United States District Court,
N.D. California, San Jose Division.

ADVANTICA, INC., a Delaware corporation,
Plaintiff.
v.
GOLD WING ENGINEERING, Erik Gutierrez, Joel Gutierrez, Salvador Gutierrez, and JSJ Pipeline Company,
Defendants.

No. C-05-01709 RMW

May 24, 2007.

Brian M. Englund, Kenneth B. Grossfeld, Hennelly & Grossfeld LLP, Gold River, CA, Marvin Petry, Stites & Harbison, Alexandria, VA, for Plaintiff.

Shannon N. Cogan, Berliner Cohen, San Jose, CA, for Defendants.

CLAIM CONSTRUCTION ORDER REGARDING U.S. PATENT NO. 4,738,565

[Re Docket Nos. 53, 59, 60, 61]

RONALD M. WHYTE**, District Judge.**

Advantica, Inc. sued defendants for infringement of U.S. Patent Number 4,738,565 ("the '565 patent"), which claims a method for replacing existing underground pipes. The parties sought claim construction of fourteen terms or phrases in the '565 patent. Advantica filed its Claim Construction Opening Brief on March 12, 2007. On March 28, 2007, defendants filed a Statement of Nonopposition to Plaintiff's Claim Construction Brief stating they did not oppose the construction of the claim terms set out in the Joint Claim Construction and Prehearing Statement and asking that the claim construction hearing scheduled for May 16, 2007, at 2:00 PM be cancelled. Advantica filed a reply on April 3, 2007, agreeing there was no need for a claim construction hearing.

ORDER

1. Pursuant to the agreement of the parties, the court adopts the following claim construction as detailed in this order.

CLAIM LANGUAGE	CONSTRUCTION
"mole"	a part of the device which engages the inside of the existing pipe
"fracturing surface"	a surface which fractures the existing pipe
"fracturing engagement"	an engagement with the existing pipe which fractures same

"tubular assembly"	the tubular assembly forming the replacement pipe
"forcing the mole"	exerting a force on the mole for movement through the existing main
"irregular fragments"	the fragments of the existing main after they are broken
"at least a portion of the outward spreading of the fragments occurring under the action of the fracturing surface essentially concurrently with the fracturing of the existing main into such fragments"	since the element which breaks the existing pipe is larger than the internal diameter of the existing pipe, as the existing pipe is broken, the fragments must move outwardly and this occurs under the action of the fracturing surface essentially concurrently with the act of fracturing the existing main into fragments
"generally conically tapering configuration"	the tool may have a generally conical tapering configuration
"in substantially axial registry"	the tool which fractures the existing main is placed in axial registry, meaning in axial alignment, with the center line of the existing main to be replaced
"intense local pressure"	the force exerted by the fracturing tool on the existing main to cause it to crack and fracture
"in axial registry"	the respective elements, for example the fracturing apparatus and the replacement apparatus, are placed in axial alignment with the center line of the existing main to be replaced
"a pipe fracturing portion of generally frustoconical configuration"	the pipe fracturing tool may be of generally frusto-conical configuration
"endwise"	endwise, rather than sideways
"spreading the fragments outwardly generally about the axis of the tool"	the tool which breaks the existing main, being circular, such as generally frusto-conical, will spread the fragments outwardly in all directions about the axis of the tool

2. As the parties have agreed that no hearing is necessary, the scheduled claim construction hearing is hereby cancelled.

N.D.Cal.,2007.
Advantica, Inc. v. Gold Wing Engineering