

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

**Stephen A GUMMOW,**  
Plaintiff.

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

No. Civ.A. 3:03CV1428L

**March 3, 2005.**

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 Defendant.

***ORDER***

**LINDSAY, J.**

Before the court are the Findings and Recommendation of the United States Magistrate Judge ("Report"), filed on April 26, 2004; Plaintiff's Objections to Findings and Recommendation of the United States Magistrate Judge, filed May 10, 2004; Defendants' Objection to the Magistrate Judge's April 26, 2004 Findings and Recommendations, filed May 10, 2004; Plaintiff's Response in Opposition to Defendants' Objection to the Magistrate Judge's April 26, 2004 Findings and Recommendations, filed June 2, 2004; Defendants' Response to Plaintiff's Response in Opposition to Defendants' Objection to the Magistrate Judge's April 26, 2004 Findings and Recommendations, filed June 7, 2004; Plaintiff's Reply Brief in Support of his Objection to Findings and Recommendation of the United States Magistrate Judge, filed June 25, 2004; and Defendants' Reply Brief in Opposition to Defendants' [sic] Objection to the Magistrate Judge's Findings and Recommendations, filed July 6, 2004.

Having considered the Report, the parties' objections, responses, replies, and the applicable law, the court determines that the findings and conclusions of the magistrate judge are correct. For the reasons stated herein, the court accepts the findings and conclusions of the magistrate judge and overrules the objections of the parties.

***I. Factual and Procedural Background***

This case involves a disputed claim of inventorship and attendant rights in a patent for a wrench. The parties seek judicial construction of certain language in Claim 1 of U.S. Patent No. 4,406,186 ("the '186 Patent"). The technology at issue in this case involves a dual action ratchet wrench with 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.

Claim 1 of the '186 Patent states:

What is claimed:

1. A wrench comprising:

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; wherein 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.

Appendix to Plaintiff's Claim Construction Brief at 90 (emphasis added). The parties sought judicial construction of the following phrases in Claim 1 of the '186 Patent: (1) "engaging a mating surface"; (2) "in a fixed force transmitting relationship"; and (3) "cylindrical opening." In his Report, the magistrate judge recommended that the terms and phrases in Claim 1 of the '186 Patent be construed 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." Report at 9.

Plaintiff has filed objections to the magistrate judge's construal of the phrase "engaging a mating surface," and Defendants have filed objections to the magistrate judge's construal of the phrase "cylindrical opening." Neither party has filed objections to the magistrate judge's construal of the phrase "in a fixed force transmitting relationship." The court addresses each parties' objections in turn.

## ***II. Legal Standard for Claim Construction***

Claim construction is a question of law for the court. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996); *Texas Digital Sys. Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1201 (Fed.Cir.2002), *cert. denied*, 538 U.S. 1058, 123 S.Ct. 2230, 155 L.Ed.2d 1108 (2003). Claim construction begins with the claim language itself. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996); *Inverness Med. Switzerland GmbH v. Warner Lambert Co.*, 309 F.3d 1373, 1378

(Fed.Cir.2002). Terms within a claim are to be accorded their ordinary and accustomed meaning. CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 1366 (Fed.Cir.2002). Moreover, "a technical term used in a patent is interpreted as having the meaning a person of ordinary skill in the field of the invention would understand it to mean." Bell Atlantic Network Serv., Inc. v. Covad Communications Group, Inc., 262 F.3d 1258, 1267 (Fed.Cir.2001). Dictionaries are useful resources to assist the court in determining the ordinary and customary meanings of claim terms, as well as the meanings that would have been ascribed to technical terms by those of skill in the relevant art. Texas Digital Sys., 308 F.3d at 1202; however, a technical term will not be assigned its ordinary meaning by one skilled in the art if "it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning." Phillips Petroleum v. Huntsman Polymers, 157 F.3d 866, 871 (Fed.Cir.1998) ( quoting Hoechst Celanese Corp. v. BP Chems. Ltd., 78 F.3d 1575, 1578 (Fed.Cir.), cert. denied, 519 U.S. 911, 117 S.Ct. 275, 136 L.Ed.2d 198 (1996)). "[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." Vitronics Corp., 90 F.3d at 1582. In an effort to reconcile a disputed claim term, courts should initially examine the intrinsic evidence (the patent itself, the specification, and the claims). *Id.* If an examination of the intrinsic evidence reveals a clear meaning of a disputed term, then that meaning shall apply. Frank's Casing Crew & Rental Tools, Inc. v. PMR Techs., Ltd., 292 F.3d 1363, 1374 (Fed.Cir.2002). Extrinsic evidence (including expert and inventor testimony) may be used where the claim language remains unclear after consulting the intrinsic evidence. *Id.*

### **III. Discussion**

#### **A. Plaintiff's Objections**

Plaintiff objects to the magistrate judge's construal of the phrase "engaging a mating surface." Pl. Objections at 3. The magistrate judge relied on the dictionary definitions of the disputed claim terms as provided by the parties in their claim construal briefs:

In ordinary usage, "engage" means "to come into contact or interlock with," or "mesh." The term "mate" means "to fit (mechanical parts) together."

Report at 5. Relying on these dictionary definitions of "engaging" and "mating," and examining the intrinsic record to identify which of the various possible meanings were most consistent with the way those terms were used by the inventor, the magistrate judge recommended construing the phrase "engaging a mating surface" as meaning to "interlock with a mating surface of the wrench body."

