

United States District Court,  
S.D. California.

**SECURUS, INC., a California corporation,**  
Plaintiff.

v.

**INFLOW PRODUCTS, INC., a Virginia corporation,**  
Defendant.

No. 07cv0540 DMS (RBB)

**July 22, 2008.**

Michael Wischkaemper, The Law Offices of Michael Wischkaemper, Carlsbad, CA, for Plaintiff.

Diana Chen, Alston & Bird LLP, Grant Kinsel, Foley and Lardner, Los Angeles, CA, Stephan J. Nickels, Foley & Lardner LLP, Madison, WI, Michael Wischkaemper, The Law Offices of Michael Wischkaemper, Carlsbad, CA, for Defendant.

## **ORDER CONSTRUING PATENT CLAIMS**

**DANA M. SABRAW, District Judge.**

This matter came before the Court for a claim construction hearing on June 9, 2008. Michael Wischkaemper appeared and argued on behalf of Securus, Inc. ("Plaintiff" or "Securus"), and Grant Kinsel appeared and argued on behalf of Inflow Products, Inc. ("Defendant" or "Inflow"). After a thorough review of the parties' claim construction briefs and all other material submitted in connection with the hearing, as well as a review of the Court's file, the Court issues the following order construing the disputed terms of the patents at issue in this case.

### **I.**

#### **BACKGROUND**

There are two patents at issue in this case: United States Patent Number 6,655,413 ("the '413 Patent") and United States Patent Number 6,994,041 ("the '041 Patent"). The '041 Patent is a continuation-in-part of the '413 Patent. Both patents are directed to a product and method for testing pressure in a plumbing line. The product generally consists of the following parts: (1) a fitting, which is inserted into a break in the plumbing line, (2) a test slide that is inserted into the fitting, (3) a pressure release slide, which is inserted into the test slide, and (4) a finish slide, which is inserted into the break in the plumbing line after the line has been tested. The method generally explains the use of the product.

On March 23, 2007, Plaintiff filed the present Complaint against Defendant alleging infringement of the '413 and '041 Patents. Plaintiff alleges infringement of claims 1, 2, 3, 6, 24, 25, 26 and 29 of the '413 Patent,

and claims 7, 8, 11, 12, 33, 34 and 38 of the '041 Patent. Plaintiff also alleges claims for false marking under 35 U.S.C. s. 292, and unfair competition under California Business and Professions Code s.s. 17200 et seq. Plaintiff filed a First Amended Complaint on May 30, 2007.

Defendant filed an Answer and Counterclaim on June 18, 2007. The Counterclaim seeks a declaratory judgment of non-infringement, invalidity, and unenforceability of the '413 and '041 Patents. It also alleges claims for declaration of improper inventorship/ownership, improper assignment, breach of contract, conversion, interference with prospective economic advantage, and unfair competition.

## II.

### DISCUSSION

Claim construction is an issue of law, *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996), and it begins "with the words of the claim." *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1142 (Fed.Cir.2005) (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996)). Generally, those words are "given their ordinary and customary meaning." *Id.* (citing *Vitronics*, 90 F.3d at 1582). This " 'is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.' " *Id.* (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed.Cir.2005)). "The person of ordinary skill in the art views the claim term in the light of the entire intrinsic record." *Id.* Accordingly, the Court must read the claims " 'in view of the specification, of which they are a part.' " *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed.Cir.1995)). In addition, " '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.' " *Id.* (quoting *Phillips*, 415 F.3d at 1318).

#### A. The '413 Patent

As stated above, there are eight claims at issue in the '413 Patent, independent claims 1, 24, 25, 26 and 29, and dependent claims 2, 3 and 6. Within these claims, there are several terms that Defendant contends are indefinite. Those terms include: (1) "the finish slide" (claims 2, 25), (2) "the test slide" (claims 3, 24 and 26), (3) "the slide" (claims 3 and 26), and (4) "the test fitting" (claim 24). In light of Defendant's contention, the Court will not construe these terms until Defendant has had an opportunity to brief the invalidity of the patents based on indefiniteness. The remainder of the disputed claim terms are addressed below.

