

United States District Court,
W.D. North Carolina, Asheville Division.

MINUTE MAN ANCHORS, INC,
Plaintiff.

v.

OLIVER TECHNOLOGIES, INC., and James Oliver, an individual,
Defendants.

Civil No. 1:04CV27

May 23, 2007.

Cort Flint, Douglas William Kim, McNair Law Firm, PA, Greenville, SC, Robert Edward Dungan, Dungan & Associates, P.A., Asheville, NC, for Plaintiff.

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MEMORANDUM OF OPINION (CLAIM CONSTRUCTION)

LACY H. THORNBURG, District Judge.

THIS MATTER is before the Court on the parties' respective positions concerning claim construction.

I. PROCEDURAL HISTORY

On February 11, 2004, Minute Man Anchors, Inc. (Minute Man) initiated this action for declaratory judgment of noninfringement of United States Patent Number 6,634,150 (the '150 patent) for an invention entitled, "Foundation with Lateral Brace for Manufactured Home," which is licensed to Oliver Technologies, Inc. (OT) and owned by James Oliver (Oliver). In December 2003, Oliver's attorney wrote to Minute Man claiming that its lateral bracing system appeared to infringe the '150 patent and demanded its removal from the market. As a result, Minute Man brought this action to obtain a declaration of noninfringement and patent invalidity. Service was not effected until June 2004. Thereafter, on consent of the parties, the Court stayed this action to allow for settlement negotiations. By the end of August 2004, the parties reported their inability to reach settlement and the Court lifted the stay.

In September 2004, OT and Oliver moved to dismiss the action or, in the alternative, to transfer venue to the Middle District of Tennessee. Shortly thereafter, the parties jointly moved for discovery in connection with that motion; the Court allowed the motion and an extensive period of discovery ensued. In August

2005, the undersigned denied both the motion to dismiss and the alternative motion to transfer. The Defendants' motion for a certificate of appealability was denied in November 2005. In December 2005, the Defendants' Counterclaims II through VI I were dismissed. The parties subsequently filed their respective claim construction briefs and that issue is ready for consideration.

II. STANDARD OF REVIEW

Claim construction is a question of law[.] ... There is a "heavy presumption" that the terms used in claims "mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." Moreover, dictionaries are often helpful in ascertaining the plain and ordinary meaning of claim language.... Specifically: claim terms take on their ordinary and accustomed meanings unless the patentee demonstrated an intent to deviate from the ordinary and accustomed meaning of a claim term by redefining the term or by characterizing the invention in the intrinsic record using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.

The written description, however, is not a substitute for, nor can it be used to rewrite, the chosen claim language. "Specifications teach. Claims claim."... [Finally,] "[a]lthough [it] is correct that the prosecution history is always relevant to claim construction, it is also true that the prosecution history may not be used to infer the intentional narrowing of a claim absent the applicant's clear disavowal of claim coverage."

SuperGuide Corp. v. DirecTV Enter., Inc., 358 F.3d 874-75 (Fed. Cir.2004) (quoting *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (Fed.Cir.2002); *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed.Cir.2002); *SRI Int'l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 n. 14 (Fed.Cir.1985); *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1327 (Fed.Cir.2003)) (other citations omitted).

To summarize, the scope of an invention is determined first from the words of the claims in the patent. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). Words are given their ordinary meaning. *Id.* After reviewing the words of the claim, a construing court should review the specification of which the claims are a part. *Id.* The specification explains the nature of the invention. "The role of the specification includes presenting a description of the technologic subject matter of the invention, while the role of claims is to point out with particularity the subject matter that is patented." *Netword, LLC v. Centraal Corp.*, 242 F.3d 1347, 1352 (Fed.Cir.2001). If either the claim or the specification contains a definition for a term, that controls. *Vitronics, supra*. However, such a definition must be made explicit in the patent specification or history. *Mycogen Plant Science v. Monsanto Co.*, 243 F.3d 1316, 1327 (Fed. Cir.2001).

