

United States District Court,
C.D. California.

WESLEY JESSEN CORP,
Plaintiff.

v.

COOPERVISION, INC,
Defendant.

No. CV01-3678AHM(EX)

March 14, 2002.

Peter I Ostroff, Edward G Poplawski, Peter L. Poplawski, Bridget J Santorelli, Sidley Austin Brown & Wood, Los Angeles, Mark T Banner, Rebecca P Rokos, Timothy C Meece, Thomas K Pratt, Robert H Resis, Jason S Shull, Banner & Witcoff, Chicago, IL, for Wesley Jessen Corporation, plaintiffs.

Bruce D Kuyper, David J Schindler, Latham & Watkins, Los Angeles, Thomas J Wimbiscus, Edward W Remus, Anthony E Dowell, Christopher V Carani, McAndrews Held & Malloy, Chicago, IL, for Coopervision Inc, defendants.

MARKMAN ORDER

MATZ, District J.

INTRODUCTION

This matter comes before the Court for patent claim construction. The parties filed a Joint Statement of Disputed Terms in which they disputed ten terms contained in two different patents related to soft, colored contact lenses and the method for their manufacture. On March 12, 2002, the Court held a *Markman* hearing to assist it in construing the patents. At the hearing, the parties did not present witnesses but clarified the argument and evidence presented in their papers. Because the Court finds the evidence submitted is sufficient to construe the disputed terms, no further evidence will be considered.

BACKGROUND ON THE PATENTS

Before the Court for claim construction are ten terms contained in the following two patents owned by the plaintiff: (1) U.S. Patent No. 5,414,477 ("477 patent") and (2) U.S. Patent No. 4,668,240 ("240 patent"). Both patents concern Plaintiff's soft, colored contact lenses and the method for their manufacture. The 477 product patent lists Plaintiff Wesley Jessen Corporation as the assignee of an invention labeled "Colored Contact Lens Having Very Natural Appearance." (Shull Decl., Ex. Bat 44). The 477 patent is for colored contact lenses that have opaque colored dots that are arranged in a pattern so as to change the apparent color of the wearer's iris while imparting a natural appearance. (Shull Decl., Ex. B at 55, col. 1, ln. 10-13). The invention purports to be an improvement on U.S. Patent No. 4,582,402 ("Knapp patent"), which was a

contact lens having, in its preferred embodiment, colored, opaque dots that created a change in the wearer's iris color that appeared natural. (Shull Decl., Ex. B at 55, col. 1, ln. 27-47). The 477 patent purportedly improves on the Knapp patent through the use of multiple-color opaque dots arranged in a pattern (the Knapp pattern used only one color). The use of multiple-color opaque dots has the effect of causing a similar apparent change in the color of the wearer's iris, but maintaining a more naturally appearing iris.

The 240 process patent concerns the method of manufacturing the contact lenses described in the 477 patent. Specifically, the 240 patent refers to the method of printing the surface of a clear lens with a coloring substance so as to produce a lens of the type described in the 477 patent. The 240 patent is incorporated by reference in the 477 patent. (Shull Decl., Ex. B at 57, col. 5, ln. 21).

LEGAL STANDARDS FOR CLAIM CONSTRUCTION

"Claim construction is a matter of law for the court, but claim construction is 'not an obligatory exercise in redundancy' and therefore does not require the court to repeat or restate every claim term." *Macrovision Corp. v. Dwight Cavendish Developments Ltd.*, 105 F.Supp.2d 1070, 1072 (N.D.Cal.2000) (*quoting* U.S. Surgical Corp. v. Ethicon, Inc., 103 F.3d 1554, 1568 (Fed.Cir.1997)). The Court must interpret only disputed terms. *Id.* (*citing* Wang Laboratories, Inc. v. Mitsubishi Electronics America, Inc., 103 F.3d 1571, 1583 (Fed.Cir.1997)).

Claim construction begins and ends with the actual words of the claim. *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed.Cir.1998). In construing disputed claim terms, the court should look first to intrinsic evidence. *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996.). Intrinsic evidence includes the language of the claims, the specification and the file history, if in evidence. *Id.* The file history is often important intrinsic evidence because any interpretation that is either provided or disavowed in the file history affects the claim scope. *Renishaw*, 158 F.3d at 1249 n. 3. In most situations, analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. *Vitronics*, 90 F.3d at 1583.

