, other than the one described, exists. In the first place, in the '817 patent the specification refers to the "Detailed Description Of The Invention" rather than the "Description Of The Preferred Embodiment" which is the language found in other patents. *See* Def.'s Mem. Supp. Mot. Summ. J., Ex. D. (The specification in the Rodney Jr. patent refers to "The Description Of The Preferred Embodiment."); *SRI Int'l*, 775 F.2d at 1139-40 (Kashiwa, J., dissenting) ("But where, as here, the specification does not refer to an angular orientation of the grids of the filter as only a 'best mode' for utilizing the invention, but rather teaches this arrangement as essential to achieve the objects of the invention, I am satisfied ... that the invention has not been improperly limited."); *Laitram Corp. v. Cambridge Wire Cloth Co.*, 863 F.2d 855, 865 (Fed.Cir.1988) (Where the plain language of the specification stated that "[a]lthough other noncircular sections such as hexagonal may be employed, the square cross section is preferred," it was clear that the patentee was merely describing the preferred embodiment.); *Ferag Ag v. Grapha-Holding AG*, 935 F.Supp. 1238, 1251 (D.D.C.1996) ("[T]he patent specification states, 'a sheet transporting device which serves to advance folded sheets in a predetermined direction (preferably along a helical path).' ").FN4 In addition, Figure 3 of the '817 patent further reinforces that "the forward longitudinal section" must extend parallel to the axis of the bolt. (Def.'s Br. Supp. Claim Construction, Ex. A.)

FN4. The court also notes that while "[g]enerally, particular limitations or embodiments appearing in the specification will not be read into the claims," *E.I. Du Pont de NeMours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed.Cir.1988) (citation omitted), this is not always the case and exceptions to the rule do exist.

The court agrees that "Remington never identifies within the patent record an alternative embodiment for the forward longitudinal section other than what is disclosed in Figure 3." (Def.'s Resp. Pl.'s *Markman* Br. at 8.) Furthermore, while the summary, description, and drawings of the '817 patent do not depict nor suggest

a forward longitudinal section other than one that extends parallel to the longitudinal axis of the bolt, the patentee did disclose alternative embodiments for the transverse section of the '817 patent. (Def.'s Resp. Pl.'s *Markman* Br. at 8-9; Def.'s Br. Supp. Claim Construction, Ex. A, col. 4, 11.26-34.)

This evidence standing alone persuades the court that the description in the specification of the forward longitudinal section was intended as the only embodiment, rather than the preferred embodiment. Giving due consideration to the general rule that the specification does not limit a claim, this court nevertheless finds that there is nothing in the written description or drawings which suggests that an alternate embodiment exists nor that the claim language encompasses a forward longitudinal section that is not parallel to the axis of the bolt.FN5

FN5. *See also* Tr. *Markman* Hr'g at 43, 11.3-10 (Plaintiff's technical expert David Byron admitted that the '817 specification does not indicate that there could be other embodiments.).

3. Extrinsic evidence should not be considered since the claim language is unambiguous.

To support Plaintiff's proposed claim construction, Plaintiff interjects extrinsic evidence consisting of prior art and expert testimony. It is well settled that "[i]n most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence." *Vitronics*, 90 F.3d at 1583. FN6

FN6. Plaintiff's broad contention that "[a] court always may rely on expert testimony and extrinsic evidence to aid its understanding of the technology underlying the patent claims" is misleading. (Pl.'s *Markman* Br. at 3.) In the present matter, Plaintiff is attempting to rely upon expert testimony to bolster its construction of the disputed claim terms. It is well settled, however, that expert testimony "may only be relied upon if the patent documents, taken as a whole, are insufficient to enable the court to construe disputed claim terms. Such instances will rarely, if ever, occur." *See Vitronics Corp. v. Conceptronc, Inc.*, 90 F.3d 1576, 1585) (Fed.Cir.1996); *see also Level One Communications, Inc. v. Seeq Tech., Inc.*, 987 F.Supp. 1191, 1195 (N.D.Cal.1997) ("[E]xpert testimony going to proper construction of a disputed claim is to be eschewed and used only in the rarest circumstances.").