"The construction that stays true to the claim language and [that] most naturally aligns with the patent's description of the invention will be, in the end, the correct construction." *Renishaw PLC v. Marposh Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed.Cir.1998). Nor is the Court required, in order to issue a claim construction, to conduct a *Markman* FN1 hearing. " *Markman* does not require a district court to follow any particular procedure in conducting claim construction. It merely holds that claim construction is the province of the court, not a jury." *Ballard Med. Prod. v. Allegiance Healthcare Corp.*, 268 F.3d 1352, 1358 (Fed.Cir.2001). Thus, if the undersigned does not find that a hearing is necessary, one is not required by law. *Id.* "As long as the trial court construes the claims to the extent necessary to determine whether the accused device infringes, the court may approach the task in any way that it deems best." *Id.* The Court does not find that a *Markman* hearing is necessary in order to make a claim construction.

III. THE '150 PATENT

The '150 patent issued on October 21, 2003, for a "Foundation with Lateral Brace for Manufactured Home." **Exhibit A**, U.S. Patent No. 6,634,150, *attached to Plaintiff's Memorandum Supporting Summary Judgment of No Infringement and Responsive to Defendants' Opening Claim Construction Brief ["Plaintiff's Memorandum"]*, filed July 17, 2006, at col.1 ll.1-2. The background of the invention explains that

[m]anufactured homes ... include long longitudinal support beams underneath. Typically, when the home ... is installed, a plurality of vertical piers or jacks are placed under the beams to support them. Most piers or jacks require placement on a rigid ground pan so as not to sink into the ground from the loading. Conventional piers do not provide resistance to lateral forces that may be exerted on the [home], such as by strong winds or earthquakes. Consequently, additional bracing systems must be attached to resist lateral forces.

Id. at col.1 ll.16-26.

Minute Man and OT are competitors in the field of foundation systems to secure manufactured homes against high winds. Minute Man also owns a patent for a foundation system, United States Patent 6,622,439, which issued on September 14, 2003. That patent is not at issue here although the ultimate issue in this litigation is whether the Minute Man products infringe Defendants' '150 patent.

The first three claims of the '150 patent are at issue. The patent claims are as follows with the disputed claim terms shown in **bold type**: FN2

FN2. Language within Claim 2 which differs from that in Claim 1 is italicized. Likewise, language within Claim 3 which differs from that in Claim 1 and/or 2 is italicized. Only disputed claims terms are shown in bold type.

1. A foundation for a manufactured home having first and second elongate, horizontal, and parallel support beams, the second beam having an upper lateral flange; said foundation comprising:
a ground support for disposition on the ground beneath the first beam for vertically supporting the first beam and for interaction with the ground for resisting lateral movement;

a pier for positioning on said ground support for vertically supporting the first beam and transferring the weight of the manufactured home and pier to said ground support; and

a lateral brace assembly including:

a beam connector adapted for clamping attachment to the upper lateral flange of the second beam; and

an elongate and rigid lateral brace including:

a bottom end **pivotably supported** by said ground support; and

a top end **pivotably attached** to said beam connector.

2. The foundation of *claim 1 wherein the upper flange has* [a] foundation for a manufactured home having first and second elongate, horizontal, and parallel support beams, the second beam having an upper lateral flange *having free ends*, said foundation comprising:

a ground support for disposition on the ground beneath the first beam for vertically supporting the first beam and for interaction with the ground for resisting lateral movement;

a pier for positioning on said ground support for vertically supporting the first beam and transferring the weight of the manufactured home and pier to said ground support; and

a lateral brace assembly including:

a beam connector adapted for clamping attachment to the upper lateral flange of the second beam *and wherein*;

said beam connector is adapted to bear against the free ends of the upper flange of the second beam; and

an elongate and rigid lateral brace including:

a bottom end **pivotably supported** by said ground support; and

a top end **pivotably attached** to said beam connector.