Absent a special and particular definition created by the inventor, *e.g.*, the inventor acted as his own lexicographer, terms in a claim are to be given their ordinary and accustomed meaning. *Id.* at 1249. It is necessary to review the specification to determine whether disputed terms have been used by the inventor in a manner other than their ordinary meaning. *Vitronics*, 90 F.3d at 1582. Technical terms are interpreted from the perspective of persons skilled in the art. *See Phillips Petroleum Co. v. Huntsman Polymers Corp.*, 157 F.3d 866, 871 (Fed.Cir.1998).

Extrinsic evidence refers to evidence that is external to the patent and its file history, such as expert testimony, inventor testimony, dictionaries, and technical treatises and articles. *Vitronics*, 90 F.3d at 1584. A court may rely on extrinsic evidence to construe claims, but only where the intrinsic evidence alone does not resolve any ambiguity. *Vitronics*, 90 F.3d at 1583. However, a court may consult extrinsic evidence to ensure that its claim construction is not inconsistent with how a person skilled in the art would understand the claim terms. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1308-09 (Fed.Cir.1999). Moreover, the court may freely consult dictionaries and may rely on dictionary definitions when construing claims, to the extent the dictionary definition does not contradict a definition found in the patent documents. *Vitronics*, 90 F.3d at 1584 n. 6.

DISCUSSION

I. DISPUTED TERMS

The parties' Joint Statement of Disputed Terms lists ten disputed terms contained in the two patents, seven in the 477 patent and 3 in the 240 patent. However, as to the disputed terms in the 477 patent, which appear in claims one and thirteen of the patent, the briefs submitted by the parties address only the first five of the seven terms listed as in dispute. FN1 Accordingly, this Court will address only those five terms in this order. In addition, for convenience and clarity, disputed terms one and two will be addressed as a single term, as will disputed terms three and four. Disputed term five will be discussed separately.

FN1. Disputed terms six and seven are nearly identical to terms one and two. As such, the parties' briefs are sufficient to resolve all disputed terms, as the parties acknowledged at the hearing.

As to the 240 patent, the Joint Statement of Disputed Terms listed three terms as in dispute. Each of the terms appears in either claim one or two of the patent. Defendant's brief solely addresses portions of claims one and two and the meaning of the term "-NCO." Plaintiff's brief states that there is only one term in dispute in the 240 patent, "isocyanate" and its chemical formula or abbreviation, "-NCO." Because the Court agrees with Plaintiff that only that term is in dispute, the Court will confine its analysis to the meaning of "isocyanate." (At the hearing, the parties agreed to this approach.).

II. 477 PATENT

A. *"a first portion of the elements of said pattern are of a first shade and a second portion of the elements of said pattern are of a second shade different from said first shade"* (Disputed Terms 1 and 2)

The above language appears in claim one of the 477 patent. As Plaintiff points out, the Court interpreted language nearly identical to that in dispute here in its June 18, 2001 Order Denying Plaintiff's Motion for a Preliminary Injunction. In that order, the language at issue appeared in claim 17 of the patent. Although it denied Plaintiff's motion on other grounds, the Court nonetheless adopted Plaintiff's position as to this language, finding that the limitation proposed by the defendant was not present in the claim language. (P.I. Order, 6:4-10). FN2

FN2. The Court incorporates that earlier order in this analysis.

At issue in construing this language is the degree to which the two colored portions of the iris section may intermix or overlap. Plaintiff's position is that the first portion, which includes a pattern of opaque dots of one shade or color, may cover most, if not all, of the iris section of the eye. (Joint Statement of Disputed Terms ("Joint Statement"), Term 1). As a result, the second portion, which consists of opaque dots of a totally different color or of the same basic color but having a different intensity from the first shade, may overlay significant portions of the first shade. Therefore, necessarily, "the second portion may comprise primarily elements of the second shade but with some elements of the first shade showing through the interstices of the second portion." (Joint Statement, Term 2). According to Plaintiff, this is permissible "as long as the inner portion (a product of overlap) is of a 'noticeably different shade' from the outer portion..." (Joint Statement, Term 1).

