

United States District Court,  
E.D. Texas, Marshall Division.

**ACCO BRANDS, INC,**

v.

**ABA LOCK MANUFACTURING CO.**

Civil Action No. 2:02-CV-112

**Jan. 15, 2004.**

Otis W. Carroll, Jr., Jack Wesley Hill, Ireland Carroll & Kelley, Tyler, TX, Brian A. E Smith, Henry Charles Bunsow, Howrey Simon Arnold & White, Korula T. Cherian, Howrey LLP, Sean P. Hodge, Bad Address, San Francisco, CA, Rickey Lawrence Faulkner, Rickey L. Faulkner, P.C., Sidney Calvin Capshaw, III, Brown McCarroll, Longview, Tx, for Plaintiff.

Guy N. Harrison, Attorney at Law, Longview, TX, Michael E. Dergosits, Samuel S. Lee, Dergosits & Noah LLP, Richard A. Nebb, Jeffer Mangels Butler & Marmaro LLP, San Francisco, CA, Earl Glenn Thames, Jr., John H. Minton, Jr., Michael Edwin Jones, Potter Minton PC, Tyler, TX, Christopher J. Hayes, Robert G. Lancaster, Bryan Cave LLP, St Louis, MO, George C. Chen, Bryan Cave LLP, Phoenix, AZ, Joseph J. Richetti, Lawrence G. Kurland, Bryan Cave LLP, New York, NY, for Defendants.

## ***ORDER***

T. JOHN WARD, **District Judge.**

After considering the submissions and the arguments of counsel, the court issues the following order concerning claim construction and scheduling issues:

### **1. Introduction.**

The plaintiff, Acco Brands, Inc. d/b/a/ Kensington Technology Group, brought this patent infringement suit against the defendants ABA Locks Manufacturing Co. and Belkin Components alleging infringement of certain claims of United States Patent Nos. 5,502,989 (the "989 patent"), the 6,006,557 (the "557 patent"), and 5,493,878 (the "878 patent"). The patents are directed toward the security of portable electronic devices.

### **2. Law Governing Claim Construction.**

The court incorporates by reference the rules governing claim construction and its prior orders construing claims in *ACCO Brands, Inc. d/b/a Kensington v. American Power Conversion Corp., et al.*, Cause No. 2:02-CV-113-TJW. In addition, as to the '989 patent, the court is bound by the Federal Circuit's recent ruling in *ACCO Brands, Inc. v. Micro Security Devices, Inc.*, 346 F.3d 1075 (Fed.Cir.2003). The court's approach here will not deviate from its approach in the previous case. The constructions of the pertinent terms of the '989 patent, the '557 patent, and the '878 patent are set forth below.

## A. '989 Patent.

There are three areas of dispute with respect to the '989 patent. The first concerns the issues that were before the Federal Circuit in *ACCO Brands, Inc. v. Micro Security Devices, Inc.*, 346 F.3d 1075 (Fed.Cir.2003). That court has issued an opinion, and the court will apply the claim construction as set forth by the Federal Circuit. In accordance with that opinion, the court holds that claim 10's limitation requiring a "pin ... for extending into said security slot proximate said slot engaging portion when said slot engagement member is in said locked position" is construed such that "extending" is an active verb. Under this construction, the pin must extend at or during the time that the slot engagement member is in the locked position. There is a sequencing limitation in the claim which requires that the slot engagement member is first rotated to the locked position and the pin is inserted into the slot after the engagement member is in the locked position. In addition, the language of the claim requires a pin that can be extended into the security slot and that inhibits the rotation of the slot engagement member between the locked and unlocked positions. The court declines to import the additional limitations suggested by the defendants; namely, that the pin performs the *sole* function of inhibiting the rotation of the slot engagement member and that the pin be separate and distinct from the slot engagement member. The court is not persuaded that these additional limitations are proper.