3. The foundation of *claim 1 wherein: said lateral brace includes*: A foundation for a manufactured home having first and second elongate, horizontal, and parallel support beams, the second beam having an upper lateral flange, said foundation comprising:

a ground support for disposition on the ground beneath the first beam for vertically supporting the first beam and for interaction with the ground for resisting lateral movement;

a pier for positioning on said ground support for vertically supporting the first beam and transferring the weight of the manufactured home and pier to said ground support, and

a lateral brace assembly including:

a beam connector adapted for clamping attachment to the upper lateral flange of the second beam; and an elongate and rigid lateral brace including:

a bottom end **pivotably supported** by said ground support;

a top end **pivotably attached** to said beam connector; *and*

length adjustment means for adjusting the length of said lateral brace.

Exhibit A, *supra*, at col.4 ll.4-67; col.5 ll.1-2.

The specification teaches as follows:

Lateral brace assembly 40 FN3 provides resistance to lateral loads, such as produced by wind or earthquake. Lateral brace assembly 40 generally includes pan connector 42, beam connector 60, and lateral brace 50 therebetween. Lateral brace 50 is an elongate, rigid member having a bottom end 51 **pivotably supported** by pan connector 42 and a top end 56 **pivotably attached** to beam connector 60.

FN3. The numerals refers to portions of the figures made part of the patent.

Id. at col.2 ll.61-67 (footnote added).

Pan connector 42 **pivotably attaches** brace 50 to [ground] pan 20. U-bracket 46 is attached by any suitable means, such as by welding or a bolt, to [ground] pan 20. Means, such as a pivot or journal bolt 47, attached to U-bracket 46, pivotably connects bracket 46 with bottom end 51 of brace 50.

...

Top end 56 of lateral brace 50 is **pivotably attached** to beam connector 60, such as by pivot bolt 57 in bracket 61 such that all forces are transferred.

Id. at col.3 ll.15-19, 53-55.

The patent also makes clear that the benefit of this invention lies in its simplicity and ease of installation in the field.

Since all of these support and bracing devices have to be installed in the field, it is desirable that they be simple to install, preferably by a single person, not require complex tools and not require any alterations to the existing beams, such as drilling, that could deleteriously affect the strength of the beams.

Id. at col.1 ll. 27-32.

Having described the invention, it can be seen that it provides a very convenient foundation for supporting a manufactured home while simultaneously providing resistance to lateral forces on the home. Foundation 10 is easy to set up in the field with a minimum of tools and personnel.

Id. at col.3 ll.56-60.

IV. CLAIM CONSTRUCTION

The plain language of the claims and specification discloses that the patent intended to claim an invention which would accommodate different foundation sites by allowing the lateral brace to be adjusted accordingly. The language of the claim describes "pivoting" as being involved in the setup of the brace so that the proper angle may be achieved to attain maximum bracing potential.

Once installed, the lateral brace clearly could not "freely rotate" as Minute Man suggests. What the patent instead requires, therefore, is for this lateral brace to be "pivotably attached" [or pivotably supported] or, in other words, to be capable of pivoting. It maintains that pivotable capability at all times, even under load

and even if temporarily secured by a bolt.

Defendants' Reply Concerning Patent Claim Construction ["Defendants' Reply"], filed July 31, 2006, at 5.

The Defendants define the claim to mean:

The disputed term "pivotably supported" should be construed to have its plain and ordinary meaning in light of the intrinsic evidence or, in other words, to mean that the lateral brace is supported by the ground support with a connection that enables the lateral brace to pivot and thereby change its angle of orientation relative to the ground support.... In other words, as illustrated in Fig. 1 of the '150 Patent[,], the lateral brace is positioned at an angle between the second beam and the ground pan. The lower end of the lateral brace attaches to the ground pan. To accommodate differences in terrain at the installation site (among other reasons), the lower end pivotably attaches to the ground pan. Pivotably attaching the lower end allows the lateral brace to be positioned (or turned) to different angles due to different spacings of the second beam and the ground pan. The ground pan thus pivotably supports the lower end of the lateral brace.

Defendants' Brief in Support of Patent Claim Construction ["Defendants' Brief"], filed July 3, 2006, at 7.

The patent plainly describes a brace which may be angled into the best position and, thus, may be pivoted to be placed in that position.

