

United States District Court,
S.D. Texas, Houston Division.

CUDD PRESSURE CONTROL, INC,
Plaintiff.

v.

WESTBURY SERVICE COMPANY, L.L.C. d/b/a Downhole Injection Systems,
Defendant.

July 10, 2002.

Charles John Rogers, Conley Rose, P.C., Robert Charles Shaddox, Winstead Sechrest, et., al., Houston, TX,
for Plaintiff.

Bill D. McCarthy, David Michael Sullivan, Phillip L. Free, Jr., Crowe and Dunlevy, Oklahoma City, OK,
Lester L. Hewitt, Akin Gump, et., al., Houston, TX, for Defendant.

ORDER

JOHN D. RAINEY, District Judge.

This is a declaratory judgment action in which Plaintiff Cudd Pressure Control, Inc. ("Cudd") seeks a ruling that Cudd has not infringed United States Patent No. 5,937,943 ("the '3 Patent") and that the '3 Patent is invalid and unenforceable. Westbury Service Company, L.L.C. ("Westbury") is the owner of the '3 Patent. On March 6, 2002 the Court held a *Markman* hearing to construe the claims of the '3 Patent.

THE PATENTED DEVICE

The '3 Patent is titled "Tubing Insertion and Withdrawal Apparatus for Use with a Live Well" and describes "an apparatus and method to insert continuous lengths of small diameter tubing into a live oil well or the like, and for withdrawing the tubing therefrom." U.S. Patent No. 5,937,943 at col. 1, 11.15-18. Such tubing is used to inject various fluids into an oil well in order to "displac[e] undesirable fluids within the well ... stimulat[e] production of the well and ... clean[] and prevent[] corrosion of expensive well components." *Id.* at col. 1, 11. 20-27.

DISPUTED CLAIMS

There are 32 claims in the '3 Patent, but the parties have narrowed their dispute to claim 18. Within claim 18 the parties disagree only as to the meaning of the following language: "[A] support means for supporting the tubing insertion and withdrawal assembly on the well." *Id.* at col. 14, 11. 56-57. The parties agree that this is a means-plus-function claim under 35 U.S.C. s. 112, para. 6. The parties also agree that the following elements disclosed in the '943 Patent perform the support function described in claim 18:

- (a) two members that each include an arcuate portion;
- (b) clevis members that selectively engage the support stand assembly with the frame; and
- (c) a pin for securing the support stand assembly to the frame.

Cudd contends that the following additional structures also perform the support function described in claim 18:

- (c₁) a locking pin that slidingly engages the clevis members of the support stand assembly and the clevis members of the support frame in order to form a hinged connection between the support stand assembly and the support frame;
- (d) a plurality of fasteners that join the arcuate portions of the two members and clamp the support stand assembly to a hydraulic pack-off unit; and
- (e) a platform that supports a conventional load cell for monitoring the resistance experienced by the tubing during insertion or withdrawal.

Thus, there are three claim construction issues that must be resolved by the Court: 1.) Whether the arcuate portions of the support stand assembly must be clamped to the well head, 2.) Whether the pin that connects the support stand assembly to the support frame must slidingly engage the support frame, and 3.) Whether the support stand assembly must include a load cell support platform.

CLAIM CONSTRUCTION STANDARD

In construing the claims of a patent the court must consider all of the intrinsic evidence, that is, the claims, the specification, and the prosecution history. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). However, in the present case, the parties agree that the prosecution history provides little guidance in construing the claims of the '943 Patent.

Interpreting a means-plus-function claim is a two-step process. First, the Court must determine "the function of the means-plus-function limitation." *Globetrotter Software, Inc. v. Elan Computer Group*, 236 F.3d 1363, 1368 (Fed.Cir.2001). In the present case, the parties agree that the function described in claim 18 is supporting the tubing injection and withdrawal assembly on the well head.

The second step in construing a means-plus-function claim "is to determine the corresponding structure described in the specification and equivalents thereof." *Id.* In making this determination a "structure disclosed in the specification is [a] 'corresponding' structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim." *B. Braun Med., Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 (Fed.Cir.1997). A structure disclosed in the specification is not a corresponding structure if it merely enables another structure to perform the recited function. *Asyst Techs., Inc. v. Empak, Inc.*, 268 F.3d 1364, 1371 (Fed.Cir.2001). For example, although a toaster will not work without an electrical outlet, the electrical outlet does not toast bread. *See id.* However, when the specification clearly identifies a structure as "an essential part of the structure required to perform the claimed function" it is proper to construe that structure as part of the means-plus-function claim. *Globetrotter*, 236 F.3d at 1368. In addition, when interpreting claims "[u]nder s. 112, para. 6, a court may not import functional limitations that

are not recited in the claim, or structural limitations from the written description that are unnecessary to perform the claimed function." *Wenger Mfg., Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1233 (Fed.Cir.2001). The patent claims are also not limited to the specific embodiment described in the specification, but also cover any equivalent structures. *Globetrotter*, 236 F.3d at 1369 n. 2; *Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc.*, 145 F.3d 1303, 1308 (Fed.Cir.1998) (holding that a means-plus-function claim "must be construed 'to cover the corresponding structure, material, or acts described in the specification and equivalents thereof" (quoting 35 U.S.C. s. 112, para. 6)). However, it is not necessary for the Court to attempt to include every conceivable equivalent structure in its claim construction. *See Globetrotter*, 236 F.3d at 1366 (approving the following claim construction: "LICENSE FILE MEANS FOR STORING is an area of memory on the disk of a NODE, capable of storing at least one LICENSE, and containing at least one UID). Equivalents of the structure just described also constitute LICENSE FILE MEANS FOR STORING."); *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1347 (Fed.Cir.2001) (approving the following claim construction: "[A] slight taper at the portion of each indicia situated closest to the palm of the hand, and any equivalents of such structure."). Ultimately, the question of equivalence under s. 112, para. 6 is a question of fact for the jury. *Asyst Techs.*, 268 F.3d at 1373; *IMS Tech., Inc. v. Haas Automation, Inc.*, 206 F.3d 1422, 1430 (Fed.Cir.2000); *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1268-69 (Fed.Cir.1999).

