

United States District Court,
S.D. California.

EUROPEAN NATURAL STONE COMPANY, Inc., a California corporation,
Plaintiff.

v.

BEDROCK CREATIONS, a business entity of unknown formation; Bull Outdoor Products, Inc., a California corporation; and Does 1 through 25, inclusive,
Defendant.

Bedrock Creations Distributing Inc., a California corporation,
Counterclaimant.

v.

European Natural Stone Company, Inc., a California corporation,
Counterdefendant.

Civil No. 05CV2023-B (BLM)

May 18, 2006.

John L. Haller, Richard P. Sybert, Gordon and Rees, San Diego, CA, for Plaintiffs/Counterdefendants.

Charles C. H. Wu, Carolyn N. Ko, Law Offices of Wu & Cheung, Irvine, CA, for
Defendants/Counterclaimants.

CLAIM CONSTRUCTION ORDER FOR UNITED STATES PATENT NUMBER 6,413,337

RUDI M. BREWSTER, Senior District Judge.

Pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), on April 25, 2006, the Court conducted a *Markman* hearing in the above-titled patent infringement action regarding construction of the disputed claim terms for U.S. Patent Number 6,413,337 B2 ("the '337 patent"). Plaintiff European Natural Stone Company, Inc. was represented by the law firm of Gordon & Rees LLP; Defendants Bedrock Creations and Bull Outdoor Products, Inc. were represented by the law firm of DLA Piper Rudnick Gray Cary LLP.

At the *Markman* hearing, the Court, with the assistance of the parties, analyzed the claim terms in order to prepare jury instructions interpreting the pertinent claims at issue in the '337 patent. Additionally, the Court prepared a case glossary for terms found in the claims and the specification for the '337 patent considered to be technical in nature which a jury of laypersons might not understand clearly without specific definition.

After careful consideration of the parties' arguments and the applicable statutes and case law, the Court **HEREBY CONSTRUES** the claims in dispute in the '337 patent and **ISSUES** the relevant jury instructions as written in Exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical

terms as written in Exhibit B, attached hereto.

IT IS SO ORDERED.

EXHIBIT A FN1

UNITED STATES PATENT NUMBER 6,413,337 **B2-CLAIM CHART**

VERBATIM CLAIM LANGUAGE	COURT'S CONSTRUCTION
Claim 1	
1. A stone edging tile comprising:	1. A stone edging tile comprising [<i>including, but not limited to</i>]:
a top member made of natural stone and	a top member [<i>a piece of the stone edging tile that, when assembled, is above another piece</i>] made of natural [<i>found in nature</i>] stone and
having a lower surface and a	having a lower surface [<i>bottom side of the top member, which includes but is not limited to the surface that is affixed to the top surface of the facing member</i>] and a
polished upper surface,	polished upper surface [<i>top side of the top member</i>],
said top member having a rearward edge,	said top member having a rearward edge,
a planar plate portion, and	a planar plate portion [<i>the portion of the top member that is of uniform thickness from the back of the forward edge to the rearward edge</i>], and
an at least partially radiused forward edge,	an at least partially radiused forward edge [<i>portion of the forward edge which is curved</i>],
said forward edge has a thickness,	said forward edge [<i>that portion of the top member which is forward of the planar plate portion</i>] has a thickness [<i>a dimension of the forward edge which is perpendicular to the upper surface of the planar plate portion</i>],
the planar plate portion of said top member extends between said forward edge and said rearward edge and	the planar plate portion of said top member [<i>that portion of the top member that is of uniform thickness from the back of the forward edge to the rearward edge</i>] extends between said forward edge and said rearward edge and
has a uniform thickness no greater than about half said thickness of said forward edge; and	has a uniform thickness [<i>dimension</i>] no greater than about half said thickness of said forward edge ; and
a facing member made of natural stone and	a facing member [<i>the other piece of the edging tile that is located below and perpendicular to the top member</i>] made of natural stone and
having an upper edge bonded to said lower surface of said top member	having an upper edge [<i>the upper portion of the facing member that is attached to the lower surface of the top member</i>] bonded [<i>the term "bonded" includes within its scope, all known methods for attaching stone pieces to one another</i>] to said lower surface of said top member
adjacent said forward edge and	adjacent said forward edge [<i>the upper edge of the facing member is attached so that the upper edge of the facing member is next to the forward edge of the top member</i>] and
having a planar plate portion	having a planar plate portion perpendicular [<i>a flat part of the</i>

