

United States District Court,  
N.D. Texas, Dallas Division.

**Stephen A. GUMMOW Plaintiff,**  
Stephen A. GUMMOW Plaintiff.

v.

**SPLINED TOOLS CORPORATION,**  
et al. Defendants.

No. 3-03-CV-1428-L

**April 26, 2004.**

Scott L. Harper, Casey L. Griffith, David W. Carstens, Carstens Yee & Cahoon, Dallas, TX, for Plaintiff.

Robert G. Oake, Jr., Law Office of Robert G. Oake Jr., Allen, TX, for Defendants.

***FINDINGS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE***

**KAPLAN, Magistrate J.**

This patent case is before the court on the issue of claim construction. The parties have submitted a joint claim construction statement, briefs, and evidence in support of their respective positions. For the reasons stated herein, the court should interpret the relevant claims as follows:

**I.**

In 1983, Plaintiff Stephen A. Gummow obtained a patent on a dual action ratchet wrench. (U.S. Patent No. 4,406,186, or "the '186 Patent"). ( *See* Plf. Compl. at 2, para. 9). The unique feature of this tool is an elongated handle that moves into different positions above the wrench body and rotates the wrench body while the head is fixed. This special configuration allows the user to rapidly and easily fasten or loosen a nut, which is particularly useful where space is limited. Over the next ten years, plaintiff conceived, designed, and invented several improvements to the '186 Patent, including a various indexable head ratchet wrench. FN1 ( *Id.* at 2, para. 10-11). Some of the prototypes, designs, and writings depicting these improvements were disclosed by plaintiff to Defendants Charles Austin Cole and James G. Jones for the purpose of obtaining their assistance in marketing the wrenches. ( *Id.* at 2, para. 12). Plaintiff alleges that Charles Cole and Jones subsequently communicated his ideas to another defendant, James Ellis Cole, who then filed two patent applications for indexable head ratchet wrenches claiming plaintiff's improvements as his own invention. ( *Id.* at 3, para. 15-16). Patents were subsequently issued to James Cole on May 30, 1995 ( U.S. Patent No. 5,419,211, or "the '211 Patent") and June 16, 1997 ( U.S. Patent No. 5,775,184, or "the '184 Patent"). ( *Id.* at 3, para. 17, 20). These patents were later assigned to Defendant Splined Tools Corporation. ( *Id.* at 4, para. 24). Plaintiff now sues defendants for infringement of the '186 Patent and correction of inventorship. FN2

FN1. An "indexable head ratchet wrench" is a wrench to which other tools are connected for use in tightening and loosening nuts and bolts.

FN2. Plaintiff also sues some or all of the defendants for breach of contract, breach of fiduciary duty, breach of the duty of good faith and fair dealing, unjust enrichment, fraud, conspiracy, and rescission. ( *See* Plf. Compl. at 4-6, para. 27-37).

## II.

The threshold issue in any patent infringement case is claim construction. This is a question of law for the court to decide. *See* *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372, 116 S.Ct. 1384, 1387, 134 L.Ed.2d 577 (1996). In construing the scope of a patented invention, the court must first look to the "intrinsic" evidence of record. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996); *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed.Cir.1995), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). Intrinsic evidence includes the claim language, the specification, and the prosecution history. *Vitronics*, 90 F.3d at 1582.

Claim interpretation always begins with language of the claim itself. *Johnson Worldwide Associates, Inc. v. Zebco Corp.*, 175 F.3d 985, 989 (Fed.Cir.1999); *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed.Cir.1998). In general, these terms must be given their ordinary and accustomed meaning to one skilled in the art. *Quantum Corp. v. Rodime, PLC*, 65 F.3d 1577, 1580 (Fed.Cir.1995), *cert. denied*, 517 U.S. 1167, 116 S.Ct. 1567, 134 L.Ed.2d 666 (1996); *Hoganas AB v. Dresser Industries, Inc.*, 9 F.3d 948, 951 (Fed.Cir.1993). "[D]ictionaries, encyclopedias and treatises are particularly useful resources to assist the court in determining the ordinary and customary meanings of claim terms." *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (Fed.Cir.2002), *cert. denied*, 538 U.S. 1058, 123 S.Ct. 2230, 155 L.Ed.2d 1108 (2003). Indeed, "these materials may be the most meaningful sources of information to aid judges in better understanding both the technology and the terminology used by those skilled in the art to describe the technology." *Id.* at 1203.

