United States District Court,
W.D. Michigan, Southern Division.

GRAND HAVEN STAMPED PRODUCTS COMPANY,
Plaintiff and Counter-Defendant.
v.
DURA AUTOMOTIVE SYSTEM, INC,
Defendant and Counter-Plaintiff.

No. 1:03-cv-343

June 28, 2004.

Matthew Gipson, Steven L. Underwood, Price Heneveld Cooper Dewitt & Litton, Grand Rapids, MI, for Plaintiff.

Peter D. McDermott, Dale A. Malone, Banner & Witcoff, Ltd., Boston, MA, for Defendant.

ORDER

RICHARD ALAN ENSLEN**, District Judge.**

In accordance with the Opinion filed this date:

IT IS HEREBY ORDERED that the Court adopts the legal claim constructions of the terms in Claims 1, 2 and 5 of U.S. Patent No. 5,799,538 as the binding interpretations in this case.

OPINION

This matter is before the Court to consider the legal claim constructions of the patent at issue. This issue has been fully briefed and can be readily decided without oral argument. W.D. Mich. L. Civ. R. 7.2(d).

Plaintiff Grand Haven Stamped Products Company has sued Defendant Dura Automotive System, Inc. for patent infringement regarding Plaintiff's U.S. Patent No. 5,799,538 ("'538 patent"), which is a patent covering particular kinds of automobile automatic transmission shifters having a shift lever support configured to facilitate assembly. Defendant has counterclaimed for a declaratory judgment of invalidity, unenforceability, and non-infringement of the '538 patent. According to the parties' claim construction charts, statements and briefs, the claims at issue are Claims 1, 2, and 5 of the ' 538 patent. In connection with claim construction, Plaintiff has neither requested an evidentiary hearing nor requested the Court to consider any extrinsic evidence, and Defendant has submitted that, to the extent Plaintiff's assertions with respect to the claims terms to be construed are at odds with Defendant's submitted constructions, these terms may be so ambiguous or vague as to merit an evidentiary hearing for consideration by the Court of extrinsic evidence to determine what the claims would have meant to one of ordinary skill in the art at the time of the

alleged invention.

The Court has received a Sur-Reply Brief from Defendant that included Technical Expert Reports directed to the meaning of the claim language at issue, but this Brief was not considered in the construction of the claim terms that follows. Defendant has not been granted leave of court to file its Sur-Reply Brief, as required by Local Civil Rule 7.2(c). A sur-reply brief must be attached as an exhibit to a motion seeking leave to file. W.D. Mich. L. Civ. R. 5.7(f). FN1

FN1. The Court, however, having read Defendant's Sur-Reply Brief, has determined that it presents no material that would vary the constructions of the '538 patent claim terms made in this Opinion.

CLAIM CONSTRUCTION LEGAL STANDARDS

In accordance with the Case Management Order issued on August 22, 2003, the parties submitted claim construction charts, statements and briefs for the purpose of determining the legal construction of the pertinent patent claims. The Court has now read and analyzed those papers. In doing so, the Court has concluded that a hearing on claim construction is unnecessary since the claim construction may be readily made from the pertinent claim language and the intrinsic evidence filed by the parties. The papers themselves are clear and do not need further comment. The United States Supreme Court's decision in Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996) made clear that patent construction is an essential aspect of patent adjudication, but took no position on the process to be used in claim construction. *See* Ballard Med. Prods. v. Allegiance Healthcare Corp., 268 F.3d 1352, 1358 (Fed.Cir.2001). In the Court's judgment, the process used in this case is sufficient to fairly adjudicate the legal construction of the claims and to allow the parties a fair opportunity to be heard prior to the construction.

Under federal patent law, the patent claims define the patentee's property rights in the claimed invention similar to the manner in which a property description in a deed defines a landowner's right to possess real property. In re Vamco Mach. & Tool, Inc., 752 F.2d 1564, 1577 n. 5 (Fed.Cir.1985). Construction of the patent claim language is a matter of law for the courts to explicate on the record. Markman v. Westview Instruments, Inc., 52 F.3d 967, 976 (Fed.Cir.1994) (*en banc*), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996); Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1581-82 (Fed.Cir.1996). Courts may properly draw from several sources for guidance in determining the proper construction of a patent claim, including both intrinsic evidence such as the patent specification and prosecution history, and extrinsic evidence such as expert testimony. Vitronics, 90 F.3d at 1582.

