

United States District Court,
S.D. Ohio, Eastern Division.

The OHIO WILLOW WOOD COMPANY,
Plaintiff.

v.

DAW INDUSTRIES, INC,
Defendant.

Sept. 21, 2006.

Jeffrey S. Standley, Standley & Gilcrest, Fred Michael Speed, Jr., Standley Law Group LLP, Dublin, OH,
for Plaintiff.

Eric O. Haugen, Haugen Law Firm PLLP, Minneapolis, MN, Richard Eric Gaum, Hahn Loeser & Parks
LLP, Akron, OH, for Defendant.

OPINION AND ORDER

GREGORY L. FROST, District Judge.

Case No. 2:05-cv-1038 is a patent infringement case involving The Ohio Willow Wood Company ("OWW") and Daw Industries, Incorporated ("Daw"). As in case No. 2:04-cv-1222, the parties have again requested that the Court construe various patent language pursuant to *Markman v. Westview Instruments, Incorporated*, 517 U.S. 370 (1996). This claims-construction decision serves that function.

I. Background

Given the procedural posture of this litigation, the Court need not and shall not describe the facts in great detail here. Of import is the fact that OWW is the owner of U.S. Patent No. 6,964,688 ("the ' 688 patent"). The company applied for the patent on October 15, 1999, and the patent issued on November 15, 2005. The ' 688 patent is titled "Tube Sock-Shaped Covering" and, like prior patents involved in related litigation, also involves technology related to coverings for amputees employing a prosthesis. FN1 The relevant specification to the patent discloses a "liner" device that fits over a residuum, or an amputation stump, so as to provide a cushion between the stump and the artificial limb. The device employs a gel composition that is used in or formed into its various permutations.

FN1. Case No. 2:04-cv-1222 involves U.S. Patent No. 5,830,237 ("the ' 237 patent").

On November 16, 2005, OWW filed suit against Daw, claiming that Daw has infringed on the ' 688 patent. OWW and Daw have stipulated to the meaning of various terms involved in this litigation. The parties' dispute at this juncture focuses on four terms or clauses that appear in various claims contained within ' 688

patent: "tube-shaped," "coated on only the inside thereof," "coated on the inside thereof," and "coated directly on the inside thereof."

After the parties completed briefing on the claim construction issues, the Court conducted a September 7, 2006 *Markman* hearing in which the parties presented oral argument. Having finalized the construction of the claims involved in case No. 2:05-cv-1038, the Court now issues its decision on the relevant claim language.

II. Claim Construction

A. Standards Involved

The Federal Circuit has explained that "[i]t is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude.'" *Varco, L.P. v. Pason Systems USA Corp.*, No. 05-1136, 2006 WL 229926, at (Fed.Cir. Feb. 1, 2006) (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed.Cir.2005) (en banc) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed.Cir.2004))). Consequently, the meaning and scope of a patent's claims lie at the heart of any patent dispute.

The purpose of a *Markman* hearing is to ascertain the meaning of a patent's claims so that it is clear precisely what has been patented and, by consequence, the protections the patent therefore affords the patent holder. *See Phillips*, 415 F.3d at 1312. *See also Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 978 (Fed.Cir.1995) ("When a court construes the claims of the patent ... the court is defining the federal legal rights created by the patent document"), *aff'd*, 517 U.S. 370 (1996). There is no "rigid algorithm for claim construction." *Phillips*, 415 F.3d at 1324. Rather, in construing the meaning of a patent's claims, the Court is guided by a set of principles that the Federal Circuit has described as follows:

The claim terms "are generally given their ordinary and customary meaning." *Id.* (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996)). "The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation." *Id.* "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification ." *Id.* "In examining the specification for proper context, however, this court will not at any time import limitations from the specification into the claims." *CollegeNet, Inc. v. Apply Yourself, Inc.*, 418 F.3d 1225, 1231 (Fed.Cir.2005) (citing *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1326 (Fed.Cir.2002)).

