United States District Court,
D. Maryland.

YUYAMA MFG. CO,
LTD. Plaintiff.
v.
JVM CO,
LTD. Defendant.

July 29, 2008.

Torsten M. Kracht, Michael A. O Shea, Hunton And Williams LLP, Washington, DC, John D. Simmons, Panitch Schwarze Belisario & Nadel LLP, Philadelphia, PA, for Plaintiff.

Thomas O. Toole, Baroody and O. Toole, Baltimore, MD, Chong Hyun Roh, Howard L. Hoffenberg, James W. Ahn, John K. Park, Katherine Lien, Mark Leon Sutton, Michael N. Cohen, Michele Cobin Friedlander, Los Angeles, CA, for Defendant.

MEMORANDUM AND ORDER RE PATENT CLAIM CONSTRUCTION

GARBIS**, J.**

Pursuant to the Scheduling Order, the parties have filed materials relating to what they specify as material claim construction issues. The Court has held a hearing regarding claim construction issues (a Markman FN1 hearing) and has had the benefit of the arguments of counsel.

FN1. Markman v. Westview Instruments, Inc., 517 U.S. 370, 390, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996).

I. *BACKGROUND*

A. *The Alleged Invention*

Plaintiff Yuyama Manufacturing Co., Ltd. ("Yuyama") has sued JVM Co., Ltd. ("JVM") for infringement of U.S. Patent No. 5,803,309 "Tablet Feeder" ("the '309 patent" ').

A tablet feeder is a device that dispenses solid medication (pills, capsules, tablets, etc.) into containers. An institutional pharmacy may have automatic packaging machines including several tablet feeders, each containing a different medication.FN2 To fill a prescription using these machines, a pharmacist or technician would enter an order for a specified amount of prescribed medication (e.g., 60 Lipitor 20 mg tablets) together with pertinent labeling information into a computer terminal. The machinery would properly label a container and place it in position to receive tablets from the automated tablet feeder containing Lipitor 20 mg tablets. The feeder would then dispense 60 tablets into the container.

FN2. The tablet feeders are not uniform, but will vary so as to accommodate the particular medication being dispensed.

According to the '309 Patent, use of the prior art for an automated tablet feeder sometimes resulted in miscounting and/or dispensing chipped, split or cracked tablets. The purpose of the invention claimed in the '309 patent is to enable an automatic tablet feeder to dispense the prescribed amount of tablets in undamaged condition.

In essence, one practicing the '309 patent would have tablets (or similar solid medications) in a container with a rotator at the bottom containing pockets into which the tablets fall. As the rotator moves a pocket containing tablets over an outlet, a partitioning member blocks off a single tablet that falls through the outlet as shown in Figure 5 of the '309 Patent.

Tabular or graphic material set at this point is not displayable.

In the prior art, the partitioning member was solid. This could cause tablets to get caught and damaged (split, cracked or chipped) as shown in Figure 9 of the '309 Patent.

Tabular or graphic material set at this point is not displayable.

To avoid this problem, the '309 Patent teaches the use of a partitioning member that has elastic bristles as shown in Figure 6 of the '309 Patent.

Tabular or graphic material set at this point is not displayable.

Thus, tablets cannot be trapped between a hard partition and the side of a pocket but, rather, will be more or less gently "brushed" into position above or below the partition.

B. ***The Claim Terms at Issue***

The parties seek the Court's construction of certain terms that appear in several of the Claims in the '309 Patent. Representative uses of the terms appear in Independent Claim 1 and Dependent Claim 3.

Independent Claim 1 states:

A tablet feeder comprising: a tablet accommodating section capable of accommodating a multiplicity of tablets; a tablet array board which is disposed in the tablet accommodating section and which, while being driven and rotated, retains the tablets one by one in pockets defined on an outer periphery thereof and discharges them at a discharge position; and a partitioning member whose partitioning portion located at each of the pockets of the tablet array board partitions the pocket into upper and lower two divisions, thereby restricting a number of tablets to be discharged, the tablet feeder being characterized in that the partitioning portion of the partitioning member comprises a plurality of elastic bristles formed into a comb shape.