Having carefully reviewed the claim language, patent specification, and drawings,FN7 and having found no ambiguity in the claims, the court concludes that to use extrinsic evidence would constitute clear error. Therefore, David Byron's expert testimony will not be considered. *Id.* at 1585 ("[O]pinion testimony on claim construction should be treated with the utmost caution, for it is no better than opinion testimony on the meaning of statutory terms."). For the reasons stated above, the alleged prior art cited by Plaintiff is likewise improper and will not be examined. *Id.* at 1584. ("[R]eliance on [prior art] is unnecessary, and indeed improper, when the disputed terms can be understood from a careful reading of the public record.").FN8

FN7. While the patent's prosecution history constitutes intrinsic evidence which may be initially considered, in this case, the court agrees with Plaintiff that the prosecution history is sparse and not helpful in construing the disputed claim language. *See General Am. Transp. Corp. v. Cryo-Trans, Inc.*, 93 F.3d 766, 770 (Fed.Cir.1996).

FN8. The court also notes that at the *Markman* hearing even Plaintiff conceded that "the claim is unambiguous, that Your Honor or the jury could apply the words in the claim and reach a finding of infringement." Tr. *Markman* H'rg, at 20, 11.22-24.

Moreover, even if the court were to consider extrinsic evidence, which it has declined to do, the court is still not persuaded that the patents cited by Plaintiff constitute prior art and are relevant to the present matter. See Def.'s Resp. Pl.'s *Markman* Br. at 11-13. (Defendant contends that "Remington's reliance on a breech bolt firearm contradicts previous arguments made by Remington [in its response to Defendant's motion for summary judgment] claiming prior art is irrelevant if it relates to a breech loading firearm and is not binding on muzzleloading rifles.") *Id.* at 13 n.1.

Finally, in construing "forward longitudinal section" narrowly, the court recognizes that the privilege of being granted a patent is accompanied by many responsibilities and duties. The patentee shoulders the burden of clearly defining the scope of the invention. See 35 U.S.C. s. 112, para. 2 (1988) ("The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.").

Because the issuance of a patent endows a patentee with a temporary monopoly on the market, a patentee cannot be permitted to abuse this privilege by inserting limiting language in its claim, only later to assert a broader meaning to the detriment of competitors. See *Athletic Alternatives, Inc. v. Prince Mfg., Inc.*, 73 F.3d 1573, 1581 (Fed.Cir.1996) (The primary purpose behind the statutory requirement that a patentee distinctly claim his invention is "to guard against unreasonable advantages to the patentee and disadvantages to others arising from uncertainty as to their [respective] rights.") (citation omitted); *Nike Inc.*, 43 F.3d at 647 (Holding that a patentee "cannot ... rewrite its patent claims to suit its needs in ... litigation."); *Sage Prod., Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1425 (Fed.Cir.1997)

[A]s between the patentee who had a clear opportunity to negotiate broader claims but did not do so, and the public at large, it is the patentee who must bear the cost of its failure to seek protection for this foreseeable alteration of its claimed structure.

Therefore, in order to protect the sanctity of the patent process, prevent the patentee from manipulating the system, and to ensure consistency with the specification and drawings such that the claim requirement "of a rearwardly extending transverse section" is not rendered superfluous, "forward longitudinal section" in claim one must be construed as requiring that the cam cut be parallel to the axis of the bolt.FN9

FN9. The court need not decide the issue of whether the disputed claim language should be interpreted in structural versus functional terms since this will not change the court's analysis or ultimate conclusion. See Pl.'s Resp. Def.'s Br. Supp. Claim Construction at 5 n.2 (Acknowledging that Plaintiff was arguing for a functional definition and that Defendant was arguing in favor of a structural definition.).

The court finds that this alleged dispute has been rendered moot by Plaintiff's concession at the *Markman* hearing that Plaintiff is not arguing for a functional definition. See Tr. *Markman* Hr'g at 18, 19, 11.25 and 1, respectively ("Modern says that the first cam cut with the ... forward longitudinal element is a functional element."); see also *id.* at 19, 11.11-13 ("This reasoning is faulty because ... the patentee has chosen not to use the very language [the means plus language] that would require that a structure in the specifications be found.").

Therefore, the court finds that Plaintiff has waived any argument that the disputed claim language should be interpreted in functional terms and accepts as undisputed by the parties that "forward longitudinal section" should be construed in structural terms.

III. CONCLUSION

For the reasons stated above, in claim one of the '817 patent, the court adopts Defendant's proposed claim construction and finds that the term "forward longitudinal section" means a section parallel to the longitudinal axis of the bolt.

An order in accordance with this memorandum opinion shall be filed contemporaneously herewith.

M.D.N.C., 1999.

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