United States District Court,
C.D. California.

SUN COAST MERCHANDISE CORP,
Plaintiff.
v.
CCL PRODUCTS ENTERPRISES, INC,
Defendant.

No. CV 01-0772 GHK RNBX

May 1, 2003.

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MEMORANDUM AND ORDER RE: CLAIM CONSTRUCTION

KING**, J.**

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Sun Coast Merchandise Corporation ("SCM") filed suit against CCL Products Enterprises, Inc. ("CCL") seeking a declaration of patent invalidity and non-infringement. CCL counterclaimed for patent infringement. The disputed patent, U.S. Patent # 6,175,085 (" '085 Patent"), is for a small calculator with a cover that flips over the calculator and functions as a stand.

This matter is before the court on claim construction. Pursuant to our order, the parties have filed a joint brief on the construction of certain disputed terms within the '085 patent claims. The following terms are in dispute: (1) generally flat; (2) front surface; (3) parallel spaced relationship; (4) trunnion; (5) damping means; (6) controlled pivotal motion; (7) opposite sides; and (8) rubber.

We have considered the parties' briefing, and counsel's arguments. We rule as follows:

II. DISCUSSION

A. *RULES OF PATENT CLAIM CONSTRUCTION*

Claim construction determines the objective meaning of the patent claims at the time of the invention. Markman v. Westview Instruments, 52 F.3d 967, 986 (Fed.Cir.1995), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). We are not limited to choosing between the parties' competing construction but must independently determine the meaning of the disputed claims. *See* Exxon Chem. Patents, Inc. v. Lubrizol Corp., 64 F.3d 1553, 1556 (Fed.Cir.1995). However, we are only required to interpret disputed terms. Vivid Techs. v. American Science & Eng'g, 200 F.3d 795, 803 (Fed.Cir.1999).

In claim construction, we must first examine the intrinsic evidence, which includes the claims, specifications, and patent prosecution history. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582

(Fed.Cir.1996) ("[It] is the most significant source of the legally operative meaning of the disputed claim language."). We should interpret the claims, if possible, in a manner that sustains their validity, but we may not redraft the claims to do so. Process Control Corp. v. Hyddreclaim Corp., 190 F.3d 1350, 1357 (Fed.Cir.1999). Additionally, claims "should not be construed in a manner that renders claim language 'meaningless or superfluous." ' Biagro W. Sales, Inc. v. Helena Chem. Co., 160 F.Supp.2d 1112, 1122 (E.D.Cal.2001) (citing Texas Instruments, Inc. v. United States Int'l Trade Comm'n, 988 F.2d 1165, 1171 (Fed.Cir.1993)).

Claim construction always begins with the words of the claims themselves. Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1324-25 (Fed.Cir.2002); Vitronics Corp., 90 F.3d at 1582. There is a heavy presumption that the words in the claim should be interpreted in their ordinary and customary meaning. Teleflex, 299 F.3d at 1325; CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 1366 (Fed.Cir.2002). The ordinary meaning is determined from the perspective of "a person of ordinary skill in the relevant art." Teleflex, 299 F.3d at 1325. Prior art may be used to determine how the term is used by one "skilled in the art." Vitronics, 90 F.3d at 1584. Moreover, technical terms should be construed from the perspective of a person experienced in the field of the invention. CVI/Beta Ventures, Inc. v. Tura LP, 112 F.3d 1146, 1153 (Fed.Cir.1998). However, the patentee may redefine a term if there is clear intent to deviate from a term's ordinary meaning. Teleflex, 299 F.3d at 1327.

After the claims themselves, the specification "is always highly relevant" and is usually dispositive. Teleflex, 299 F.3d at 1325. While the claims must be interpreted "in light of the specifications," the limitations from the specifications are not to be read into the claim. *See* id. at 1326-27 ("That claims are interpreted in light of the specification does not mean that everything expressed in the specification must be read into all the claims.") (quotation omitted); Comark Comms., Inc. v. Harris Corp., 156 F.3d 1182, 1186 (Fed.Cir.1998); Electro Med. Sys. v. Cooper Life Sciences Inc., 34 F.3d 1048, 1054 (Fed.Cir.1994) ("[A]lthough specifications may well indicate that certain embodiments are preferred, particular embodiments appearing in the specification will not be read into the claims when the claim language is broader than such embodiments."). Additionally, preferred embodiments within the specifications generally are not read into the claims. *See* Speciality Composites v. Cabot Corp., 845 F.2d 981, 987 (Fed.Cir.1988). FN1

FN1. Normally we would also examine the prosecution history. However, because neither party has submitted in evidence the prosecution history of the '085 Patent, we do not consider it.