Dependent Claim 3 states:

The tablet feeder according to claim 1, wherein the elastic bristles have their cross section formed into a generally oval shape, and its minor axis is directed along the rotational direction of the tablet array board.

(Emphasis added).

II. *DISCUSSION*

A. *General Principles of Claim Construction*

It is a "bedrock principle" of patent law that "the claims of a patent define the invention to which the patentee is entitled the right to exclude." Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc., 381 F.3d 1111, 1115 (Fed.Cir.2004).

The construction of patent claims is a matter for the Court. Markman v. Westview Instruments, Inc., 517 U.S. 370, 390, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). However, the Court must construe claim terms as they would be understood, in the context of the patent, by one of ordinary skill in the pertinent art.

As expressed in *Phillips v. AWH Corp.:*

We have frequently stated that the words of a claim "are generally given their ordinary and customary meaning." ... We have made clear, moreover, that the ordinary and customary meaning of a claim term 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, i.e., as of the effective filing date of the patent application.

* * *

Importantly, 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 specification.

415 F.3d 1303, 1312-13 (Fed.Cir.2005).

B. *Construction of the Claim Terms*

1. *Pockets [of the Tablet Array Board]*

Yuyama contends that the term "pockets [of the tablet array board]" means "regions defined on an outer periphery of the tablet array board and within the tablet accommodating section capable of retaining tablets." Joint Statement at 5.

JVM would add to the foregoing the restriction that the region must be of "such a size that two pieces of tablets (*sic*) A arrayed longitudinally one by one can be accommodated therein." Joint Statement at 5-6.

As discussed at the hearing, the term "pockets" simply refers to regions capable of retaining tablets. Tr. 14-16. Certainly, there are claim terms that impose limitations relating to the pockets; however, these limitations are not "packed" into the definition of the term "pockets." Nor is there any basis for

incorporating, within the definition of "pockets," a requirement that, as shown in an embodiment in the disclosure, the pockets have the capacity to accommodate the tablets arranged longitudinally one-by-one.

Accordingly, the term "pockets" is construed to mean "regions capable of retaining tablets." Of course, other claim limitations relating to the pockets must be met in determining whether the claim "reads on" a device under consideration in an infringement or validity context.

2. ***Partitions the Pocket***

Both parties seek to have the Court construe the term "partitions the pocket" to include limitations that are not inherent in the term itself. JVM wishes to have the term construed to mean "separates/divides pockets into upper and lower regions sufficient to restrict a number of tablets to be discharged." Joint Statement at 6. JVM would construe the term to include a requirement that the separation be accomplished by "elastic bristles where the tips project along the outer circumferential cylindrical surface of the table[t] array board to create two divisions." *Id*.

The Court agrees with neither side and finds no justification to add limitations to the term as written. The phrase "partitions the pocket" means precisely what it says: "divides the pocket into partitions."

3. ***Upper and Lower Two Divisions***

Yuyama contends that the terms "upper and lower two divisions" means the " 'region above the partitioning member' and 'the region [below] the partitioning member" '. Joint Statement at 13. JVM would add the requirement that each region be of sufficient size to accommodate at least one tablet longitudinally. *Id*.

The Court agrees with Yuyama and holds that the term "upper and lower two divisions" refers to one region above and another region below the partitioning member. The claim does not require that the "divisions" have any particular capacity.

4. ***Elastic Bristles***

Yuyama submits that the term "elastic bristles" means "bristles/members sufficiently elastic/resilient to bend under pressure." Joint Statement at 16. JVM seeks to have the term construed as, "a tooth structure deformed with increasing pressing force and returning to its original position." *Id*. at 17. JVM seeks to "load" into the term "elastic bristles" the requirement that the bristles constitute a "tooth structure." This is part of the JVM position, discussed below, that the partition member must literally be a comb rather than merely be comb-shaped.