In *Vitronics,* the Federal Circuit explained claim construction as follows:

It is well-settled that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history.... Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language.

First, we look to the words of the claims themselves, both asserted and non-asserted, to define the scope of the patented invention.... Although words in a claim are generally given their ordinary and customary meaning, 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 of the term is clearly stated in the patent specification or file history....

Thus, second, it is always necessary to review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning. The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication.... As we have repeatedly stated, "[c]laims must be read in view of the specification, of which they are a part." ... The specification contains a written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it. Thus, the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.

Third, the court may also consider the prosecution history of the patent, if in evidence.... This history contains the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims. As such, the record before the Patent and Trademark Office is often of critical significance in determining the meaning of the claims....

In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence.... In those cases where the public record unambiguously describes the scope of the patented invention, reliance on any extrinsic evidence is improper. The claims, specification, and file history, rather than extrinsic evidence, constitute the public record of the patentee's claim, a record on which the public is entitled to rely. In other words, competitors are entitled to review the public record, apply the established rules of claim construction, ascertain the scope of the patentee's claimed invention and, thus, design around the claimed invention.... Allowing the public record to be altered or changed by extrinsic evidence introduced at trial, such as expert testimony, would make this right meaningless.... The same holds true whether it is the patentee or the alleged infringer who seeks to alter the scope of the claims.

Vitronics, 90 F.3d at 1581-83 (citations omitted).

In the absence of an expressed intention to attach a novel meaning to claim terms, claim terms assume the full breadth of the ordinary and customary meanings usually attributed to them by those of ordinary skill in the art. Ferguson Beauregard/Logic Controls, Div. of Dover Res., Inc. v. Mega Syst. LLC., 350 F.3d 1327, 1338 (Fed.Cir.2003). Customary meaning may be drawn from a variety of sources, including the claims themselves, dictionaries and treatises, the specification and drawings, and the prosecution history. *Id*. (citing cases). The claim language must be examined through the eyes of a person skilled in the art. *Id*.

Notwithstanding the above rules of construction, there are at least two common situations wherein the common usage of terms is improper when defining claim terms. One situation is where the patentee, acting as his or her own lexicographer, clearly adopts an alternate definition. ACTV, Inc. v. Walt Disney Co., 346 F.3d 1082, 1091 (Fed.Cir.2003). Another situation is where the patentee has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope. *Id.;* Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1324-26 (Fed.Cir.2002). The latter category includes circumstances in which the patentee during the prosecution history disclaimed or disavowed subject matter, narrowing the scope of the claim terms. *Id*.

Dictionaries do not form part of an integrated patent document and, thus, fall within the category of

extrinsic evidence. Nevertheless, they deserve special note. So long as a dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents, judges, in order to better comprehend the underlying technology, may consult and rely on dictionary definitions when construing claim terms. *See* Vitronics, 90 F.3d at 1584 n. 6. The use of dictionary definitions requires special care because those definitions, while reflecting common usage, sometimes do not reflect the context of the invention or the understandings of persons skilled in the art. Ferguson, 350 F.3d at 1338. As opposed to expert testimony, however, dictionaries are more reliable and objective guides that are publicly accessible in advance of litigation. *See* Vitronics, 90 F.3d at 1585.