In the event the meaning of the claims cannot be determined by the intrinsic evidence, we may look at extrinsic evidence, such as expert testimony, technical treatises, and articles. Vitronics Corp., 90 F.3d at 1584. However, extrinsic evidence may not be used if it varies or contradicts the terms of the claims. Markman, 52 F.3d at 981. Although dictionaries are technically extrinsic evidence, we may consult one "at any time in order to better understand the underlying technology and may also rely on dictionary definitions when construing claim terms, so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents." Vitronics Corp. ., 90 F.3d at 1584 n. 6. FN2

FN2. The parties disagree about the applicability of SCM's patent application for a similar calculator. CCL argues that it is relevant as an admission, while SCM argues it is improper for consideration because it is extrinsic evidence.

The relevance of this evidence depends upon our construction of the claim. SCM's patent application is extrinsic evidence as it is not part of CCL's patent or its prosecution history. Therefore, it should be used only if we are unable to construe the claim from the intrinsic evidence. *See* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996) (indicating that extrinsic evidence should only be utilized if the claims, specification and patent history do not reveal a proper claim construction). If a claim is still

ambiguous after evaluating the available intrinsic evidence, then we may examine extrinsic evidence, including SCM's patent application.

However, in this case, we conclude that the intrinsic evidence is sufficient for us to construe the meaning of all the disputed terms. Accordingly, we do not utilize any of the extrinsic evidence supplied by the parties.

B. *THE DISPUTED CLAIMS*

1. *Claim One*

Claim One reads as follows:

1. A portable hand-held calculator, comprising:

(a) a generally flat rectangular housing containing operating electronics and an array of calculator actuating buttons; a display panel being located on a front surface of said housing proximate said array of actuator buttons; said housing including a pair of flanges extending from opposite side edges of said housing in parallel spaced relationship; and hinge-forming trunnions being formed on inwardly facing surfaces of said flanges;

(b) a lid structure connected to said trunnions for pivotal motion relative to said housing; said lid structure including a flat cover portion and a tubular portion formed along one edge of said flat cover portion extending between said trunnions; said tubular portion including cylindrical bores extending along the longitudinal axis thereof; and

(c) a lid operating mechanism including damping means arranged within at least one said cylindrical bore, biasing said lid toward a rearwardly pivoted position, and effectuating a controlled pivotal motion of said lid structure between the closed position thereof covering said display panel and the rearwardly pivoted position exposing said display panel and forming a stand for supporting said calculator in a tilted position on a horizontal surface.

(a) *Claim One, Clause Two*

Claim 1, clause 2 reads as follows: "A generally flat rectangular housing containing operating electronics and an array of calculator actuating buttons[.]" The phrase "generally flat" is in dispute.

(1) Indefiniteness

SCM claims that the term "generally" is too ambiguous, and therefore the patent fails for indefiniteness. A patent is presumed valid. 35 U.S.C. s. 282. A party attempting to invalidate a patent for indefiniteness must do so by clear and convincing evidence. *Al-* Site Coro. v. VSI Int'l Inc., 174 F.3d 1308, 1323 (Fed.Cir.1999).

The Patent Act requires that the "specification shall conclude with one or more claims particularly pointing out and distinctly claiming subject matter which the applicant regards as his invention ." 35 U.S.C. s. 112, para. 2. This requirement places future inventors on notice concerning the scope of the patent. Regno Co. v. Molins Mach. Co., 657 F.2d 535, 551 (3d Cir.1981). Whether a patent is invalid because it is indefinite is an issue of law. Exxon Research & Eng'g Co. v. United States, 265 F.3d 1371, 1376 (Fed.Cir.2001) ("We adhere to the principle that determination of claim indefiniteness is a legal conclusion that is drawn from the court's performance of its duty as the construer of patent claims.")