In the context of the '309 Patent, the words in the term "elastic bristles" should be given their customary meaning. Hence, the word "elastic" shall be defined simply as that which "spontaneously resumes ... its normal ... shape after having been contracted, dilated, or distorted by external force." Oxford English Dictionary, at *www.oed.com*. s. he word "bristle" shall be defined as a stiff structure resembling a coarse material hair, such as those on a common hair brush. Id.

Accordingly, the term "elastic bristles" used in the claims of the '309 Patent shall be construed to mean stiff structures resembling coarse natural hair, such as those on a common hair brush that are capable of returning to their original shape after bending.

5. ***Formed Into a Comb*** FN3 ***Shape***

FN3. Of course, in the '309 Patent, the word "comb" refers to the type of comb used on hair and similar material as distinct from a honey comb.

Yuyama contends that the term "formed into a comb shape" should be construed to mean "disposed on the partitioning member in a comb-like shape." Joint Statement at 19. JVM seeks to have the term defined as forming into "a row of single spaced apart teeth." Id .

The essential problem with the JVM position is that it seeks to eliminate the word "shape" from "comb shape" and require that the elastic bristles literally be formed into a comb. However, the claim expressly refers to a partitioning member that comprises "a plurality of elastic bristles formed into a comb *shape,*" *i.e.*, bristles formed into the shape of a comb even if not literally a comb. Essentially, elastic bristles formed into a comb would consist of a line of single separated bristles (i.e. one in which each bristle would, in and of itself, be a tooth of a comb). On the other hand elastic bristles formed into a comb shape could include clumps of bristles separated so as to give the appearance of a comb with the "teeth" consisting of groups of bristles.

Further evidence that the partitioning member need not literally be a comb lies in its mode of functioning. Essentially, a comb is a device on which there is a row of teeth such that, when drawn through hair,FN4 the hair is "combed" or separated by the rigid teeth. Therefore, in an actual comb, the operational function is perpendicular to the row of teeth. In the context of the '309 Patent, the operational effect of the comb shaped bristles on the partitioning member is parallel to the row of "teeth". Moreover, the "teeth" are not rigid but consist of elastic bristles that bend so that the force against the tablets gradually increases until they are separated. Hence, in the '309 Patent, the partitioning member-even if it included bristles that were literally formed into a comb, would not be functioning in the normal manner of a comb.

FN4. Or similar material.

Finally, the Court notes that there are common uses of the term "comb shaped" to refer to items that are not literally combs but have the shape of one. To take a somewhat extreme example, there can even be what the architects of the Europol Police headquarters described as a "comb shaped" building.

Tabular or graphic material set at this point is not displayable.

The comb-shaped structure provides that the building can be linked in a suitable manner to the area. Furthermore, the comb-shaped structure with three large atria provides a functional foundation for the organisation of the internal functions at Europol .FN5
FN5. "Quist Wintermans Architects designs new Europol headquarters in The Hague." Europol Press Release, The Hague, 9 June 2004.

I.
In sum, in the context of the '309 Patent, the term "comb shape" is not construed so narrowly as to include only items that are, literally, combs. Rather, the term includes objects that have the shape of a comb, such as a common hair comb. Thus the Court concludes that the limitation "formed into a comb shape" means

formed into the shape of a comb although not necessarily formed into what is literally a comb.

III. *CONCLUSION*

For the foregoing reasons, the Court concludes the following with regard to the construction of the claim terms at issue:

1. The term "pockets" is construed to mean "regions capable of retaining tablets."

2. The term "partitions the pockets" is construed to mean "divides the pocket into partitions.

3. The term "upper and lower two divisions" is construed to mean "one region above and another region below the partitioning member."

4. The term "elastic bristles" is construed to mean "stiff structures resembling coarse natural hair, such as those on a common hair brush, which are capable of returning to their original shape after bending."

5. The term "formed into a comb shape" is construed to mean "formed into the shape of a comb although not necessarily formed into what is literally a comb."

SO ORDERED.

D.Md.,2008.
Yuyama Mfg. Co., LTD v. JVM Co., LTD