

United States District Court,
S.D. Texas, Corpus Christi Division.

CHEVRON PHILLIPS CHEMICAL COMPANY LP,
Plaintiff.

v.

BJ SERVICES COMPANY,
Defendant.

Civil Action No. C-02-299

March 16, 2003.

J. Christopher Reynolds, Jean C. Frizzell, Gibbs & Bruns, Houston, TX, Darrell Lee Barger, Hartline Dacus et al., Corpus Christi, TX, for Plaintiff.

William Charles Slusser, Michael E. Wilson, Slusser Wilson & Partridge LLP, Houston, TX, J.A. Tony Canales, Canales & Simonson, Corpus Christi, TX, for Defendant.

ORDER CONSTRUING CLAIM 1 OF UNITED STATES PATENT NO. 5,165,477

JANIS GRAHAM JACK, District Judge.

On November 25 and 26, 2002, the Court conducted a *Markman* hearing in the above-captioned case. FN1 After considering the testimony of witnesses and arguments of counsel, as well as the submissions of the parties, the Court issues the following order construing claim 1 of the patent in question.

FN1. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995)(en banc), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384 (1996). A *Markman* hearing is an evidentiary presentation to the court on the issue of interpreting the claims of a patent.

I. JURISDICTION

The Court has jurisdiction over this suit pursuant to 28 U.S.C. s.s. 1331 and 1338.

II. FACTS AND PROCEEDINGS

Plaintiff Chevron Phillips Chemical Company LP ("CP Chem") is the owner of U.S. Patent No. 5,165,477 ("477 Patent"), FN2 entitled "Enzymatic Decomposition of Drilling Mud." The ' 477 Patent relates to "compositions and methods for removing drilling mud from subterranean formations and wellbores." (Pl.'s Compl. para. 8.) CP Chem alleges that Defendant BJ Services Company ("BJ Services") has infringed the ' 477 Patent.

FN2. On November 24, 1992, the '477 Patent was issued to Phillips Petroleum Co. ("Phillips"), as assignee of Francis Shell and Donald Hitzman. On January 22, 2001, Phillips assigned the '477 Patent to CP Chem.

On November 20, 2002, both CP Chem and BJ Services submitted, independently, pre-hearing *Markman* briefs. FN3 On November 25 and 26, 2002, the *Markman* hearing took place. On January 15, 2003, CP Chem filed a post- *Markman* hearing brief ("CP Chem post-Markman"). On January 30, 2003, BJ Services filed a response to CP Chem's post-Markman brief. ("BJ Serv. post-Markman"). On February 12, 2003, CP Chem filed a reply brief to BJ Services response. The Court now considers claim 1 of the ' 477 Patent.

FN3. These submissions will be referenced as "CP Chem pre-Markman" and "BJ Serv. pre-Markman," respectively.

III. DISCUSSION

A. Patent Claim Construction

The Court construes the meaning of language used in a patent claim as a matter of law. *See Markman*, 52 F.3d at 979. In interpreting the language of a claim, "the court should look first to the intrinsic evidence of the record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). If the Court's "analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term ... it is improper to rely on extrinsic evidence." *Vitronics*, 90 F.3d at 1583. A court may, however, consider extrinsic evidence, such as expert testimony, in order to educate itself on the meaning of technical terms and terms of art. *See Markman*, 52 F.3d at 980.

When construing the language of a claim, the words of the claim "are generally given their ordinary and customary meaning," as they are understood by one skilled in the art. *Vitronics*, 90 F.3d at 1582. Indeed, "a court must presume that the terms in the claim mean what they say, and, unless otherwise compelled, give full effect to the ordinary and accustomed meaning of claim terms." *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 989 (Fed.Cir.1999).

The ordinary meaning of claim terms can be ignored in only two situations. First, a patentee can "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 clearly stated in the patent specification or file history." *Vitronics*, 90 F.3d at 1582; *see also Zebco*, 175 F.3d at 990; *Markman*, 52 F.3d at 980. Second, "the term or terms chosen by the patentee [can] so deprive the claim of clarity that there is no means by which the scope of the claim may be ascertained from the language used." *Zebco*, 175 F.3d at 990.

A patent's specification-the text of a patent other than the claims themselves-should also be considered in interpreting disputed claim language. Although "the general rule ... is that the claims of a patent are not limited to the preferred embodiment," *Karlin Tech., Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968, 973 (Fed.Cir.1999), "[c]laims must be read in view of the specification, of which they are a part." *Markman*, 52 F.3d at 979.