By contrast, Defendant asks this Court to interpret the language in claim 1 as allowing for little or no overlap between the first and second shades. Defendant relies on what it argues is the plain language of the

claim, which contemplates two shades of totally different colors that cannot be intermixed. (Joint Statement, Term 2). FN3

FN3. Apart from the declaration of Silver, the defendant cites only to two sections of the specification in support of this position. One section addresses an undisputed point—that the second shade must be either of a totally different color than the first shade or of the same basic color, but having a different intensity. (Shull Decl., Ex.B at 56, col. 3, ln. 36-41). The other does not support the defendant's position. (Shull Decl., Ex. B at 56, col. 4, ln. 48-58).

The limitation proposed by the defendant is not supported by the intrinsic evidence. Rather, the language of the specification expressly supports Plaintiff's position. Specifically, it states that the outer pattern (first shade) "comprises a substantial portion of the area of the iris and is not merely a thin outer ring at the periphery..." (Shull Decl., Ex. B at 57, col. 6, ln. 55-58). This supports Plaintiff's argument that the first shade may cover most of the iris. In addition, and more significant, the preferred embodiment expressly contemplates overlap between the elements of the first shade and the second shade. For example, the specification states, "[the lens] will thus have an outer portion comprised solely of elements of the first shade...and an inner portion comprised *primarily* of the second shade...but with some of the [first shade] *showing through the interstices* of the...pattern [of the second shade]." (Shull Decl., Ex. B at 57, col. 6, ln. 61-65) (emphasis added). In addition, it states, "It [elements of the first shade] covers most of the iris section...After the ink is cured, the first pattern is overprinted with the pattern shown in FIG. 2 [elements of the second shade]..." (Shull Decl., Ex. B., col. 6, ln. 16-21). As these statements indicate, the preferred embodiment of the 477 patent expressly provides for intermixing of the first and second shades. Thus, Defendant's position would appear to exclude from coverage the preferred embodiment of the 477 patent. As Federal Circuit case law indicates, "[s]uch an interpretation is rarely, if ever correct." Vitronics, 90 F.3d at 1583. In short, as stated in this Court's prior order, because the specification does not require the complete absence of elements of the first shade from the second, "Defendant has provided no intrinsic basis for reading such a limitation into the claim language." (P.I. Order, 6: 9-10).

B. "*Said first portion is located generally on the outside of said iris section and said second portion is located generally on the inside of said iris section*" (Disputed Terms 3 and 4) FN4

FN4. The terms "first portion" and "second portion" refer to the portions of the elements of the pattern.

The interpretation of the second pair of related terms in dispute again involves the question of to what extent the elements of the first shade must be separated from the elements of the second shade. The Court has already found that the express terms of the specification provides for some overlap between the elements of the first and second shades (*supra*). Here, Defendant argues that the elements of the first shade cannot span the entire iris section, but rather are confined to the outer circumference of the iris.

As stated *supra*, there is substantial support in the specification that elements of the first shade may comprise a substantial area of the iris, thus providing for overlap between elements of the first and second shades. Apparently aware that its position is not supported by the specification, FN5 Defendant asks the Court to disregard the specification because it is not supported by the plain language of the claims. (Def.'s Memorandum of Points and Authorities ("Def.'s P & A") at 18).FN6 Specifically, Defendant relies on the following terms in the claims themselves as supporting its proposed limitation:

FN5. Although not in the Joint Statement, Defendant's memorandum does cite one statement in the specification in support of its position-"the second portion of the elements...is surrounded by the first portion." (Def.'s P & A at 20; Shull Decl., Ex. B. at 56, col. 4, ln. 54-58). That term states only that the elements of the second shade must be surrounded by the elements of the first shade. It says nothing as to whether the elements of the first shade may occupy the entire iris. It is completely consistent to say that the elements of the second shade both overlap and are surrounded by elements of the first shade. Furthermore, this construction is consistent with the specification, which states that the "outer portion" will be comprised solely of elements of the first shade. (Shull Decl., Ex. B at 57, col. 6, ln. 61-62).