Although Plaintiff does not disagree with the dictionary definitions upon which the magistrate judge relied in finding the plain and ordinary meaning of the disputed claim terms, Plaintiff contends that this claim language should be construed to encompass both meanings of "engage," that is, that the magistrate judge should have construed "engaging a mating surface" to mean either "interlock with a mating surface of the wrench body" or "come into contact with a mating surface of the wrench body." The magistrate judge rejected Plaintiff's position as ignoring the plain language of the claim and "read[ing] the term 'mating' out of the claim, an untenable prospect." Report at 5.

After a *de novo* review of the intrinsic record, the court agrees with the magistrate judge's finding that Plaintiff's proposed construction ignores the plain language of the claim. The '186 Patent requires a surface of the wrench handle to actually "engag[e] a mating surface." "Engaging" and "mating" are not used as alternatives in the claim. The claim requires not that the handle's second end engage or mate with the surface, but rather that the handle's second end engage a "mating surface." Mere contact with the surface cannot be equated to mating with the surface. The dictionary definition for the term "engaging" that is consistent with the intrinsic record is to "interlock with." This court further agrees with the magistrate judge that adopting Plaintiff's proposed definition of "to come into contact" would essentially read the term

"mating" out of the claim, which is impermissible, as courts must give meaning to all terms of the claim. See Report at 5-6 ( *citing* 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)).

Plaintiff also contends in its objections that where there is more than one meaning for a term, a presumption arises that a plaintiff is entitled to both meanings. *See* Pl. Objections at 4 ( *citing* Texas Digital Sys., 308 F.3d at 1204). With regard to choosing between multiple available dictionary meanings, *Texas Digital* provides that "[i]f more than one dictionary definition is consistent with the use of the words in the intrinsic record, the claim terms may be construed to encompass all such consistent meanings." 308 F.3d at 1203. In this case, the "come into contact with" alternative definition of "engage" is not consistent with the words in the intrinsic record for the reasons just stated, and therefore the claim term may not be construed to encompass it. *See id.*

In short, the dictionary definition of "engage" that is consistent with the intrinsic record is to "interlock with." Parts that merely come into contact with each other are, *ipso facto*, not parts that fit together in the sense of being mated. Because the plain language of the claim does not support Plaintiff's interpretation, the court overrules Plaintiff's objections to the Report and accepts the magistrate judge's construal of the phrase "engaging a mating surface" in the '186 Patent as that of the court.

## **B. Defendants' Objections**

Defendants object to the magistrate judge's construal of the phrase "cylindrical opening" to mean "an opening with straight sides and open ends of any shape." Report at 9. Defendants contend that the term "cylindrical opening" should instead be construed to mean "an opening with straight sides *and circular ends of equal size*." Def. Objections at 4 (emphasis added).

After a *de novo* review of the intrinsic record, the court rejects Defendants' proposed construal of "cylindrical opening." Nothing in the claim language or specification limits the shape of the opening to "circular ends of equal size"; nor does the dictionary definition of "cylinder" limit the term in the manner Defendants propose. Although Defendants correctly note that the illustrations in the patent depict a circular opening, the magistrate judge correctly applied the rule of law that "limitations shown in the patent drawings should not be imported into the claim when the specification and claim language contain no such limitation." Report at 8 ( *citing* Advanced Cardiovascular Sys. ., Inc. v. Scimed Life Sys., Inc., 261 F.3d 1329, 1339 (Fed.Cir.2001)).

The court also rejects Defendants attempt to characterize this case as one where "the claims can be limited by what is described in the specification when the specification makes clear that the invention was limited to a particular structure." Def. Objections at 2 ( *citing* Lieber-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 906 (Fed.Cir.2004)). Defendants appear to be arguing that because certain shapes of cylindrical openings may not allow for the "cylindrical handle pivot pin" to freely rotate full circle within the cylindrical opening," then the claims of the patent requiring a "cylindrical opening" must necessarily be construed as limited to a circular opening, which Defendants contend will always allow for the cylindrical pin and opening to rotate in full circle. Def. Objections at 3. First, nothing in the specification makes clear to the court that the invention was limited to a particular structure, namely, an opening with straight sides and circular ends of equal size. In addition, Defendants' argument ignores that the claims of a patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the scope of the claim using "words or expressions of manifest exclusion or restrictions." Lieber-Flarsheim, 358 F.3d at 906.

Accordingly, the court overrules Defendants' objections to the Report and accepts the magistrate judge's construal of the phrase "cylindrical opening" in the '186 Patent as that of the court.

## **C. Findings and Recommendations in Report with No Objections Filed**

The magistrate judge adopted Plaintiff's contention that the definition of "fixed" in the phrase "fixed force transmitting relationship," 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." Report at 6. In light of the specification, the magistrate judge construed "in a fixed force transmitting relationship" to mean "in a force transmitting relationship in which there is no angular movement between the wrench handle and the wrench body." Id. at 9. Defendants filed no objections to this portion of the Report. After reviewing this finding and the applicable law, the court determines it to be correct, and hereby accepts the magistrate judge's construal of the phrase "in a fixed force transmitting relationship" in the '186 Patent as that of the court.

#### **IV. Conclusion**

After making an independent review of the findings, the applicable law, and the parties' objections and related briefing, the court determines that the findings of the United States Magistrate Judge are correct, and hereby accepts them as those of the court. Accordingly, the court shall construe the following 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."*

It is so ordered.

N.D.Tex.,2005.

Gummow v. Splined Tools Corp.

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