

United States District Court,
E.D. New York.

NATIONAL MOLDING CORPORATION,
Plaintiff.

v.

NEWELL RUBBERMAID, INC., Graco Children's Products Inc., and Buy Buy Baby, Inc,
Defendants.

No. 01-CV-8284 (ADS)(WDW)

Sept. 15, 2003.

Collard & Poe, P.C., by: Allison C. Collard, Esq., Frederick J. Dorchak, Esq. and Elizabeth Collard Richter, Esq., of Counsel, Roslyn, NY, for the Plaintiff.

Ruskin Moscou Faltischek, P.C., by: Douglas J. Good, Esq. and Mark S. Mulholland, Esq., of Counsel, Uniondale, NY, for the Defendants.

Schiff Hardin & Waite, by: Richard J. Hoskins, Esq., Manotti L. Jenkins, Esq. and Amy M. Kloempken, Esq., of Counsel, Chicago, IL, for the Defendants.

ORDER

SPATT, District Judge.

In this case, the plaintiff National Molding Corporation ("National" or the "plaintiff") alleges that the defendants Newell Rubbermaid, Inc. ("Newell"), Graco Children's Products Inc. ("Graco") and Buy Buy Baby, Inc. ("BBB") (collectively, the "defendants") are infringing United States Patent 5,438,737 dated August 8, 1995 (the "'737 Patent"). The '737 Patent is an invention entitled "Snap Closure Type Buckle with Quick Release", which is designed for use with an infant carrier or high chair where both clasps can be released with one hand.

I. BACKGROUND

On January 22, 2003, the defendants filed a motion pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384 (1996) to adopt their proposed construction of claims 1, 4 and 14 of the '737 Patent. On April 3, 2003, the parties agreed to have the Court appoint a special master for the purposes of holding a *Markman* hearing and to prepare a report and recommendation construing those claims. Shortly thereafter, the parties selected Robert B. Smith Esq., Skadden, Arps, Slate, Meagher & Flom, Four Times Square, New York, New York 10036 to serve as Special Master. The Court then appointed Mr. Smith to serve as a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure.

On July 10, 2003, the Special Master filed his thorough and well-reasoned Report and Recommendation. In his Report and Recommendation, the Special Master made the following claim construction recommendations:

Claim 1. The disputed phrase 'wherein simultaneous depression of said release tabs biases said pair of clasps into contact with each other so that said pair of clasps is propelled outwardly of the opening together with increased spring-release action' should be construed to mean that the act of simultaneously depressing the release tabs causes some portion of each clasp to be pressed against some portion of the other clasp. Pressing the clasps against one another creates a counter-force opposing the depression of the release tabs, thereby causing the flexible release tabs to bend and store a spring force. Thereafter, the clasps must be propelled out of the opening together. As the clasps are propelled out of the opening, the spring force is released to help propel the clasps out of the opening with greater force.

Claim 4. The disputed term 'inner surface' should be given its plain meaning, namely, a surface located inside the main buckle. Claim 4, however, contains additional limitations concerning the location of the inner surface, namely, that it must include a section opposite its respective locking slot such that, when pressure is applied to the release tab, some portion of the clasp will press against such inner surface such that the inner surface produces counter pressure.

Claim 14. The disputed phrase 'wherein said clasps are adapted for contacting each other upon joint release of said clasps' should be construed in light of the clause immediately preceding it, which reads 'wherein the locking slots are positioned on the main buckle so that the release tabs are adapted for pressure contact by two fingers of one hand to release said pair of clasps,' and the claim as a whole. When so construed, the disputed language means that, at the time the release tabs are released from the locking slots, some portion of one clasp contacts some portion of the other clasps. No further limitations are warranted.

R & R at 54-55.