Only when some genuine ambiguity remains in the claims following consideration of all available intrinsic evidence pertaining to the meaning of a claim should the Court resort to extrinsic evidence. Certainly, instances where intrinsic evidence is insufficient to enable a determination of the meaning of the asserted claims will arise. *See* Markman, 52 F.3d at 979. When such circumstances require expert testimony, courts routinely hold *Markman* hearings to determine the proper interpretation of claim language. *See* Teleflex, Inc. v. KSR Int'l Co., 298 F.Supp.2d 581, 591 (E.D.Mich.2003). Nevertheless, since the Court finds the patent documents submitted here sufficiently leave no patent term ambiguous or vague, such extrinsic evidence is entitled no weight, and an evidentiary hearing on the meaning of the asserted claims is unnecessary. Permitting consideration of extrinsic evidence in a case such as this "would be unfair to competitors who must be able to rely on the patent documents themselves, without consideration of expert opinion that then does not even exist, in ascertaining the rights of a patentee's right to exclude." Southwall Techs., Inc. v. Cardinal IG Co., 54 F.3d 1570, 1578 (Fed.Cir.1995).

CLAIM LANGUAGE

Claim 1 recites:

An automatic transmission shifter for a vehicle comprising: a support configured for attachment to a vehicle, said support including a longitudinally extending center flange forming a detent plate structure defining a plurality of gear positions and further including spaced apart opposing pivot flanges and webs connecting opposite ends of each of said pivot flanges to said center flange in spaced relationship therefrom, said pivot flanges defining a space therebetween generally below said detent plate structure and defining a downwardly-facing access opening and an upwardly facing access opening to said space; a shift lever for shifting between the plurality of gear shift positions on said support, said shift lever including a post and a pivot structure at one end of the post, the shift lever being configured to fit through said downwardly facing access opening of said support during assembly to an operative position wherein said post is positioned adjacent said detent plate structure and said pivot structure is positioned between said opposing pivot flanges; and at least one pivot pin engaging said pivot structure and said opposing pivot flanges for pivotally mounting said shift lever to said support, upper edges of said pivot flanges terminating below an upper edge of said center flange to provide an open, accessible structure whereby manual manipulation and positioning of said pivot structure on said pivot flanges is facilitated thereby simplifying assembly of said shifter.

('538 patent, col.5, lines 33-62.)

Claim 2 recites:

An automatic transmission shifter as defined in claim 1 wherein said pivot structure is insert-molded on said post.

(Id., col. 5, lines 63-64.)

Claim 5 recites:

An automatic transmission shifter for a vehicle, comprising: a support configured for attachment to a vehicle, said support including a longitudinally extending center flange, the center flange including a detent plate structure defining a plurality of gear positions, spaced apart opposing pivot flanges and webs connecting opposite ends of each of said pivot flanges to the center flange in spaced relationship therefrom, at least one leg projecting laterally from each side of the center flange, each laterally projecting leg including an attachment flange defining an aperture for receiving a fastener for securing the support to a vehicle; a shift lever including pivot structure; and at least one pivot pin engaging the pivot structure and the opposing pivot flanges for pivotally mounting the shift lever to the support.

(Id., at col. 6, lines 4-20.)

SPECIFICATION LANGUAGE

The patent describes the background of the invention as follows:

The present invention concerns a vehicle shifter, and more particularly concerns an automatic transmission shifter having a shift lever support configured to facilitate assembly.

Many automotive transmission shifters for vehicles include a support having a cup-shaped section.... The cup-shaped section forms a structurally rigid mounting structure for the shift lever.... However, the cup-shaped section also creates a semi-blind situation where it is more difficult than desired to align the shifter with pivot holes on the support when installing a pivot pin to pivotally mount the shift lever to the support. This semi-blind situation can be further aggravated by the presence of other structures on the support....

Another problem is the numerous pieces that must be welded or assembled together to form a shifter support subassembly or a complete shifter assembly. Some molded support structures have been constructed to reduce the number of parts and subassembly operations. However, improved molded structures are desired that save material and reduce weight, and yet are structurally satisfactorily rigid. Further, many molded support structures also have the semi-blind assembly problem noted above.

Thus, a shifter solving the aforementioned problems is desired.

(Id., col. 1, at lines 9-13, 18-24, 29-39.)