A patent is sufficiently definite "[i]f one skilled in the art would understand the bounds of the claim when read in light of the specification...." Exxon Research & Engineering Co., 265 F.3d at 1375 (citation omitted). A patent is not indefinite "merely because it poses a difficult issue of claim construction." *Id*. The amount of

necessary detail depends upon the invention and the prior art. Shatterproof Glass Corp. v. Libbey-Owens Ford Co., 758 F.2d 613, 624 (Fed.Cir.1985).

While the Federal Circuit has not specifically addressed whether the term "generally" is too indefinite to maintain the validity of a patent, courts have discussed the viability of words connoting approximations and have often found them sufficiently definite. For example, the use of the term "substantially" does not necessarily render a claim indefinite because the term and others like it are "ubiquitous" in patent claims. Andrew Corp. v. Gabriel Elec., Inc., 847 F.2d 819, 821 (Fed.Cir.1988); *see also* Ecolab, Inc. v. Environchem, Inc., 264 F.3d 1358, 1367 (Fed.Cir.2001) ("We note that like the term 'about,' the term 'substantially' is a descriptive term commonly used in patent claims to avoid a strict numerical boundary to the specified parameter.") (quotation omitted). *But see* Amgen Inc. v. Chugai Pharm. Co., 927 F.2d 1200, 1218 (Fed.Cir.1991) (finding the use of the word "about" in the claim was too indefinite, but noting it was not a per se rule).

SCM has not shown by clear and convincing evidence that the term "generally" as used in Claim 1 is too indefinite for "one skilled in the art." We conclude that SCM has not met its burden to invalidate the '085 patent on indefiniteness grounds.

(2) Construction of Disputed Term

CCL contends that the ordinary and customary meaning of "generally flat" is something that need not be perfectly flat. SCM proposes that we construe this term to mean "at least as flat as a Prod Art Co. calculator model No. SC-82." This proposed construction is derived from a statement the inventor of the '085 patent made when he was questioned about this disputed term with reference to another calculator.

We conclude that the term "generally" is sufficiently clear given its ordinary meaning. Webster's Third International Dictionary defines generally to mean "on the whole." It is also defined as "in a general manner." In turn, "general" is defined as "marked by broad overall character without being limited, modified or checked by narrow precise considerations." *Id*. Thus, in the context of this claim, generally flat means "housing that is flat on the whole."

Additionally, while the claims and specifications do not explicitly provide a definition of "generally flat," in light of the function of the invention, certain limitations are at least implied and would be known to one skilled in the art. The invention has a "generally flat" housing, but it also contains a lid structure that has a "flat cover." Claim 1(b). That "flat cover" must pivot rearwardly to form a stand, which supports the calculator in a tilted position. Claim 1(c). If the housing is not flat as a whole, it would inhibit the functioning of the invention because the flat cover could not properly cover the display and subsequently pivot to form a stand. Thus, the claims and the function of the invention help to define this disputed term.

The specifications also support this construction of the disputed term. They provide that the lid structure is supposed to protectively cover the display panel. Col. 2: 28-29; Col 2: 61-65. As explained above, if the front housing is too curved, the flat cover would not properly protect the display panel. The specifications also indicate that after the lid rotates backwards, it is in essentially a perpendicular orientation and forms a stand to support the calculator on a horizontal surface. Col. 2:34-38. If the housing is not "generally flat," (flat as a whole), but is more rounded, the calculator, even with the stand, may be unsteady when used on a horizontal surface.

Accordingly, we construe the term "generally flat" to mean a housing that is flat on the whole, but not necessarily exactly or perfectly flat.

(b) *Claim One, Clause Three*

Claim 1, clause 3 reads as follows: "a display panel being located on a front surface of said housing proximate said array of actuator buttons[.]" The parties dispute the construction of the term "front surface."

CCL proposes that we construe this term to mean "a forward surface of the housing." In addition to claiming that the term is too ambiguous and indefinite, SCM asserts that it means the "surface on which the actuator buttons appear."

Webster's Third International Dictionary defines "front" as "2: something that confronts or faces forward," or "2b(1): The part or surface of something that seems to look out or be directed forward." Nothing in the specifications is inconsistent with this ordinary meaning. Nor is there any need to narrow the definition to the surface on which the actuator buttons appear, as SCM proposes.

We construe the term "front surface" to mean a forward surface of the housing.

