

United States District Court,
N.D. Ohio, Western Division.

DURAMAX, INC,
Plaintiff.

v.

ROPPE CORPORATION,
Defendant.

Jan. 20, 2005.

Alan L. Briggs, Squire, Sanders & Dempsey, Washington, DC, James D. Troxell, Suzanne K. Ketler, Squire, Sanders & Dempsey, Cleveland, OH, for Plaintiff.

Christina J. Moser, Thomas H. Shunk, Baker & Hostetler, John M. Heffernan, Janik & Dorman, Cleveland, OH, for Defendant.

MEMORANDUM OPINION AND ORDER

KATZ, Senior District Judge.

BACKGROUND

Duramax, Inc. ("Duramax") initiated this patent infringement action against Roppe Corporation ("Roppe") regarding infringement of Patent No. 6,385,923 ("the '923 patent"). As noted by Duramax, the '923 patent was issued in May 2002 for an invention titled "**TRANSITION SUPPORT FOR FLOORING MATERIAL**" and listing Frank Pelosi, Jr. as the inventor. (Compl.para. 4.) Prior to its issuance, the '923 patent was assigned by the inventor to Duramax. (*Id.* para. 6.) It is Duramax's position that Roppe manufactures and sells products which infringe the '923 patent.

Specifically, Roppe is accused of selling a transition support which infringes each of the elements of one or more claims of the '923 patent, without a license from Duramax (*Id.* para. 10.) Roppe's product is alleged to violate the '923 patent literally and/or under the doctrine of equivalents. Moreover, Duramax contends Roppe's infringement of the '923 patent to be willful and deliberate. For these reasons, Duramax seeks a declaration that the '923 patent is valid and that Defendant Roppe has infringed claims thereunder. Duramax also seeks a declaration that such infringement by Roppe was willful as well as a finding that this should be deemed an "exceptional" case in order to allow an award of attorney's fees and costs. In addition to damages under the relevant statute, Duramax also seeks injunctive relief to prevent Roppe from engaging in further acts of infringement.

Defendant Roppe asserts a general denial as to the charges of infringement. In addition, Roppe submits a counterclaim contending that the '923 patent is invalid and requests declaratory relief that Roppe's products do not infringe claims under the '923 patent. On this basis, Roppe seeks dismissal of the complaint with

prejudice. Duramax generally denies the claims asserted in the counterclaim.

On July 13, 2004, this Court conducted a hearing pursuant to *Markman v. Westview Instruments*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), for the purpose of the parties' proposed claim construction. Both Duramax and Roppe filed briefs in advance of the hearing as well as responses to the initial briefs in advance of the hearing. Following the *Markman* hearing, both parties filed post-hearing briefs.

MARKMAN HEARING

A. Applicable Legal Standard

The meaning of patent claim terminology is a matter of law for the court, not for the trier of fact. *See 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. As the claims of the patent, not its specifications, mark the measure of the invention, the Federal Circuit has been clear in its pronouncement that "analysis must begin and remain centered on the claim language itself, for that is the language the patentee has chosen to 'particularly point [] out and distinctly claim [] the subject matter which the patentee regards as his invention.'" *Innova/Pure Water v. Safari Water Filtration*, 381 F.3d 111, 1116 (Fed.Cir.2004) (citations omitted).

Absent "an express intent to impart a novel meaning to the claim terms, the words of the claim are presumed to take on 'the ordinary and customary meanings attributed to them by those of ordinary skill in the art.'" *Mars, Inc. v. H.J. Heinz Co. L.P.*, 377 F.3d 1369, 1373 (Fed.Cir.2004), citing *Int'l Rectifier Corp. v. IXYS Corp.*, 361 F.3d 1363, 1369 (Fed.Cir.2004); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed.Cir.2003). A court must examine the intrinsic record in each case "to determine whether the presumption of ordinary and customary meaning is rebutted." *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1204 (Fed.Cir.2002), *cert. denied*, 538 U.S. 1058, 123 S.Ct. 2230, 155 L.Ed.2d 1108 (2003). The Federal Circuit has long held "that dictionaries, encyclopedias and treatises are particularly useful resources to assist the court in determining the ordinary and customary meanings of claim terms." *Id.* at 1202. Stated differently, "the ordinary and customary definition will be overcome if the patentee has acted as his or her own lexicographer in explicitly setting forth a definition of a claim term distinct from its ordinary meaning or if 'the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.'" *Nystrom v. Trex Co., Inc.*, 374 F.3d 1105, 1111 (Fed.Cir.2004), citing *Texas Digital Systems, Inc.*, *supra*.