If the prosecution history of a patent is in evidence, it should also be consulted by the court in construing disputed claim language. *See Markman*, 52 F.3d at 980. The prosecution history "is of primary significance

in understanding the claims," and "[t]he court has broad power to look as a matter of law to the prosecution history of the patent in order to ascertain the true meaning of language used in the patent claims." *Id.* For example, the theory of "[p]rosecution history estoppel bars the patentee from recapturing subject matter that was surrendered by the patentee during prosecution in order to promote allowance of the claims." *In situform Techs., Inc. v. Cat Contracting, Inc.*, 99 F.3d 1098, 1107 (Fed.Cir.1996).

B. The '477 Patent

Claim 1 of the '477 Patent reads as follows:

A method of removing used drilling mud of the type comprising solid materials including at least one polymeric organic viscosifier from a wellbore and portions of formations adjacent thereto comprising:

injecting a well treatment fluid comprising an enzyme capable of rapidly enzymatically degrading said polymeric organic viscosifier into said well; and

allowing said enzyme to degrade said polymeric organic viscosifier and said well treatment fluid to disperse said used drilling mud.

(477 Patent, col 16, lines 47-56). FN4 The Court will address each limitation, and any limitation subsets, in turn.

FN4. Hereinafter, citations to the '477 Patent will be made as "column:line(s)," making the above citation "16:47-56."

1. "A method of removing used drilling mud "

The '477 Patent specification defines 'used drilling mud:' " 'used' drilling mud means ... drilling mud or residual mud *remaining in contact with the wellbore or in portions of formations adjacent thereto (the well face)*." (4:43-48)(emphasis added). Accordingly, the specification adds a position, or location, requirement to the first limitation. Both parties agree that such a position requirement must be construed in this limitation, but dispute how the position requirement must be construed.

The parties dispute whether 'portions of formations adjacent thereto (the well face)' must be further construed, CP Chem arguing in the negative and BJ Services in the affirmative. Both parties agree that 'portions of formations adjacent thereto' is synonymous with 'well face.' (*See* CP Chem post-Markman at 27, 28; BJ Serv. post-Markman at 13 [both *citing* 3:40-41, 4:28-29, 4:47-48, and 8:40-41.]) However, CP Chem argues only the first phrase is necessary while, in contrast, BJ Services argues only the latter phrase is necessary.

CP Chem bases its argument for using 'portions of formations adjacent thereto' on the fact that the claim language itself, in the fourth limitation, uses this language without the parenthetical 'well face.' (*See* 16:49-50.) CP Chem notes that 'well face,' to the extent it is used in the specification, is synonymous with 'portions of the formations adjacent thereto.' (CP Chem post-Markman at 27.) Therefore, because "the claim language and the specification's definitions ... rely primarily upon ... 'portions of the formations adjacent thereto,'" CP Chem argues, there is no reason to vary from using only that phrase. (CP Chem post-Markman at 27.)

BJ Services, on the other hand, argues that the term 'portions of formations adjacent thereto' alone does not provide sufficient guidance regarding the extent into the portion of a formation from which mud must be removed to satisfy the '477 Patent. (*See* BJ Serv. post-Markman at 13.) BJ Services claims that using the synonymous term 'well face' gives sufficient guidance because it "refers to the portion of a formation invaded by polymers from drilling mud ('the bridging zone'), which is usually only one or two sand grains into the formation." (*Id.*) In other words, BJ Services asserts that " 'well face' indisputably defines the portion of a well formation into which a well treatment fluid is injected and from which polymers are removed under the claims of the '477 patent." (*Id.*)

This Court agrees with BJ Services that the phrase 'portions of formations adjacent thereto' gives insufficient guidance regarding *the extent* into the portion of a formation from which mud must be removed to satisfy the '477 Patent. Without any further construction, that phrase alone could potentially mean the *entire* formation adjacent to the well despite the fact that a person skilled in the art understands that drilling mud does *not* go into the entire formation adjacent to a well.

