United States District Court,
E.D. Texas, Marshall and Lufkin Divisions.

COOPERVISION, INC,
Plaintiff.
v.
CIBA VISION CORPORATION,
Defendant.

Civil Action Nos. 2:06-CV-149, 9:06-CV-260

July 16, 2007.

Adam S. Hoffman, Amir A. Naini, Anthony E. Falcone, Morgan Chu, Raj Sardesai, Douglas Nejaime, David I. Gindler, Jason G. Sheasby, Jonathan H Steinberg, Irell & Manella LLP, Los Angeles, CA, Ben Yorks, Michael G. Ermer, Michelle Armond, Kenneth R. Nielsen, Irell & Manella, Newport Beach, CA, Clayton Edward Dark, Jr., Attorney at Law, Lufkin, TX, J. Thad Heartfield, The Heartfield Law Firm, Beaumont, TX, Jonathan Steinsapir, Kinsella Weitzman Iser Kump & Aidisert, Santa Monica, CA, for Plaintiff.

Virgil Bryan Medlock, Jr., Catherine Isabelle Casey Rajwani, Debera Denise Wells, Feras Alkasab, Michael David Hatcher, Sidley Austin, Dallas, TX, Charles W. Goehringer, Jr., Lawrence Louis Germer, Germer Gertz, L.L.P., Beaumont, TX, Stephanie P. Koh, Thomas D. Rein, Sidley Austin, Chicago, IL, for Defendant.

ORDER ON AGREED CLAIM TERMS

EARL S. HINES**, United States Magistrate Judge.**

Plaintiff CooperVision, Inc. ("CooperVision") filed suit against Defendant CIBA Vision Corporation ("CIBA") claiming infringement of United States Patent Nos. 6,431,706 and 6,923,538 (collectively, "the Edge Design patents") and of United States Patent Nos. 6,467,903; 6,857,740; 6,971,746; 7,133,174; and 7,134,753 (collectively, "the Toric patents"). The definitions agreed upon comport with the meaning of the terms as they are used in the claims, the specification, the prosecution history, and any applicable extrinsic evidence. Therefore, these terms will be defined as follows:

I. Claim Terms

1. "[O]ptic(al) zone." Used in claims 29, 34 and 38 of the '903 patent; claim 1 of the '740 patent; claim 1 of the '746 patent; claim 16 of the ' 174 patent and claim 15 of the '753 patent.
"[O]ptic(al) zone" means: **the area on the anterior face of the lens that contributes to optical power or correction.**

2. "[A] superior portion." Used in claim 1 of the '740 patent and claim 1 of the '746 patent.

"[A] superior portion" means: **the portion of the inner zone that extends from an imaginary horizontal line at the uppermost extent of the optic zone to the uppermost extent of the inner zone.**

3. "[T]he superior extent of the inner zone." Used in claim 1 of the '740 patent and claim 1 of the '746 patent.

"[T]he superior extent of the inner zone" means: **the uppermost edge of the inner zone in the superior portion.**

4. "[A] superior boundary." Used in claim 16 of the '174 patent and claim 15 of the '753 patent.

"[A] superior boundary" means: **the uppermost edge of the second zone in the superior portion of the lens.**

5. "[A]n inferior portion." Used in claim 1 of the '740 patent and claim 1 of the '746 patent.

"[A]n inferior portion" means: **the portion of the inner zone that extends from an imaginary horizontal line at the lowermost extent of the optic zone to the lowermost extent of the inner zone.**

6. "[T]he inferior extent of the inner zone." Used in claim 1 of the '740 patent and claim 1 of the '746 patent.

"[T]he inferior extent of the inner zone" means: **the lowermost edge of the inner zone in the inferior portion.**"

7. "[A]n inferior boundary." Used in claim 16 of the '174 patent and claim 15 of the '753 patent.

"[A]n inferior boundary" means: **the lowermost edge of the second zone in the inferior portion of the lens.**

8. "[A]n intermediate portion." Used in claim 1 of the '740 patent and claim 1 of the '746 patent.

"[A]n intermediate portion" means: **the portion of the inner zone between the superior and inferior portions.**

9. "[A] left side region." Used in claim 15 of the '753 patent.

"[A] left side region" means: **the entire area of the second zone that is to the left of the vertical meridian of the lens.**

10. "[A]right side region." Used in claim 15 of the '753 patent.

"[A] right side region" means: **the entire area of the second zone that is to the right of the vertical meridian of the lens.**

11. "[T] he ballast portion is defined within one or more of the superior, intermediate, and inferior portions and has a series of consecutive horizontal cross-sections exclusive of the peripheral zone and optic zone spanning a distance along the vertical meridian of at least 20% of the smallest dimension of the superior, intermediate, and inferior portions as measured along the vertical meridian." Used in claim 1 of the '746 patent.