#### 1. Claim 1

Claim 1 of the '413 Patent provides:

A pressure testing kit for testing the pressure in a pipe line, comprising:

a main fitting having at least one end adapted to connect to an end of a pipe and align a fluid passage of the pipe with a fluid passage extending through the main fitting, the main fitting having formed therein a port defined by walls and opening on an exterior side of the fitting and aligned with a recess extending around an internal circumference of the fluid passage in the main fitting;

a first test slide sized and configured to be removably inserted through the port and into the recess to block the flow of fluid through the main fitting;

a second finish slide sized and configured to be inserted into the port and recess and cooperating with each of the walls to seal the port.

There are eight terms and phrases in Claim 1 of the '413 Patent that the parties agree require construction. They are: (1) "kit," (2) "end," (3) "to connect to," (4) "port defined by walls," (5) "recess extending around an internal circumference of," (6) "slide," (7) "to block," and (8) "to seal the port."

**a. "Kit"**

The parties' proposed constructions of this term are similar. The only difference is whether the parts of the kit must be fully unassembled, as Defendant suggests. The Court has reviewed the intrinsic evidence cited by the parties, and finds it does not support either parties' proposed construction. Defendant's extrinsic evidence supports its proposed construction, but it also reveals another possible definition for the term, which is "[a] set of instruments or equipment used for a specific purpose." This definition is consistent with Plaintiff's revised proposed construction, and the invention, in general. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "kit" as "a set of parts to be used together."

**b. "End"**

The next term at issue in the '413 Patent is "end." Plaintiff asserts this term should be construed according to its plain and ordinary meaning while Defendant argues it should be construed as "terminus." Pursuant to Defendant's proposal, there would be no overlap between the fitting and the end of the pipe. Rather, the end of the pipe would simply touch the end of the fitting.

Both sides cite the specification to support their respective constructions, but overall, the specification is more consistent with Plaintiff's proposal than Defendant's. Throughout the specification, the patentee speaks in terms of "inserting" pipe ends, couplings or inserts into the main fitting. ('413 Patent, col. 1, lines 50-51; col. 4, lines 18-22; col 4, lines 62-col.5, line 1; col. 12, lines 47-52; col. 14, lines 52-60; col. 16, lines 30-31.) The use of the word "insert" runs contrary to Defendant's proposed construction. Adhesion of the pipe and the fitting is also described as taking place inside the fitting, not at the place where the two "ends" meet. ( *See id.* at col. 4, lines 18-22; col. 5, lines 1-5.)

In light of this intrinsic evidence the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "end" as the latter portion of the fitting, not just the outer edge. FN1

FN1. As a result of this construction of the term "end," the Court declines to adopt Defendant's proposed construction of the phrase "to connect to" as "to be abutted to." Instead, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe that phrase according to its plain and ordinary meaning.

**c. "Port defined by walls"**

The next phrase at issue in the '413 Patent is "port defined by walls." The parties agree that a port is an opening, but they disagree on whether the walls defining the port must extend into the main fitting, as

Defendant suggests.

The Court has reviewed the intrinsic evidence cited by Defendant, but it does not support Defendant's proposed construction. Indeed, the cited portion of the specification states the port extends "from outside the fitting to the inside of the fitting." ('413 Patent, Col. 16, lines 11-12.) Defendant's proposal that the port must only extend inwards, therefore, cannot be correct. Rather, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "port defined by walls" according to its plain and ordinary meaning.

***d. "Recess extending around an internal circumference of"***

The next phrase at issue in claim 1 of the '413 Patent is "recess extending around an internal circumference of." Within this phrase, the parties also dispute the term "recess."

Plaintiff argues the term "recess" should be construed according to its plain and ordinary meaning, while Defendant asserts the term means "hollow." None of the evidence cited by Defendant, however, supports its proposed construction. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "recess" as an "indentation" or "groove."

Aside from the term "recess," the larger dispute here is whether the phrase "extending around an internal circumference of" means the recess must fully encircle the fluid passage. Defendant asserts it must, and Plaintiff disagrees. The claim language supports Defendant's proposed construction. It states the recess extends "around an internal circumference of the fluid passage." Plaintiff argues this cannot be correct because the recess cannot extend around the port, but Plaintiff fails to explain why this cannot be so. Given the language of the claim and the intrinsic evidence, the Court finds that one of ordinary skill in the art would construe the phrase "recess extending around an internal circumferences" according to its plain and ordinary meaning, *i.e.*, the recess must fully encircle the fluid passage.