Varco, L.P., 2006 WL 229926, at *4. The starting point in claim construction therefore lies with the language of the claims themselves. *Purdue Pharma L.P. v. Endo Pharmaceuticals, Inc.*, Nos. 04-1189, 04-1347, & 04-1357, 2006 WL 231480, at (Fed.Cir. Feb. 1, 2006) (citing *Phillips*, 415 F.3d at 1312). In considering a patent's language, a court should apply the plain meaning rule, presumptively giving claim terms their ordinary, plain meaning. *Teleflex*, 299 F.3d at 1325. A court may, however, depart from a term's plain meaning if the patentee has acted as a lexicographer or otherwise limited the scope of the invention through a clear disclaimer in the specification or prosecution history. *Phillips*, 415 F.3d at 1316-17.

Of considerable import to claim construction, then, is the intrinsic evidence—the claim language, the specification, and the prosecution history as applicable. *World Kitchen (GHC), LLC v. Zyliss Haushaltwaren AG*, 151 Fed. Appx. 970, 972 (Fed.Cir.2005) (citing *Interactive Gift Express, Inc. v.*

Compuserve, Inc., 256 F.3d 1323, 1331 (Fed.Cir.2001)); Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). When this intrinsic evidence provides an unambiguous description of the scope of the invention, reliance on extrinsic evidence is improper. Vitronics Corp., 90 F.3d at 1582.

But although less significant than intrinsic evidence, extrinsic evidence is still of value to claim construction when necessary. Phillips, 415 F.3d at 1317. This latter category encompasses such things as expert and inventor testimony, as well as texts such as treatises and dictionaries. *Id.* (quoting *Markman*, 52 F.3d 980). A court may entertain expert testimony for numerous purposes, such as

to provide background on the technology at issue, to explain how an invention works, to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field.

Phillips, 415 F.3d at 1318. The value of expert testimony in regard to claim construction is qualified, however, as an expert cannot offer an opinion of any value that is at odds with the intrinsic evidence of a patent. *Id.* (quoting *Key Pharms. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed.Cir.1998)); *Playtex Prods., Inc. v. Procter & Gamble Co.*, 400 F.3d 901, 908 n. 1 (Fed.Cir.2005).

Finally, the Federal Circuit has recognized that "patent documents are meant to be 'a concise statement for persons in the field.'" Phillips, 415 F.3d at 1313 (quoting *Verve, LLC v. Crane Cams, Inc.*, 311 F.3d 1116, 1119 (Fed.Cir.2002)). The parties informed the Court during the *Markman* hearing that they have agreed to a definition of what "one of skill in the art" means in this context. The Court accepts the following stipulation:

One of skill in the art of the ' 688 patent is a person that [sic] has either 1-2 years of experience in the manufacturing or design of prosthetic components involving gels; or is a person who has worked for at least a year as a certified prosthetist or orthotist; or is a person who has 2-4 years of experience training and/or working in the field of prosthetics or orthotics.

Cognizant of this definition and the foregoing governing principles, and having entertained argument as well as having reviewed the scope of the prior art, the Court shall now address each claim-construction issue in turn.

B. "Tube-shaped"

The parties dispute the meaning of "tube-shaped," which appears in every claim of the ' 688 patent. OWW proposes that this language means "a relatively long hollow shape, not form-fitted, and greater in length than in width." (Doc. # 14, at 13.) Daw in turn proposes that the language means "in the shape of a cylinder with parallel sides, closed at one end." (Doc. # 16-1, at 6, 9.)

OWW bases its construction on the fact that the ' 688 patent links "tube-shaped" with a tube-sock shape. (Doc. # 1, Ex. A, ' 688 Patent, col. 1, line 24.) As with the ' 237 patent, the use of such plain language is important. The Federal Circuit has explained:

In the absence of an express intent to impart a novel meaning to claim terms, an inventor's claim terms take on their ordinary meaning. [There is] a "heavy presumption" that a claim term carries its ordinary and

customary meaning. The ordinary meaning of a claim term may be determined by reviewing a variety of sources, including the claims themselves, other intrinsic evidence including the written description and the prosecution history, and dictionaries and treatises.

Teleflex, 299 F.3d at 1325 (citations omitted). Here, as before, the plain meaning of the disputed term at issue compels a construction reflecting a generally tubular shape, but without requisite parallel sides.