Therefore, the duty of a trial court facing claim construction is to first ascertain the plain meaning of the disputed term to one ordinarily skilled in the art. *Rexnord Corporation v. The Laitram Corp.*, 274 F.3d 1336, 1342 (Fed.Cir.2001). Second, the court reviews the specification to determine whether the use of the term therein is consistent with the meaning given by the court. *Id.* Third, the court must examine the prosecution history in order confirm the meaning and "parties should provide the district court with all relevant arguments and point out with specificity the relevant statements in the specification and prosecution history in support of their arguments." *Id.* at 1243.

With the applicable legal standard in mind, the Court now turns to the claim at issue.

B. Claim and Disputed Terms

Claim 1 of the '923 patent states as follows:

1. A transition support for supporting flooring extending over a floor having an area at a relatively high height, an adjacent area at a relatively low height, a juncture between the relatively high area and the relatively low area, and a difference in the heights between the height of the high area of the floor and the height of the low area of the floor, said transition support comprising an elongate wedge in sheet form, and including:

a relatively thick end having an upper portion, a lower portion and a thickness between the upper portion and lower portion, the thickness being generally equal to said difference in heights between the height of the high area of the floor and the height of the low area of the floor, said thick end being placeable in the juncture adjacent to the high area of the floor:

a relatively thin end opposite said thick end and parallel to said thick end, said thin end being placeable on the low area of the floor remote from the high area of the floor and the juncture; and

a tapering section having a support surface interconnecting the upper portion of said thick end and said thin end, said tapering section defining the wedge for being covered with the flooring, the distance between said thick end and said thin end being at least 30 times the thickness of said thick end for rendering the junction generally unnoticeable to persons walking across said tapering section and for generally preventing the jostling of wheeled vehicles crossing said tapering section, said tapering section having a surface with physical characteristics for retaining adhesives thereon for adhesively securing said support to the floor and to the sheet flooring, and for increasing the friction between said transition support and the floor and the sheet flooring, said physical characteristics comprising at least one surface in said tapered section having ridges parallel to said thick end and said thin end.

2. A transition support according to claim 1 wherein the thickness of said thick end is at least 3/16 inches and the distance between said thick end and said thin end is at least 12 inches from the thick end.

3. A transition support according to claim 1 wherein said support is selected from the group consisting of vinyl, polyester, recycled plastic, vinyl mixed with filler, vinyl composition and plastic-like materials.

4. A transition support according to claim 1 wherein said support is selected from the group consisting of molded vinyl and extruded vinyl.

5. A transition support according to claim 1 wherein said ridges are less than 0.1 mm in height and where there are at least 10 ridges per inch.

6. A transition support according to claim 1 wherein said tapering section interconnects the upper portion of said thick end and said thin end at the interior angle of less than 10 (deg.), measured at said thin end.

7. A transition support according to claim 6 wherein said interior angle is less than 5 (deg.).

8. A transition support according to claim 6 wherein said interior angle is 3 (deg.).

Distilled to its essence, the parties are at loggerheads over the purported meaning of the term "ridges." It is Duramax's position that the term ridges is clear and unambiguous, thereby allowing submission of the term, based upon its ordinary meaning, to the jury for its determination of infringement. However, Roppe

contends that the term "ridges" requires additional clarification and requests an instruction which defines ridges to mean "a surface having, small raised lines, but in no event includes a surface having only grooves." (Roppe Post-Hearing Mem. at p. 6.) The broad construction advocated by Duramax stands in contrast to the narrow definition advanced by Roppe.

C. Claim Construction Analysis

1. Disputed Claim Term

The parties disagree over the definition of the term "ridges."

