

United States District Court,  
W.D. Wisconsin.

**3M COMPANY and 3M Innovative Properties Company,**  
Plaintiffs.

v.

**KERR CORPORATION,**  
Defendant.

No. 07-C-087-C

**March 29, 2007.**

Catherine M. Rottier, Madison, WI, Garret Leach, Chicago, IL, for Plaintiffs.

David L. Debruin, Michael Best & Friedrich, Milwaukee, WI, for Defendant.

## **ORDER**

**BARBARA B. CRABB, District Judge.**

The parties to this patent litigation dispute have conferred and agree that only three claims need to be construed by the court with respect to plaintiff's United States Patent No. 6,899,948 (the "8 patent). The parties have stipulated to the appropriate construction of two of these claims: they agree that a "silica particle" is a particle that includes silicon dioxide and that "visual opacity value" means the numerical value arrived at by measuring the light transmission through the thickness of a 1 mm thick disk using a Macbeth TD-903 transmission densitometer equipped with a visible light filter, or an equivalent.

That leaves only one claim in dispute. For reasons that are not entirely clear, defendant asks the court to construe the claim term "dry powder" as "a solid in the form of fine, loose particles that are flowable but not dispersed in a liquid medium." Although I agree that defendant's proposed definition accurately captures the meaning of the claim term, I see no reason to say in nineteen words what could just as easily be said in two. Defendant does not suggest that the phrase dry powder as used in the "8 patent has any meaning other the one given it in common parlance. Consequently, there is no need to construe the term; a jury will be perfectly capable of understanding what is, and is not, a dry powder.

## **ORDER**

IT IS ORDERED that the relevant claims of the "7 patent at issue in this lawsuit are construed as follows:

1. A "silica particle" is a particle that includes silicon dioxide.
2. "Visual opacity value" means the numerical value arrived at by measuring the light transmission through

the thickness of a 1 mm thick disk using a Macbeth TD-903 transmission densitometer equipped with a visible light filter, or an equivalent.

3. All remaining claims in the "8 patent are to be given their ordinary meaning.

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