United States District Court,
C.D. California, Eastern Division.

TOKAI CORP.; Scripto-Tokai Corp.; and Calico Brands, Inc,
Plaintiffs.
v.
JARDEN CORP., and Hearthmark LLC d/b/a Jarden Home Brands,
Defendants.

No. EDCV-07-269SGL (OPx)

May 21, 2008.

Olga Kay, R. Joseph Trojan, Trojan Law Offices, Beverly Hills, CA, for Plaintiffs.

Aton Arbisser, Jonathan M. Rotter, Kaye Scholer, Los Angeles, CA, for Defendants.

ORDER CONSTRUING CERTAIN CLAIMS IN '724 PATENT

STEPHEN G. LARSON**, District Judge.**

Tokai Corporation, a Japanese company, manufacturers and sells numerous consumer products worldwide, including utility and cigarette lighters. In connection with its lighter business Tokai is the owner by assignment of numerous patents, including United States Patent No. 5,743,724 (hereinafter "the '724 patent"). Tokai's lighters in the United States are distributed through Scripto-Tokai Corporation and Calico Brands, Inc., both of whom are exclusive licensees of the '724 patent.

Jarden Corporation is the parent company of Hearthmark LLC doing business as Jarden Home Brands ("Hearthmark"). Hearthmark sells a variety of lighters under the Diamond brand, including a lighter that Tokai asserts infringes the patent at issue. To understand the infringement question at issue in this case, some discussion of how lighters operate is in order.

Ignition devices such as hand-held lighters and torches utilize hydrocarbon fuel, such as liquefied butane, to produce a flame. The color of the butane flame ranges from yellow to pale blue, depending on the oxygen supply. Without some coloring mechanism, the yellow to pale blue flame is poorly visible in daylight, which can present a safety hazard. Hence, it is desirable to add color to the flame for safety and decorative purposes. Alkali and alkali earth metals produce characteristic colors in reaction to a gas flame. When a powder of the metal compound is put in the path of the flame, the powder is usually quickly volatilized or scattered by the flame.

The '724 patent relates to an ignition device capable of producing a colored flame that is generated by placing a color-generating compound in the path of the flame. The patent teaches a device capable of retaining the color reactive material in the path of the flame, so that the lighter produces a continuous,

colored flame. The claims in the patent describe the mechanical components generally found in an ignition device and the particular chemical technology used to produce the colored flame. The chemical technology involves a coloring agent fused with additional material to form a structure secured in the path of the flame. The entire structure is referred to as a "flame reaction member." The flame reaction member includes a coloring agent referred to as a "flame reaction agent," as well as an additional material called a "fused material." The meaning of the claim language quoted above has become a source of dispute between the parties in this case.

A. ***Claim Construction Process***

Patents consist of "claims" that "point out ... the subject matter [(be it, a process, a machine, a manufacture, a composition of matter, or a design)] which the applicant regards as his invention," 35 U.S.C. s. 112, and the construction of claims is a matter of law for which the Court has sole responsibility. *See* Markman v. Westview Instruments, Inc., 517 U.S. 370, 372, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). By interpreting the words used in a claim, courts explain the scope of the claim, which consequently defines the scope of the patented invention. *See* id. at 373-74 ("The claim defines the scope of a patent grant and functions to forbid not only exact copies of an invention, but products that go to the heart of an invention but avoids the literal language of the claim by making a noncritical change" (internal citations and quotations omitted)). Claim construction is therefore a critical task, as it not only elucidates what has been patented but, just as significantly, it serves to note what is excluded from the reach of the patent. *See* Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed.Cir.2005) ("It is a 'bedrock' principle of patent law that 'the claims of a patent define the invention to which the patentee is entitled to exclude' ").