As the Court also noted in issuing its construction of "tube-sock shaped" in connection with the ' 237 patent, there is no mandate that a tube shape be cylindrical. The Court again notes that the plain meaning of "tube" is "a hollow elongated [usually] cylindrical body." *Webster's Third New International Dictionary* 2459 (2002) (abbreviation "usu." changed to reflect full word). This definition permits variations that conform to a cylindrical shape *generally*, such as contemplated in both the ' 237 and the ' 688 patents. The difference in the patents is that the ' 688 clause "tube-shaped" arguably does not expressly mandate a closed end-the other claim language "a closed end opposite said open end" control the tube shape here-whereas the ' 237 patent clause included the sock shape. (Doc. # 1, Ex. A, ' 688 Patent, col. 22, Claims 1-7.) OWW is thus correct in reasoning that the distinguishing element in the definitions is the closed-end limitation.

Daw vehemently disagrees with OWW's construction. Daw posits that the patent history generally and OWW's specific amendment of its application teach that "tube-shaped" must mean "in the shape of a cylinder with parallel sides, closed at one end." (Doc. # 16-1, at 6, 9.) This proposed definition presents three elements: a cylindrical shape, parallel sides, and a closed end.

The Court disagrees with the first element, the cylindrical shape aspect of Daw's proposed definition. As cited above, the definition of a tube presents a *usually* cylindrical body or shape, but it also allows for the atypical variance of a non-cylindrical shape. Daw's overly restrictive definition thus imputes a limitation at odds with the plain meaning of the term.

Similarly, the Court disagrees with Daw that "tube-shaped" mandates a closed end, which is the third element of its proposed definition. As noted, the ' 688 patent's independent claims contain other language expressly imposing this characteristic. Nothing in the clause "tube-shape" itself warrants the limitation. The Court recognizes that the difference between the parties' view of the clause to be construed (OWW's "tube-shaped" versus Daw's "tube-shaped" covering") might partially account for Daw's more specific proposal. But even in that case, the closed-end limitation on the covering is more linked to the other specific claim language than to the tube-shape description.

This essentially leaves the second element of Daw's proposed definition, the parallel sides component. FN2 Daw argues that "tube-shaped covering" is more limiting than "tube-sock shaped covering" and points for support to the Lerman and Handal patents, U.S Patent Nos. 4,634,626 ("the ' 626 patent") and 5,263,990 ("the ' 990 patent"), respectively. Under Daw's theory, OWW expressly identified the ' 626 patent as not being "tube-sock shaped" and now seeks to recapture that subject matter. Similarly, Daw argues, OWW distinguished the ' 990 patent by characterizing it as "form-fitting" as opposed to "tube-shaped" or even "tube-sock shaped." FN3

FN2. The Court recognizes that Daw's argument in regard to the parallel sides component also informs the company's belief that OWW's conduct mandate a cylindrical shape and a closed end. To the extent that Daw's argument can be read to present a separate language-based basis for the existence of these two characteristics, the Court has already explained why that argument fails. To simplify discussion, the Court

has elected to discuss explicitly the prosecution/amendment argument in regard to the parallel sides element, but the same reasoning applies to Daw's contention that OWW's application conduct mandates the cylindrical shape and closed end.

FN3. Daw also points to OWW's reference to U.S. Patent No. 6,406,499 as indicative of OWW presenting cylindrical shapes with closed ends. These embodiments fall within the general definition of "tube-shaped covering" but do not subsume or equal that definition. Rather, the ' 499 specifications are illustrative of tube-shape coverings without confining tube-shaped coverings to their specific and limited form. The claim language and not specification embodiments must control; in the absence of drafter intent, the Federal Circuit has cautioned against limiting a claim pursuant to a specification or preferred embodiment. *Playtex Prods., Inc.*, 400 F.3d at 907 (collecting cases). *See also Dow Chem Co.*, 257 F.3d at 1378 (" '[c]laims, not the specification embodiments, define the scope of protection' ") (quoting *American Permahedge, Inc. v. Barcana, Inc.*, 105 F.3d 1441, 14444 (Fed.Cir.1997)); *Laitram Corp. v. Cambridge Wire Cloth Co.*, 863 F.2d 855, 865 (Fed.Cir.1988) ("it is well established that broad claims supported by the written description should not be limited in their interpretation to a preferred embodiment"). There is no express declaration of patentee intent to import such an embodiment limitation here.