Once the court identifies possible definitions, it must examine the intrinsic record to identify which of the various possible meanings are most consistent with the way those terms were used by the inventor. *Id.* In general, a claim must be construed to encompass all meanings that are consistent with the intrinsic record. *Id.* However, "a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition is clearly stated in the patent specification or file history." *Vitronics*, 90 F.3d at 1582; *see also* *Johnson Worldwide Associates*, 175 F.3d at 990. The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication. *Vitronics*, 90 F.3d at 1582. The court also may consider the prosecution history in determining the meaning of disputed terms. *Id.* at 1582-83; *see also* *CVI/Beta Ventures, Inc. v. Tura LP*. 112 F.3d 1146, 1158 (Fed.Cir.1997), *cert. denied*, 522 U.S. 1109, 118 S.Ct. 1039, 140 L.Ed.2d 105 (1998). The prosecution history contains a complete record of all proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims. *Vitronics*, 90 F.3d at 1582.

While most patent claims can be construed solely on the basis of intrinsic evidence, extrinsic evidence may

be considered "for background and education on the technology implicated by the presented claim construction issues." *Key Pharmaceuticals v. Hercon Laboratories Corp.*, 161 F.3d 709, 716 (Fed.Cir.1998). However, extrinsic evidence cannot be used to arrive at a construction of the claim that is clearly contrary to the public record. *Id.*; *Vitronics*, 90 F.3d at 1584.

### III.

Claim 1 of the '186 Patent states:

What is claimed:

a wrench body having a top and a bottom;

a shank extending downwardly from the bottom of the wrench body for rotatably driving removably attached tools about a first axis;

a handle having a first end for gripping by a user and a second end for transmitting force from the handle to the wrench body; and

a pivot pin extending between and connecting the wrench body and the second end of the handle, the pivot pin being aligned along a second axis which is spaced from and parallel to the first axis; wherein the pivot pin extends through and is slidable within a *cylindrical opening* in one of the wrench body and second end of the handle to permit sliding movement of said one containing the *cylindrical opening* along the second axis, and wherein the pivot pin is rotatable with respect to the *cylindrical opening*, so that the wrench body and the second end of the handle are relatively positionable along the second axis in a first engaged force transmitting relationship and a second spaced apart force transmitting relationship; therein in the first engaged force transmitting relationship the wrench body and the second end are positioned so that at least a portion of the second end of the handle is below a plane which is perpendicular to the first and second axes and is defined by the top of the wrench body, with a surface of the second end *engaging a mating surface* of the wrench body in a *fixed force transmitting relationship*; and wherein the pivot pin is of sufficient length so that in the second force transmitting relationship a bottom surface of the second end of the handle is elevated above and spaced apart from the plane defined by the top of the wrench body so that the second end of the handle is freely rotatable about the second axis while the pivot pin and the second end of the handle are freely rotatable in a full circle about the first axis.

( *See* Plf.App. at 90) (emphases added). The parties seek construction of the terms and phrases: (1) "engaging a mating surface," (2) "fixed force transmitting relationship," and (3) "cylindrical opening."

#### A.

Plaintiff contends that the phrase "a surface of the second end engaging a mating surface of the wrench body" means "a surface of the wrench handle comes into contact with a surface of the wrench body." (Plf. Br. at 5). Defendants counter that the term "engaging" requires the two surfaces to interlock with, not merely contact, one another. (Def. Br. at 2, 6).

