

United States District Court,
D. Oregon.

John R. JAMISON,
Plaintiff.

v.

**OLIN CORPORATION-WINCHESTER DIVISION; U.S. Repeating Arms Co., Inc. ; Browning;
Browning Arms Co.; and G.I. Joe's Inc,**
Defendants.

Nos. 03-1036-KI (lead case), 04-31-KI, 04-76-KI

March 3, 2005.

Robert A. Shlachter, Timothy S. DeJong, Stoll Stoll Berne Lokting & Shlachter P.C., William O. Geny, Julianne R. Davis, Chernoff Vilhauer McClung & Stenzel LLP, Portland, OR, for Plaintiff.

L. Grant Foster, Brett L. Foster, Timothy P. Getzoff, Holland & Hart LLP, Salt Lake City, UT, Jeffrey S. Love, Ramon A. Klitzke, II, Klarquist Sparkman, LLP, Portland, OR, for Defendants Browning, Browning Arms Co., and U.S. Repeating Arms Co., Inc.

Robert E. Sabido, Cosgrave Vergeer Kester LLP, Portland, OR, Stephen D. Gay, Husch & Eppenberger, LLC, Chattanooga, TN, Dutro E. Campbell, II, Gregory E. Upchurch, Husch & Eppenberger, LLC, St. Louis, MO, for Defendant Olin Corporation-Winchester Division and G.I. Joe's, Inc.

ORDER ADOPTING SPECIAL MASTER'S CLAIM CONSTRUCTION REPORT AND RECOMMENDATION

KING, Judge:

On December 3, 2004, I appointed special master Robert L. Harmon to assist the court by holding proceedings and recommending findings of fact on issues to be decided by the court.

On or about January 28, 2005, the special master issued a report and recommendation regarding the construction of the claim terms at issue. The Browning, Browning Arms Co., and U.S. Reporting Arms Co. (the "Browning defendants") timely filed objections to the special master's report and recommendation. Specifically, the Browning defendants object to the recommendations as follows: (1) The special master incorrectly construed "capable of operably withstanding ... at least 50,000 psi when in said chamber;" (2) the special master incorrectly concluded that "about" requires no further definition; (3) the special master incorrectly construed the term "short-action;" (4) the special master incorrectly construed the terms "bolt" and "bolt-face" and; (5) the special master incorrectly construed "operably extractable [or extracting] manually."

The court finds that the written submissions constitute a hearing for purposes of Federal Rule of Civil Procedure 53(g)(1). After reviewing de novo the special master's report and recommendations, I adopt the report and recommendation and order as follows:

1. For purposes of construing the claims of the patents, the hypothetical person of ordinary skill in the art is regarded as one who possesses at least an undergraduate degree (or the equivalent in education and experience), sufficient to impart a working knowledge of the scientific principles involved in firearms and cartridge technology, and at least several years of experience in working with the design and development of cartridges for firearms, including original cartridges, or modification of original cartridges (and firearms), or both.
2. I construe the claims as they would have been understood by a person of ordinary skill in the art when the first of the patents issued, in 2003.
3. The word "about" needs no additional construction in the several instances that it is used as a qualitative modifier in the asserted claims.
4. The terms "bolt" and "bolt face" need no further construction.
5. The term "short-action" is construed as a limitation of the claims, and it is construed to mean (depending upon the context of the claim) either a cartridge having an overall length (with bullet) of less than three inches, or a firearm capable of firing such a cartridge.
6. The term "50,000 psi" needs no additional construction.
7. The limitation "capable of operably withstanding ... at least 50,000 psi when in said chamber" is construed to mean that the cartridge must not experience failure, in such a way and in a sufficient proportion of samples of a given cartridge caliber and propellant load, as to amount to a risk to shooter safety regarded as unacceptable by a person of ordinary skill in the art.
8. The limitation "capable of withstanding internal gas pressures of at least 65,000 psi" is construed to mean that the firearm chamber must not experience failure in a way that would amount to a risk to shooter safety regarded as unacceptable by a person of ordinary skill in the art.
9. The limitations "annular groove ... capable of withstanding permanent deformation of said groove longitudinally of said chamber" and "case ... capable of withstanding ... without permanent deformation of said groove longitudinally of said case" require no further construction.
10. "Operably extractable [or extracting] manually" is construed to mean that a spent cartridge can be extracted from the chamber by manual operation of the bolt, applying an upward force of no more than 20 pounds.
11. "Substantially no less than said inner chamber [or "said outer case"] diameter" is given no further construction.
12. The terms "firearm," "cartridge," "sized to matingly engage," "elongate tubular case," "insure reliable bolt operation," "substantially cylindrical shape," and "tubular chamber" are given no additional

construction.

IT IS SO ORDERED.

D.Or.,2005.

Jamison v. Olin Corp.-Winchester Div.

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