At first blush, Daw's argument is compelling. But ultimately Daw's contention fails to persuade. Review of the prosecution history reveals that OWW attempted to distinguish Lerman by submitting the following:
FN4

FN4. For ease of discussion, the Court has numbered the paragraphs to enable quick reference.

[1] Lerman does not disclose a tube-sock-shaped covering for enclosing an amputation stump, said covering having an open end for introduction for said stump and a closed end opposite said open end as recited in both independent claim 24 and independent claim 31.

[2] In addition, Lerman does not disclose the covering having docking means for attachment of an external device to the covering as recited in claim 24.

[3] Moreover, there is no teaching in Lerman of a covering being coated on the inside thereof with polymeric material as recited in claim 24 and 31. The structure disclosed by Lerman merely comprises separate layers stitched together.

[4] Furthermore, Lerman does not teach a covering comprising one or more high wear resistant areas with said cover being coated on the inside thereof in at least one of the one or more of the high wear resistant areas with polymeric material as recited in claim 31.

[5] Claim 33 depends from claim 31, and it therefore patentably distinguishes over Lerman for the reasons stated above with respect to claim 31. Moreover, claim 33 includes an additional recitation that further distinguishes over Lerman.

[6] For at least the above reasons, none of the claims 24, 31 nor 33 is anticipated by Lerman. (OWW Hearing Ex. B, at 175-76.) Daw posits that paragraphs 1 through 4 present distinct reasons for distinguishing Lerman, with the first reason being shape. The company points to the transitional clauses "In addition

(paragraph 2), "Moreover" (paragraph 3), and "Furthermore" (paragraph 4) and argues that these orienting clauses indicated distinct reasons. Under this analysis, paragraph 1 asserts that Lerman is not tube-shaped, paragraph 2 distinguishes Lerman on the grounds that it does not have a docking means, paragraph 3 targets Lerman's lack of an inside coating, and paragraph 4 asserts that Lerman lacks the referenced coating on high wear resistant areas.

OWW of course disagrees and asserts that paragraph 1 is simply a general statement that Lerman does not disclose a tube sock-shaped covering *that contains the features identified in claims 24 and 31*. Paragraphs 2 through 4, OWW explains, then proceed to explain the specifics of why the general paragraph 1 statement is true. OWW also urges the Court to consider that if paragraph 1 is not read as a general statement, then it is a false statement, a problem of a different sort.FN5 The company argues that the general reading is appropriate because the cited language does not amount to words of clear manifest exclusion.

FN5. Lerman discloses "a tubular sock which is open at its top, closed at its bottom, and shaped to generally conform to the shape of an amputee's stump." (Doc. # 16, -10, Ex. D., ' 626 Patent, col. 2, lines 46-48.)

As at the *Markman* hearing, the Court has continued to struggle with the issue. At best, the referenced language is sloppy; at worst, it is a false statement accepted by the patent office. The Court has concluded that the cited language fails to present the requisite indication of exclusion that Daw asserts.

Paragraphs 5 and 6 expressly indicate that the foregoing paragraphs contain not a single distinguishing reason, but reasons. Paragraph 2 through 4 unquestionably present three distinct reasons. The question is whether paragraph 1 is a general statement or a false statement presenting shape as a distinguishing reason. The paragraph is not a model of drafting. The first segment presents a statement, followed after the comma by clauses describing the covering. What is unclear is what the drafter intended the clauses beginning with "as recited in" to modify. The paragraph 2 "In addition" language would suggest that the drafter is moving from a reason one to a reason two, not simply presenting a specific explication of a larger concept. But to accept this proposition would mean that OWW asserted that Lerman's disclosure of a tubular sock did not disclose a tube sock-shaped covering.