The abstract of the '477 Patent states that the patent provides a method "of removing used drilling mud from a wellbore and around *the well face*." ('477 Patent, Abstract)(emphasis added) The abstract of a patent is a "potentially useful source of intrinsic evidence as to the meaning of a disputed claim term" when determining the scope of a claim. *Tate Access Floors, Inc. v. Maxcess Tech., Inc.*, 222 F.3d 958, 965 n. 2 (Fed.Cir.2000)(*citing* *Hill-Rom Co. v. Kinetic Concepts, Inc.*, 209 F.3d 1337, 1341 n.* [Fed. Cir.2000]["[w]e have frequently looked to the abstract to determine the scope of the invention."]) Moreover, the specification itself, as cited by the parties, uses 'well face' in a parenthetical after using 'portions of formations adjacent thereto.' (*See* 3:40-41, 4:28-29, 4:47-48, and 8:40-41.) As the phrase 'well face' gives greater guidance with respect to the extent into the formation from which mud must be removed to satisfy the '477 Patent, as 'well face' is synonymous with 'portions of the formations adjacent thereto,' and as the abstract uses 'well face' alone, this Court views 'well face' as the best construction.

Lastly, the parties agree that 'used drilling mud' must be construed as having remained in contact with the wellbore *as well as* the well face, despite the disjunctive "or" employed in the 'used drilling mud' definition in the specification; the wellbore and well face must be referenced conjunctively. The Court agrees because the fourth limitation, 'from a wellbore and portions of the formations adjacent thereto,' requires removal from both positions (see 16:49-50); the conjunctive 'and'-not the disjunctive 'or'-is used. Accordingly, the first limitation must also be construed in the conjunctive, not disjunctive. FN5

FN5. This construction is consistent with the patent as a whole, considering the other independent claim of the '477 Patent-Claim 10. Claim 10 discloses a method of removing used drilling mud from the cavity between a well casing (absent in Claim 1) and the well face-but *not* the wellbore. (*See* 17:29-43.)

The Court concludes that the proper construction of the first limitation is "a method of removing used drilling mud remaining in contact with the wellbore and the well face." This is the most reasonable interpretation based on the predominate use of the term in the patent, despite one or two arguably ambiguous references in the specification. FN6

FN6. BJ Services asserts that fracturing with enzyme breakers is not a "method of removing used drilling mud." (BJ Serv. post-Markman at 7-12). However, as CP Chem points out, "[w]hether the removal of used drilling mud during the fracturing process falls within [the '477 Patent] parameters is of no consequence

during the claim construction process." (CP Chem post-Markman at 4.) Although this Court has reservations on whether the claimed method covers well fracturing jobs, at this juncture it need not make such a determination.

2. "*of the type comprising solid materials*"

There is no dispute between the parties regarding the construction of this limitation. Both agree that this limitation should be construed as meaning that "the used drilling mud must include solid materials as one of its ingredients." This Court concurs with the parties' construction of the second limitation. 'Comprising' is a special term in patent law that means "including at least all of the following and potentially more." *Vehicular Technologies Corp. v. Tital Wheel Int'l, Inc.*, 212 F.3d 1377, 1382-83 (Fed.Cir.2000). Here, 'comprising' adds a further requirement that the used drilling mud to be removed must be of the type that includes 'solid materials.' Both parties agree that, in this context, a person skilled in the art would understand that the used drilling mud must include solid materials as one ingredient of the mud, as drilling muds are typically formulated to contain solid materials as one ingredient of the drilling mud.

The Court concludes that the proper construction of the second limitation is "the used drilling mud must include solid materials as one of its ingredients."

3. "*including at least one polymeric organic viscosifier*"

For the most part, there is no dispute between the parties regarding the construction of this limitation. Both agree that this limitation should be construed as meaning that "the used drilling mud must include as another ingredient at least one polymeric organic viscosifier." The '477 Patent specification explicitly defines a polymeric organic viscosifier ("POV") as "a compound that increases the plastic viscosity, yield point and/or gel strength of drilling mud." (4:52-54).

