

United States District Court,
S.D. California.

ADVENTURE PRODUCTS, INC., a California Corporation,
Plaintiff.

v.

SMOOTHREADS, INC., a California corporation, d/b/a \$2.95 Guys,
Defendant.

No. 07CV2025-MMA (AJB)

April 24, 2009.

Anthony J. Dain, Procopio Cory Hargreaves and Savitch, San Diego, CA, John L. Roberts, Roberts IP Law, Columbus, IN, for Plaintiff.

Alexander E. Papaefthimiou, Darren James Quinn, Law Offices of Darren J. Quinn, Del Mar, CA, for Defendant.

**ORDER CONSTRUING DISPUTED CLAIM TERMS OF UNITED STATES PATENT NUMBER
5,042,227**

MICHAEL M. ANELLO, District Judge.

Pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), the Court took argument via written claims construction briefs regarding the construction of the disputed claim terms in Plaintiff AddVenture Products, Inc.'s ("AddVenture") United States Patent Number 5,042,227 ("227 Patent"). Upon careful consideration of the parties' briefs, the Court issues the following order construing the disputed claim terms of the patent at issue in this case.

Background

Plaintiff AddVenture is in the business of compressing t-shirts into promotional shapes. One of AddVenture's many innovative products is the "CompressT," a 100% cotton t-shirt, that is screen printed with a graphic and then compressed under pressure into a solid custom shape. AddVenture has acquired numerous patents to protect its business enterprise, including the '227 Patent, which patents the "method and apparatus for compression packaging." Defendant Smoothreads, Inc., doing business as \$2.95 Guys ("\$2.95 Guys"), is a local t-shirt screen printer also engaged in the business of compressing t-shirts into a variety of shapes for use as promotional items. On October 18, 2007, AddVenture filed the instant action alleging, *inter alia*, that \$2.95 Guys was infringing AddVenture's '227 Patent by "making, using, offering for sale and selling t-shirts compressed by a method embodying the patented invention, and/or inducing others to do the same." *Compl.* [Doc. No. 1] at para. 13.

DISCUSSION

A. LEGAL STANDARD

The construction of patent claim terms is a matter of law for the court. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). "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 Sys.*, 381 F.3d 1111, 1115 (Fed.Cir.2004). As a general rule, the claim language carries its ordinary and customary meaning. *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299 (Fed.Cir.1999). The ordinary meaning of a term cannot, however, be construed in a vacuum; rather, a court "must look at the ordinary meaning in the context of the written description and the prosecution history." *Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed.Cir.2005). To ascertain the meaning of a claim term, the court refers to "those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed.Cir.2005) (en banc). The court does so to "determine whether the inventor used any terms in a manner inconsistent with their ordinary meaning." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). The sources include "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Phillips*, 415 F.3d at 1314 (citing *Innova*, 381 F.3d at 1116).

The court begins with the language of the claims. *PSC Computer Prods., Inc. v. Foxconn Int'l*, 355 F.3d 1353, 1359 (Fed.Cir.2004). When considering the claim language, "the context in which a term is used in the asserted claim can be highly instructive." *Phillips*, 415 F.3d at 1314. The court may also consider the other claims of the patent, both asserted and unasserted. *Id.* For example, as claim terms are normally used consistently throughout a patent, the usage of a term in one claim may illuminate the meaning of the same term in other claims. *Id.* The court may also consider differences between claims to guide in understanding the meaning of particular claim terms. *Id.*

As the claims do not stand alone, they "must be read in view of the specification, of which they are a part." *Phillips*, 415 F.3d at 1315 (citing *Markman v. Westview Instruments*, 52 F.3d 967, 979 (Fed.Cir.1995)). "The construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed.Cir.1998). When the specification reveals a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess, the inventor's lexicography governs. *Phillips*, 415 F.3d at 1316 (citing *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed.Cir.2002)). The specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor. *Id.* (citing *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343-44 (Fed.Cir.2001)).