ANALYSIS

I. The Clamping Fasteners

In regard to the fasteners that connect the two arcuate portions of the support arms that both parties agree perform the support function described in claim 18, the '3 Patent states:

The support stand assembly 204 provides a two-piece support stand and has a first member 212 and a second member 214 that are joined together by a plurality of fasteners 216. Each of the first and second members 212, 214 forms an arcuate portion which, when joined by fasteners 216, clamps the support stand assembly 204 to the hydraulic pack-off unit 210.

U.S. Patent No. 5,937,943 at col. 9, 11. 32-38. Because the two-piece support stand assembly could not stay on the well head unless the two pieces were fastened together, the "plurality of fasteners" described in the specification is an "essential part" of the supporting structure and not merely an enabling device. *Globetrotter*, 236 F.3d at 1368. However, it would be improper to import the "clamping" function attributed to these fasteners into claim 18's support function. Thus, the Court construes claim 18 to require: "A plurality of fasteners that join the arcuate portions of the two members."

II. A Sliding Pin

In regard to the pin that connects the clevis members on the support stand assembly to the clevis members on the support frame, the '3 Patent states:

The support stand assembly 204 has a pair of clevis members 218, 220 which are spatially separated so as to flank the clevis members 206, 208 of the support frame 20. With all four clevis members 206, 208, 218, 220 aligned, a pin 222 is inserted there through to secure the support frame 20 of the tubing insertion and withdrawal assembly 18 to the support stand assembly 204. The pin 222 has a handle portion 224 which, when the pin 222 is fully inserted, passes into a locking channel formed by a locking tab 226 to retain the pin 222 in a locked position.

U.S. Patent No. 5,937,943 at col. 9, 11. 39-48. Although, the parties agree that the pin discussed in the specifications does perform a supporting function, the parties have also devoted a good deal of space in their briefs to debating whether or not the pin must "slidingly" engage the various clevis members described in the specification. It is entirely unclear to the Court how a pin can engage clevis members without sliding. However, contrary to Cudd's assertion that inserting the word "slidingly" into the claim construction will help to prevent jury confusion, the Court believes that such redundancy would only enhance the possibility that the jury will misunderstand the Court's claim construction. The true locking pin debate appears to be over whether or not claim 18 is limited to a pin, as opposed to a bolt, screw, or other similar device, and whether multiple pins that engage different sets of clevis members can be used instead of the single pin configuration disclosed in the specification. Westbury argues that the alternative configurations mentioned above are structural equivalents of the design disclosed in the specification. However that may be, the specification discloses only a single pin and the question of what structures are equivalent to that single pin design is a question of fact that must be addressed by the jury or a motion for summary judgment. Thus, the Court construes claim 18 to require: "A locking pin that engages the clevis members of the support stand assembly and the clevis members of the support frame."

III. The Load Cell Support Platform

In regard to the load cell support platform, the '3 Patent states:

The support stand assembly 204 furthermore has a platform 228 to support a conventional load cell (not shown). The support frame 20 of the tubing insertion and withdrawal assembly 18 is thus supported upon the load cell so that the weight of suspended tubing 11 can be monitored as it is inserted or withdrawn to anticipate difficulties associated with restrictions to a smooth insertion or withdrawal of the tubing 11 from the oil well 12.

U.S. Patent No. 5,937,943 at col. 9, 11. 55-62. The parties agreed during the *Markman* hearing that the two arcuate members described in the patent specification are insufficient by themselves to perform claim 18's supporting function because a third point of support is required to support the tubing insertion and withdrawal assembly on the well head. In the '3 Patent's specification the support frame is described as being supported on the load cell which is in turn supported on the load cell support platform. The fact that the load cell serves as an intermediary between the support frame and the load cell support platform and that the load cell support platform also performs a weighing function in no way diminishes the load cell support platform's role in keeping the tubing injection and withdrawal assembly from falling off the well head. In addition, although a design in which an additional arm, instead of a load cell support platform, is extended from one of the arcuate members may be an equally conceivable configuration for the support stand assembly, the structure actually disclosed in the patent specification as providing the third point of support for the tubing injection and withdrawal assembly is the load cell support platform. Once again, equivalence is a factual issue that must await determination by either the jury or a proper motion for summary judgment. However, it would be improper to import a weighing function into claim 18. Thus, the Court construes claim 18 to require: "An additional support platform."

CONCLUSION

The Court construes the "support means for supporting the tubing insertion and withdrawal assembly on the well" limitation of claim 18 of the '3 Patent as follows:

- (1) The function of claim 18 is to support the tubing insertion and withdrawal assembly on the well head.
- (2) The corresponding structure described in the specification includes:
 - (a) two members that each include an arcuate portion;
 - (b) a plurality of fasteners that join the arcuate portions of the two members;
 - (c) clevis members that selectively engage the support stand assembly with the frame;
 - (d) a locking pin that engages the clevis members of the support stand assembly and the clevis members of the support frame; and
 - (e) an additional support platform.
- (3) Equivalents of the structure described in (2) above also constitute a means for supporting the tubing injection and withdrawal assembly on the well head.

It is so ORDERED.

S.D.Tex.,2002.

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