In practice, executing the *Markman* mandate means following rules that rank the importance of various sources of evidence for the "true" meaning of claim terms. "When construing patent claims, the Court must look first to the intrinsic evidence in the record: 'The claims, the specification, and the prosecution history.' " Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed.Cir.1995). Such intrinsic evidence is the primary source from which to derive a claim term's meaning. Phillips, 415 F.3d at 1314. These intrinsic sources are not considered equal; rather, there is an "hierarchy of analytical tools." Digital Biometrics, Inc. v. Indentix, Inc., 149 F.3d 1335, 1344 (Fed.Cir.1998). "The actual words of the claim are the controlling focus." *Id.; see also* Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1116 (Fed.Cir.2004) ("[C]laim construction analysis must begin and remain centered on the claim language itself"). While the specification and the prosecution history serve to "place the claim language in its proper technological and temporal context," the claim language as used by "skilled artisans at the time of the invention" controls unless the intrinsic evidence found in the specification or the prosecution history "compels a contrary conclusion." SmithKline Beecham Corp. v. Apotex Corp., 403 F.3d 1331, 1338-39 (Fed.Cir.2005).

The language used in the claim in question is the most important guide in the court's analysis. *See* Digital Biometrics, 149 F.3d at 1344. Towards that end, courts must give the words used in a claim their "ordinary and customary meaning" as defined by how that term is understood "to a person of ordinary skill in the art in question at the time of the invention." Phillips v. Awh Corp., 415 F.3d 1303, 1313 (Fed.Cir.2005). For these purposes, "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 specifications." *Id.*

Moreover, the Federal Circuit has recognized that, in some instances, "the ordinary meaning of claim

language as understood by a person of ordinary skill in the art may be readily apparent even to lay judges" such that "claim construction ... involves little more than the application of the widely accepted meaning of commonly understood words." *Id*. at 1314. Oftentimes, however, claim terms in a patent are so technical or particularized (even idiosyncratic) to the field in which they are being used that determining their meaning requires a more rigorous analysis. Inventors, not surprisingly, "are typically persons skilled in the field of the invention" and, often write the claims in their patents, so as to be understood only by others in the same field. Phillips, 415 F.3d at 1313 (observing that inventors' "patents are addressed to and intended to be read by others of skill in the pertinent art"). For this reason, "the inventor's words that are used to describe the invention-the inventor's lexicography-must be understood and interpreted by the court as they would be understood and interpreted by a person in that field of technology." *Id* (citations and quotation marks omitted).

A court must read claim language, however, in light of the remainder of the patent's specification, which includes the description of the field and background for the invention, a written description of the invention, and drawings illustrating the invention. *See* Phillips, 415 F.3d at 1316 ("[T]he specification necessarily informs the proper construction of the claims"); Netword, LLC v. Centraal Corp., 242 F.3d 1347, 1352 (Fed.Cir.2001) ("The claims are always construed in light of the specification, of which they are a part"); *cf*. 35 U.S.C. s. 112 (requiring that the inventor include a "specification" in an application for a patent, and that the specification contain "a written description of the invention, ... the manner and process of making and using it, ... set forth the best mode contemplated by the inventor of carrying out his invention" and "conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention").

The specification acts as a "concordance" for claim terms delineating "the manner and process" of what the invention does and how it performs, and is thus the best source beyond the claim language for understanding claim terms. *Id*. at 1315. The inventor is free to use the specification to define claim terms as she wishes, and the court must defer to the inventor's definitions. *Id*. at 1316 ("[T]he inventor's lexicography governs"). The court should "rely heavily" on the specification in interpreting claim terms as it is perhaps the best way to understand a technical term because it gives context from which the term itself arose. *Id*. at 1317. The court should not, however, commit the "cardinal sin" of claim construction-reading limitations from the written description of the invention found in the specification into the claims. *Id*. at 1320. Although a court should limit the meaning of a claim where the "specification makes clear that the invention does not include a particular feature," the court must not read "particular embodiments and examples appearing in the specification" into the claims unless the specification requires it. *See* Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571 (Fed.Cir.1988).

Although the patent's prosecution history (termed the patent's file wrapper) is also intrinsic evidence, it is "less useful for claim construction purposes." *Id*. at 1317. A patent's prosecution history contains "all [the] express representations made by or on behalf of the applicant to the examiner to induce a patent grant," which may come in the form of "amendments to the claims and arguments made to convince the examiner that the claimed invention meets the statutory requirements of novelty, utility, and nonobviousness." Jonsson v. Stanley Works, 903 F.2d 812, 818 (Fed.Cir.1990). As the prosecution history documents an invention's evolution from application to the issuance of the patent, it usually "lacks the clarity of the specification...." Constant, 848 F.2d at 1571. Nonetheless, the prosecution history remains useful, especially when an inventor has expressly disavowed certain interpretations of his or her claim language. *Id*. Furthermore, even without such disavowal, the "prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in

the course of prosecution, making the claim scope narrower than it would otherwise be." Phillips, 415 F.3d at 1317. The statements in the prosecution history, however, must be "clear and unmistakable" in order to limit the scope of a claim. Resqnet.com, Inc. v. Lansa, Inc., 346 F.3d 1374, 1378 (Fed.Cir.2003).