(c) *Claim One, Clause Four*

Claim 1, clause 4 reads as follows: "said housing including a pair of flanges extending from opposite side edges of said housing in parallel spaced relationship[.]" The parties' only dispute is whether the prepositional phrase "in parallel spaced relationship" modifies the noun "flanges" or the noun phrase "extending from opposite side edges." In other words, the parties dispute whether "parallel spaced relationship" refers to the flanges or the opposite side edges.

SCM asserts that the claim is indefinite because this language is capable of two meanings. However, it has not demonstrated that someone skilled in the art would find the language ambiguous. SCM has not shown indefiniteness by clear and convincing evidence.

We conclude that, in ordinary English, the "parallel spaced relationship" modifies the noun (flanges), not the noun phrase (extending from opposite side edges). This construction is supported by the shape of the invention which has a generally flat rectangular housing. Claim 1(a). If the housing is rectangular, then by definition, all of the opposite sides would be parallel to one another. *See* Webster's Third International Dictionary (defining rectangle as "a parallelogram all of whose angles are right angles"). Since the opposite sides are parallel by definition, they would be in parallel spaced relationship to one another. As such, it would be superfluous to have the phrase "parallel spaced relationship" modify "opposite side edges." On the other hand, the flanges would not necessarily be in a "parallel spaced relationship" to one another absent this language in the claim. Accordingly, we conclude that the phrase "parallel spaced relationship" modifies the "flanges," not the "opposite side edges."

(d) *Claim One, Clause Five*

Claim 1, clause 5 reads as follows: "hinge-forming trunnions being formed on inwardly facing surfaces of said flanges[.]" The parties dispute the meaning of the word "trunnions."

Trunnion is not defined in either the claims or the specifications. Although the parties purport to only dispute the single word "trunnion," it became apparent at oral argument that they dispute not so much the definition of this word itself as the context in which it is being used in this claim. SCM in fact does not dispute that trunnions can be defined as something other than just projections. Its position is that use of the word "trunnion" in conjunction with the word "on" in Claim 1, clause 5, means that the type of trunnion contemplated by this claim language is a projection of some sort.

CCL claims that because a trunnion can be something other than a projection, the claim language should not be limited to projections. It asserts that even though the claim language states that the trunnions are formed on the inwardly facing surfaces of the flanges, they can be recessed within the flanges.

We conclude that, in its ordinary meaning, trunnion is a pin or pivot that permits something to be rotated or tilted. However, in this case, regardless of whether a trunnion is necessarily a projection, the context of the claim language demonstrates that the trunnion referred to is some form of a projection.

The claim language states that the trunnions are formed on the inwardly facing surfaces of the flanges. Claim 1, Clause 5. To be formed on the flange surfaces, the trunnions must necessarily protrude from that surface. As used in the claim language, the trunnions are projections. This construction is entirely consistent with the language of other claims as well as the intrinsic evidence. For example, both claims 3 and 6 refer to the trunnions on the flanges. Claim 3, clause 3; Claim 6, clause 2.

Moreover, this construction is appropriate in light of the specifications which all consistently refer to the trunnions as types of projections. *See, e.g.,* Col. 2:45-46 ("mounting trunnions which project inwardly...."); Col 4:12-17 ("a short inwardly extending trunnion-like projection...."); Col. 4:23-24 ("trunnion-like projections...."); Col. 5:14-15 ("the trunnion projections...."); Col. 6:23-24 ("hinge-forming trunnion projections...."). FN3

FN3. Because the claims themselves state that the trunnions are formed on the flanges, specifications that refer to projections are consistent with, not limitations on, the claim language.

CCL argues that an indentation in the flanges qualifies as a trunnion because it could be used to rotate something along its axis. While such recess might be a trunnion, it would be one that is formed in, not on, the inwardly facing surface of the flanges. We cannot simply rewrite the claims to accommodate CCL's argument.

Moreover, although the indentation might also be seen as being part of the surface of the flange, albeit on a different plane, the indentation still is not on the surface of the flange. While an indentation may be viewed either as being in, or part of, the surface of the flange, it is not formed on the surface of the flange.

Accordingly, we construe trunnions to mean "pin[s] or pivot[s] usually mounted on bearings for rotating or tilting something." Webster's New Third International Dictionary. In this case, the trunnions are formed on the flanges to permit rotation of the lid structure. Claim 1(a),(b). As such, the trunnions identified in the claim language are ones that project from the inwardly facing surface of the flanges.

