

United States District Court,
N.D. California, Oakland Division.

JOHNSON & JOHNSTON ASSOCIATES, INC., a New Hampshire corporation,
Plaintiff.

v.
R.E. SERVICE CO., INC., a California corporation,
Defendant.
and Related Counterclaim,
and Related Counterclaims.

No. CV 03-02549SBA

Aug. 18, 2004.

Matthew Herman Poppe, Orrick Herrington & Sutcliffe LLP, Menlo Park, CA.

Robert Michael Isackson, Esq., William Benjamin Tabler, III, Orrick Herrington & Sutcliffe LLP, New York, NY, for Plaintiff.

Archie Stirling Robinson, Robinson & Wood, Inc., Robert A. Nakamae, San Jose, CA, for Defendant.

ORDER RE CLAIM CONSTRUCTION

SAUNDRA BROWN ARMSTRONG, District Judge.

On July 29, 2004, this Court held a claim construction hearing in this patent infringement case. Each party appeared, represented by counsel of record. Having considered the parties' oral argument, their claim construction briefs, the claims, specifications, and file histories of the patents-in-suit, and the other admissible evidence presented by the parties, IT IS HEREBY ORDERED as follows:

(1) The disputed claim terms of U.S. Patent Nos. 5,674,596 (the "'596 patent") and 5,942,315 (the "'315 patent") have or had the following meanings to a person of ordinary skill in the art at the relevant time periods:

'596 Patent

1. **sheet of steel:** "A thin piece of an iron-base alloy containing manganese, usually carbon, and often other alloying elements, not to be confused with cast iron or various types of relatively pure iron."

2. **essentially uncontaminated:** "Substantially free of undesirable substances."

3. **flexible adhesive:** "A type of adhesive substance, such as an elastomeric adhesive or rubber cement,

which can stretch or deform without breaking."

4. joining the uncontaminated surfaces of the sheets together at their borders: The parties have withdrawn their requests for construction of this phrase, which therefore will be given its plain and ordinary meaning.

5. substantially uncontaminated central zone: "A region located within the perimeter of the adhesive attaching the copper foil to the metal substrate and substantially free of undesirable substances."

'315 Patent

1. **sheet of metal:** This term does not require construction and will be given its plain and ordinary meaning.

2. **essentially uncontaminated:** "Substantially free of undesirable substances."

3. **band of flexible adhesive:** "A type of adhesive substance, such as an elastomeric adhesive or rubber cement, which can stretch or deform without breaking. The flexible adhesive is applied so as to extend in a substantially continuous line."

4. joining the uncontaminated surfaces of the sheets together at their borders: The parties have withdrawn their requests for construction of this phrase, which therefore will be given its plain and ordinary meaning.

5. substantially uncontaminated central zone: "A region located within the perimeter of the adhesive attaching the copper foil to the metal substrate and substantially free of undesirable substances."

(2) The Court adopts the parties' agreed-upon construction of claim terms from the '596 and '315 patents as follows:

'596 Patent

1. **engageable:** "Surfaces that can be placed into contact with one another."

2. **the thickness of the foil sheet is from approximately 0.000175 to approximately 0.0007 inches:** "An approximate range of copper foil thickness to be measured using equipment manufactured and calibrated in accordance with accepted industry standards and capable of providing the necessary degree of accuracy without deforming or otherwise altering the foil sheet."

'315 Patent

1. **engageable:** "Surfaces that can be placed into contact with one another."

(3) The Court adopts the parties' agreed-upon construction of claim terms from U.S. Patent Nos. 6,129,990 (the "'990 patent"), 6,129,998 (the "'998 patent"), 6,130,000 (the "'000 patent"), and 6,235,404 (the "'404 patent") as follows:

'990 Patent

1. **sheet laminate:** "A layered structure consisting of two or more sheets of material that are bonded together."