2. Plain Meaning and Specification

The term "ridges" is not defined in the claim specification of the '923 patent. Duramax advocates against a special construction of the term "ridges." If a definition must be given, Duramax contends that "ridges" should be construed to mean "a surface with raised strips," taking variations from the Merriam-Webster's Collegiate Dictionary, The New Oxford American Dictionary and Webster's Third New International Dictionary. Alternatively, Duramax advocates for the entire definition as contained in the Merriam-Webster's Collegiate Dictionary, which states as follows:

ridge ... 1: an elevated body part (as along the backbone) **2:** a range of hills or mountains **b:** an elongate elevation on an ocean bottom **3:** an elongate crest or a linear series of crests **4:** a raised strip (as of plowed ground) **5:** the line of intersection at the top between the opposite slopes or sides of a roof

Merriman-Webster's Collegiate Dictionary (10th ed 1997).

In contrast, Roppe argues for a proposed construction which defines ridges as "a surface having small, raised lines, but in no event includes a surface having only grooves." Roppe claims that a construction containing the attribute "narrow" as pertaining to ridges is necessary in order to be consistent with the specification. As an example, Roppe cites to the definition proposed by The New Oxford Dictionary in the following manner:

ridge ... a long narrow hilltop, mountain range, or watershed: *the northeast ridge of Everest*. [x] the line or edge formed where two sloping sides of a root meet at the top. [x] Meteorology an elongated region of high atmospheric pressure [x] a narrow raised band running along or across a surface: *buff your nails in order to smooth ridges*. [x] a raised strip of arable land, esp. (in medieval open fields) one of a set separated by furrows.

(1998).

Inclusion of the "narrow" attribute is consistent with discussion of ridges as contained in the preferred embodiment ('923 Patent, column 4, lines 10-12) and as stated in Claim 5:

A transition support according to claim 1 wherein said ridges are less than 0.1 mm in height and there are at least 10 ridges per inch.

The purpose of the ridges is explained in the specification as follows:

In order to secure support **1** on a floor such as floor **2**, an appropriate adhesive can be used. In order to promote the strength of the adhesive, slight ridges **26** or other physical changes in bottom surface **24** are provided to hold the adhesive as well as to improve the friction between support **1** and the floor.... Flooring **14** is preferably secured to support **1** with all appropriate adhesive, and ridges **28** both hold the adhesive in place and increase friction between flooring **14** and support **1**.

(Id. at column 4, lines 4-10.) Stated differently, the variations to the surface bolster the effectiveness of the adhesives affixing the transition support to the objects above and below it. However, Roppe's proposed construction excluding grooves from the proposed definition is inconsistent with language in the preferred embodiment, which states, "[t]he ridges could be replaced with grooves. Other forms of physical variations in surfaces **22** and **24** are available." (Id. at column 4, lines 15-17.)

3. Prosecution History

A review of the prosecution history does not reveal that Duramax limited or excluded grooves from the surface variant. Rather, Duramax recognized the fluting of the Bell Patent, noting that Bell did not suggest or advocate its usefulness regarding adhesive properties. (Exh. E, Duramax Oct. 5, 1998 Appeal Brief at pp. 10-11 .)

4. Discussion

With the aforementioned background, there is no dispute that the term "ridges" means a surface having raised strips. The only issue is the width of the space between the strips or ridges. It is this Court's view that the presumption against the ordinary and customary meaning in this instance has not been rebutted by the intrinsic evidence in the record. While the Defendant seeks to exclude grooves as a substitute for the term "ridges," primarily based upon broad dictionary definitions, it also advocates "ridges" to mean "a surface having long, narrow portions." The Court agrees that the width of the ridges is dependent, as is the length, upon the nature of the design required for the application. However, to import the limitations and qualifications advocated by the Defendant in light of the intrinsic record would be to force a limitation where none was intended. *See e.g.,* Liebel-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 904 (Fed.Cir.), *cert. denied*, 543 U.S. 925, 125 S.Ct. 316, 160 L.Ed.2d 223 (2004). (Citations omitted.) A review of the record presented does not support the Defendant's limited definition in its entirety.

CONCLUSION

Although the Court is of the view that the jury could define the term for itself from dictionaries, the terms "ridges" and "grooves" as used in the patent, should be construed in the context of the patent and the design of the floor shim as "a surface with raised strips or ridges, containing grooves between the strips or ridges, generally having both the ridges and grooves narrow in width."

IT IS SO ORDERED.

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