

United States District Court,
D. New Jersey.

ALLURE HOME CREATION CO., Inc., a New Jersey corporation,
Plaintiff.

v.

ZAK DESIGNS, INC., a Washington corporation,
Defendant.

Civil Action No. 03-193(JWB)

Aug. 11, 2005.

Arnold B. Calmann, Saiber, Schlesinger, Satz & Goldstein, LLC, Newark, NJ, for Plaintiff.

James P. Flynn, Lauren D. Daloisio, Epstein, Becker & Green, PC, Newark, NJ, for Defendant.

ORDER

JOHN W. BISSELL, Chief District Judge.

This matter having come before the Court for a hearing construing several claims in U.S. Patent No. 6,155,411 (the '411 Patent) conducted pursuant to the guidelines set forth in *Markman v. Westview Instr.*, 52 F.3d 967 (Fed.Cir.1995); and for the reasons set forth in this Court's Opinion of even date herewith,

IT IS on this 10th day of August, 2005,

ORDERED that the claims in suit are construed as set forth in Exhibit PM2 (as altered to reflect the Court's decision), a copy of which is annexed hereto and incorporated by reference.

JOINT CLAIM CONSTRUCTION STATEMENT

| 411 Claim Language | Stipulated Construction | Allure's Proposed Construction | Zak's Proposed Construction |
|----------------------------|---|---------------------------------------|---|
| 1. A container comprising: | A "container" is a thing that contains something. | | |
| a first vessel | | | A separate preformed vessel such as a standard tumbler. |
| and a second vessel, | | | A preformed sealed vessel enclosing a first liquid and a second |

| | | | |
|---|--|---|--|
| | | | liquid that is a fluid and an insoluble structure floating on the first liquid. |
| wherein the first vessel is hollow with an opening for receiving a solid or a liquid, and removably containing the solid or liquid, and | | The first vessel is open and liquids or solids can be put into and taken out of the first vessel. | |
| the second vessel is a sealed vessel containing | | The second vessel is closed. | |
| a first liquid, | | The second vessel contains two fluids and at least one solid object. | |
| a second liquid, | | | |
| at least one structure, | | | |
| wherein the structure is insoluble in both the first and second liquids, | The solid object does not dissolve in the two fluids. | | |
| and floats on the first liquid, | The density of the solid object is such that it floats on one of the fluids. | | |
| the first and second liquids are immiscible, | The two fluids do not mix. | | |
| the first and second liquids have densities such that the first liquid is beneath the second liquid, | The densities of the fluids are such that the fluids are distinguishable from one another. | | |
| and the first vessel is positioned | | The bottom surface of the first vessel contiguously covers the top surface of the second vessel and the vessels are positioned so that the contents of the second vessel can be seen. | |
| completely above the second vessel, | | | |
| whereby the second vessel is a base support of the container, | | The second vessel forms a base that supports the container. | Ordinary meaning. The second vessel is a base support of the container. Zak's objects to Allure's previously unsubmitted interpretation. |

| | | | |
|---|--|--|--|
| and, wherein the material of the first vessel is fused with the material of the second vessel. | | The material at the bottom of the first vessel is blended by melting together and united by heating with the material of the top of the second vessel. | |
| 3. The container of claim 1, wherein the structure is decorative. | The solid object has an ornamental function, | | |
| 12. The container of claim 1, wherein the first liquid is optionally colored. | The first fluid may be colored, i.e., the liquid is of a type that can be colored. | | |
| 13. The container of claim 1, wherein the second liquid is optionally colored. | The second fluid may be colored, i.e., the liquid is of a type that can be colored. | | |
| 14. The container of claim 1, wherein the first and the second liquids are optionally colored. | Both the first and second fluids may be colored, i.e., both liquids are of types that can be colored. | | |
| 15. The container as claimed in claim 1, wherein the first vessel is a tumbler. | | | Ordinary meaning. The first vessel is a cup without a handle and with a flat bottom. |
| 16. The container as claimed in claim 1, wherein the first vessel is a tumbler with a cover capable of receiving a toothbrush. | | Claim not at issue. | |
| 21. The container as claimed in claim 1, wherein the first vessel includes a removable cover. | | Claim not a issue. | |
| 22. The container as claimed in claim 1, wherein the first vessel containing means defining an opening, and a closure therefore, allowing for filling or refilling of the first vessel. | The first vessel includes a cover that can be opened so that the first vessel can be filled or refilled. | | |
| 23. The container as claimed in claim 1, wherein the sealed vessel has a decorative three- | | Claim not at issue. | |

| | | | |
|--|--|---------------------|--|
| dimensional object positioned within it in surrounding relationship to an interior of the sealed vessel. | | | |
| 24. The container of claim 1, wherein the first vessel is welded to the sealed vessel. | Claim not at issue. | | |
| 25. The container of claim 1, wherein the first vessel is permanently attached to the sealed vessel by way of microwave fusion | | Claim not at issue. | |
| 26. The container of claim 1, wherein the first vessel is fused with the sealed vessel by radiowave fusion. | | Claim not at issue. | |
| 27. The container of claim 1, wherein the first vessel includes a removable cover. | The first vessel includes a cover that can be removed. | | |
| 28.permanently attached the sealed vessel.... | | Claim not at issue. | |

D.N.J.,2005.
Allure Home Creation Co., Inc. v. Zak Designs, Inc.

Produced by Sans Paper, LLC.