

United States District Court,
D. Utah, Central Division.

MEGADYNE MEDICAL PRODUCTS, INC., a Utah corporation,
Plaintiff.

v.

TRIAD SURGICAL TECHNOLOGIES, INC., a Utah corporation, Inova Systems, Inc., a Utah corporation; Brian McGavin, an individual; Ashok Khandkar, an individual; et al,
Defendants.

No. 2:00-CV-548-ST

Oct. 11, 2002.

CLAIMS CONSTRUCTION ORDER

TED STEWARD, District Judge.

I. Introduction

Plaintiff, MegaDyne Medical Products, Inc., filed this action against Triad Surgical Technologies, Inc., and Inova Systems, Inc., claiming that Defendants have infringed U.S. Patent Number 4,785,807 (the '807 patent), which MegaDyne owns. MegaDyne subsequently amended its complaint to add defendants AshokKandkar and Brian McGavin as defendants for inducement of patent infringement in violation of 35 U.S.C. s. 271(b).

The court conducted a hearing pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995), *aff'd*, 517 U.S. 370 (1996), for the purpose of construing certain disputed terms in claims 1 and 5 of the '807 patent. The court has considered all of the parties' written submissions on these matters, as well as the arguments made at the hearing, and the prior claim construction order of Judge Tena Campbell rendered for the '807 patent in the case *MegaDyne Medical Products, Inc. v. Aaron Medical Industries, Inc., et al*, Civil No. 2:96-CV-233C.

Written orders have been delayed in this case due to the premature appeal and Defendants' letter request to extend the time to file objections to Plaintiff's proposed orders pending preparation of a complete transcript. The transcript was prepared but no objection has been received from Defendants. The court construes the claims as follows:

II. Background

MegaDyne owns the '807 patent, which is directed to an electrosurgical instrument, the blade of which is coated with a fluorinated hydrocarbon material commonly known as Teflon. According to MegaDyne, this invention solved a long-standing problem in electrosurgery concerning the buildup of flesh on the electrosurgical instrument during surgery. Typically during electrosurgery, surgeons use a stainless steel

blade placed in a holder known as an electrosurgical "pencil," which is attached to an electrosurgical generator. When the electrosurgical blade contacts the patient's flesh, electricity passes from the generator to the electrosurgical blade causing electrical heating of the flesh and cauterizing bleeding vessels. Although the cauterization effect of electrosurgery is beneficial, the heating of flesh during surgery causes the flesh to stick to the stainless steel electrosurgical blade. This buildup reduces the effectiveness of cauterization and thus must be removed, causing delays in surgery and increasing operating room costs.

Although Teflon, with its non-stick properties, would appear to be a simple solution to the problem, it is an electrical insulator. The innovation of the MegaDyne invention is that the surgical blade has a dual coating that reduces eschar buildup, while still transferring electricity to the flesh.

Defendants manufacture an electrosurgical instrument with a coated electrosurgical blade, called the "Skysaber," which MegaDyne contends infringes claims 1 and 5 of the '807 patent.

III. Claims at Issue

Independent claim 1 of the '807 patent claims:

An electrosurgical instrument for use with a source of radio-frequency electrical energy during surgery to cauterize tissue, said instrument comprising:

- a. a stainless steel portion of said instrument for receiving said radio-frequency energy and having at least one flesh contacting surface formed thereon,
- b. a first coat of primer material covering at least all of said flesh contacting surface, and
- c. a second coat of fluorinated hydrocarbon material entirely covering the primer material to cause a total thickness of the first and second coats of about 3 mils thereby enabling said radio-frequency energy to be transported across said coatings to said flesh by capacitive coupling.

Independent claim 5 reads:

An electrosurgical knife for utilizing radio-frequency energy to cause hemostasis during surgery comprising:

- a. a stainless steel blade at least a part of whose surface is abraded,
- b. a first coat of primer material covering said abraded surface of said blade, and
- c. a second coat of non-stick fluorinated hydrocarbon material completely covering said primer material only to a thickness sufficient to ensure transmission of radio-frequency electrical energy from said blade to said flesh essentially exclusively by capacitive coupling to cause hemostasis during surgery.

Defendants claim that their blade does not infringe MegaDyne's '807 patent and disputes MegaDyne's construction of certain terms found in claims 1 and 5 of the '807 patent.