FN6. In support of its argument that this Court should disregard the specification, the defendant cites *Rheox Inc. v. Entact Inc.*, 61 U.S.P.Q.2d 1368 (Fed.Cir.2002). Defendant's reliance is misplaced. In *Rheox*, the Federal Circuit held only that a claim construction eliminating coverage for one of the preferred embodiments may be correct where such a construction is required by the prosecution history. *Id.* at 1374. Here, the prosecution history of the 477 patent does not demonstrate that Plaintiff clearly relinquished a claim that included the first preferred embodiment. Thus, that embodiment, as expressed in the specification, remains strong evidence of the scope of the patent.

1. "located generally"-Defendant argues that "because the respective portions are specifically claimed to be 'generally located' on either the 'outside' or the 'inside' of the iris section, the portions cannot be located over the entire iris section ." (Def.'s P & A at 19).

2. The required location of the "jagged border," where a "noticeable change of shade" occurs between elements of the first and second shades. The claim indicates this border must appear at a distance from the outer perimeter of the iris of between 5% and 95% of the radial width of the iris.

The Court rejects Defendant's position. As to the term "located generally," the term merely requires that the elements of the first shade are generally positioned on the outside of the iris. The term does not limit the elements of the first shade from appearing anywhere in the iris, so long as those elements are more prevalent near the outside. As to the location of the jagged border, Defendant failed to point out that the jagged border represents only that area where there takes place a "noticeable change of shade" between the elements of the first and second shade. (Shull Decl., Ex. B at 56, col. 4, ln. 64-65). This change of shade may occur even should elements of the first shade appear throughout the iris, so long as those elements are more prevalent on the outside of the iris and elements of the second shade are more prevalent on the inside. The existence of an apparent jagged border between the two shades does not mean that elements of the first shade cannot appear throughout the iris.

For the reasons discussed, the Court finds Defendant's position is not supported by either the specification or the language of the claims.FN7 Rather, as stated *supra* in its discussion of claim one, the specification expressly supports Plaintiff's position that elements of shade one may appear throughout the iris, thus providing for substantial overlap between elements of the two shades. Moreover, as the intrinsic evidence is conclusive on this point, the Court does not consider extrinsic evidence.

FN7. Defendant also relies on the prosecution history of the 477 patent for the proposition that because prior patents contemplated overlapping patterns, the 477 patent cannot, or else it would be invalid. (Def.'s P & A, Ex. 5 at 83). The Court rejects this argument. It surely is possible that the 477 patent could have developed a

specific pattern of overlapping shades that made it distinct from prior contact lens patents that also provided for overlapping colors.

C. "a jagged border separates said first and second portions" (Disputed Term 5)

The above language appears in claims one and thirteen of the 477 patent. As Plaintiff points out, the jagged border or "border zone" represents that area of the lens where "there takes place a noticeable change of shade" between the first and second shades. (Shull Decl., Ex. B. at 56, col. 4, ln. 64-65). This border may be created by variations in the outer radius of the elements of the second shade. (Shull Decl., Ex. B at 56, col. 6, ln. 34-35).

As with the second pair of disputed terms, Defendants again contends that the term "a jagged border separates said first and second portions" means that although the first and second portions may overlap somewhat at the jagged border, the two may not completely overlap over one another. (Joint Statement). However, as discussed *supra*, there is no intrinsic evidence in support of such a limitation. Rather, the specification states only that "some dots of the first shade may be mixed with dots of the second shade, so long as there is a jagged border or border zone across which there takes place a noticeable change of shade." (Shull Decl., Ex. B. at 56, col. 4, ln. 62-65). Neither the language of the term in dispute nor the specification states that the two shades may not completely overlap. A "noticeable change of shade" at the border, as required by the patent, may occur even if elements of the first shade appear throughout the iris.

Defendant also contends, without apparent dispute, that the border must be an "uninterrupted" line or zone. (Joint Statement, Def.'s P & A at 24). In other words, there may not be a break in the border; rather, at some point throughout the iris, the jagged border must delineate a noticeable change in shade between the outer and inner portions of the iris. This interpretation appears to be consistent with the location of the border described in claims one and thirteen. Each requires that the jagged border be located at a distance of between 5% and 95% of the radial width of the iris from the outer perimeter of the iris. (Shull Decl., Ex. B at 59, col. 10, ln. 8-14, ln. 54-59). As such, the specification appears to provide great flexibility as to the exact location of the jagged border within the iris, but does not allow for a break in such border. For that reason, the Court finds Defendant is correct that the 477 patent requires that the jagged border be uninterrupted. However, as stated *supra*, the patent merely requires that there take place a "noticeable change of shade" at the border. It does not limit the 477 patent to one where elements of the first shade cannot appear throughout the iris.