On July 30, 2003, the defendants filed timely objections to the Report and Recommendation. First, the defendants argue that the Special Master incorrectly construed the following disputed limitations of Claim 1: "wherein simultaneous depression of said release tabs biases the pair of clasps into contact with each other" and "so that said pair of clasps is [sic] propelled outwardly of the opening together with increased spring release action." In particular, the Special Master should have concluded that the required contact must occur within the main buckle as demonstrated by the intrinsic record, namely the claims, the patent specification and the prosecution history. Second the defendants argue that the Special Master incorrectly construed the following limitation of Claim 4: "section of said inner surface." In particular, the Special Master should have concluded that, based on the intrinsic record, the phrase must be interpreted as requiring "a slightly tapered surface." Third, the defendants argue that the Special Master incorrectly construed the following limitation of Claim 14: "wherein said clasps are adapted for contacting each other upon joint release of said clasps." In particular, the Special Master should have concluded that, based on the intrinsic record, the contact recited in this limitation must occur between the clasp guide rails within the buckle prior to ejection, and thereby cause ejection of the clasps.

II. DISCUSSION

A. The Standard

In addressing objections, a court must "accept the master's findings of fact unless clearly erroneous." Fed.R.Civ.P. 53(e) (2). A court must also review the special master's legal conclusions *de novo*. See *Sony Elecs., Inc. v. Soundview Techs., Inc.*, 225 F.Supp.2d 164, 173 (D.Conn.2002).

B. Patent Infringement

A patent infringement case involves a two-step process: (1) construction of the claims of the patent; and (2) comparison of the allegedly infringing device to the scope and meaning of the construed claims. See *Genentech, Inc. v. Wellcome Found, Ltd.*, 29 F.3d 1555, 1561 n. 6 (Fed.Cir.1994). Courts have exclusive jurisdiction to construe the claims of the patent while the question of infringement is determined by the trier of fact. *Markman*, 52 F.3d at 967. The only issue here is the first step.

1. Claim Construction

"[A] patent must describe the exact scope of an invention and its manufacture," as defined by the claims. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 373, 116 S.Ct. 1384, 1387 (1996). "[C]onstruction of a patent ... is exclusively within the province of the court." 517 U.S. at 372, 116 S.Ct. at 1387. The purpose of claim construction is to decide the "meaning and scope of the patent claims asserted to be infringed." *Markman*, 52 F.3d at 976. In that regard, a court must decide "how those skilled in the art would interpret the claim." *Moeller v. Ionetics*, 794 F.2d 653, 657 (Fed.Cir.1986), *abrogated on other grounds*, *Markman*, 52 F.3d at 967. An application for a patent must include: "[1] a specification as prescribed by ... section 112[of 35 U.S.C.; and 2] a drawing as prescribed by section 113 [of 35 U.S.C.]." In addition, the specification must:

[C]ontain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains ... to make and use the same.... The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as [her] invention.

35 U.S.C. s. 112.

In a claim construction, a court relies, to the extent possible, on "intrinsic evidence." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996) ("It is well-settled that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record."). Intrinsic evidence includes, "the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Id.* If intrinsic evidence proves inadequate for the construction of a claim, a court may rely on "extrinsic evidence." *Id.* at 1584. Extrinsic evidence includes, "all evidence external to the patent and prosecution history," *Markman*, 52 F.3d at 980, and may include evidence such as, "expert testimony and inventor testimony, dictionaries, and technical treatises and articles." *Vitronics*, 90 F.3d at 1584.

2. The Disputed Terms

a. Claim 1

With the disputed terms in italics, Claim 1 reads as follows:

1. A buckle assembly configured for one-handed release by an operator thereof, the buckle assembly comprising:

a pair of clasps, each having a flexible release tab; and a main buckle including a hollow body with two sidewalls, an opening for jointly receiving said clasps, and a locking slot extending through each sidewall for providing access to the release tabs;

each flexible release tab snaps into the respective locking slot to engage the sidewall upon full insertion of the clasp, and the locking slots are positioned on the main buckle so that the flexible release tabs are adapted for pressure contact by two fingers of one hand *wherein simultaneous depression of said release tabs biases said pair of clasps into contact with each other so that said pair of clasps is [sic] propelled outwardly of the opening together with increased spring-release action.*

'737 Patent, col 5, lines 33-50.