The patent summarizes the invention as follows:

The present invention includes an automatic transmission shifter for a vehicle including a support configured for attachment to a vehicle, and a shift lever defining a plurality of gear positions pivotally mounted to the support. The support includes a detent plate structure defining a plurality of gear positions and further includes opposing pivots defining a space therebetween generally below the detent plate structure. The shift lever includes a post and pivot structure at one end of the post. The support includes a bottom defining an access opening to the space, and the shift lever is configured to fit through the access

opening of the support during assembly to an operative position wherein the post is positioned adjacent the detent plate structure and the pivot structure is positioned between the opposing pivots. The shifter also includes at least one pivot pin engaging the pivot structure and the opposing pivots for pivotally mounting the shift lever to the support.

(Id., col. 1, at lines 43-58.)

As is typical of patents, the specification language also includes a detailed description of a preferred embodiment of the invention, which embodiment is explained by reference to technical drawings of the embodiment. (Id., at col. 2, line 21 to col. 5, line 30; drawing sheets 1-7.)

CLAIM CONSTRUCTION

In consideration of the law and the parties' arguments, the Court determines to adopt the below described claim constructions of disputed terms in Claims 1, 2, and 5. Claims 1 and 5 are independent claims whose meanings do not borrow limitations from other claims in the '538 patent. These claims, however, share a number of common terms at issue. Of course, Claim 2 is a dependent claim whose meaning depends on the elements of Claim 1.

1. Claims 1 and 5

a. "a support"

The term "support" calls for a structurally rigid, molded structure that serves as a prop, base, foundation, brace or stay for a shift lever and related attachments, and pivotally mounts a transmission shift lever, such that the pivot axis is at a low position on the shifter to provide optimal mechanical advantage and movement to actuate a transmission shift cable.

b. "a longitudinally extending center flange"

The term "longitudinally extending center flange" refers to a single, vertically planar projecting rim or rib located along the middle part or the centerline of the support and extending along the longitudinal length of the vehicle on which the detent plate structure is formed or attached. This structure is not attached to the inside of a supporting sidewall or a walled arrangement.

While noting that the article "a" can mean "one or more" in patent claims, *see* AbTox, Inc. v. Exitron Corp., 122 F.3d 1019, 1023 (Fed.Cir.1997), the Court finds the specification language to express a singular embodiment of the invention's center flange. Notwithstanding Plaintiff's arguments comparing the use of "a" in this term to indefinite terms in other patents found to potentially contemplate the existence of multiple elements, the "center flange" element in this term is described more like the patent term "a cup" at issue in Insituform Techs., Inc. v. Cat Contracting, Inc., 99 F.3d 1098 (Fed.Cir.1996) than the elements at issue in the cases cited by Plaintiff. The claim language and the specification in *Insituform* were interpreted as suggesting "a cup" was meant to encompass only one cup. There, the asserted claim repeatedly described a single cup, using the term "the cup" and describing a process in terms of a single cup. Insituform, 99 F.3d at 1105-06; *See also* AbTox, 122 F.3d at 1023-24 (interpreting the article "a" in the claim term "a metallic gas-confining chamber" as suggesting a single chamber). In Claims 1 and 5 in the '538 patent, the "center flange" element is referenced back to as "said center flange" and "the center flange," suggesting a single flange. ('538 patent, col. 5, at lines 40-41; col. 6, at lines 7-8, 11). Additionally, neither the specification nor

the drawings of the '538 patent reveal the use of more than one center flange.

However, this interpretation does not create the outcome that any product containing an additional, unrecited structure in the support (such as another flange or a wall) would not infringe upon the patent. The specific claim *term* construed here only refers to a single center flange, but the term "comprising" in these claims permits the claims to include additional elements. Use of the transitional term "comprising" in patent claims indicates that the claims are inclusive or open-ended and may be supplemented by additional, unrecited elements. *See* Renishaw P.L.C. v. Marposs Societa' Per Azioni, 974 F.Supp. 1056, 1083 (E.D.Mich.1997). Thus, an accused product need not exactly meet every limitation to infringe a patent claim that contains the term "comprising" in its preamble. Modification by merely adding elements cannot negate infringement if the accused device has otherwise adopted the basic features of the patent. *Id*. Nevertheless, in accordance with the stated objectives of the '538 patent, any modified version of the support covered by these claims must provide an open structure facilitating the mounting of the shift lever to the same extent as the invention to solve certain specified problems with known shifter support structures having a cup-shaped section. A support within the scope of Claims 1 and 5 must reduce weight and save material, as well as alleviate the semi-blind assembly problem. ('538 patent, col. 1, at lines 33-39).