The key issue is thus whether the poorly executed text reveals an expression of manifest exclusion or restriction, representing a clear disavowal of claim scope. *See Teleflex, Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325 (Fed.Cir.2002). The Federal Circuit has held:

[T]he prosecution history may demonstrate that the patentee intended to deviate from a term's ordinary and accustomed meaning, i .e., if it shows the applicant characterized the invention using words or expressions of manifest exclusion or restriction during the administrative proceedings before the Patent and Trademark Office. "Arguments and amendments made during the prosecution of a patent application and other aspects of the prosecution history, as well as the specification and other claims, must be examined to determine the meaning of terms in the claims." *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576, 34 USPQ2d 1673, 1676 (Fed.Cir. 1995). In particular, "the prosecution history (or file wrapper) limits the interpretation of claims so as to exclude any interpretation that may have been disclaimed or disavowed during prosecution in order to obtain claim allowance." *Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448, 452, 227 USPQ 293, 296 (Fed.Cir.1985).

Teleflex, Inc., 299 F.3d at 1326. What is required is "a clear disavowal of claim scope." *Id.* at 1327.

Here, OWW's poor drafting has created ambiguity where none need be found. On one hand, language such as the "In addition" clause supports a list of reasons beginning with paragraph 1. On the other hand, the content of paragraph 1 supports reading a covering shaped as a tubular sock to be a tube sock-shape covering, which means that accepting "In addition" as indicative of paragraph 1 being a reason and not a conclusion would render the statement false; there is no indication that Lerman's "tubular sock" shape is different from the shape of the "tube sock-shaped covering" in amended claims 24 and 31 and the eventual "tube-shaped covering" shape that ultimately became the language of the seven independent claims in the ' 688 patent.FN6 In other words, if "In addition" is read to have an incorrect meaning, OWW's language makes sense. If "In addition" is credited with correct usage, the rejection is inherently flawed.

FN6. The Court again notes that the ' 688 patent equates tube-shaped with tube-socked shape. (Doc. # 1, Ex. A, ' 688 Patent, col. 1, line 24.)

Given such a situation, the Court cannot say that OWW's language equals an expression of manifest exclusion or restriction, representing a clear disavowal of claim scope. The inquiry presents a close call, with the Court preserving rather than destroying the statement. The Court thus reads "In addition" as curiously but necessarily meaning "for example." Such a reading is not contrary to the plain meaning and effect of the language used, but treats the clause as used less formally and precisely than would be traditional. The context demands this looser construction.FN7

FN7. Similarly, context defeats Daw's reliance on the Handal patent, which discloses only a form-fitting device employing an interior foam fitting member.

In light of the foregoing considerations-and indulging in the heavy presumption that a claim term has its ordinary and customary meaning-the Court construes "tube-shaped" as used in the ' 688 patent to mean "relatively long, hollow, not form-fitted, and greater in length than width."

C. "Coated on only the inside thereof"

Claim 1 of the ' 688 patent claims

A tube-shaped covering for enclosing an amputation stump, said covering comprising fabric coated on only the inside thereof with polymeric material capable of forming an air-tight seal with a limb of a wearer when said covering is donned, said covering configured to have an open end for introduction of said stump and a closed end opposite said open end.

(Doc. # 1, Ex. A, ' 688 Patent, col. 22, lines 4-10.) The parties disagree over the meaning of the clause or term "coated on only the inside thereof." FN8

FN8. With little elaboration, Daw focuses on the narrow issue of impregnation in regard to all three "coating" clauses at issue herein and asserts that "[t]he proper construction of the 'coated' and 'coating' terms should include 'coated' and 'coating' but not the term 'impregnated.' " (Doc. # 16-1, at 6.) This leads to Daw's conclusion that the "coated" clauses "should specifically exclude materials which are impregnated with gel." (Doc. # 21, at 13.) In reaching this conclusion, Daw narrowly reads the ' 688 patent as referencing impregnation and coating in the disjunctive. (Doc. # 16-1, at 9-10.)

As OWW notes, this Court previously construed the ' 237 patent clause or term "coated on only one side" in the consolidated case No. 2:04-cv-1222 to mean "the presence of a layer of a substance on a surface of a fabric, with no observable penetration of the substance onto the opposing surface of the fabric." (Cite.) OWW asks that this construction similarly inform the Court's construction of the ' 688 patent language.