In ordinary usage, "engage" means "to come into contact or interlock with," or "mesh." The term "mate" means "to fit (mechanical parts) together." ( *See* Plf.App. at 2-3; *see also* Def.App. at 77-84). An inventor is entitled to the benefit of all meanings consistent with the use of the terms in the intrinsic record. *Rexnord*

Corp. v. Laitram Corp., 274 F.3d 1336, 1343 (Fed.Cir.2001). Because he never explicitly disclaimed an intention to capture alternative meanings, plaintiff concludes that he is entitled to a construction encompassing all three definitions. In other words, plaintiff maintains that the '186 Patent describes a relationship between the wrench handle and the wrench body in which the surfaces contact, interlock, or fit together.

This proposed construction ignores the plain language of the claim. Plaintiff treats the terms "engage" and "mate" as alternatives when in fact they are both necessary components of the claim. The patent does not describe a handle that engages *or* mates with a surface, but specifically requires that the handle *engag[e] a mating surface*. Even under plaintiff's proposed definition, "mating" requires mechanical parts to fit together. A handle end that merely contacts a surface would not "mate" with that surface. The construction proposed by plaintiff would essentially read the term "mating" out of the claim language, an untenable prospect. *See Exxon Chemical Patents, Inc. v. Lubrizol Corp.*, 64 F.3d 1553, 1557 (Fed.Cir.1995), *cert. denied*, 518 U.S. 1020, 116 S.Ct. 2554, 135 L.Ed.2d 1073 (1996) (court must give meaning to all terms of the claim).

Nothing in the intrinsic record contradicts the conclusion that the term "engage" was used in its ordinary sense to mean "interlock with." The court therefore determines that the phrase "engaging a mating surface" means to "interlock with a mating surface of the wrench body."

## B.

The '186 Patent further requires that the second end of the handle engage a mating surface in a "fixed force transmitting relationship." Plaintiff argues that the term "fixed" should be construed in light of the specification, which provides that "the handle is in a fixed relationship with respect to the wrench body to prevent it from having angular movement with respect to the wrench body." ( *See* Plf.App. at 88). *See Vitronics*, 90 F.3d at 1582 (specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication). Defendants do not challenge this construction, and the court agrees that it is appropriate in light of the specification.

For their part, defendants contend that the term "force transmitting relationship" should be construed to mean "a force transmitting relationship capable of tightening, breaking loose, loosening, and removing nuts from machine bolts." (Def. Br. at 6-7). Construing the claim to incorporate such a limitation would be improper for at least two reasons. First, the background section of the patent, from which this limitation supposedly derives, states: "This invention relates to ratchet wrenches having shanks holding socket heads to install and tighten nuts onto machine bolts and to break loose and remove nuts from machine bolts, *for example*." ( *See* Def.App. at 4) (emphasis added). It would be improper to limit this claim to a condition listed as but one example of the possible uses of the invention. *See Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1300-01 (Fed.Cir.2003); *Honeywell Inc. v. Victor Company of Japan, Ltd.*, 298 F.3d 1317, 1325-26 (Fed.Cir.2002). Moreover, a claim term that is expressed in general descriptive words typically should not be limited to a numerical range or subset of structures expressed in the written description. *See Renishaw*, 158 F.3d at 1249-50. That principle applies with equal force here. The court therefore determines that the phrase "in a fixed force transmitting relationship" means "in a force transmitting relationship in which there is no angular movement between the wrench handle and the wrench body."

## C.

Finally, the '186 Patent describes a dual action ratchet wrench with a "cylindrical opening." Defendants contend that this term should be construed to mean "a shape with straight sides and circular ends of equal size." (Def. Br. at 7). Plaintiff agrees with the "straight sides" part of this definition, but argues that the open ends may be of any shape, not merely circular. (Plf. Br. at 6, 10).

The dictionary defines a "cylinder" as:

1. *Math.* a. A surface generated by a straight line moving parallel to a fixed straight line and intersecting a plane curve. b. The part of such a surface bounded by two parallel planes and the regions of the planes bounded by the surface. c. A solid bounded by two parallel planes and such surface having a close curve, esp. a circle, as a directrix.