The Federal Circuit has also affirmed the importance of the prosecution history. *Phillips*, 415 F.3d at 1317. The prosecution history represents an ongoing negotiation between the PTO and the applicant. *Id.* The prosecution history, like the specification, "provides evidence of how the PTO and the inventor understood the patent." *Id.* (citing *Lemelson v. Gen. Mills, Inc.*, 968 F.2d 1202, 1206 (Fed.Cir.1992)). However, it is subject to inherent ambiguity because it represents the negotiation, rather than the final product of the negotiation, and is thus less useful than the specification. *Id.*

Extrinsic evidence "can shed useful light on the relevant art," but the Federal Circuit considers it "less significant than the intrinsic record in determining the legally operative meaning of claim language." *Id.*

(citing *CR. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed.Cir.2004)). "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." *Id.* at 1319. The Federal Circuit has held that it remains within the court's discretion to admit extrinsic evidence, provided the court keeps in mind the flaws inherent in extrinsic evidence. *Id.*

In sum, the Court first must interpret the claim terms in light of intrinsic evidence-specification, claims, and prosecution history-and then exercise discretion in deciding whether to consider extrinsic evidence submitted by the parties. With the above principles in mind, the Court turns to the construction of the disputed terms.

B. CONSTRUCTION OF DISPUTED CLAIM TERMS

At issue is the interpretation of two claims in the '227 Patent: (1) "**woven** sheet article," and (2) "original un-compacted condition."

i. "Woven Sheet Article"

The first disputed term is "woven sheet article," which appears in asserted claims 8, 9, 12, and 13. The patent identifies examples of a "woven sheet article" to include items such as underwear, face cloths, shop cloths, tube socks, and pan tyhose. \$2.95 Guys contends that the ordinary meaning of the term "**woven**" in the '227 Patent claim term "**woven** sheet article" does not encompass the term "**knit**" and should be construed as "a sheet article produced by the process of weaving, which is to interlace in over/under pattern or a variation thereof, and additionally includes the fibrous material of disposable diapers." AddVenture, however, argues that when read in the context of the patent's specification and claims, the terms "**knit**" and "**woven**" clearly overlap, and the claim should be construed to include both "**knit**" and "**woven**" sheet articles. AddVenture places heavy emphasis on the inclusion of tube socks (Family Dollar brand) and pan tyhose (Leggs Sheer Energy brand) as examples of "**woven** sheet articles" because it contends that these items are, and must be, knit items. Thus, AddVenture proposes the following construction: "a fabric item formed by the interlacing of threads, such as, for example, knit items including socks, underwear, pan tyhose, and t-shirts."

As it is used in the patent, the term "sheet article" is modified by the word "**woven**." Thus, the patent limits the compaction process it describes to only those sheet articles that are "**woven**." The dispute, however, arises over whether the term "**woven**" includes those sheet articles that are "**knit**." The parties do not dispute that a "**woven**" article is one formed by the interlacing of threads. An article that is "**knit**," however, is one that is formed by the interlocking of loops. Thus, there is a clear distinction between the two. The Court also notes that Plaintiff's expert concedes that to someone trained in the textile industry, the terms "**woven**" and "**knit**" have two different meanings. *Swantko Decl.* [Doc. No. 29] at 5. Thus, to a person skilled in the art, it cannot be disputed that the term "**woven**" is different from, and does not include, the term "**knit**." Although the respective definitions may overlap to the average person, the Court's inquiry is limited to the ordinary meaning to those skilled in the art. Therefore, the Court finds that one skilled in the art would define the term "**woven**" to be "produced by the process of weaving, which is to interlace in an over/under patten or variation thereof."