"[T]he ballast portion is defined within one or more of the superior, intermediate, and inferior portions and has a series of consecutive horizontal cross-sections exclusive of the peripheral zone and optic zone spanning a distance along the vertical meridian of at least 20% of the smallest dimension of the superior, intermediate, and inferior portions as measured along the vertical meridian" means: **the ballast portion has consecutive horizontal cross-sections (exclusive of the peripheral zone and the optic zone) throughout the entire ballast portion, the ballast portion being located within one or more of the superior, intermediate and inferior portion such that the ballast portion extends a distance along the vertical meridian of at least 20% of the smallest dimension of the superior, intermediate, or inferior portions of the inner zone as measured along the vertical meridian.**

12. "[T] he ballast portion including a series of consecutive horizontal cross-sections exclusive of the optic zone each having a substantially uniform thickness." Used in claim 1 of the '740 patent.

"[T]he ballast portion including a series of consecutive horizontal cross-sections exclusive of the optic zone each having a substantially uniform thickness" means: **the ballast portion has consecutive horizontal cross-sections (exclusive of the peripheral zone and the optic zone) throughout the entire ballast portion, in which each horizontal cross-section has a substantially uniform thickness that does not vary by more than 30 m or 20% of the minimum thickness within the cross-section, exclusive of the optic zone and the peripheral zone.**

13. "[[A] stabilization structure including] at least one region extending across the entire second zone and having a substantially uniform horizontal thickness." Used in claim 16 of the '174 patent.

"[[A] stabilization structure including] at least one region extending across the entire second zone and having a substantially uniform horizontal thickness" means: **the stabilization structure includes a region extending throughout the entirety of the second zone, and that region of the stabilization structure has substantially uniform horizontal thicknesses throughout that do not vary by more than approximately 30 m or 20% of the minimum thickness along each horizontal.**

14. "[A] plurality of iso-thickness bands." Used in claim 24 of '174 patent.

"[A] plurality of iso-thickness bands" means: **two or more consecutive horizontal cross-sections each of which has substantially uniform thickness not varying within the second zone by more than approximately 30 m or 20% of the minimum thickness in the cross section.**

15. "[A] prism ballast portion." Used in claims 29 and 34 of the '903 patent.

"[A] prism ballast portion" means: **a ballast portion that includes the optic zone.**

16. "[A] stabilization structure." Used in claim 16 of the '174 patent.

"[A] stabilization structure" means: **a surface contour that interacts with the eyelid in a manner that is effective in rotationally stabilizing the contact lens on the eye of an individual.**

17. "[W]herein the consecutive horizontal cross-sections each has a substantially uniform thickness not varying by more than about 15 m or 10%, whichever is greater in absolute terms." Used in claim 11 of the '740 patent.

"[W]herein the consecutive horizontal cross-sections each has a substantially uniform thickness not varying by more than about 15 m or 10%, whichever is greater in absolute terms" means: **the consecutive horizontal cross-sections each have a substantially uniform thickness not varying by more than about 15 m or 10% of the minimum thickness within the cross-section, whichever is greater in absolute terms.**

18. "[F]ully molded contact lens body." Used in claims 29 and 34 of the ' 903 patent.

"[F]ully molded contact lens body" means: **a contact lens body made with front surface and back surface molds.**

19. "[E]nhanced lens wearer comfort relative to an identical contact lens without the rounded outer peripheral edge." Used in claim 1 of the '538 patent.

"[E]nhanced lens wearer comfort relative to an identical contact lens without the rounded outer peripheral edge" means: **a clinically relevant increase in user comfort relative to an identical contact lens that does not have a rounded outer peripheral edge.**

20. "[E]nhanced scleral safety relative to an identical contact lens without the rounded outer peripheral edge." Used in claims 2 and 7 of the '538 patent.

"[E]nhanced scleral safety relative to an identical contact lens without the rounded outer peripheral edge" means: **a clinically relevant increase in scleral safety relative to an identical contact lens that does not have a rounded outer peripheral edge.**

21. "[W]herein the ballast portion spans a distance along the vertical meridian of at least 50% of the respective dimensions of the superior, intermediate, and inferior portions as measured along the vertical meridian." Used in claim 8 of the '746 patent.

"[W]herein the ballast portion spans a distance along the vertical meridian of at least 50% of the respective dimensions of the superior, intermediate, and inferior portions as measured along the vertical meridian" means: **the ballast portion spans a distance along the vertical meridian of at least 50% of each of the separate vertical dimensions of the superior, intermediate and inferior portions as measured along the vertical meridian.**

II. Conclusion

The jury shall be instructed in accordance with these agreed interpretations of the claim terms in the '706, '538, '903, '740, '746, '174 and '753 patent.

E.D.Tex.,2007.
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