United States District Court,
C.D. California.

**GENES INDUSTRY, INC,**
v.
**ADVANCED COMPONENTS SPECIALIST, INC.**

No. SACV 04-0408 JVS (MLGx)

**June 22, 2005.**

Eric D. Leach, Michael A. Oswald, Oswald and Yap, William L. Buus, Buus Kim Kuo and Tran, Irvine, CA, John D. Tran, Buus Kim Kuo & Tran, Newport Beach, CA, for Plaintiff.

D. Jay Ritt, Gregory S. Lampert, Lee Ann Meyer, Bensinger Ritt and Tai, Pasadena, CA, for Defendant.

**Present: The Honorable** JAMES V. SELNA**, Judge.**

Karen J. Kirksey Smith for Karla Tunis, Courtroom Clerk.

Not Present, Court Reporter.

PROCEEDINGS: (IN CHAMBERS): Order re: Claim Construction

## I. *BACKGROUND*

Pursuant to an April 21, 2005 Scheduling Order, Plaintiff Genes Industry, Inc. ("Genes") and Defendant Advanced Components Specialist, Inc. ("ACS") have submitted to the Court proposed claim constructions regarding one term contained in Genes' United States Patent Number 5,501,116 ("the '116 Patent"). The relevant claim language is construed by the Court below, in Section III.

## II. *LEGAL STANDARD*

Claim construction "begins and ends" with the claim language itself. Interactive Gift Express, Inc. v. CompuServe, Inc., 256 F.3d 1323, 1331 (Fed.Cir.2001). In construing the language of a patent claim for purposes of claim construction, the patent and its prosecution history are of paramount importance. Burke, Inc. v. Bruno Ind. Living Aids, Inc., 183 F.3d 1334, 1340 (Fed.Cir.1999). Evidence extrinsic to this public record may only be consulted "if needed to assist in determining the meaning or scope of technical terms in the claims." Pall Corp. v. Micron Separations, Inc., 66 F.3d 1211, 1216 (Fed.Cir.1995); *accord* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1583 (Fed.Cir.1996). The Court's starting point in determining the meaning of the terms at issue in this Motion is therefore the intrinsic evidence: the claim language, specification, and prosecution history of the patent.

Where the patent applicant has not acted as his own lexicographer, FN1 there is a "heavy presumption" that the words in the claims have their full ordinary or accustomed meaning. Johnson Worldwide Assocs. v. Zebco Corp., 175 F.3d 985, 989 (Fed.Cir.1999). As the Federal Circuit has noted, "dictionaries, encyclopedias and treatises are particularly useful resources to assist the court in determining the ordinary and customary meanings of claim terms." Texas Digital Sys., Inc. v. Telegenix, Inc., 308 F.3d 1193, 1202 (Fed.Cir.2002). If a particular claim term has both an ordinary meaning and a customary meaning known to one ordinarily skilled in the art, and these meanings conflict, the latter meaning prevails. Karlin Tech. v. Surgical Dynamics, 177 F.3d 968, 971 (Fed.Cir.1999).

With these principles in mind, the Court now turns to the construction of the claim language at issue.

**III. *DISCUSSION***

The '116 Patent, titled "Transmission Device for a Vertical Blind" claims a transmission device for smooth use, simple construction, and easy operation of vertical blinds. *See* '116 Patent, Pl.Ex. A, p. 6, col. 1, ll. 39-47. Specifically, the device comprises a worm within a housing, a worm gear disposed within the housing and meshed with the worm, and a spiral tooth that ends gradually extending radially outward. *See* id. at col. 2, ll. 50-65.

The '116 Patent contains a single claim. It reads as follows:

A transmission device for a vertical blind comprising:

a worm disposed within a housing and having an upper flange, a lower flange, a spiral tooth extending at least 720 degrees around the worm and having a given radial dimension, the tooth positioned between the said upper flange and said lower flange; and

a worm gear disposed with said housing and meshed with said worm, said worm gear being formed with a partition across a number of teeth thereof, said worm gear being limited to rotate through a maximum angle of 180 degrees only; characterized in that the spiral tooth has ends gradually extending radially outward beyond the said given radial dimension of the spiral tooth.

Id.

The Parties have presented one claim term for the Court to construe: "spiral tooth extending at least 720 degrees around the worm." Id. at col. 2, 11.54-55. Each party's proposed claim construction for the term is as follows:

| Disputed Term | Genes' Proposed Construction | ACS' Proposed Construction |
|---|---|---|
| "spiral tooth extending at least 720 degrees around the worm" | Spiral projection from the worm that allows it to engage with the worm gear and which extends at least 720 degrees around the worm | Projection from the worm that allows it to engage with the worm gear and which extends around the worm no less than two complete revolutions |

In interpreting a term, the Court starts with the particular claim language used in the Patent. Interactive Gift Express, 256 F.3d at 1331. The terms used by the patentee bear a " 'heavy presumption' that they mean what they say" and take on the ordinary meaning attributed to them by those persons skilled in the relevant art.