The Court agrees that, as in the ' 237 patent, the ' 688 patent language at issue targets only where the *coating* lies, as opposed to where *portions of the gel that do not constitute a complete coating* might be present.FN9 Both patents permitted some of the gel substance to be present elsewhere, such as *into* the fabric and imperceptibly *onto* the other or outer side of the fabric, provided these gel portions do not constitute a layer or coating on the other or outer side. The prior ' 237 construction turned in part on the fact that the patent examiner had stated that the device featured "a gel coat on one side but no observable penetration of the gel through the fabric and onto the opposite side ." FN10 (Doc. # 18, Ex. F, at 133-36.) OWW has not directed the Court to any such statement on the ' 688 patent here.

FN9. As explained in the Court's construction of the ' 237 patent, the process or manner of coating—for example, use of impregnation—lies outside the definition and does not impose the "without impregnating the fabric" limitation Daw suggests.

FN10. The examiner also described the device as having a "lack of exterior gel," which distinguished it from the Silosheath, which has "polymeric material ... present on both the inside and outside" of its covering. (Doc. # 17, Ex. F, at 130.)

The Court therefore makes explicit here that the basis for today's construction is the plain language of the clause construed and not the irrelevant ' 237 patent examiner statement. What was sought and what was approved in the ' 688 patent's use of the words "coated on only the inside thereof" is a clause meaning "the presence of a layer of a substance on the inner surface of a fabric, with no observable penetration of the substance onto the opposing surface of the fabric."

D. "Coated on the inside thereof"

Claims 2, 3, 5, and 6 of the ' 688 patent include the clause or term "coated on the inside thereof." (Doc. # 1, Ex. A, ' 688 Patent, col. 22, lines 13-14, 24-25, 37-38, 44-45.) The deletion of "only" is the single difference between the instant clause and the foregoing "coated on only the inside thereof." Thus, the layer or coating that is prohibited in the language of Claim 1 is permissible in Claims 2, 3, 5, and 6. Both the inner and outer fabric surfaces can be coated, but all that is required is that at least the inner surface be coated. The Court therefore construes "coated on the inside thereof" to mean "the presence of a layer of a substance on the inner surface of a fabric."

E. "Coated directly on the inside thereof"

Claim 4 of the ' 688 patent claims

A tube-shaped covering for enclosing an amputation stump, said covering comprising fiber-on-end fabric and a polymeric material capable of forming an air-tight seal with a limb of a wearer when said covering is

donned, said fabric being coated directly on the inside thereof with said polymeric material, said covering configured to have an open end for introduction of said stump and a closed end opposite said open end.

(Doc. # 1, Ex. A, ' 688 Patent, col. 22, lines 28-35.) The relevant term at issue is the clause "coated directly on the inside thereof."

This clause includes an additional component to the clause contained in Claims 2, 3, 5, and 6 and construed above: the word "directly." OWW explains that the word precludes the presence of an intervening substance between the fabric and the gel layer or coating. Therefore, OWW proposes that the construction be "the application of a layer of a substance on the inner immediate surface of a fabric." (Doc. # 14, at 15.) The Court agrees with the substance of OWW's construction, but disagrees with the company's needless departure from consistent terminology. Accordingly, the Court construes "coated directly on the inside thereof" to mean "the presence of a layer of a substance or composition on the inner immediate surface of a fabric, without an intervening other substance between said substance and the fabric's inner surface."

G. Summary of Constructions

For ease of reference the Court has set forth its constructions in the following chart.

Patent Language	Construction
tube-shaped	relatively long, hollow, not form-fitted, and greater in length than in width
coated on only the inside thereof	the presence of a layer of a substance on the inner surface of a fabric, with no observable penetration of the substance onto the outer surface of the fabric
coated on the inside thereof	the presence of a layer of a substance on the inner surface of a fabric, with or without observable penetration of the substance onto the outer surface of the fabric
coated directly on the inside thereof	the presence of a layer of a substance or composition on the inner immediate surface of a fabric, without an intervening other substance between said substance and the fabric's inner surface

III. Conclusion

The Court concludes that the foregoing claim constructions control. The parties shall therefore proceed in a manner consistent with the conclusions of this Opinion and Order.

IT IS SO ORDERED.

S.D.Ohio,2006.

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