Although admitting that the specification explicitly defined a POV, BJ Services wishes to add the phrase 'the thickness of drilling mud by increasing' after the word 'increases' in the definition because, according to BJ Services, compounds that increase the plastic viscosity, yield point and/or gel strength of drilling mud "in simple terms, increase its thickness." (BJ Serv. post-Markman at 25; *see also* BJ Serv. pre-Markman at 10 [the terms plastic viscosity, yield point and/or gel strength all "relate to the thickness of the mud."]) CP Chem argues there is no reason to vary from the specification's definition as it does not include the additional language. (CP Chem post-Markman at 24.) Also, CP Chem asserts that BJ Services' suggested language should be rejected because it would potentially input improper additional limitations. (*Id.*)

The Court agrees with CP Chem that the suggested additional POV definition language is unnecessary. Although the specification does explicitly contrast polymeric additives that increase "the rheological properties (e.g. plastic viscosity, yield point value, gel strength) of drilling mud" from those that do not, "such as thinners and flocculents," (1:66-2:4), the '477 Patent specification POV definition did *not* include such language. As the specification explicitly gave an unambiguous POV definition, that definition should be used. *See Vitronics*, 90 F.3d at 1582. BJ Services has not given any reason, much less a convincing one, to vary from the specification definition. In fact, if plastic viscosity, yield point, and/or gel strength of mud all increase drilling mud's thickness as BJ Services asserts, then the additional language would be superfluous. Accordingly, this Court determines that the POV definition need not be construed with such additional language.

The Court concludes that the proper construction of the third limitation is "the used drilling mud must include as another ingredient at least one polymeric organic viscosifier" where "polymeric organic viscosifier" means "a compound that increases the plastic viscosity, yield point and/or gel strength of drilling mud."

4. "*from a wellbore and portions of formations adjacent thereto* "

The parties' constructions regarding this limitation are:

CP Chem's construction	BJ Services' construction
The used drilling mud <i>is</i> removed from the wellbore and <i>portions of the formation adjacent thereto</i> .	The used drilling mud <i>must be</i> removed from <i>both</i> the wellbore and <i>well face</i> .

The parties dispute how this limitation should be construed in three aspects, as underlined in their respective constructions above. The dispute regarding the last aspect-'portions of the formations adjacent thereto' versus 'well face'-the Court addressed *supra*, at s. A.1.; the phrase 'portions of formations adjacent thereto' must be construed as 'well face.' The Court now turns to the other areas of dispute in this limitation.

First, BJ Services wishes to add the word 'both' before the word 'wellbore.' BJ Services argues that although the specification "sometimes uses 'and' and sometimes uses 'or' to state the two positions from which used drilling mud can be removed," because the claim language itself "uses the connecting word 'and' only and not 'or' or 'and/or,'" this limitation requires removal from both positions. (BJ Serv. pre-Markman at 12.) BJ Services claims, therefore, the word 'both' should be added to the claim construction. BJ Services points to the patent examiner's Reasons for Allowance in support of this construction (*see id.*, Ex. B, Tab 8 at BJCP609)("primary reason for the allowance ... is that none of the references ... teach or disclose a method of removing used drilling mud from a wellbore *and* portions of the formation adjacent to the wellbore....") However, although this Court agrees that the fourth limitation requires removal from both positions, the term 'both' is not required. Looking at both the Examiner's Reasons for Allowance, as well as the '477 Patent as a whole, including its abstract, specification, and claims, the word 'both' never appears. The term 'and' is sufficient by itself to express the conjunctive/ connecting relation between the two positions. The term 'both' is unnecessary.

Second, BJ Services and CP Chem dispute whether the phrase 'must be' or the word 'is' should be used before 'removed' in the fourth limitation. BJ Services argues for the former and CP Chem for the latter. This is merely a dispute of semantics; neither party addresses the other's term use but merely posits their own term as the correct construction.

The Court agrees with CP Chem that the word 'is' embodies the better construction. Although the '477 Patent requires used drilling mud removal, the phrase 'must be' is not necessary to express that requirement. In fact, other requirements apparent in the patent are not explicitly stated with 'must be' and the parties agree on the phrasing of those requirements.

The sixth limitation, relevant to the issue here, reads "injecting a well treatment fluid..." (16:51) The parties agree this limitation should read "the well treatment fluid *is* injected"-not "the well treatment fluid *must be* injected." Despite the fact that the well treatment fluid is required to be injected under the '477 Patent, neither party states a need to state such requirement explicitly with the phrase 'must be;' the use of 'must be' would be excessive.

Further, the second subset of the seventh limitation states, relevant to the discussion here, "allowing ... said well treatment fluid to disperse said used drilling mud." (16:54-56) Again, the parties agree this subset should be read as "the well treatment fluid breaks up and scatters the used drilling mud"-not "the well treatment fluid *must* break up and scatter the used drilling mud." The necessity of the breaking up and scattering (i.e., dispersing) of the used drilling mud, again, is apparent, and using "must be" would be superfluous.