III. 240 PATENT

As stated *supra*, the 240 process patent concerns the method of manufacturing the contact lenses described in the 477 patent. Specifically, the 240 patent refers to the method of printing the surface of a clear lens with a coloring substance so as to produce a lens of the type described in the 477 patent. To accomplish this process, the lens, which is constructed of polymer, FN8 is coated with a coloring substance and a binding polymer. (Shull Decl., Ex. C at 61). The lens and binding polymer are then bonded to each other by the reaction of their functional groups. (*Id.*)

FN8. A "polymer" is a very large molecule that is made up of a chain of repeating units derived from small molecules in the same sense that a wall is made up of bricks. (Shull Decl., Ex. D at 72).

The Joint Statement of Disputed Terms indicates that the parties dispute three terms that appear in claims one and two of the 240 patent. These terms are as follows:

1. "coating at least a portion of a surface of the lens with a color coat comprising coloring substance, binding polymer having functional groups selected from at least one of -COOH, -OH, and -N-H-R, where R is hydrogen or C₁ to C₈ alkyl, and an additional compound having at least two groups per molecule selected from at least one of -NCO and epoxy,"
2. "binding the lens polymer to the binding polymer by the reaction of the functional groups selected from at least one -COOH, -OH, and -N-H-R, where R is hydrogen or C₁ to C₈ alkyl with the functional groups selected from at least one of -NCO and epoxy."
3. "The method of claim 1 wherein the additional compound contains two isocyanate groups."

The first two terms are in claim one and the third is in claim two.

Notwithstanding the Joint Statement, both parties acknowledge that the fundamental dispute involves the interpretation of the claim terms "isocyanate" and its chemical formula or abbreviation, "-NCO." (Pl.'s P & A at 16). FN9 Because this is the fundamental dispute between the parties, the Court limits its order to construing those terms. At the hearing, the parties agreed to this approach. As Defendant points out, its accused process does not involve coating a contact lens with an unreacted isocyanate. (Def.'s P & A at 4). Thus, not surprisingly, Defendant interprets the 240 patent as requiring the use of "unreacted" or "free" -NCO.FN10 Conversely, Plaintiff argues that no such limitation is present in the claim or the specification.

FN9. *Websters Third New International Dictionary* defines "isocyanate" as "a compound containing the univalent radical -NCO consisting of an isocyano group united with oxygen." "Isocyano" is defined as "relating to or containing the groups -NC."

FN10. For background, an isocyanate group that is attached to a compound may be "free" or "blocked." (Pl.'s P & A at 20-21). An isocyanate group that is available to react with other compounds is "free." (*Id.*). An isocyanate group that is "blocked" has been reacted with a second compound so that the compound becomes attached to the isocyanate group, thereby essentially blocking or protecting the isocyanate group from further reactions with other compounds. (*Id.*). Thus, Defendant's position is that the isocyanate used in the 240 process patent must be available to react with other compounds.

At the outset, the Court notes Defendant has failed to point to any language in the claims or the specification of the 240 patent which expressly limits the isocyanate used to "free" isocyanate. In fact, although the terms "-NCO" and "isocyanate" appear throughout the specification, at no place are those terms modified by the word "free." Moreover, the specification appears to provide for a broad definition of the type of isocyanate that may be used. It states, "Hexamethylene diisocyanate (OCN-(CH₂)₆-NCO) is the *preferred* isocyanate compound. However, use of *any isocyanate* having the formula R¹(NCO)_n wherein n is greater than or equal to two (preferably two) is within the scope of this invention." (Shull Decl., Ex. C at 64, col. 6, ln. 15-19) (emphasis added).FN11

FN11. Defendant places great emphasis on the fact that the preferred isocyanate is hexamethylene diisocyanate, which, it argues, is a "free" isocyanate. (Def.'s P & A at 5, 6; Risen Decl. para. 28). However, as this language indicates, the invention reads on *any isocyanate* with the designated formula. Federal circuit law is clear that what is patented is not limited to the examples used in the specification unless such a limitation appears in the language of the claims or the specification. *Specialty Composites v. Cabot Corp.*, 845 F.2d 981, 987 (Fed.Cir.1998).