Finally, a court can consider extrinsic evidence, "including expert and inventor testimony, dictionaries, and learned treatises." Phillips, 415 F.3d at 1317. For a variety of reasons, extrinsic evidence is usually "less reliable than the patent and its prosecution history" as a source for claim interpretation. Id. at 1318. A court thus need not admit extrinsic evidence, but may do so in its discretion. Id. at 1319. As the *Phillips* court put it, 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* . at 1314. However, a court can only rely on dictionaries or on expert testimony from a person of skill in the art when no answers are apparent from the intrinsic evidence.

A. ***Construction of Claim Language In Claim One to*** '724 Patent FN1

Here, the Court is called upon to construe certain language in claim one to Tokai's '724 patent. Claim one provides in full:

1. A gas combustion appliance comprising a fuel storage tank, a combustion cylinder, a nozzle for jetting fuel from the fuel storage tank into the combustion cylinder, an igniter for igniting fuel gas jetted into the combustion cylinder, and a flame reaction member comprising a flame reaction material disposed with the combustion cylinder so as to be heated by a gas flame within the combustion cylinder so as to produce a flame reaction which colors the gas flame by the flame reaction,

wherein the flame reaction material comprises a glass compound, which is formed by mixing a flame reaction agent and a fused material with each other and fusing them together, said flame reaction agent comprising a metal compound capable of producing the flame reaction, said fused material being capable of being mixed and fused together with said flame reaction agent and vitrified.

Out of this lengthy description, the parties spar over the meaning of the following phrases: "A gas combustion appliance"; "igniter," and "flame reaction agent."

Each parties' claim construction of these terms in the '724 patent is listed as follows:

Disputed Term	**Tokai's Proposed Const.**	**Jarden's Proposed Const.**
Gas combustion appliance	A fuel-burning lighter	An appliance in which gas is used to create a combustion
Igniter	A spark-generating piezoelectric unit	A device for igniting the gas causing a combustion
Flame Reaction	An oxide or salt of a metal or an alkaline earth metal, which is capable of undergoing a flame reaction	A metal compound capable of producing a flame reaction

Agent

1. ***Gas Combustion Appliance***

The parties disagreement in construing this language is over whether the term "gas combustion appliance" is limited to lighters. Plaintiffs argue that it is, while defendants contend that the term extends beyond lighters to any device in which gas is used to create a combustion. For support of its position, plaintiffs direct the Court to the dictionary definition of the term "appliance" as meaning "a device, an instrument," as well as to the specification in the patent that teaches the "invention relates to a flame reaction member, which is to be located in a gas combustion appliance, *such as a gas lighter for smoker's requisites, a lighter, or a torch,* and which undergoes a flame reaction and colors a gas flame." (Decl. Jonathan Rotter, Ex. 1, col. 1, lines 7-12 (emphasis supplied by plaintiffs)). Not surprisingly, defendants point to this same language in the patent's specification to support its contention that the term is broader than a simple lighter. (Defs' Claim Construction Br. at 4).

The Court finds defendants' construction more persuasive. The fact that the specification links the phrase "gas lighter" with the phrase "such as" strongly suggests that the items appearing are *illustrative* of the ones that the patent considers to be a gas combustion appliance, not that the term is *limited* to those illustrations.