Pan connector 42 pivotably attaches [lateral] brace 50 to pan 20 [ground support]. U-bracket 46 is attached by any suitable means, such as by welding or a bolt, to pan 20. Means, such as a pivot or journal bolt 47, attached to U-bracket 46, pivotably connects bracket 46 with bottom end 51 of brace 50.

Exhibit A, *supra*, at col.3 ll.15-19. Whether the brace is locked down *via* bolt or welding, as described in the specification, it is clear that the patent claims a brace which may be pivoted into position and held there. The Court thus construes the claim language "pivotably supported" to mean the lateral brace is supported by the ground support with a connection that enables the lateral brace to pivot and thereby change its angle of orientation relative to the ground support. Although not part of the construction, the patent clearly states the angle is then tightened by means.

The Court rejects the additional language, italicized herein, which the Defendants seek to add to the construction: " 'pivotably supported' means that the lateral brace is supported by the ground support with a connection that enables the lateral brace to pivot and thereby change its angle of orientation relative to the ground support *by rotating, revolving, turning or hinging about a point, pin or shaft.*" Defendants' Brief, at 10. Defendants seek to add these terms because, they claim, they define the word "pivotably." Likewise, Minute Man also sought to add terms such as "pivot axis," and "about which the brace freely rotates in a vertical plane." Plaintiff's Memorandum, at 14. The language of the patent does not contain these additional descriptions and the Court will not expand the plain language of the claim. "[C]laim construction ... begins and ends in all cases with the actual words of the claim." *Renishaw PLC*, 158 F.3d at 1248. "[W]e cannot endorse a construction analysis that does not identify 'a textual reference in the actual language of the claim with which to associate a proffered claim construction.'" *MBO Labs., Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1330-31 (Fed.Cir.2007) (quoting *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 990 (Fed.Cir.1999)). "If the meaning of a claim term is clear on its face, consideration of the remaining

intrinsic evidence is restricted to determining if a deviation from the clear language of the claim is specified." *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1373 (Fed.Cir.2004) (Schall, J., concurring in part, dissenting in part). No such deviation is specified here.

[The parties'] interpretations are drawn almost exclusively from extrinsic dictionary definitions, in an effort to capture the "ordinary meaning" of the disputed terms. While dictionary definitions are a preferred form of extrinsic evidence, and may be consulted in the absence of any relevant intrinsic evidence, dictionary definitions do not substitute for probative information contained in the patents themselves.

Sevenson Env'tl. Servs., Inc. v. United States, 76 Fed.Cl. 51, ----, 2007 WL 962875, * (Fed.Cl.2007). "It is unnecessary in this circumstance to consult a dictionary definition of ["pivotably"], and thereby add wording that is not contained in the patent." *Id.* at * *17; *accord*, *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed.Cir.2005), *cert. denied*, 126 S.Ct. 1332 (2006) (claim construction based on general dictionary definitions improperly expanded claim rather than relying on the specific technical usage in the specification).

The next phrase which requires claim construction is "pivotably attached." That is, the lateral brace has a bottom end pivotably supported by the ground support and "a top end pivotably attached to said beam connector." Exhibit A, *supra*, at col.4 l.22. Just as the bottom end of the lateral brace is able to be pivoted into the appropriate position, the top end is also capable of being so positioned. "Top end 56 of lateral brace 50 is pivotably attached to beam connector 60, such as by pivot bolt 57 in bracket 61 such that all forces are transferred." *Id.* at col.3 ll.53-55.FN4 "The term 'pivotably attached' does not have a special technical meaning to one of skill in the art." *Deere & Co. v. Toro Co.*, 57 F. App'x 442, 447 (Fed.Cir.2003).

FN4. "In terms of the patent, this means there is a pivot pin device attaching the top end of the lateral brace to the beam connector separately clamped to the frame beam of the home." Exhibit B-1, Declaration of Rod M. Hudgins, Jr., *attached to* Plaintiff's Memorandum, at 3. The Court does not rely on extrinsic evidence in making the claim construction. Rather, the Court cites such evidence only to show additional support therefore. *Phillips*, 415 F.3d at 1319 ("In sum, extrinsic evidence may be useful to the court, but it is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence."); *Sevenson*, *supra*, 2007 WL 962875, * *6-7.