In asserting that the use of "isocyanate" and its chemical formula "-NCO" in the 240 patent is limited to "free" isocyanate or -NCO, Defendant argues, as its counsel put it at the hearing, that isocyanate (-NCO) can only mean, or can only consist of, "free" -NCO. In support of this argument, Defendant relies exclusively on expert testimony coupled with textbook definitions.FN12 Specifically, Defendant puts forth the declaration and deposition testimony of William M. Risen, a Professor of Chemistry at Brown University. Mr. Risen's declaration states that "-NCO as used in the '240 patent claims, and as disclosed in the '240 patent specification means unreacted isocyanate (sometimes referred to as 'free' isocyanate)." (Risen Decl. para. 26). Dr. Rosen also states that "-NCO" does not include the chemical formula "RNHCOOR," which is a urethane. (Risen Decl. para. 27). In support of these claims, Dr. Risen cites a textbook on Organic Chemistry. (Risen Decl., Ex. F). However, apart from its dubious value in construing a claim, that textbook definition does not clearly support the opinion offered. Nor does the definition from *Hackh's Chemical Dictionary*, to which Defendant pointed at the hearing.

FN12. Both at the hearing and in its brief, Defendant argued the prosecution history of the 240 patent indicates Plaintiff gave up any claim to a process using "blocked" isocyanates. (Def.'s P & A at 7-10). However, the Court does not find a basis in the prosecution history to conclude that Plaintiff is precluded from having the patent construed to include *all* isocyanates.

Defendant's reliance on expert testimony results from the fact that there is no language in the claims or the specification which supports the conclusion that the 240 patent is limited to "free" isocyanate or -NCO. Indeed, as stated *supra*, the specification contains such broad language-"use of *any isocyanate* having the formula $R^1(NCO)_n$ wherein n is greater than or equal to two (preferably two) is within the scope of this invention" (Shull Decl., Ex. C at 64, col. 6, ln. 15-19) (emphasis added)-that it supports Plaintiff's position. At the hearing, the Court asked the parties whether there can be an isocyanate with the chemical formulation $R^1(NCO)_n$ that is blocked. (If so, Plaintiff's construction is correct; if not, as Defendant contends, the 240 patent is limited to "free" isocyanates). Their answers were far from illuminating and, predictably, at odds. Defendant's best argument was that the formula, in diagram form, expressly contemplates two isocyanates joined by a placeholder (R). The isocyanates, Defendant argued, are thus "free" to react with other functional groups, as shown in the diagram below.

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Plaintiff's best argument makes use of a chemistry textbook, which points out that the "capping or blocking" of isocyanates is considered a special way of modifying isocyanates. (Shull Decl., Ex. G at 81). This "capping or blocking" can be reversed under certain conditions, such as heat, to produce a free isocyanate. (Id.). Thus, Plaintiff argues, any distinction between a "blocked" isocyanate and a "free" one can readily be eliminated, and the patent's reference to *any isocyanate* indicates that either "free" or "blocked" isocyanates may be used at points in the process.

The Court cannot conclude which, if either, of the alternative and rather confusing arguments the parties made in court is correct, but believes it need not reach such a determination. The language of the specification is plain: "any isocyanate" means "any isocyanate." That is, given that isocyanates may be "free" or "blocked," the use of the term "any" indicates that the claim includes the use of *either* "free" or "blocked" isocyanates. Thus, Defendant's position that the patent is restricted to the use of "free" isocyanates would impose a limitation not present in the specification. Federal Circuit law is clear that where the specification does not require a proposed limitation, that limitation should not be read into the claims. *Specialty Composites v. Cabot Corp.*, 845 F.2d 981, 987 (Fed.Cir.1988); *Comark Communications, Inc. v. MAC Panel Co.*, 133 F.3d 860, 865-66 (Fed.Cir.1997). The Court follows this rule and finds the 240 patent is not limited to a process using "free" isocyanates or its chemical formula, -NCO.

CONCLUSION

For all the foregoing reasons, and good cause appearing therefor, the Court construes the disputed terms as described in the foregoing order.

IT IS SO ORDERED.

C.D.Cal.,2002.

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