The patent's specification gives some background that is illuminating on this question. At the outset, the specification appears to differentiate "combustion appliances, such as candles, lighters, and torches," on the one hand, from gas combustion appliances, on the other, in that it omits the word "gas." (Decl. Jonathan Rotter, Ex. 1, col. 1, lines 17-18). This appears confirmed by the fact that, later in the specification when it speaks of a "gas" combustion appliance, it gives as an illustrative example a "gas" lighter, not simply a "lighter," as done when speaking of "combustion appliances." (*See* Decl. Jonathan Rotter, Ex. 1, col. 2, lines 8-9 ("the flame reaction member is located at a fire outlet of a *gas* combustion appliance, such as a *gas* lighter" (emphasis added))). It is undoubtedly true that the specification places emphasis on how the invention meets the peculiar demands for gas lighters when speaking of the problems sought to be overcome by and the efficacy of the invention itself, but in the same breath the specification also makes clear that discussion of "gas lighters" was not meant in any way to be to the *exclusion* of the invention applying to other devices. (*See* Decl. Jonathan Rotter, Ex. 1, col. 2, lines 29-33 ("In particular, in the case of gas lighters, it is necessary that the time required to light a fuel gas is short, and that the time required from the lighting to the occurrence of the color formation of the flame with the flame reaction is as short as possible")).

Indeed, the brief description of the drawings and the preferred embodiments to the invention make clear that the invention's application went beyond simple "gas lighters." For instance, FIGURES 1A, 1B, and 1C are all described as drawings for the steps in "producing an embodiment of the flame reaction member for gas combustion appliances," while the description for FIGURE 2 "is a vertical sectional view showing a gas lighter *serving as a gas combustion appliance*." (Decl. Jonathan Rooker, Ex. 1, col. 8, lines 46-52 (emphasis added) & col. 10, lines 23-25 (In the embodiments described below, flame reaction members are applied to a gas lighter *serving as gas combustion appliances* " (emphasis added)). That a gas lighter is referenced in the description to FIGURE 2 as being a *subset* of the term "gas combustion appliance" clearly indicates that term comprises much more than a "lighter."

Finally, the patent's prosecution history clearly points in the direction that the term "gas combustion appliance" is as argued by defendants. When counsel for plaintiffs first submitted its application for a patent

for its client's invention, the examiner at the Patent and Trademark Office ("PTO") rejected the application, citing multiple problems with the wording of the patent itself. In response, plaintiffs' counsel submitted an amended application that changed much of the wording in the proposed patent. One of those changes in wording was from the use of the term "gas lighter" in favor of "gas combustion appliance." As explained by counsel for plaintiffs in a letter to the PTO examiner accompanying the proposed amendment:

We believe the term 'gas lighter' when interpreted in view of the specification should properly include other gas combustion appliances as well as cigarette lighters. Nevertheless, to avoid any uncertainty, I have revised all of the claims which previously specified a 'gas lighter' to require a 'gas combustion appliance.'

(Decl. Jonathan Rotter, Ex. 3). This exchange makes clear that plaintiffs themselves viewed (and impressed upon the PTO examiner) that the patent went well beyond covering lighters to over devices as well, the crucial element being that the device involve combusting gas.

Accordingly, the Court adopt defendants' proposed construction of the claim language "gas combustion appliance" to mean "an appliance in which gas is used to create a combustion."

2. *Igniter*

Here, the difference between the parties' claim construction turns on whether, in using the term "igniter," the patent sought to narrow it to a specific type of igniter (as suggested by plaintiffs, a "piezoelectric" igniter), or whether the patent simply sought to use the term in the more generic sense (as suggested by defendants, a "device for igniting gas causing a combustion"). In support of its position, plaintiffs first observe that the term "igniter" does not appear anywhere else in the patent's other 23 claims; its appearance is confined to claim one. They then direct the Court to the fact, that in a single description of one of the drawings of the invention's preferred embodiment (figure 3), it states: "When the operation member 15 is pushed down even further, the piezo-electric unit 14 is actuated by the operation member 15. In this manner, a high voltage for electrical discharge is applied to the electrical discharge electrode 29, discharge is caused to occur, and the mixed gas is lighted." (Decl. Jonathan Rotter, Ex. 1, col. 14, lines 34-42).