The Court finds that the Special Master's recommendation concerning Claim 1 is correct. In examining the plain meaning of the disputed phrase, the Special Master concluded that:

[It] should be construed to mean that the act of simultaneously depressing the release tabs causes some portion of each clasp to be pressed against some portion of the other clasp. Pressing the clasps against one another creates a counter-force opposing the depression of the release tabs, thereby causing the flexible release tabs to bend and store a spring force. Thereafter, the clasps must be propelled out of the opening together. As the clasps are propelled out of the opening, the spring force is released to help propel the clasps out of the opening with greater force.

R & R at 16, 17, 54. In support of that recommendation, the Special Master stated that:

Because the plain language of claim 1 does not require the clasps to have guide rails, and because nothing in the specification or prosecution history compels a construction in which the term 'clasp' necessarily includes a guide rail, the limitation in claim 1 'wherein simultaneous depression of said release tabs biases said pair of clasps into contact with each other' should be construed to mean merely that, upon simultaneous depression of the release tabs, some portion of one clasp is biased into contact with some portion of the other clasp.

Id. at 18. The Special Master also stated that "[t]o construe claim 1 to require guide rails would improperly read a limitation from the specification into the claim." Id. at 17.

In rejecting the defendants' argument that contact must occur within the main buckle, the Special Master also stated:

Addressing first the language of the claim, while the defendants correctly argue that the phrase 'so that' means that the clasps are propelled out of the opening after contact first occurs, that does not necessarily mean that the contact occurs inside the main buckle. Contact need only occur in a location or locations that will produce the counter pressure necessary to flex the release tabs (i.e., to store a spring force). If that can be done by contact of the clasps occurring outside of the main buckle, the specification discloses an embodiment in which contact occurs within the main buckle, the specification nowhere states that contact within the main buckle is necessarily a requirement if the design were to be modified.

Id. at 24. The Special Master also rejected the defendants' argument that contact must be within the main

buckle in order to minimize friction because Claim 1 does not require minimizing friction. Id. at 24-25. Based on the drawings and plain language of the claim, he also properly rejected the defendants' contention that the language of the claim, "such that said pair of clasps is propelled outwardly" indicates that the contact must occur within the buckle. Id. at 25. Rather, the language of that claim does not specify where such contact takes place. Id.

The Special Master properly adhered to the plain meaning of Claim 1. The language of the claim, the specification and the prosecution history do not indicate that Claim 1 should be limited to require contact between the guide rails or that this contact occur within the main buckle. Accordingly, the defendants' objection to Claim 1 is denied.

b. Claim 4

With the disputed terms in italics, Claim 4 reads as follows:

4. A buckle assembly configured for single-handed release by an operator thereof, the buckle assembly comprising:

a pair of clasps, each having a flexible release tab; and a main buckle including a hollow body with an *inner surface*, two sidewalls, an opening corresponding to each sidewall for removably receiving said clasps, and a locking slot extending through each sidewall for accessing said release tab;

wherein each flexible release tab snaps into the respective locking slot to engage the sidewall upon full insertion of the clasp, and wherein the locking slots are positioned on the main buckle so that said release tabs are adapted for pressure contact by two fingers of one hand to press each clasp against *a section of said inner surface* opposite the respective locking slot, whereby *said section exerts counter pressure on said clasps during release of said clasps from said main buckle*.

'737 Patent, col 6, lines 3-21.

The Court finds that the Special Master's recommendation concerning Claim 4 is correct. In examining the plain meaning of the disputed phrase, the Special Master found that:

[The] term 'inner surface' should be given its plain meaning, namely, a surface located inside the main buckle. Claim 4, however, contains additional limitations concerning the location of the inner surface, namely, that it must include a section opposite its respective locking slot such that, when pressure is applied to the release tab, some portion of the clasp will press against such inner surface such that the inner surface produces counter pressure.