There are two additional areas of dispute related to the '989 patent. These disputes involve the proper construction of means plus function claim elements. First, claims 1 and 10 recite limitations, respectively, of "cable attachment means" and "means ... for attaching said cable to said housing." The court, consistent with its prior opinions, has considered the entire specification for corresponding structure. The court holds that corresponding structure includes a pair of aligned apertures through which a cable is passed and the collar structure set forth in Figures 11 and 12. A description of the collar structure is found at Col. 7, ll. 35-40: "A cylindrical collar 106 circumscribes the outer portion of shell 90 and occupies the slot laterally defined by plate 96 and the aft surface 108 of nose-piece 92. Collar 106 has an integral tab 110 with an aperture 112 adapted to receive one end of cable 32. Cable 32 is dead-ended into tab 110 and attached so that it cannot be removed." Notwithstanding the plaintiff's arguments to the contrary, it is not clear that Figure 26A or the description depict the use of a swage to attach the cable to the housing. The court construes the corresponding structure of the attachment means to include a pair of aligned apertures through which a cable is passed, the collar structure shown in Figures 11 and 12 and equivalents.

Finally, the parties dispute the meaning of the term "cable means." The court adopts the plaintiff's proposed construction that this limitation includes only a cable, not the cable and the lock combination set forth in the '557 patent. In the '989 patent, the drawings demonstrate that the cable could be attached around an immovable object with the device passed through a loop in the cable. *See, e.g.*, Figure 2. As such, the court construes the "cable means" limitation to include the cable and equivalent structures.

## B. '557 Patent

The court incorporates by reference its prior claim construction rulings set forth in 2:02-CV-113 with respect to the '557 patent with one caveat: One of the limitations found in claim 3 of the '557 patent recites a "pin retaining means coupled to said pin for inhibiting the removal of said pin from said slot." The court previously construed this clause to be subject to s. 112 para. 6. The court identified as corresponding structure the combination of the body portions, apertures, and cable and equivalents. This was the structure disclosed in Figures 2-7 of the patent.

The plaintiff asserts that the court should consider the additional structure found in Figures 15-18 to be structure corresponding to the pin retaining means limitation of claim 3 of the '557 patent. The court employed a similar approach to the construction of claim 1 of the '557 patent in its previous claim construction opinions, and, in doing so, included the additional structure set forth in Figure 17 of the '557 patent. The plaintiff's request in this case as to the pin retaining means of claim 3 is consistent with the court's previous approach to this issue, and the court will examine Figures 15-18 to assess whether those drawings disclose corresponding structure.

Figures 15-18 show a pin retaining means which performs the function of inhibiting the removal of said pin from the slot. The structure necessary to perform the function is the combination of the pins and the flanges together with the shaft and the spacer or head of such shaft placed partially in between the pins to extend the flanges into the locked position and inhibit their removal from the slot. As to Figures 15-16, the court includes as corresponding structure the combination of the legs 705 and 710, the flanges 720 and 725, and the shaft 735 and spacer 730. As to Figures 17-18, the court includes as corresponding structure the combination of the legs 805 and 810, the flanges 820 and 825, and the shaft 840 and head portion 845. This additional structure, together with the structure previously found to be corresponding and equivalents, constitutes the structure corresponding to the pin retaining means limitation in claim 3 of the '557 patent.

### **C. '878 Patent**

Finally, with respect to the '878 patent, the plaintiff argues that no terms need to be construed. The defendants seek construction of three terms. After carefully considering the briefs, the court is persuaded that only one term needs construction. The court construes the term parallel, as used in the claims, in a manner similar to that suggested by the defendants. As such, the limitation "a first and second locking leg generally parallel to each other" means "a first and second locking leg, generally extending in the same direction, generally an equal distance apart, and not meeting each other." The balance of the terms in the '878 patent need no construction.

### **3. Scheduling issues.**

This case is currently set for a pre-trial conference on January 22, 2004, at 3:30 p.m. and jury selection on February 2, 2004. To enable the parties to file their final infringement and invalidity contentions as required by this court's local patent rules, the court cancels the pre-trial conference and jury selection and re-sets the pre-trial conference for Thursday, April 1, 2004 at 10:30 a.m.. Jury selection is re-set to Monday, April 5, 2004, at 9:00 a.m.. The parties are directed to meet and confer and submit, within ten (10) days, an amended docket control order addressing motions in *limine*, jury instructions, and joint final pretrial order dates consistent with the new trial setting.

So **ORDERED**.

E.D.Tex.,2004.

Acco Brands, Inc. v. ABA Lock Mfg. Co.

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