*Webster's II New College Dictionary* at 282 (1986 ed.). Although this definition references a circular cylinder by way of example, it does not necessarily limit a cylinder to such a shape. FN3 To the contrary, at least two geometry treatises make clear that such a limitation is not inherent in the definition of a cylinder. See *Dow Chemical Co. v. Sumitomo Chemical Co., Ltd.*, 257 F.3d 1364, 1372 (Fed.Cir.2001) (citing cases) (technical definitions generally preferable to those found in general dictionaries). In *Geometry, A Modern Introduction*, the authors write:

FN3. One of the three general definitions cited by defendants in support of their argument also defines "cylinder" without reference to a circle. ( See Def.App. at 86) (defining cylinder as "the surface traced by a straight line moving parallel to a fixed straight line and intersecting a fixed planar closed curve [or] the space bounded by a cylinder and two parallel planes cutting all its elements").

Consider a curve on a plane and a line that meets the curve but does not itself lie in the plane, ... Now consider the set of all lines parallel to line  $m$  which contain a point of the curve  $C$ ... [T]he union of all these lines is called a *cylindrical surface*. The curve  $C$  could be any sort of curve.... Let us now make the following definition,

... If  $C$  is any plane curve and  $m$  is a line not on the plane but containing a point of  $C$ , then the union of  $m$  and all lines parallel to  $m$  and containing a point of  $C$  is called a *cylindrical surface*. The line  $m$  is called a *directrix*, and the curve  $C$  is called the *generatrix*.

Mervin L. Keedy & Charles W. Nelson, *Geometry, A Modern Introduction* at 69-70 (2d ed. 1973) (Plf.App. at 57-58) (emphases in original). The *McGraw-Hill Encyclopedia of Science & Technology* gives a similar definition and notes that cylinders may be elliptical, parabolic, hyperbolic, or polygonal, as well as circular. See *McGraw-Hill Encyclopedia of Science & Technology*, Vol. 4 at 653 (7th ed. 1992) (Plf.App. at 60). FN4 FN4. This same construction was adopted by a federal district court in Illinois in an earlier lawsuit brought by plaintiff. *Gummow v. Snap-On Tools, Inc.*, No. 98-C-8013, op. at 6-7 (N.D.Ill. Jan. 11, 2001). See *Lamps Plus, Inc. v. Dolan*, 2003 WL 22435702 at (N.D.Tex. Aug.26, 2003) (prior constructions of claims may be instructive).

Nor is the limitation of the cylindrical opening to a circular shape consistent with the intrinsic record. Although defendants correctly note that the illustrations all depict a circular opening, limitations shown in the patent drawings should not be imported into the claim when the specification and claim language contain no such limitation. See *Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc.*, 261

F.3d 1329, 1339 (Fed.Cir.2001), *citing* Johnson Worldwide Assoc., Inc. v. Zebco Corp., 175 F.3d 985, 992 (Fed.Cir.1999). Nothing in the claim, specification, or prosecution history supports defendants' assertion that "[i]f the opening was anything other than 'a shape with straight sides and circular ends of equal size,' ... then such surface could [not] be used to transmit the type of force contemplated by the subject patent[.]" ( *See* Def. Br. at 7). The court construes the term "cylindrical opening" to mean "an opening with straight sides and open ends of any shape."

### ***RECOMMENDATION***

The court should construe the following disputed terms and phrases in Claim 1 of the '186 Patent as follows:

(a) the phrase "engaging a mating surface" means to "interlock with a mating surface of the wrench body,"

(b) the phrase "in a fixed force transmitting relationship" means "in a force transmitting relationship in which there is no angular movement between the wrench handle and the wrench body;" and

(c) the term "cylindrical opening" to mean "an opening with straight sides and open ends of any shape."

A copy of this report and recommendation shall be sent to all counsel of record. Any party may file written objections to this recommendation by *May 10, 2004*. The failure to file written objections shall bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See* Douglass v. United Services Automobile Ass'n, 79 F.3d 1415, 1417 (5th Cir.1996).

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