c. "detent plate structure defining a plurality of gear positions"

The term "detent plate structure defining a plurality of gear positions" means a structure of irregular notches positioned on a lower edge of the center flange for engagement by the shift lever that correspond to the PRNDL shift positions of an automatic transmission. The structure can be molded as part of the rear section of the center flange or a separate plate attached to the center flange.

d. "spaced apart opposing pivot flanges"

The term "spaced apart opposing pivot flanges" refers to projecting rims or ribs with flat inner surfaces placed a fixed distance from each other on opposite sides of the center flange that support the shift lever pivot structure and attach it to the support via a pivot pin for turnable or rotational motion. These projections are distinct from and supported by pairs of webs that serve to connect opposite ends of each pivot flange to the center flange.

e. "webs connecting opposite ends of each of said pivot flanges to said center flange in spaced relationship therefrom"

The terms "webs connecting opposite ends of each of said pivot flanges to said center flange in spaced relationship therefrom" means flat, narrow and rigid connecting plates that hold the pivot flanges in fixed distance from each other on opposing sides of the support, forming a looped structure defining a generally open, accessible bottom area that facilitates manual manipulation and positioning of the pivot structure on the pivot flanges from above and below, and within which the shift lever can be inserted during assembly. These structures extend from and connect the front and rear ends of each of the pivot flanges to the center flange.

f. "pivot structure"

The term "pivot structure" refers to a separate, functional structure located at the lower end of the post of the shift lever between the pivot flanges that pivotally attaches the shift lever to the pivot flanges and operationally couples the shift lever to the shifter.

2. Claim 1 only

g. "defining a downwardly facing access opening and upwardly facing access opening"

The term "access opening" means an opening to an area lower than the detent plate structure defined by the looped structure of the webs and pivot flanges that allows access to and manipulation of the pivot structure from a specified direction. The term "downwardly facing access opening" refers to the generally open bottom area within and through which the shift lever can be inserted from below and mounted to the support during assembly, while the term "upwardly facing access opening" refers to the open area directly above that allows complete access to and manipulation of the shift lever from above the support during assembly. The bottom access allows ready alignment of the pivot structure with the pivot flanges to facilitate easy and efficient insertion of the pivot pin.

h. "adjacent said detent plate structure"

The term "adjacent said detent plate structure" means positioned near the detent plate structure.

i. "upper edges of said pivot flanges terminating below an upper edge of said center flange"

The term "upper edge of said center flange" means the edge formed by the uppermost end line or border at which the center flange terminates. The term "upper edges of said pivot flanges" means the edges formed by the uppermost end lines or border of the pivot flanges that terminate lower than the upper edge of the center flange.

j. "thereby simplifying assembly of said shifter"

The term "thereby simplifying assembly of said shifter" means allowing manual manipulation and positioning of the internal components of the shifter.

3. Claim 2

k. "said pivot structure is insert-molded on said post"

The term "said pivot structure is insert-molded on said post" means the pivot structure, where it extends transversely at the lower end of the insert-molded body, is molded in place about the post.

4. Claim 5 only

1. "at least one leg projecting laterally from each side of the center flange, each laterally projecting leg including an attachment flange defining an aperture for receiving a fastener for securing the support to a vehicle"
The term "at least one leg projecting laterally from each side of the center flange" means each side of the longitudinal length of the center flange must include at least one "laterally projecting leg," a term referring to a structure providing support for one side of the shifter support and having an attachment rim or rib projection extending outwardly from the side and fitted with a hole for receiving a fastener, such as a screw, to secure the support to the vehicle.

CONCLUSION

For the reasons set forth above, an Order shall enter approving the interpretations set forth in this Opinion as the binding legal interpretations controlling the interpretation of Claims 1, 2, and 5 of the '538 patent.

W.D.Mich.,2004.
Grand Haven Stamped Products Co. v. Dura Automotive System, Inc.