2. **a Knoop hardness between approximately 150 and approximately 850:** "An approximate range of Knoop hardness to be determined by a measure of the resistance of metal to indentation by a rhombic-based pyramidal-shaped diamond indenter under loads ranging from one to 1000 grams as described in ASTM E 384 "Standard Test Method for Microindentation Hardness of Materials."

3. **said copper foil layer has a thickness between approximately 0.00025 and approximately 0.005 inches:** "An approximate range of copper foil thickness to be measured using equipment manufactured and calibrated in accordance with accepted industry standards and capable of providing the necessary degree of accuracy without deforming or otherwise altering the foil sheet."

4. **carbon steel substrate:** "A piece of steel, a metal, to which the copper foil is attached, and having no minimum content specified or required for chromium, cobalt, columbium (niobium), molybdenum, nickel, titanium, tungsten, vanadium, or zirconium, or any other element to be added to obtain a desired alloying effect; having a specified minimum for copper not exceeding 0.40 percent; and having the maximum content specified for any of the following elements not exceeding the percentages noted: manganese 1.65, silicon 0.60, copper 0.60."

'998 Patent

1. **sheet laminate:** "A layered structure consisting of two or more sheets of material that are bonded together."

2. **a Rockwell B hardness between approximately 80 and approximately 100:** "An approximate range of Rockwell B hardness to be determined by the depth of penetration of an indenter consisting of a 1/16-inch diameter steel ball into the surface of the specimen under a load of 100 kilograms, as described in ASTM E 18 "Standard Test Methods for Rockwell Hardness and Rockwell Superficial Hardness of Metallic Materials."

3. **arranged generally linearly:** "Placed in a manner resembling a straight line."

4. **said copper foil layer has a thickness between approximately 0.00025 and approximately 0.005 inches:** "An approximate range of copper foil thickness to be measured using equipment manufactured and calibrated in accordance with accepted industry standards and capable of providing the necessary degree of accuracy without deforming or otherwise altering the foil sheet."

5. metal substrate layer: "A piece of metal to which the copper foil is attached."

%2C000 Patent

1. **a Knoop hardness between approximately 150 and approximately 850:** "An approximate range of Knoop hardness to be determined by a measure of the resistance of metal to indentation by a rhombic-based pyramidal-shaped diamond indenter under loads ranging from one to 1000 grams as described in ASTM E 384 "Standard Test Method for Microindentation Hardness of Materials."

2. **carbon steel substrate:** "A piece of steel, a metal, to which the copper foil is attached, and having no

minimum content specified or required for chromium, cobalt, columbium (niobium), molybdenum, nickel, titanium, tungsten, vanadium, or zirconium, or any other element to be added to obtain a desired alloying effect; having a specified minimum for copper not exceeding 0.40 percent; and having the maximum content specified for any of the following elements not exceeding the percentages noted: manganese 1.65, silicon 0.60, copper 0.60."

'404 Patent

1. **sheet laminate:** "A layered structure consisting of two or more sheets of material that are bonded together."

2. **a Knoop hardness between approximately 150 and approximately 850:** "An approximate range of Knoop hardness to be determined by a measure of the resistance of metal to indentation by a rhombic-based pyramidal-shaped diamond indenter under loads ranging from one to 1000 grams as described in ASTM E 384 "Standard Test Method for Microindentation Hardness of Materials."

3. **carbon steel substrate:** "A piece of steel, a metal, to which the copper foil is attached, and having no minimum content specified or required for chromium, cobalt, columbium (niobium), molybdenum, nickel, titanium, tungsten, vanadium, or zirconium, or any other element to be added to obtain a desired alloying effect; having a specified minimum for copper not exceeding 0.40 percent; and having the maximum content specified for any of the following elements not exceeding the percentages noted: manganese 1.65, silicon 0.60, copper 0.60."

(4) The Court notes that additional claim construction is set forth in the Stipulation and Order Regarding Agreed-Upon Construction of Claim Terms dated July 29, 2004.

IT IS SO ORDERED.

N.D.Cal.,2004.

Johnson & Johnston Associates, Inc. v. R.E. Service Co., Inc.

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