United States District Court,
S.D. Florida.

BENNETT MARINE, INC., a Florida corporation,
Plaintiff.
v.
LENCO MARINE, INC., a Florida Corporation,
Defendants.

No. 04-60326-CIV

May 30, 2007.

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OPINION AND ORDER

KENNETH A. MARRA**, District Judge.**

This cause is before the Court upon the parties' claim construction briefs and the *Markman* hearing held before the Court. The parties submitted additional briefing regarding the July 12, 2005 decision Phillips v. AWH Corp. 415 F.3d 1303 (Fed.Cir.2005) (*en banc*), *cert. denied,* 546 U.S. 1170, 126 S.Ct. 1332, 164 L.Ed.2d 49 (2006) by the United States Court of Appeals for the Federal Circuit. The Court has carefully considered the patent, the prosecution history, the parties' briefs and the arguments of counsel, and is otherwise fully advised in the premises.

I. Background

The claims in United States Patent Number 5,113,780 involve an automatic boat trim tab control system that automatically retracts fully upon removal of ignition power from the boat engine. *See* Exhibit A to Plaintiff's Claim Construction Brief (hereinafter, the "780 patent"). A trim tab is a device on a power boat that adjusts the boat attitude as the boat is powered through water. Id. at col. 1. Prior to the '780 patent, other trim tab systems existed. Id. Patent '780, however, sought to improve the trim tab control systems and to address the problems that result from trim tabs remaining in the last position selected by the boat operator. Id. These problems include: the boat operator not being aware of the position of the trim tabs, the risk of damage to trim tabs from fork lifts, trailers and dry storage racks, the actuator being subjected to hydraulic fluid pressure during storage and exposure to marine growth. Id.

II. Legal Standard

A. General Claim Interpretation Principles

It is the Court's role to construe the claims of the disputed patent. Markman v. Westview Instruments, Inc., 517 U.S. 370, 388-90, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The Court principally looks to the claims made in the patent, specifications, and prosecution history. Alza Corp. v. Mylan Labortories, Inc., 391 F.3d 1365, 1370 (Fed.Cir.2004); Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1186 (Fed.Cir.1998); Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). These sources are considered "intrinsic evidence." Vitronics, 90 F.3d at 1582.

In approaching claim construction, the words of the claim are to be given their ordinary and customary meaning as understood by one with ordinary skill in the art at the time of the invention. Phillips, 415 F.3d at 1313; *see also* Elekta Instrument S.A. v. O.U.R. Scientific International, Inc., 214 F.3d 1302, 1307 (Fed.Cir.2000) ("Absent an express intent to impart a novel meaning, claim terms take on their ordinary meaning."). Since a person with ordinary skill in the art would look not just to the term's context in a particular claim, but the term's context in the specification and the prosecution history as well, courts must approach claim construction in this same manner. Phillips, 415 F.3d at 1313. Furthermore, courts must pay particular attention to the patentee's own definition of the claim terms, which control. Oakley, Inc. v. Sunglass Hut International, 316 F.3d 1331, 1341 (Fed.Cir.2003) ("a patentee may be his or her own lexicographer by defining the claim terms."); Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1342 (Fed.Cir.2001) ("patent law permits the patentee to choose to be his or her own lexicographer by clearly setting forth an explicit definition for a claim term that could differ in scope from that which would be afforded by its ordinary meaning.").

With respect to the relationship between the specification and the claims, the Federal Circuit has explained that "claims must be read in view of the specification" and that the specification "may act as a sort of dictionary, which explains the invention and may define terms used in the claims." Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed.Cir.1995) (*en banc*), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The Federal Circuit has cautioned, however, that "there is sometimes a fine line between reading a claim in light of the specification, and reading a limitation into the claim from the specification." Comark, 156 F.3d at 1186. As such, "one may not read a limitation into a claim from the written description, but one may look to the written description to define a term already in a claim limitation, for a claim must be read in view of the specification of which it is a part." Renishaw PLC v. Marposs Societa' Per Azioni, 158 F.3d 1243, 1248 (Fed.Cir.1998).

Although courts should begin their analysis with intrinsic evidence, courts may rely on extrinsic evidence, which includes expert and inventor testimony as well as dictionaries and technical treatises. Markman, 52 F.3d at 980. Extrinsic evidence, however, is viewed as "less reliable than the patent and its prosecution history in determining how to read claim terms." Phillips, 415 F.3d at 1318. With respect to the use of dictionaries, courts may consider dictionary definitions to help understand and define claim terms. *Id.*

B. Means Plus Function Elements

Section 112 of United States Code 35 provides:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material or acts described in the specification and equivalents thereof.