AddVenture argues that by use of tube socks and pan tyhose as examples in the specification, the patent clearly sought to give the word "woven" a broad definition to include the word "knit," because these items can only be knitted. This argument is not persuasive. In cases such as this, where the claim language is clear

on its face, the Court may consider the rest of the intrinsic evidence to determine whether a deviation from the clear language of the claims is specified. There is only one instance within the intrinsic record that supports a broadening of the term "woven." This occurs immediately prior to Claim 1 where the inventor states: "In this respect, the term 'woven sheet article' is to be construed in this specification including the claims as encompassing the fibrous material of disposable diapers." Thus, the Court finds that the term "woven" should be broadened to include "the fibrous material of disposable diapers." There is, however, nothing within the intrinsic evidence that shows an intent by the inventor to include articles that are "knit" within the definition of "woven." Nor does the inventor delineate that the examples listed in the specification are knitted and not woven. A party that seeks to alter the meaning of a clear claim term must overcome the heavy presumption that the ordinary and accustomed meaning is the proper one by demonstrating the reason why such an alteration is appropriate. Plaintiff has not met that burden. Accordingly, the Court construes the term "woven sheet article" as "a sheet article produced by the process of weaving, which is to interlace in an over/under pattern or a variation thereof, and additionally includes the fibrous material of disposable diapers." FN1

FN1. Because the Court found that reference to extrinsic evidence was not necessary to construe the term, the Court did not consider such evidence. Accordingly, the Court shall not address Defendant's objections because they wholly relate to the extrinsic record, which the Court did not consider.

ii. Original un-compacted condition

The second disputed term is "original un-compacted condition," which appears in asserted claims 1, 8, and 10. The term is used to describe the state of the "woven sheet article" after it has been compacted and subsequently removed from the mould and manipulated from its compacted state. \$2.95 Guys contends that the term means "the article is loose and of the exact size and shape it was prior to being compressed with only immaterial creasing that, in the case of a t-shirt, does not make the t-shirt unacceptable to wear." AddVenture, on the other hand, argues for a broader construction: "the original loose un-compressed state, without regard to wrinkles or creases (because "[a]s a result of the compacting of the article, it will then almost certainly have been extensively creased")." The claim uses the disputed term in the following respect: "... which compacted article can return to the original un-compacted condition by manipulation thereof without the addition of any liquid...." There is no reference in the claim language to any creasing that may exist after the woven sheet article is manipulated back to its un-compacted state. The patent specification, however, provides some guidance as to the state of the woven sheet article after it has been returned to the "original un-compacted condition." The patent states:

As a result of the compacting of the article, it will then almost certainly have been extensively creased. However, for many articles this is immaterial, e.g. underwear, or alternatively the creases will quickly disappear. Thus, for articles such as socks and pan tyhose, the presence of creases is immaterial, since they effectively disappear once they are worn. For other articles such as shop cloths, the presence of creases is immaterial to their function, or their appearance is immaterial.

See '227 Patent at Col.4 ln. 62-Col.5 ln. 2. It is clear from the specification that there will be creasing as a result of the compaction process. In some cases, these creases may dissipate after the sheet article is worn. In other cases, such as those where the sheet article is not worn, the creasing may not dissipate. Thus, in light of the claim language and specification, the Court does not find either proposed construction appropriate. Defendant's construction is not appropriate because there is nothing in the patent that refers to t-shirts or the

extent to which a t-shirt will show creases once manipulated back into the "original un-compacted condition." FN2 Plaintiff's construction, however, is also not appropriate because it is not accurate in light of the specification.

FN2. The Court also finds Defendant's description of the article as being the "exact size and shape it was prior to being compressed" to be redundant and thus unnecessary to the construction.

Accordingly, the Court construes the claim term "original un-compacted condition" as "the original loose un-compressed state with creasing that may or may not dissipate through use."

CONCLUSION

For the reasons stated above, the disputed terms of United States Patent Number 5,042,227 are construed as set forth in this Order.

IT IS SO ORDERED.

S.D.Cal.,2009.

Addventure Products, Inc. v. Smoothreads, Inc.

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