The Court sees no reason to place such an artificial phrase on the requirement at issue in the fourth limitation regarding removing used drilling mud. As the parties did not deem it necessary that other requirements in the '477 Patent be expressed with an explicit enunciation, this Court sees no such need for the equally important requirement of removing used drilling mud. It is unquestioned that the used drilling mud is required to be removed under the '477 Patent and, consistent with the expression of those other patent requirements on which the parties agree, this Court construes this portion of the fourth limitation to read "the used drilling mud *is* removed...."

In summary, the Court concludes that the proper construction of the fourth limitation is "the used drilling is removed from the wellbore and the well face."

5. "*comprising*"

As noted *supra*, at s. A.2., both parties agree that "comprising" is a special term in patent law that means "including at least all of the following and potentially more." Vehicular Technologies, 212 F.3d at 1382-83. This Court concludes that the proper construction of the fifth limitation is "including at least all of the following and potentially more."

6a. "*injecting a well treatment fluid*"

Both parties agree that the first subset of the sixth limitation should be construed exactly as written; no additional language is necessary to properly construe it. A "'well treatment fluid' simply carries an enzyme into the well." (BJ Serv. pre-Markman at 13.) As the second subset of this limitation requires that the well treatment fluid contain an enzyme, no further language is necessary here to properly construe this limitation.

This Court concludes that the proper construction of this first subset of the sixth limitation is "injecting a well treatment fluid ."

6b. "*comprising an enzyme capable of rapidly enzymatically degrading said polymeric organic viscosifier*"

The parties agree on the construction of this limitation subset as well. Both agree that this limitation subset should be construed as meaning that "the well treatment fluid must include an enzyme capable of substantially decomposing the specific polymeric organic viscosifier in the used drilling mud within about 60 minutes." This Court agrees with the parties construction.

'Comprising' is a special term in patent law that means "including at least all of the following and potentially more." Vehicular Technologies, 212 F.3d at 1382-83. 'Rapidly decomposed or degraded' is defined in the specification as meaning "substantially decomposed within about 60 minutes." (4:51-52). "'Said' is a term used by patent drafters ... when referring back to previously recited claim elements." *See*,

e.g. *Pieczenik v. Dyax Corp.*, 226 F.Supp.2d 314, 320 (D.Mass.2002); *Astra Aktiebolag v. Andrx Pharmaceuticals, Inc.*, 222 F.Supp.2d 423, 458 (S.D.N.Y.2002). Here, 'said' refers back to the POV mentioned in the third limitation as an ingredient of the used drilling mud.

Accordingly, this Court concludes that the proper construction of this second subset of the sixth limitation is "the well treatment fluid must include an enzyme capable of substantially decomposing the specific polymeric organic viscosifier in the used drilling mud within about 60 minutes."

6c. "into said well; and "

The construction of the location term of this limitation subset-where the well treatment fluid is injected into-is disputed by the parties. CP Chem asserts that it should simply be "the well ." CP Chem post-Markman at 25.) BJ Services, on the other hand, states that due to the modifying term 'said' in the limitation subset, the location construction must be "the wellbore and the well face." (BJ Serv. post-Markman at 26-27.) The Court agrees with BJ Services.

As noted, *supra*, at s. A.6b, 'said' is a term used to refer back to a previously recited claim element. *Pieczenik*, 226 F.Supp.2d at 320; *Astra Aktiebolag*, 222 F.Supp.2d at 458. Here, however, there is no express use of the term 'well' earlier in the claim. In general, the lack of an antecedent basis for a term in a claim may render the claim invalid for indefiniteness. *See, e.g.* *In re Altenpohl*, 500 F.2d 1151, 1156 (C.C.P.A.1974). However, the Manual of Patent Examining Procedure ("MPEP") states that, "the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite." MPEP s. 2173.05(e) (8th ed.2001); *see Ex parte Porter*, 25 USPQ2d 1144, 1146 (Bd. Pat. Apps. & Int.1992); *see also* *In re Moore*, 439 F.2d 1232, 1235 (C.C.P.A.1971) ("the definiteness of the language employed must be analyzed-not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art").