***e. "Slide"***

The next term in the '413 Patent is "slide." Defendant asserts this term should be construed as "member," whereas Plaintiff argues it should be given its plain and ordinary meaning. Defendant fails to provide the Court with any persuasive evidence or argument to support its proposed construction. Accordingly, the Court finds that one of ordinary skill in the art would construe the term "slide" according to its plain and ordinary meaning.

***f. "To block"***

Plaintiff asserts this phrase should be construed according to its plain and ordinary meaning, while Defendant proposes that it be construed to mean "to stop." The Court has reviewed the intrinsic evidence cited by the parties to support their respective constructions. This evidence reveals that the preferred method of operating the test slide is that it stop the flow of fluid through the main fitting. However, this is a preferred method only. It does not serve to limit the claim language. Accordingly, the Court finds that one of ordinary skill in the art would construe the phrase "to block" according to its plain and ordinary meaning, *i.e.*, it does not require that fluid be completely stopped from flowing through the main fitting.

***g. "To seal the port"***

In the joint claim construction worksheet, it appears the parties disputed the meaning of this phrase, with Plaintiff proposing that the phrase be construed to mean "prevent fluid from leaking out of the port," and Defendant asserting the phrase should be construed to mean "in sealing engagement with the surfaces on the main fitting extending inwards into the main fitting to seal the opening." However, Defendant's claim construction charts indicates there may not be a dispute after all. (*Compare* Joint Claim Construction Worksheet *with* Def.'s Proposed Claim Constructions.) The parties' claim construction briefs are also silent on this particular phrase.

In light of the above, and in view of the intrinsic evidence, the Court finds that one of ordinary skill in the art would construe the phrase "to seal the port" according to its plain and ordinary meaning, *i.e.*, to prevent fluid from leaking out of the port.

## **2. Claim 2**

Claim 2 of the '413 Patent provides:

The pressure testing kit of claim 1, wherein the finish slide has an opening corresponding in size and shape to the fluid passage through the main fitting to allow flow through the finish slide while providing a smooth flow surface across the finish slide and immediately adjacent portions of the main fitting.

The parties agree that one term in this claim requires construction: "smooth flow surface." Plaintiff asserts this term should be given its plain and ordinary meaning, while Defendant argues it should be construed to mean "flat surface without sharp edges." The Court has reviewed the portions of the specification cited by Defendant, but finds that evidence does not support Defendant's proposed construction. Accordingly, the Court finds that one of ordinary skill in the art would construe the term "smooth flow surface" according to its plain and ordinary meaning.

## **3. Claim 3**

Claim 3 of the '413 Patent reads:

The pressure testing kit of claim 1, wherein the test slide further comprises a fluid passage having a first end opening onto an exterior surface of the slide when the slide is inserted into the port and a second end opening into the fluid passage of the main fitting when the slide is inserted into the port.

The parties agree that there is one term in this claim that requires construction: "fluid passage."

Plaintiff argues the term "fluid passage" should be given its plain and ordinary meaning, while Defendant asserts the term should be construed as "path designed to convey fluid." Defendant requests this construction to clarify that the "fluid passage" is specifically designed to convey fluid as opposed to "accidentally or incidentally convey[ing] fluid as a result of leakage." (Def.'s Br. in Supp. of Proposed Claim Construction at 10.) Plaintiff does not dispute that this is the purpose of the fluid passage. Accordingly, the Court incorporates that explanation into the term. With that explanation, the Court finds that one of ordinary skill in the art would construe the term "fluid passage" as "a passage designed to convey fluid."

## **4. Claim 6**

Claim 6 of the '413 Patent provides: "The pressure testing kit of claim 1, wherein the main fitting has a boss extending toward a longitudinal centerline of the fitting, with the recess being formed in the boss." There is only one term at issue in this claim: "boss ."

