United States District Court,
D. Nebraska.

CIRCLE R, INC., a Nebraska Corporation, and Thurston Mfg. Company, a Nebraska Corporation,
Plaintiffs.
v.
TRAIL KING INDUSTRIES, INC., a South Dakota Corporation,
Defendant.

No. 8:98-CV-00281-TMS

Nov. 23, 1999.

Denise C. Mazour, Dennis L. Thomte, Thomte, Mazour Law Firm, Omaha, NE, for Plaintiffs.

Eric M. Dobrusin, Dobrusin, Thennisch Law Firm, Pontiac, MI, Glenn E. Forbis, R. Terrance Rader, Stefan V. Chmielewski, Rader, Fishman Law Firm, Bloomfield Hills, MI, Theodore J. Stouffer, Cassem, Tierney Law Firm, Omaha, NE, for Defendant.

MEMORANDUM AND ORDER

After having examined and considered the briefs and evidence submitted per the court's September 9, 1999 "Memorandum and Order" (filing no. 57), the court concluded in its November 9, 1999 "Order" (filing no. 68) that the controverted limitations set forth in claim 1 of U.S. Patent No. 5,480,214 (the " '214 patent") could be properly interpreted solely through examination of "intrinsic" evidence, without recourse to any "extrinsic" evidence. (filing no. 68) Therefore, in accordance with the court's November 9, 1999 "Order" (filing no. 68), the court hereby informs the plaintiff, Circle R, Inc. ("Circle R"), and the defendant, Trail King Industries, Inc. ("Trail King"), of its interpretation of the two disputed claim limitations of the '214 patent.

ANALYSIS

It is the court's responsibility to interpret the language used in patent claims and determine what the claims mean as a matter of law. Markman v. Westview Instruments, Inc., 52 F.3d 967, (Fed.Cir.1995)(*en banc*), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996)(*per curiam*). In interpreting the meaning of a claim, a court should look to the claim language, the patent specification, and the patent's prosecution history-in that order. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1581-85 (Fed.Cir.1996). Thus, claim interpretation begins with the court's review of the actual language of the claim.

It is generally presumed that the ordinary and accustomed meaning of a disputed word in a claim is the correct meaning of that word. *See* Johnson Worldwide Assoc. Inc. v. Zebco Corp., 175 F.3d 985, 989 (Fed.Cir.1999). In determining the ordinary meaning of language in a claim, a court should construe the claim language according to the standard of what it would have meant to one skilled in the art on the application date. *See* Weiner v. NEC Electronics, Inc., 102 F.3d 534, 538 (Fed.Cir.1997). After determining

the ordinary meaning of the disputed claim language, the court should review the patent specification and the patent's prosecution history to see if the inventor used the disputed claim language in a manner inconsistent with its ordinary meaning. *See* Intellical Inc. v. Phonometrics Inc., 952 F.2d 1384, 1387-88 (Fed.Cir.1992). If the inventor did not use the disputed claim language in a manner inconsistent with its ordinary meaning in the patent specification or prosecution history, the party seeking to impose a meaning on the claim language different from its ordinary meaning must demonstrate why such an alteration is necessary. *See* Johnson Worldwide, 175 F.3d at 989-990.

The 90 Limitation in Claim 1

The final limitation of claim 1 describes a side dump trailer dumping the material from a dump body "without the necessity of pivotally moving said body greater than 90 from its non-dumping position." (filing no. 62, Ex. 1, claim 1) The parties dispute how the dump body's degree of movement should be measured. Trail King asserts that the court should construe the 90 limitation so as to include frame twist. In other words, Trail King suggests that since there is no reference to "level ground" in the 90 limitation, the dump angle should be measured from its starting position to its finished position, thereby including in the measurement any inherent feature of the trailer, such as twist or lean of the frame. Circle R counters by claiming that the measurement of the dump angle should not include any frame twist, pointing out that the claim limitation does not make use of the "frame twist" terminology. Thus, rather than applying the 90 limitation to the total amount of *angular* movement of the body from its non-dumping position to its fully dumped position, the 90 limitation should be applied to the *pivotal* movement of the body with respect to the frame.

After examining the '214 patent's claim language, the patent specification, and the patent's prosecution history, the court holds that the 90 limitation in claim 1 does not include frame twist or lean. An examination of the actual text of the 90 limitation reveals that the 90 measurement, to one skilled in the art on the application date, only takes into account the pivotal movement of the body, disregarding any additional movement resulting from frame twist. Including additional frame twist into the 90 limitation measurement would have troublesome ramifications. Inherent features of the trailer such as the strength of the steel in the trailer's frame, the type of suspension system on the trailer, and the weight of the trailer body would all have to be taken into account when designing and constructing a trailer so as to arrive at the desired amount of dump body movement. This would be a complex determination, to say the least. The simpler type of measurement by one constructing a side-dumping trailer would include only the pivotal movement of the body with respect to the frame, thereby excluding from the measurement the various inherent features of the trailer. A reasonable competitor of the patentee reading the claim language would thus be directed to measure the dumping angle using the frame as a point of reference, thereby excluding any additional movement of the dump body resulting from the inherent features of the trailer in the measurement. Because the critical measurement must be relative to the frame in both the non-dumping and fully-dumping position, an alleged infringer may not benefit from any twist or lean of the frame during the dumping process. Nothing in the prosecution history suggests a contrary construction.

The "Substantially Flat, Horizontally Disposed Bottom Wall" Limitation in Claim 1

Independent claim 1 of the '214 patent includes as a limitation a "substantially flat, horizontally disposed bottom wall." (filing no. 62, Ex. 1, claim 1) The parties dispute the meaning of the phrase "substantially flat." Trail King asserts that the court should construe the "substantially flat" limitation to mean "entirely flat." Circle R suggests that the court should construe the "substantially flat" limitation to mean "largely, but not wholly, flat." Circle R claims that the term "substantially flat" bottom wall should, therefore, include

bottom walls having a slight curvature.

After examining the '214 patent's claim language, the patent specification, and the patent's prosecution history, the court holds that the "substantially flat" limitation in claim 1 should be construed to mean "entirely flat." This construction is supported by the fact that nowhere in the '214 patent is the bottom wall depicted as anything but completely flat. (*See* filing no. 62, Ex. 1) One skilled in the art on the application date would interpret the "substantially flat" wording to mean "entirely flat," rather than "slightly curvilinear." Indeed, a definition of "substantial" found in Webster's Third New international Dictionary is "being that specified to a large degree or in the main." Circle R's construction of the "substantially flat" language would seem to exclude those bottom walls that are completely flat and include only those bottom walls that have a slight curvature. However, if this was what the inventor meant when drafting the patent language, the language would have actually read "slightly curved, horizontally disposed bottom wall." This would have been a more direct way to describe a bottom wall having a slight curvature. The prosecution history of the '214 patent supports this construction.

SO ORDERED.

D.Neb.,1999.
Circle R v. Trail King Industries