R & R at 55. Based upon a review of the language in Claim 4, the Court agrees with the Special Master that the term "inner surface" is not amorphous and should be given its plain meaning. R & R at 32. The Special Master also correctly found that the specification of the '737 Patent and the prosecution history do not create a basis to deviate from the plain meaning of the term. R & R at 37-40. Accordingly, the Court denies the defendants' objection to Claim 4.

c. Claim 14

With the disputed terms in italics, Claim 14 reads as follows:

14. A buckle assembly configured for one-handed release by an operator thereof, the buckle assembly comprising:

a main buckle including a hollow body with two sidewalls, an opening corresponding to each side-wall, and a locking slot extending through each sidewall wherein the two openings are in communication with each other;

a pair of clasps, each of said clasps including:

(a) a base member;

(b) a first and second arm member extending from said base member, said first arm member is an axially-extending resilient guide element, said two guide elements are disposed parallel to each other when both are fully inserted in said main buckle;

(c1) a release tab mounted on said second arm member, wherein each of said release tabs includes an exterior surface that extends into locking slot when the clasp is fully inserted in said main buckle;

(c2) said exterior surface is configured and dimensioned so that at least a portion of said exterior surface faces away from the corresponding opening whereby pressure on the portion while depressing the release tab propels the clasp out-wardly of the opening;

(c3) said exterior surface is rounded and a finger slides along the rounded surface as the release tab is depressed and the clasp moves away from the locking slot;

guide means extending axially within each of the main buckle openings and complementary to said guide element and spaced inwardly from the locking slot for cooperative sliding engagement with the guide element during telescopic association there between without interference with the first arm member and the release tab of the clasps;

said guide element and said guide means are disposed off-center of said base member and the opening, respectively, so that said base member is inserted into the opening only in a particular orientation;

wherein the engaging relationship between said clasps and said main buckle results in said release tabs seating in respective locking slots to provide a latching relationship there between and each clasp is unlatched by depressing the respective release tab inwardly of the corresponding locking slot a sufficient distance to pass beyond said sidewall;

each release tab snaps into the respective locking slot to engage the sidewall upon full insertion of the clasp, and wherein the locking slots are positioned on the main buckle so that the release tabs are adapted for pressure contact by two fingers of one hand to release said pair of clasps, wherein *said clasps are adapted for contacting each other upon joint release of said clasps.*

'737 Patent, col 7-8, lines 20-14.

The Court finds that the Special Master's recommendation concerning Claim 14 is correct. In examining the

plain meaning of the disputed phrase, the Special Master concluded that:

[It] should be construed in light of the clause immediately preceding it, which reads 'wherein the locking slots are positioned on the main buckle so that the release tabs are adapted for pressure contact by two fingers of one hand to release said pair of clasps,' and the claim as a whole. When so construed, the disputed language means that, at the time the release tabs are released from the locking slots, some portion of one clasp contacts some portion of the other clasps. No further limitations are warranted.

R & R at 55.

In giving meaning to all words in Claim 14, the Special Master properly recommended that the claim "should be construed to mean that, upon joint release of the clasps, some portion of one clasp contacts some portion of the other clasp." R & R at 49. Also, the Special Master properly rejected the defendant's contention that contact must occur "prior to" the release of the clasps because the plain language of the claim states that contact occurs "upon joint release." R & R at 49. The Special Master also properly recommended that "Claim 14 requires that, upon joint release, some portion of one clasp contact some portion of the other clasp." R & R at 51. In addition, the Special Master properly rejected the defendants' contention that contact must occur within the buckle assembly because, similar to Claim 1, Claim 14 does not state where contact must occur. *Id.* To require contact within the main buckle would read a limitation from the specification into the claim that is not expressly stated. *Id.* The Special Master also properly rejected the defendants' argument that the term "contact" in Claim 14 must have the same meaning as the term "contact" in Claim 1, namely "functional contact" because Claim 1 and Claim 14 contain different limitations. *Id.* at 53. Finally, the Special Master properly rejected the defendants' contention that he should rely on extrinsic evidence concerning this issue. *Id.* Accordingly, the defendants' objection is denied.

III. CONCLUSION

Based on the foregoing, it is hereby

ORDERED, that the defendants' objections to the Report and Recommendation of Robert B. Smith Esq. are denied; and it is further

ORDERED, that the Report and Recommendation is adopted in its entirety; and it is further

ORDERED, that the parties are directed to contact United States Magistrate Judge William D. Wall forthwith to schedule the completion of discovery.

SO ORDERED.

E.D.N.Y., 2003.

National Molding Corp. v. Newell Rubbermaid, Inc.

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