The only reasonable antecedent in the claim for 'said well' is 'wellbore and portions of the formations adjacent thereto' FN7 in the fourth limitation. Inherent characteristics of a well, to those skilled in the art, are a wellbore and well face. The prior recitation of 'wellbore and well face' in the fourth limitation must provide the antecedent basis for 'said well.' If this were not true, then the term 'said well' would lack antecedent basis, rendering the entire claim invalid due to indefiniteness. This Court, accordingly, must construe the term 'said well' as such. *Cf.* *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1344 (Fed.Cir.1998) ("if the claim is susceptible to a broader and a narrower meaning, and the narrower one is clearly supported by the intrinsic evidence while the broader one raises questions of enablement under s. 112, [the court must] adopt the narrower of the two").

FN7. This Court has already construed 'portions of the formations adjacent thereto' as 'well face.' *See, supra*, at s. A.1.

The Court concludes that the proper construction of the third subset of the sixth limitation is "the well treatment fluid is injected into the wellbore and the well face."

7a. "allowing said enzyme to degrade said polymeric organic viscosifier "

Again, as noted *supra*, at s. A.6b., 'said' is a term used to refer back to a previously recited claim element. Pieczenik, 226 F.Supp.2d at 320; Astra Aktiebolag, 222 F.Supp.2d at 458. In this limitation, it precedes both 'enzyme' and 'polymeric organic viscosifier.' Therefore, it refers back to earlier mentions of these terms in the claim. Both parties agree on the construction of this limitation to which the Court concurs.

However, the Court disagrees with the parties in one minor aspect. Both parties use the term 'degrade' in their construction of this limitation. Instead, the Court finds that using the interchangeable word 'decompose' is superior because the definition for "rapidly decomposed or degraded" was defined in specification as meaning "substantially *decomposed* within about 60 minutes." (4:51-52)(emphasis added). " 'A word or phrase used consistently throughout a claim should be *interpreted consistently*.' " *Epcon Gas Systems, Inc. v. Bauer Compressors, Inc.*, 279 F.3d 1022, 1031 (Fed.Cir.2002)(*quoting* *Phonometrics, Inc. v. Northern Telecom Inc.*, 133 F.3d 1459, 1465 [Fed. Cir.1998])(emphasis in original). As this Court construed that second subset of the sixth limitation using the word 'decomposing' for the word 'degrading,' the claim construction should stay consistent and the same construction should be used in this subset of the seventh limitation as well.

The Court, therefore, concludes that the proper construction of this first subset of the seventh limitation is "the enzyme in the well treatment fluid must decompose the polymeric organic viscosifier in the used drilling mud."

7b. "and said well treatment fluid to disperse said used drilling mud."

As 'said' precedes both "well treatment fluid" and "used drilling mud" in this final limitation, it refers back to the earlier mention of these terms in the claim. Both parties are in agreement on this last limitation's construction; 'disperse' is used in the limitation using its ordinary meaning of 'to break up and scatter.' *See, e.g.*, Merriam Webster Dictionary, 10th ed. This Court sees no reason to alter their agreed construction.

This Court concludes that the proper construction of this second subset of the seventh limitation is "the well treatment fluid breaks up and scatters the used drilling mud."

IV. CONCLUSION

For the foregoing reasons, the Court interprets the claim language in this case in the manner set forth above. For ease of reference, the Court's interpretation of the claim is set forth in tabular form in Appendix A.

APPENDIX A

Limitation	Court's Construction
A method of removing used drilling mud	A method of removing used drilling mud that remains in contact with the wellbore and the well face
of the type comprising solid materials	the used drilling mud must include solid materials as one of its ingredients
including at least one polymeric organic viscosifier	the used drilling mud must include as another ingredient at least one polymeric organic viscosifier ("POV"). POV means a compound that increases the plastic viscosity, yield point and/or gel strength of the drilling mud
from a wellbore and portions of the formations adjacent thereto	the used drilling mud is removed from the wellbore and the well face

comprising	including at least all of the following and potentially more
injecting a well treatment fluid	injecting a well treatment fluid
comprising an enzyme capable of rapidly enzymatically degrading said polymeric organic viscosifier	the well treatment fluid must include an enzyme capable of substantially decomposing the specific polymeric organic viscosifier in the used drilling mud within about sixty (60) minutes
into said well; and	the well treatment fluid is injected into the wellbore and the well face
allowing said enzyme to degrade said polymeric organic viscosifier	the enzyme in the well treatment fluid must decompose the polymeric organic viscosifier in the used drilling mud
and said well treatment fluid to disperse said used drilling mud	the well treatment fluid breaks up and scatters the used drilling mud

S.D.Tex.,2003.

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