(e) *Claim One, Clause Nine*

Claim 1, clause 9 reads as follows: "a lid operating mechanism including damping means arranged within at least one said cylindrical bore, biasing said lid toward a rearwardly pivoted position, and effectuating a controlled pivotal motion of said lid structure between the closed position thereof covering said display panel and the rearwardly pivoted position exposing said display panel and forming a stand for supporting said calculator in a tilted position on a horizontal surface." The parties dispute the meaning of the terms "damping means," and "controlled pivotal motion."

(1) *Damping Means*

The Patent Act states that:

[a]n element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. s. 112, para. 6.

If s. 112 para. 6 applies, the term is limited to the structure disclosed in the specifications that perform the claimed function and equivalents of that disclosed structure. *See id*. This is an exception to the general rule that limitations in the specifications are not read into a claim. *See* Comark Comm. v. Harris, Corp., 156 F.3d 1182, 1186-87 (Fed.Cir.1998).

Whether the claim is expressed in means-plus-function language is a matter of claim construction and determined as a matter of law. Kemco Sales, Inc. v. Control Papers Co., 208 F.3d 1352, 1360 (Fed.Cir.2000). The use of the word "means" triggers a rebuttable presumption that the inventor intended to invoke a means-plus-function clause. *See* MAS-Hamilton Group v. LaGARD, Inc., 156 F.3d 1206, 1214 (Fed.Cir.1998). Similarly the absence of the word "means" triggers a rebuttable presumption that s. 112 para. 6 does not apply. However, the mere presence or absence of the word "means" is not controlling. *Id*. ("We also have noted that while traditional 'means' language does not automatically make an element a means-plus-function element, conversely, lack of such language does not prevent a limitation from being construed as a means-plus-function limitation.").

In this case, the claim uses the phrase "damping means," and the parties do not dispute that this term should be interpreted pursuant to s. 112, para. 6. Thus, we apply a means-plus-function analysis.

Construction of means-plus-function language involves two steps. We must first identify the claimed function. Cardiac Pacemakers, Inc. v. St. Jude Med. Inc., 296 F.3d 1106, 1113 (Fed.Cir.2002). The function cannot be broadened when clear limitations exist in the claim language. On the other hand, we cannot narrow the scope of the function beyond the claim language. We employ "[o]rdinary principles of claim construction [to interpret] claim language used to describe the function. *Id*. Second, we must determine what structure, if any, disclosed in the specifications corresponds to the claimed function. *Id*. A corresponding structure is one that not only performs the claimed function, but is associated in the specifications with the performance of the function. *Id*. Both of these inquiries are made from the perspective of a person of ordinary skill in the art. *Id*.

(aa) ***Function***

The claim language shows that the damping means, a component part of the lid operating mechanism, effectuates a controlled pivotal motion of the lid structure as it is biased toward a rearwardly pivoted position. Claim 1(c). This construction is consistent with the ordinary meaning of "damping." Webster's II New Riverside University Dictionary defines "damp" as "to restrain or check." In the context of the patent, the function of the damping means is to restrain, in a controlled manner, the force of the helical spring when it is released.

The specifications are consistent with this described function. They indicate that the damping means controls the spring-loaded lid. When comparing this invention to prior art, the specifications state that "none of [the previous inventions] disclose a simple construction wherein a spring-loaded lid or cover element is hingedly connected to the housing of a hand-held or pocket calculator, and upon actuation of a switch is adapted to swing rearwardly in a controlled damped manner...." Col. 2:11-15. Elsewhere, the specifications state that "the hinge structure incorporates novel operative mechanism comprising a torsion spring, damping drum and damping grease located therein to thereby impart controlled damped pivoting movement[ ]." Col. 3:13-17. Similarly:

The rate of movement or speed in the rearward pivoting of the lid structure 14 upon the release thereof is controlled by means of the damping drum 70 and the damping grease 84 arranged thereabout in contact with the inner surface of the blind bore 40 which, in essence, forms a damping cylinder. This structure will slow

down and counteract any tendency for rapid pivoting movement of the lid structure 14 which could conceivable (sic) cause the calculator to bounce....