Texas Digital Sys., 308 F.3d at 1202. The Federal Circuit has found that when a claim is clear on its face, then the rest of the intrinsic evidence is considered only to determine if a deviation from the language of the claim is specified. Interactive Gift Express, 256 F.3d at 1331. A deviation may be necessary if a patentee has "relinquished [a] potential claim construction in an amendment to the claim or in an argument to overcome or distinguish a reference." Elkay Mfg. Co. v. Ebco Mfg. Co., 192 F.3d 973, 979 (Fed.Cir.1999).

Genes argues that since the claim term is clear on its face and unambiguous, it should not be construed by a further definition by the Court. Pl.'s Reply Claim Construction Br., p. 2. It points out that nothing in the intrinsic record shows that the inventor bestowed either a novel meaning to the term "at least 720 degrees around" or gave the term a different definition than is commonly understood. Pl.'s Claim Construction Br., p. 7. Genes urges that the term should be construed only to the extent needed to provide an easier interpretation to the jury, which would be a "spiral projection from the worm that allows it to engage with the worm gear and which extends at least 720 degrees around the worm." *Id*.

In contrast, ACS urges that the Court construe "at least 720 degrees around the worm" to have the meaning "extending around the worm no less than two complete revolutions." Def.'s Claim Construction Br., p. 8. ACS defines "at least" to mean "no less than." As to the phrase "720 degrees around the worm," ACS employs a dictionary to determine how far the spiral projection wraps around the worm. It states that the spiral nature of the device means the projection is "winding around a center or pole and gradually receding from or approaching it." *Id*. at 9. ACS states that the '116 Patent claim "makes clear that this is 'at least 720 degrees,' " then deduces that if 360 degrees is one revolution, or winding around a center, then 720 degrees equals two revolutions. Id Hence, ACS argues the term should be construed as "extending around the worm no less than two complete revolutions." Id.

The Court accepts Genes' claim construction for the following reasons. First, the language of the claim supports Genes' construction, based on the unambiguous meaning of the words used in the '116 Patent. *See* Interactive Gift Express, 256 F.3d at 1331. The words are clear and understood by members of the general public and those skilled in the art. The term "at least" does not need to be construed differently than its ordinary, common usage. Any other definition, whether it be "no less than," as ACS suggests, or "at a minimum," as Genes counters, is susceptible to the same interpretation issues as "at least." In this way, it is more accurate to construe the term as it is set forth in the patent, since there is a strong presumption that the patentee means what he has said in the claim. *See* Texas Digital Sys., 308 F.3d at 1202. Moreover, the term "720 degrees around" uses a precise geometric measurement, whose meaning is clear and unambiguous to both the general public and those skilled in the field. While 720 degrees around a center is equal to two revolutions, there is no cause to replace the chosen measurement that was purposefully used in the '116 Patent. Just as construing "six feet" to mean "two yards" would be unnecessary, so too would be ACS's proposed construction. FN2

Second, the Court rejects ACS's construction, since the specification does not show that the patentee has used a term in such a way that differs from the ordinary meaning. *See* Vitronics, 90 F.3d at 1582. The terms are used to describe the distance of the spiral tooth on the worm in a manner consistent with the ordinary meanings of "at least" and "degrees." Moreover, the term "revolutions" is not used as a synonym for "degrees" anywhere in the specification.

Third, the Court accepts Genes' claim construction because there is no evidence in the prosecution history that the applicant had introduced a limitation during the patent prosecution by use of the term "720 degrees" which would compel adoption of ACS's proposed term "two complete revolutions." FN3 *See* Southwall

Techs., Inc. v. Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.1995). After the patentee's first two applications were rejected, the patentee adopted the Examiner's suggestion and the ' 116 Patent was accepted. The main alteration to the claim was that the spiral tooth on the worm would be described as having "ends that gradually extend radially outward beyond the said given radial dimension of the spiral tooth." *See* File History of ' 116 Patent, Notice of Allowability, Pl.'s Ex. J, p. 112. This does not create a limitation that affects the term "at least 720 degrees around the worm" since it provides that the spiral tooth can extend a greater distance than 720 degrees. This interpretation is in accordance with the construction proposed by Genes and ACS has not argued that the prosecution history contains any such limitation.

Lastly, the Court has not considered extrinsic evidence since it is not needed or necessary to determine the meaning of terms in the claim. *See* Vitronics, 90 F.3d at 1583.

## IV. *CONCLUSION*

For the foregoing reasons, the Court adopts Genes' proposed construction, construing the claim term as "a spiral projection from the worm that allows it to engage with the worm gear and which extends at least 720 degrees around the worm."

FN1. Where the intrinsic evidence of a patent reveals that a patentee has acted as his own lexicographer with respect to a particular claim term-by creating a new word or assigning a new or different meaning to an existing word, for example-"the definition selected by the patent applicant controls" and the term's special meaning is given full force. Renishaw PLC v. Marposs Societa' per Azioni, 158 F.3d 1243, 1249 (Fed.Cir.1998).

FN2. The term "degree" is not an arcane scientific term, but rather is well understood and used in common parlance. People do a "180," either in their thinking or literally, if they have driven past their destination. Revolving restaurants atop hotels rotate 360 degrees and give a view similarly described. And in extreme sports, snow boarders will do a stunt called a "720." The citizenry has no trouble understanding the message conveyed.

FN3. The question of whether other limitations or estoppels arose during the course of the prosecution history is not before the Court on this *Markman* hearing.

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