

United States District Court,
E.D. Pennsylvania.

FISHER-PRICE, INC,

v.

GRACO CHILDREN'S PRODUCTS, INC. and.

June 15, 2004.

Anthony J. Dimarino, III, Frederick A. Tecce, Mcshea Tecce PC, Philadelphia, PA, Christopher M. Guest, Jay I. Alexander, William E. Wallace, III, Milbank Tweed Hadley & McCloy LLP, Washington, DC, for Plaintiff.

Jody B. Greenberg, Lynn E. Rzonca, Ballard Spahr Andrews & Ingersoll LLP, Philadelphia, PA, for Defendants.

MEMORANDUM AND ORDER

FULLAM, J.

Plaintiff alleges infringement by defendant of Patent No. 6,520,862 ("the '862 patent"). At their request, the parties presented written and oral arguments on the construction of claims 6 and 7 of that patent. *See* Markman v. Westview Instruments, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996).

Claim 6 covers:

"An infant swing comprising:

An upwardly extending frame support post; a swing arm pivotally coupled to an upper end of said frame support post and extending in a downward direction from said upper end of said frame support post; a seat coupled to said swing arm and having an upper seating surface; said swing arm and said frame support post defining a reconfigurable swing area therebetween; and a shield coupled to said seat and extending upwardly from said seat and disposed between said reconfigurable swing area and said seating area."

Claim 7, dependent upon claim 6, covers:

"The infant swing of claim 6, wherein said shield is formed of open mesh fabric."

After carefully reviewing the patent and the submissions of the parties, I set forth my construction of the claims below.

Both plaintiff and defendant have long been involved in designing and marketing various juvenile products, including such items as children's swings, baby strollers, and portable bassinets. Although plaintiff's patent, having been issued, is presumed to be valid, a patent is invalid if indefinite. 35 U.S.C. s. 112 ("The specification shall conclude with one or more claims particularly pointing out and distinctly claiming he subject matter which the applicant regards as his invention."). The claims in a patent must be "sufficiently precise to permit a potential competitor to determine whether or not he is infringing." *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1342 (Fed.Cir.2003). The parties disagree as to the meanings

of various terms and Graco contends that several terms in the claim cannot be construed at all because they are indefinite. Determining definiteness "requires an analysis of 'whether one skilled in the art would understand the bounds of the claim when read in light of the specification.'" *Personalized Media v. International Trade Comm'n*, 161 F.3d 696, 705 (Fed.Cir.1998) (quoting *Miles Lab., Inc. v. Shandon, Inc.*, 997 F.2d 879, 875 (Fed.Cir.1993)). Bearing in mind these principles, I construe the relevant terms in the patent as follows:

-> "An upwardly extending frame support post" means one or more structures that support parts of the swing. *See KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed.Cir.2000) ("This court has repeatedly emphasized that an indefinite article 'a' or 'an' in patent parlance carries the meaning of 'one or more' in open-ended claims containing the transitional phrase 'comprising.' ")

-> "a seat coupled to said swing arm and having an upper seating surface" is indefinite. The meaning of "upper seating surface" is unclear. Fisher-Price defines the "upper seating surface" as the entire top surface of the seat (and concomitantly defining at the hearing the lower seating surface as the underside of the swing). Fisher-Price's definition would apply to every seat, but the patent distinguishes the swing as having an upper seating surface, thus implying that not every seat would have an "upper seating surface."

-> "said swing arm and said frame support post defining a reconfigurable swing area therebetween" is indefinite. As Fisher-Price itself acknowledged, one of the drawings (Figure 7) is inaccurate. *See Tr. of April 15, 2004 at 34*. A person skilled in the art reviewing the patent as a whole, including the drawing, could not determine the "reconfigurable swing area."

-> "a shield coupled to said seat and extending upwardly from said seat" is indefinite. It is unclear whether the shield is to be coupled with the seat itself, the (undefined) "seating area", or the padded seat cover (if that is what is meant by "upper seating surface.")

-> "and disposed between said reconfigurable swing area and said seating area" is indefinite. Seating area is nowhere defined in the patent. Fisher-Price's attempts to define the "upper seating surface" as the entire padded area and the "lower seating surface" as the underside of the swing was unconvincing and against the ordinary meaning of the terms.

An Order follows.

ORDER

AND NOW, this day of June, 2004, it is ORDERED that the terms of Patent No. 6,520,862 are construed as set forth in the accompanying memorandum.

E.D.Pa.,2004.

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