IV. Principles of Claim Interpretation

The first crucial step in a patent infringement case is to properly construe the claims of the patent to

determine its scope and meaning. *Serrano v. Telular Corp.*, 111 F.3d 1578, 1582 (Fed.Cir.1997); *Vitronics Corp. v. Conceptionics, Inc.*, 90 F.3d 1576, 1581-82 (Fed.Cir.1996). This claim construction or claim interpretation is strictly a question of law for the court. *Markman*, 52 F.3d at 979. When construing the claims the court should first look to the intrinsic evidence of record, *i.e.*, the patent itself, including the claims, the specification and, if in evidence, the prosecution history. *CVI/Beta Ventures, Inc. v. Tura LP*, 112 F.3d 1146, 1152 (Fed.Cir.1997) (quoting *Vitronics*, 90 F.3d at 1582). Such intrinsic evidence is the most significant source of the meaning of disputed claim language. *Vitronics*, 90 F.3d at 1582. Extrinsic evidence, such as expert testimony, should not be relied upon unless an analysis of the intrinsic evidence alone will not resolve all the ambiguity in a disputed claim term. *Id.* at 1583.

The court must first look to the words of the claims themselves to define the scope of the patented invention. *Id.* at 1582; *Markman*, 52 F.3d at 979. Words in a claim are generally given their ordinary and customary meaning, but a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is stated in the patent specification or file history. *Vitronics*, 90 F.3d at 1582; *Hoechst Celanese Corp. v. BP Chems Ltd.*, 78 F.3d 1575, 1578 (Fed.Cir.1996) *cert. denied*, 117 S.Ct. 275 (1996) ("A technical term used in a patent document is interpreted as having the meaning it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and prosecution history that the inventor used the term with a different meaning.") (internal citations omitted).

The specification must be reviewed to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning. *Vitronics*, 90 F.3d at 1582. "For claim construction purposes, the specification may act as a sort of dictionary, which explains the invention and may define terms used in the claims." *Markman*, 52 F.3d at 979. "Thus, 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 court should also consider the prosecution history of the patent. *Id.* "This history contains the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims. As such, the record before the Patent and Trademark Office is often of critical significance in determining the meaning of the claims. *Id.*; *see also* *Southwall Technologies, Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576 (Fed. Cir.1995), *cert. denied*, 1165 Ct. 515 (1995) ("The prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution.") (internal citations omitted). The court may also examine the prior art cited within the file history to obtain a general idea of what the claims do not cover. *Vitronics*, 90 F.3d at 1583.

The court has considered the claim construction order in *MegaDyne Medical Products, Inc. v. Aaron Medical industries, Inc.*, and finds it to be a well-reasoned construction of the claims under the law cited above. The court also recognizes that this prior claim construction order has been a part of the public record since January of 1998.

Because claim construction is an issue of law, under some circumstances the doctrine of *stare decisis* may require the court to follow a previous court's construction of the same claim. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 391 (1996) ("whereas issue preclusion could not be asserted against new and independent infringement defendants even within a given jurisdiction, treating interpretive issues as purely legal will promote (though it will not guarantee) intrajurisdictional certainty through the application

of *stare decisis* on those questions not yet subject to interjurisdictional uniformity under the authority of the single appeals court"). However, while this court may defer to another district court's claims construction opinion on the same claims that are before it, the appropriateness of such deference should be decided on a case by case basis. *Texas Instruments, Inc. v. Linear Technologies Corp.*, 182 F.Supp.2d 580 (E.D.Tex.2002). In this case, the court has independently considered the claims and has also considered the prior order construing the claims. The court believes that the prior order correctly construes the claims in accordance with the claim construction principles set forth in the federal circuit case law. Because the court construes the claims in the same manner as the prior order, it is not necessary to determine if the application of *stare decisis* is required.

IV. Interpretation of Claims 1 and 5 of the '807 Patent

A. CLAIM 1:

With these guidelines in mind, the court now turns to the construction of the disputed terms in the claims of the '807 patent. The first claim of the '807 patent recites the following five terms or features that must be construed: (1) "about 3 mils"; (2) "a second coat of fluorinated hydrocarbon material"; (3) "entirely covering the primer material"; (4) "at least one flesh contacting surface"; and (5) "capacitive coupling."

The phrase "about 3 mils" is construed to mean "in the order of 1 to 3 mils," consistent with the file history definition. This meaning is also consistent with the prior claims construction order. The phrase "a second coat of fluorinated hydrocarbon material" is also construed to mean to mean "a second layer of certain non-stick material that includes Teflon." This meaning is also consistent with the prior claims construction order. This definition contemplates a generic version of the type of material disclosed in the specification. The phrases "entirely covering the primer materia!" and "at least one flesh contacting surface" are given their plain meanings. Finally, the term "capacitive coupling" is construed to mean "the greater part of the transmission of electrical energy is across rather than through an insulator," thus requiring there to be a downward limit to the value, as defendant argued.

The fifth claim of the '807 patent recites the following two terms or features that must be construed; (1) completely covering and (2) capacitive coupling. The term "completely covering" is given its plain meaning. The term "capacitive coupling" is construed to mean "alternating current across rather than through the blade."

D.Utah,2002.

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