Col. 5:42-52. Each of these specifications indicates that the damping means serves to slow down the spring mechanism and control the cover as it opens.

In light of the common meaning of "damping," and viewed in light of the specifications, we conclude that the damping means functions to slow down the rapid force of the helical coil spring that biases the lid structure in the rearwardly pivoting motion.

(bb) ***Structure***

CCL asserts that the structure is the damping drum and the damping grease. SCM contends that the structure is the damping drum and the helical coil. At oral argument, the parties limited their disputes to these competing contentions.

The first question is whether the helical coil is a part of the structure. CCL asserts that damping and biasing (by the movement of the helical coil) are both part of the lid operating mechanism that functions to control the movement of the lid. SCM asserts that the biasing is itself a part of the damping.

SCM relies upon the language in Claim 3 to reach its conclusion that damping has a specialized meaning, such that damping means includes the helical coil biasing mechanism. Claim 3 states that "wherein damping means comprises a helical coil spring inserted into said blind bore." SCM asserts that the patentee intended a specialized meaning to include the helical coil springs. FN4

FN4. The inventor may act as his own lexicographer and use the specifications to supply new meanings for terms either explicitly or by implication. Markman v. Westview Instruments, 52 F.3d 967, 979 (Fed.Cir.1995) (en banc), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). Thus, to help determine the proper construction of a patent claim, a construing court should consult the written description. Id. at 979-80. Here, nothing in the specifications shows that the inventor had specially defined damping means to include the helical coil. Indeed, all references are to the contrary. *See infra* at 18-19.

Although we gave some credence to this assertion at oral argument, upon further reflection we conclude that the language of Claim 3 is not the patentee's specialized definition of the term "damping means." Rather, the language of claim 3 merely sets forth a limitation over that which had been claimed in claim 2. Indeed similar limiting language appears in claim 5 ("said damping means comprises a viscous grease") and claim 9 ("said gripping structures [referring back to claim 8] comprise elongate rubber members ...."), both of which are dependant claims with narrower scope than the independent claim or other preceding dependent claims.

SCM's construction violates the doctrine of claim differentiation which assumes that different claims have different scopes. Comark Comm., 156 F.3d at 1187. Therefore, "[w]here some claims are broad and others narrow, the narrow claim limitations cannot be read into the broad whether to avoid invalidity or escape infringement." Specialty Composites v. Cabot Corp., 845 F.2d 981, 987 (Fed.Cir.1988) (quotation omitted); SDS USA, Inc. v. Ken Specialties, Inc., 107 F.Supp.2d 574, 587 (D.N.J.2000) ("Dependant claims, which add limitations, are presumed narrower than the independent claims from which they spring."). SCM is attempting to introduce the limitations of Claim 3 into Claim 1.

Moreover, the specifications do not show that the damping means structure includes the helical coil. If damping is defined as either reducing or restraining force or reducing vibration, something else must cause that force or vibration. Similarly, the specifications do not describe the damping means as also functioning to spring open the cover. That function is accomplished by the helical coil. Thus, absent reading the restriction

of Claim 3 into Claim 1, there is no basis to conclude that the damping means structure includes the helical coil.

Accordingly, we conclude that the helical coil is not part of the damping means structure.

The parties dispute whether damping grease is part of the damping means structure. SCM contends that damping grease is not part of the structure because to include it in Claim 1 would violate the doctrine of claim differentiation. It asserts that because Claim 5, a narrower dependent claim, states that the damping means comprises a viscous grease, it would be improper to import this same requirement into Claim 1.

We disagree. SCM has confused "viscous grease" with "damping grease." The specifications state that "the damping grease 84 may be a highly viscous oil or grease, or any similar suitable damping material which will not readily leak from the open end of the blind bore 40 forming the damping cylinder." Col. 5: 52-55. Therefore, viscous grease is one, but not the only, type of damping grease. As such, we do no violence to claim differentiation by including damping grease, not merely viscous grease, in the damping means structure as set forth in the specifications.

Accordingly, we conclude that the damping means structure includes the damping drum and the damping grease, but not the helical coil.

(2) *Controlled Pivotal Motion*

The parties' dispute appears to center around one word. They disagree whether "controlled pivotal motion" should be defined as effectuating a pivotal motion, slowed down from that of a lid operating mechanism without a damping drum or damping means.