There is absolutely no indication in the patent that, in describing this particular type of igniter in the preferred embodiment, it was seeking to limit the invention to a device using that particular type of igniter. Rather, it appears that the notation of the particular type of igniter demonstrated in one among many figures detailing the invention's preferred embodiment was simply recited as an inconsequential matter. While it is undoubtedly true that the patent holder can serve as his or her own lexicographer, there must be some indication in the patent's specification that the patentee was attempting to impose his or her own unique meaning to a term. The happenstance nature of the description of the igniter for one among many preferred embodiments shown for the invention, containing no express language seeking to limit the invention to use of that particular igniter, does not strike the Court as the type of lexicographical exercise required. *See* Phillips v. AWH Corp., 415 F.3d 1303, 1316 (Fed.Cir.2005) (observing that courts will give meaning to patentee's lexicography where "the specification ... reveal[s] a special definition given to a claim term by the patentee" or "reveal[s] an intentional disclaimer, or disavowal, of claim scope by the inventor").

Here, there is nothing in the patent that (1) denotes that the descriptions contained of the invention's preferred embodiment superceded or otherwise imposed a meaning for the term in dispute; or (2) that in noting that the igniter in one of the preferred embodiments was a "piezo-electric unit" the patentee was attempting to cabin the invention to only devices utilizing such an igniter.

The Federal Circuit has repeatedly warned against "confining the claims to" descriptions of "very specific embodiments of the invention." *Id.* at 1323. The purpose for the embodiments oftentimes is "to teach a person of ordinary skill in the art how to make and use the invention" by providing "an example of how to practice the invention *in a particular* case" which is all together different than demonstrating how the invention must exist and operate in *every case*. *Id.* From the way in which the specification is structured it is clear to the Court that the patentee was simply "setting out specific examples of the invention to accomplish [the] goals [of the invention]," and not intending "for the claims and the embodiments in the specification to be strictly coextensive" such that what was contained in one (for instance, the embodiments) necessarily applied to the other (the claims). *Id.*

Accordingly, the Court adopts defendants' construction that the term "igniter" means "a device for igniting the gas causing a combustion."

3. *Flame Reaction Agent*

Again the difference between the parties construction of the term "flame reaction agent" goes to the level of specificity the patent requires. To defendants, when speaking of a "flame reaction agent," the invention simply spoke of any metal compound that was capable of producing a flame reaction (that is to say, colorization upon contact with a flame). Plaintiffs, on the other hand, see the patent as requiring a specific type of metal compound: It must be an "oxide or salt of a metal or an alkaline earth metal."

Unlike the other disputed terms in claim one, "flame reaction agent" was given a precise meaning in the claim itself: "[S]aid flame reaction agent comprising a metal compound capable of producing the flame reaction." Plaintiffs, however, argue that language in the patent's specification works to narrow this definition from simply denoting a metal compound. When summarizing the invention the specification noted that "[t]he flame reaction agent is constituted of an oxide or a salt of a metal, *such as* an alkali metal or an alkaline earth metal." (Decl. Jonathan Rotter, Ex. 1, col. 3, lines 13-15 (emphasis added)). There are two problems with use of this portion of the specification. First, the specification only goes so far as to emphasize that the agent must be "a metal" oxide or salt. Second, the specification noticeably proclaims that its use of the terms "alkali metal" and "alkaline earth metal" was merely illustrative of the type of metal the agent could be as it uses the phrase "such as" immediately before use of the phrase "alkali metal or an alkaline earth metal." Thus, to the extent, plaintiffs' proposed construction seeks to cabin the nature of the agent to an "alkali metal or an alkaline earth metal" such a construction is diametrically opposed to the way in which the specification utilized that phrase when speaking of a "flame reaction agent." It is true that the specification goes into great detail identifying the various chemical compounds that could be utilized, all of which appear to be either alkali metals or alkaline earth metals, but the recitation of such materials is never to the exclusion of other metals precisely because when first making mention of "alkali metals and alkaline earth metals" the patent's specification simply states that those types of materials are included within the subset of the term "flame reaction agent" not that they are co-extensive with that term. If the patentee wished to make the terms co-extensive, he or she could have simply deleted the phrase "such as" and inserted the term "namely" or "limited to." No such effort to cabin the claim term's meaning was ever made by the patentee. Instead, the term was surrounded by open-ended language suggesting that the term was not limited to the recitation of the phrase "alkali metal or an alkaline earth metal" that followed.