The prosecution history also supports this construction. *Sevenson*, *supra*. The patent examiner, who rejected the patent based on the prior art, noted in July 2002 that neither the prior patent of MacKarvich nor Merriman "disclose using a beam connector comprising a bracket including a slot adapted for receiving a flange and retaining means connected to the bracket for bearing against a beam." Exhibit C-1, File History of United States Patent 6,634,150, *attached to* Plaintiff's Memorandum, at 33. In his amendment of the patent in December 2002, Oliver stated that he had "amended the application ... to more specifically define the invention." Exhibit C-2, Amendment, *attached to* Plaintiff's Memorandum, at 38. In so doing, he also stated that "Claim 1 has been amended ... to include that the beam connector of the lateral brace is 'clamped' to the 'upper lateral flange of the second beam.'" *Id.* at 39.

MERRIMAN shows a transverse brace assembly in which the upper end of the lateral brace is attached to the lower flange of the second beam with bolts between the pier and the flange. The brace of MERRIMAN is intended to be installed upon initial set up of the manufactured home.

Applicant's claimed invention offers improvements over MERRIMAN in that it can be quickly and easily installed retroactively on an existing manufactured home. The claimed beam connector is connected to the upper lateral flange of the second beam while MERRIMAN is connected to a lower flange. The claimed beam connector is clamped to the upper flange such that the second beam is not weakened with bolt holes as shown in MERRIMAN and such that installation can easily be done by a single person in the field. Unlike MERRIMAN, Applicant's beam connector is pivotably attached to the lateral brace.

Id.

"A patentee may not construe a term one way to win approval from the Patent and Trademark Office and then use the term in a different way against accused infringers. Prosecution history prevents 'a patentee from regaining, through litigation, coverage of subject matter relinquished during prosecution of the application for the patent.'" Severson, 2007 WL 962875, * *7.

The Court thus construes "pivotably attached" to mean that the top end of the lateral brace is attached to the beam connector with a connection that enables the lateral brace to pivot and thereby change its angle of orientation relative to the beam connector. That angle is then tightened by means. The patent does not claim that the top end of the lateral brace pivots when the bottom end is unattached except during set up. The patent claims an invention in which both the bottom and top ends are pivoted into place and then locked into place by means.

The Court is well aware that both sides seek to import terms into the claim construction which are not used in the patent, either in the claims themselves or in the specification. See, *e.g.*, Plaintiff's Response to Defendants' Opening Brief on Claim Construction, filed July 17, 2006, at 1 ("pivot attachment," "pivot axis," "pivot pin or shaft about which the brace freely rotates in a vertical plane"); Defendants' Brief, at 11-12 ("rotating, revolving, turning or hinging about a point, pin or shaft"). Yet both sides describe the invention as "simple." The Court agrees that it is a simple invention and will not unduly complicate the claim construction by adding terms. The claim language is plain, simple and clear, and that is the meaning which will be so accorded.FN5

FN5. The Defendants also seek to construe "said beam connector is adapted to bear against the free ends of the upper flange of the second beam." Plaintiff has made no argument concerning this claim and it does not appear to be in dispute among the parties. Therefore, the Court will not construe that claim.

V. ORDER

IT IS, THEREFORE, ORDERED that the claims are hereby construed as follows:

1. The claim language "pivotably supported" means the lateral brace is supported by the ground support with a connection that enables the lateral brace to pivot and thereby change its angle of orientation relative to the ground support.
2. The claim language "pivotably attached" means that the top end of the lateral brace is attached to the beam connector with a connection that enables the lateral brace to pivot and thereby change its angle of orientation relative to the beam connector.

IT IS FURTHER ORDERED that the parties may, but are not required, to file cross-motions for summary judgment on the issue of infringement on or before 60 days from entry of this opinion. Responses to such motions are due 30 days after the filing thereof.

W.D.N.C.,2007.

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