Claim 1 refers to damping means, not merely the damping drum. Moreover, we have construed the structure of the damping means to include not only the damping drum, but also the damping grease. Therefore, it would be improper to ascribe the motion resulting from the operation of the damping means to only one of its constituent parts. Accordingly, we construe "controlled pivotal motion" to mean that which is "slowed down from that of a lid operating mechanism without a damping means."

2. *Claim Eight*

Claim 8, clause 2 reads as follows: "wherein resilient gripping structures are mounted to extend along opposite sides of said housing." SCM argues that to remove any ambiguities, this claim should be interpreted to require that gripping structures appear on all opposite sides of the housing.

The term "opposite sides" is not defined in either the claims or the specifications. SCM's construction is unduly restrictive and not ordinary or usual. Its construction requiring gripping structures on all sides of the invention would essentially cover the calculator with rubber. This is at least unreasonable, if not absurd .FN5

FN5. SCM also argues that if its construction is not accepted, the claim is too indefinite. Once again, SCM does not offer clear and convincing evidence that one skilled in the art would not be able to ascertain which "opposite sides" are at issue. We decline to invalidate the claim for indefiniteness.

The gripping structures function to aid someone in handling the calculator. This is illustrated by the definition of gripping, the claims and the specification. Gripping is defined as "having the ability to grip." Webster's Third New International Dictionary. In turn, "grip" is defined as "to seize or lay hold on tightly" or to "grasp firmly." Gripping, therefore, implies that the structures are intended to help someone,

presumably the user, hold onto the calculator. Claim 9, clause 2 is consistent with this interpretation because it explains that the gripping structures are to "facilitate manual handling of the calculator." FN6

FN6. By referring to claim 9, clause 2, we do not violate claim differentiation because we have not imported the narrower limitation of "elongate rubber members having transverse grooves formed therein" into our construction of "gripping structure."

Moreover, the preferred embodiment is also consistent with this interpretation, as it indicates that the gripping structures will prevent the calculator from slipping out of the hand of the user. Col. 6:32-36.

In light of the foregoing, we conclude that putting gripping structures on the front and rear sides would interfere with the use of the calculator and does not aid in its handling. While gripping on the back might prevent the calculator from slipping out of someone's hand, it is unnecessary and counterproductive to have gripping structures on the front where the actuator buttons are located.

Also, putting gripping structures on the top and bottom sides of the calculator would not facilitate handling because those sides are unlikely to make contact with someone's hand if the calculator is being held when in use. Moreover, gripping on the top would most likely, if not invariably, inhibit the proper function of the lid. Thus, logically it appears that the only opposite sides that would facilitate the handling of the calculator are those on the right and left sides of the calculator.

One skilled in the art would understand "opposite sides" in Claim 8, clause 2 to be the pair of sides that facilitates the grasping of the hand-held calculator. Accordingly, we construe "opposite sides" to be the right and left sides of the calculator.

3. *Claim Nine*

Claim 9, clause 2 reads as follows: "wherein said gripping structures comprise elongate rubber members having transverse grooves formed therein to facilitate manual handling of said calculator."

The parties dispute whether the term "rubber" refers to natural rubber or includes synthetic rubber. There is no clear intrinsic evidence to aid in this determination. Similarly, neither party has put forth any evidence on what a person skilled in the art might consider to be the ordinary construction of the word "rubber."

Webster's Third International Dictionary defines "rubber" as: "a: a substance that is obtained from the latex of many tropical plants ... b: Any various rubber-like substances that like natural rubber can be vulcanized. c: natural or synthetic rubber that has been modified to increase its useful properties[.]"

Because in common parlance rubber includes not only natural rubber but also various forms of synthetic rubber-like substances, we construe the term "rubber" to mean the elastic substance derived from tropical plants and any of various similar synthetic substances.

III CONCLUSION

Based on the foregoing, we construe the disputed terms as set forth in this Memorandum. Although the parties dispute other clauses of other claims, we need not address them individually because the disputes therein are limited to the disputed terms discussed above. We conclude that the above construed terms shall have the same meaning when referenced in other clauses of other claims of the '085 Patent.

IT IS SO ORDERED.

C.D.Cal.,2003.
Sun Coast Merchandise Corp. v. CCL Products Enterprises, Inc.