Plaintiff proposes that "boss" be construed as "raised area," while Defendant proposes that "boss" be construed as "narrow protuberance." Both of these proposals envision the "boss" as a raised area. The question, then, is whether the "boss" must also be narrow, as Defendant suggests.

The Court has reviewed the intrinsic evidence cited by Defendant, but finds it does not support Defendant's proposed construction. There is nothing in the evidence cited that indicates the width of the boss must be narrow as opposed to broad. There appears to be a preference that the height of the boss be the same as, or slightly less than, the pipe that is inserted into the main fitting, but that is simply a preference of the height of the boss. It says nothing about the width. Accordingly, the Court finds that one of ordinary skill in the art would construe the term "boss" as a "raised area ."

### **5. Claim 25**

Claim 25 of the '413 Patent recites:

A pressure testing kit for testing the pressure in a pipe line, comprising:

a main fitting having at least one end adapted to connect to an end of a pipe and align a fluid passage of the pipe with a fluid passage extending through the main fitting, the main fitting having formed therein a port opening on an exterior side of the fitting and aligned with a recess extending around an internal circumference of the fluid passage in the main fitting;

a first test slide sized and configured to be removably inserted through the port and into the recess to block the flow of fluid through the main fitting;

a second finish slide sized and configured to be inserted into the port and recess to seal the port, the finish slide having an opening corresponding in size and shape to the fluid passage through the main fitting to allow flow through the finish slide while providing a smooth flow surface across the finish slide and immediately adjacent portions of the main fitting.

There is one phrase at issue in this claim: "port opening on."

Plaintiff asserts the Court should construe this phrase according to its plain and ordinary meaning, while Defendant argues the Court should construe the phrase as "opening accessible from." That the port is accessible from the exterior side of the fitting is clear from the language of the claim. Accordingly, the Court declines to adopt Defendant's proposed construction. Instead, the Court finds that one of ordinary skill in the art would construe the term "port opening on" according to its plain and ordinary meaning.

### **B. The '041 Patent**

As stated above, there are seven claims at issue in the '041 Patent, independent claims 7 and 33, and dependent claims 8, 11, 12, 34 and 38. Within these claims, there are several terms that Defendant contends are indefinite. Those terms include: (1) "the main fitting" (claim 7), (2) "the first slide" (claims 7, 11 and

33), (3) "the recess" (claims 7 and 11), (4) "the test slide" (claims 7 and 33), (5) "the second slide" (claims 7, 11 and 12), (6) "a second port opening on an exterior side of the fitting" (claim 11), (7) "the second port" (claim 11), (8) "the first test slide" (claim 33), (9) "a first hole" (claim 33), (10) "the line" (claim 33), (11) "the test pressure" (claim 33), and (12) "the first hole" (claim 34). In light of Defendant's contention, the Court will not construe these terms until Defendant has had an opportunity to brief the invalidity of the patents based on indefiniteness. The remainder of the disputed claim terms are addressed below.

### ***1. Claim 7***

Claim 7 of the '041 Patent recites:

A pressure testing assembly for testing the pressure in a pipe line, comprising:

a fitting having at least one end adapted to connect to an end of a pipe, the fitting having a fluid passage extending through the fitting, the fitting having formed therein a first port opening on an exterior side of the fitting and aligned with a first recess extending around at least a portion of a circumference of the fluid passage in the fitting; and

a first test slide sized and configured to be removably inserted through the first port and into the first recess to block the flow of fluid through the main fitting during the use of the fitting, the first slide having formed therein a second recess, the first slide having a first hole therethrough which is located in the fluid passage and in fluid communication with the recess to allow fluid to flow through the test slide; and

a second pressure release slide sized and configured to move within the recess in the first test slide between a first position blocking the flow of fluid through the first hole, and a second position allowing fluid to flow through the test slide, the second slide having fluid seals interposed between the second slide and the recess to block the fluid flow in the first position and allow the fluid flow through the test slide in the second position.

There is one term and one phrase at issue in claim 7:(1) "assembly," and (2) "fluid seals interposed between."

#### ***a. "Assembly"***

As with the term "kit" in the '413 Patent, the parties here dispute the meaning of the term "assembly." Plaintiff asserts "assembly" should be construed to mean essentially the same thing as "kit," namely, a number of parts put together. Defendant argues "assembly" should be construed as "a pre-built device."