A case illustrating this point discouraging drawing meaning from the specific discussions of certain types of chemical compounds found in the specification, is that of Durel Corp. v. Osram Sylvania Inc., 256 F.3d 1298

(Fed.Cir.2001). There the court was called upon to interpret the term "oxide coating." To construe the term, the court quoted the specification where "oxide coating" was defined in part as "a material made up primarily of metal cations and oxygen." Id. at 1303. The specification also contained examples of actual compounds, such as titanium oxide, silicon oxide and several other oxides. *Id*. Notably, the court used the explanation of the term "oxide coating," not the examples which would have been limiting. As explained by the court, the explanation is the "technological and temporal context" necessary to understand the claim term, which is what is required in interpreting such language. Here, the various specific chemical compounds listed in the specification are examples, not a general description of the invention itself.

More importantly, limiting the meaning of the phrase to simply a metal rather than an "oxide or salt of a metal" is required by what transpired during the patent's prosecution. When originally submitted claim one in the patent used, much like plaintiffs' proposed construction now, that the flame reaction agent would be "constituted of an oxide or a salt of a metal." The PTO examiner rejected the claim on the basis that "the phrase 'oxide or salt' causes the claim to be vague and indefinite since it is unclear which of the materials [, the salt or the oxide,] is intended to make up the invention." (Decl. Jonathan Rotter, Ex. 4). Plaintiffs' counsel submitted an amended application that took out the phrase "oxide or salt of a metal" and replaced it with "a metal compound" in order to "eliminate the basis for that rejection." (Decl. Jonathan Rotter, Ex. 3). Were the Court to accept plaintiffs' construction it would in effect be allowing it to re-introduce a meaning for the claim term that the PTO had previously rejected as to vague or indefinite upon which to issue the patent itself. In light of that action before the PTO, the clear definition provided for the term in the claim language itself, and because of the illustrative nature of the specification pointed to by plaintiffs, the Court should adopt defendants proposed construction for "flame reaction agent" as meaning a "metal compound capable of producing a flame reaction." The Court is mindful that metal oxides and salt metals are "metal compounds," but the point is that the patent itself never seeks to limit itself to just those types of metal compounds, even if they are, as plaintiffs' counsel noted at the hearing, "a huge, huge category." That the metal compound referenced in the claim language "can be," as suggested by plaintiffs counsel, a metal oxide or salt metal does not mean it has to be. The problem is that plaintiffs are seeking to impose a great level of specificity in the meaning of the disputed claim language, a level going beyond what is sought or even suggested in the language itself. No information has been supplied to the Court that the only type of metal compounds that could possibly produce a flame reaction are metal oxides or sale metals (a point admitted to by plaintiffs' counsel during the hearing). Absent some absolute scientific rule preventing the claim language for having as broad a meaning as suggested in the patent itself, plaintiffs are stuck with that broad meaning. The patentee's counsel could have responded to the PTO examiner's rejection in one of two ways, making the language more specific (such as being sought now) or simply disentangling the either or nature of the original construction (it was either a metal oxide or a salt metal). The patentee sought the more non-specific route, leaving the term as simply meaning a metal compound, its precise parameters not defined, save for the fact that it must cause a colorized flame reaction. The Court understands that the lengthy recitation of the precise types of chemical formulas noted in the specification suggested to be used in the device may point in the direction of what the patentee believed to be the more appropriate or preferred ones to use in the patented device, but nothing in the patent itself, *requires* that to be the case.

That being the case, the Court adopts defendants' proposed construction of the term "flame reaction agent" as signifying "a metal compound capable of producing a flame reaction."

B. *Conclusion*

Accordingly, the terms of the '724 Patent are construed by the Court as follows:

TERM	CONSTRUCTION
1. Gas Combustion Appliance	An appliance in which gas is used to create a combustion
2. Igniter	A device for igniting the gas causing a combustion
3. Flame Reaction Agent	A metal compound capable of producing a flame reaction

FN1. During the *Markman,* hearing the parties informed the Court that they had reached an agreement that the claim term "fused material" meant "a material capable of being mixed and fused together with a flame reaction agent and vitrified." In light of this agreement between the parties, the Court will not address the argument in the parties' papers over the proper construction of the term "fused material."

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