perpendicular to said upper surface of said top member.	<i>facing member that is at a right angle to the upper surface of the top member] to said upper surface of said top member.</i>
Claim 2	
2. A stone edging tile as claimed in claim 1, wherein said upper edge of said facing member is bonded to said plate portion of said top member.	2. A stone edging tile as claimed in claim 1, wherein said upper edge of said facing member is bonded to said plate portion of said top member .
Claim 3	
3. A stone edging tile as claimed in claim 2, wherein said forward edge has a double-bullnose shape.	3. A stone edging tile as claimed in claim 2, wherein said forward edge has a double-bullnose shape [a type of trim with the same outward radius curve on two opposite sides].
Claim 4	
4. A stone edging tile as claimed in claim 1, wherein said upper edge of said facing member is bonded to said forward edge.	4. A stone edging tile as claimed in claim 1, wherein said upper edge of said facing member is bonded to said forward edge .
Claim 5	
5. A stone edging tile as claimed in claim 4, wherein said forward edge has a single bullnose shape.	5. A stone edging tile as claimed in claim 4, wherein said forward edge has a single bullnose shape [a type of trim with an outward radius curve on one side].
Claim 6	
6. A stone edging tile as claimed in claim 4, wherein said forward edge is radiused both convexly and concavely.	6. A stone edging tile as claimed in claim 4, wherein said forward edge is radiused [curved] both convexly [outwardly] and concavely [inwardly].
Claim 9	
9. A method for using a stone edging tile, said tile comprising	9. A method for using a stone edging tile, said tile comprising
a top member made of natural stone and having a lower surface and a polished upper surface,	a top member made of natural stone and having a lower surface and a polished upper surface ,
said top member having a rearward edge,	said top member having a rearward edge,
a planar plate portion, and	a planar plate portion , and
an at least partially radiused forward edge,	an at least partially radiused forward edge ,
said forward edge has a thickness,	said forward edge has a thickness ,
the planar plate portion of said top member extends between said forward edge and said rearward edge and	the planar plate portion of said top member extends between said forward edge and said rearward edge and
has a uniform thickness no greater than about half said thickness of said forward edge,	has a uniform thickness no greater than about half said thickness of said forward edge .
said tile further comprising a facing member made of natural stone and	said tile further comprising a facing member made of natural stone and
having an upper edge bonded to said lower surface of said top member	having an upper edge bonded to said lower surface of said top member
adjacent said forward edge and	adjacent said forward edge and
having a planar plate portion	having a planar plate portion perpendicular to said upper surface

perpendicular to said upper surface of said top member,	of said <i>top member</i> .
the method comprising the step of:	the method <i>comprising</i> the step of:
bonding said stone edging tile to a countertop by	<i>bonding</i> [<i>to cause to adhere firmly</i>] said stone edging tile to a countertop by
bonding said lower surface of said top member to a top surface of said countertop and	<i>bonding</i> said <i>lower surface</i> of said <i>top member</i> to a top surface of said countertop and
bonding said facing member to a front surface of said countertop perpendicular to said top surface of said countertop.	<i>bonding</i> said <i>facing member</i> to a front surface of said countertop perpendicular to said top surface of said countertop.
Claim 10	
10. A method as claimed in claim 9, further comprising the step of	10. A method as claimed in claim 9, further <i>comprising</i> the step of
bonding to said countertop adjacent said rearward edge an additional tile made of natural stone and	<i>bonding</i> to said countertop <i>adjacent</i> [<i>next to</i>] said rearward edge an additional tile made of <i>natural</i> stone and
having uniform thickness equal to the thickness of said plate portion of said top member.	having uniform <i>thickness</i> equal to the <i>thickness</i> of said <i>plate portion of said top member</i> .
Claim 11	
11. A method as claimed in claim 9 further comprising the steps of:	11. A method as claimed in claim 9 further <i>comprising</i> the steps of:
repeating said step of bonding said stone edging tile to a countertop by bonding a plurality of stone edging tiles adjacent to one another along an edge of said countertop; and	repeating said step of <i>bonding</i> said stone edging tile to a countertop by <i>bonding a plurality</i> [<i>two or more</i>] of stone edging tiles <i>adjacent</i> to one another along an edge of said countertop; and
repeating said step of bonding to said countertop adjacent said rearward edge an additional tile made of natural stone	repeating said step of <i>bonding</i> to said countertop <i>adjacent</i> said rearward edge an additional tile made of <i>natural</i> stone
until at least one of said additional tile is bonded adjacent said rearward edge of each said stone edging tile.	until at least one of said additional tile is <i>bonded</i> [<i>caused to adhere firmly</i>] <i>adjacent</i> said rearward edge of each said stone edging tile.

EXHIBIT B

UNITED STATES PATENT NUMBER 6.413.337 B2-GLOSSARY OF TERMS

TERM A	DEFINITION
A Thickness	a dimension of the forward edge which is perpendicular to the upper surface of the planar plate portion
Adjacent	next to
Adjacent said forward edge	the upper edge of the facing member is attached so that the upper edge of the facing member is next to the forward edge of the top member
Bonded (stone-to-	the term "bonded" includes within its scope, all known methods for attaching

stone)	stone pieces to one another
Bonded (stone-to-countertop)	caused to adhere firmly
Bonding (stone-to-countertop)	to cause to adhere firmly
Comprising	including but not limited to
Concavely	inwardly
Convexly	outwardly
Double-bullnose shape	a type of trim with the same outward radius curve on two opposite sides
Facing member	the other piece of the edging tile that is located below and perpendicular to the top member
Forward edge	that portion of the top member which is forward of the planar plate portion
Lower surface	bottom side of the top member, which includes but is not limited to the surface that is affixed to the top surface of the facing member
Natural	Found in nature
Partially radiused forward edge	portion of the forward edge which is curved
Planar plate portion	that portion of the top member that is of uniform thickness from the back of the forward edge to the rearward edge
Planar plate portion perpendicular	a flat part of the facing member that is at a right angle to the upper surface of the top member
Plate portion of said top member	the portion of the top member that is of uniform thickness from the back of the forward edge to the rearward edge
Plurality	two or more
Radiused	curved
Single bullnose shape	a type of trim with an outward radius curve on one side
Thickness	dimension
Top member	a piece of the stone edging tile that, when assembled, is above another piece
Upper edge	the upper portion of the facing member that is attached to the lower surface of the top member
Upper surface	top side of the top member

FN1. All terms appearing in bold face type and underlined have been construed by the court and appear with their definitions in the glossary in Exhibit B. The definition for each construed term appears in italics use in the patent.

S.D.Cal.,2006.

European Natural Stone Co., Inc. v. Bedrock Creations

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