Defendant's argument rests on the presumption "that the use of ... different terms in the claims connotes different meanings." CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG, 224 F.3d 1308, 1317 (Fed.Cir.2000). This presumption, "however, is not conclusive; it is not unknown for different words to be used to express similar concepts, even though it may be poor drafting practice." Bancorp Services, L.L.C. v. Hartford Life Ins. Co., 359 F.3d 1367, 1373 (Fed.Cir.2004). Here, it appears the patentee used the terms "kit" and "assembly" to mean the same thing: a set of parts to be used together. There is nothing in the intrinsic evidence to support Defendant's proposed construction that an "assembly" must be pre-built. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "assembly" in the same manner as "kit," namely, as "a set of parts to be used together."

## ***b. "Fluid seals interposed between"***

The next phrase at issue in claim 7 of the '041 Patent is "fluid seals interposed between." Plaintiff argues this phrase should be construed as "seals that block fluid in between," while Defendant asserts it means "plurality of leakage prevention devices that are separate from the second slide and are inserted between." The primary disagreement here is whether the seals must be separate and independent devices, or whether they may be attached to the second slide.

Defendant cites various portions of the specification that describe the use of o-rings or d-rings to stop the flow of fluid through the slides. However, in other portions of the specification, there is no independent device disclosed. Rather, the slides themselves form the fluid seal. ( *See* '041 Patent, col. 11, lines 30-32.) ("The slide body 66 is configured to fit within the recesses 56, 54 and to form a fluid tight seal within the recess 54 in the test slide 22.") In yet another portion of the specification, the patentee explicitly refutes Defendant's assertion that the seal must be independent of the slide. ( *Id.* at col. 12, lines 23-25.) ("The seals could be placed in grooves 75, 77, or the seals could be integrally molded to one or more of the respective slides 22, 23 or surfaces 48.")

In light of this intrinsic evidence, the Court declines to adopt Defendant's proposal that the fluid seals must be separate and independent from the second slide. Absent this aspect of Defendant's proposal, the parties' proposed constructions are similar in that they both provide that fluid seals are essentially leak prevention devices. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "fluid seals interposed between" as "seals that block fluid in between."

## ***2. Claim 8***

Claim 8 of the '041 Patent recites: "The pressure testing assembly of claim 7, wherein the fluid seals are face seals." Having defined "fluid seals" above, the only remaining disputed term in claim 8 is "face seals."

Plaintiff proposes that the Court construe "face seals" as "seals on the face of a surface," while Defendant argues "face seals" should be construed as seals that are "normal to an undefined member." In support of its proposed construction, Defendant cites various portions of the specification that draw a distinction between "face seals" and "axial seals." ( *See id.* at col. 3, lines 54-55.) However, this distinction does not support Defendant's proposed construction. Indeed, another portion of the specification supports Plaintiff's proposed construction. ( *See id.* at col. 11, lines 59-62) ( "*As these fluid seals 74, 76 are on the slide body 46, they form face seals and are interposed between the pressure release slide 23 and the walls of the recess within the test slide 22.*") (emphasis added).

In light of the specification as a whole, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "face seals" as "seals on the face of a surface."

## ***3. Claim 12***

Claim 12 of the '041 Patent recites: "The pressure testing assembly of claim 7, wherein the second slide has a rectangular cross-sectional shape and the fluid seals are face seals." In light of the constructions set out above, the only remaining disputed term in claim 12 of the '041 Patent is "rectangular cross-sectional

shape." Plaintiff asserts this term should be construed according to its plain and ordinary meaning, while Defendant contends it means "rectangular cross-sectional shape taken in any direction."

The Court has reviewed those portions of the specification cited by Defendant, but that evidence does not support Defendant's proposed construction. Indeed, it is unclear what "taken in any direction" adds to the claim language. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "rectangular cross-sectional shape" according to its plain and ordinary meaning.

### **III.**

### **CONCLUSION**

For the reasons stated above, the disputed terms are interpreted as set forth in this Order.

**IT IS SO ORDERED.**

S.D.Cal.,2008.

Securus, Inc. v. Inflow Products, Inc.

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