35 U.S.C. s. 112.

To invoke 35 U.S.C. s. 112(6), "the alleged means plus function claim element must not recite a definite structure which performs the described function." Cole v. Kimberly-Clerk Corp., 102 F.3d 524, 531 (Fed.Cir.1996). When a claim limitation is expressed in means-plus-function language, the first step is to

identify the function. Generation II Orthotics, Inc. v. Medical Technology, Inc., 263 F.3d 1356, 1363 (Fed.Cir.2001). The second step is to identify the corresponding structure described in the specification and the equivalents thereof. *Id*. Notably, a presumption arises that an element is a means-plus-function element when the term "means" is used in a patent. Unidynamics Corp. v. Automatic Products International, 157 F.3d 1311, 1319 (Fed.Cir.1998). To overcome this presumption, the court must determine "whether the claims recite sufficient structure for performing the claimed function." Envirco Corp. v. Clestra Classroom, Inc., 209 F.3d 1360, 1365 (Fed.Cir.2000)

C. Independent and Dependent Claims

"A claim may be written in independent or dependent form." W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1546 n .1 (Fed.Cir.1983) *quoting* 35 U.S.C. s. 112. Under the doctrine of claim differentiation, there is a presumption that each claim in a patent has a different scope from every other claim. Comark, 156 F.3d at 1187. Generally, "limitations stated in dependent claims are not to be read into the independent claim from which they depend." Karlin Technology, Inc. v. Surgical Dynamics, Inc., 177 F.3d 968, 971-72 (Fed.Cir.1999) *citing* Transmatic, Inc. v. Gulton Indus., Inc., 53 F.3d 1270, 1277 (Fed.Cir.1995). Furthermore, "the same terms appearing in different portions of the claims should be given the same meaning unless it is clear from the specification and prosecution history that the terms have different meanings at different portions of the claims." Fin Control Systems Pty, Ltd. v. OAM, Inc., 265 F.3d 1311, 1318 (Fed.Cir.2001). Additionally, "where claims use different terms, those differences are presumed to reflect a difference in the scope of the claims." Forest Laboratories, Inc. v. Abbott Laboratories, 239 F.3d 1305, 1310 (Fed.Cir.2001). Lastly, "differences among claims can be a useful guide in understanding the meaning of particular claim terms. For example, the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." Phillips, 415 F.3d at 1314-15.

III. Claim Construction

Before specifically construing the claims of the '780 patent, the Court will address some of the legal arguments asserted by the parties. First, Defendant contends that the claims of the '780 patent are limited based upon the patent prosecution history. The Court rejects this contention. The Court concludes that the initial rejection of the '780 patent by the Patent Office, and Plaintiff's subsequent amendments of Claims 1, 2 and 6, clarified that the original application's reference to removal of power from the engine related to electrical power. The fact that independent Claim 9 was originally rejected and subsequently accepted without further amendment supports this conclusion. Second, Defendant asserts that the '780 patent "incorporates by reference" U.S. Patent Number 3, 695, 204 ("the '204 Patent") issued to Charles H. Bennett. The Court also rejects this contention. The Court concludes that the reference to the '204 patent in the patent at issue was for the purpose of showing an example of the prior art and not for the purpose of making the claims and embodiments of the '780 patent coextensive with the '204 patent. With that stated, the Court will now address the various claims of the '780 patent.

Claim 1 A boat trim control system that comprises:

a boat having a hull and an engine for powering said boat;

means for selectively applying electrical power to said engine for powering the boat;

means movably mounted to said hull for trimming attitude of said boat as said hull is propelled through the water;

means carried by said hull and responsive to a boat operator for selectively adjusting position of said trimming means to maintain desired attitude under varying conditions, and

means coupled to said trimming means and to said engine, and responsive to removal of electrical power from said engine, for automatically moving said trimming means to a predetermined position with respect to said hull upon removal of power at said engine.

Element 1 a boat having a hull and engine for powering said boat

The Court finds that this element is not stated in means plus function terms. A person with ordinary skill in the art understands the meaning of the terms. The Court notes, however, that the engine described in this element is for powering the boat through water. (Specification, col. 1, line 50.)

Element 2 means for selectively applying electrical power to said engine for powering the boat

The Court finds this element to be stated in means plus function terms. The function is to allow the operator to choose whether electrical power to the engine that runs the boat is on or off. The structure is a switch which turns the electrical power to the boat's engine on and off, and equivalents thereof.

Element 3 means movably mounted to said hull for trimming attitude of said boat as said hull is propelled through the water

The Court finds this element to be stated in means plus function terms. The function is to provide a means for maintaining the attitude of the boat. The structure is a trim tab or trim tabs and equivalents thereof. FN1

FN1. The Court rejects Defendant's assertion that the structure of this element is limited to a "pair of trim tabs." The specification expressly states that "the invention may be employed in conjunction with any number of trim tabs on a given boat." ('780 Patent, Col. 3: 56-57.) Furthermore, because dependant Claim 5 includes the limitation "a pair of laterally spaced trim tabs," independent Claim 1 should be read as broader than the dependent claim. Phillips, 415 F.3d at 1314-15 (the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim).

Element 4 means carried by said hull and responsive to a boat operator for selectively adjusting position of said trimming means to maintain desired attitude under varying conditions, and

The Court finds this element to be stated in means plus function terms. The function is to allow the boat operator to move and change the angle of the trim tabs from whatever position the tabs are in to the operator's choice of position so that a desired attitude is obtained.

The structure includes "operator switch 40" that is "coupled to battery 38 for selectively applying electrical control signals to motor 30 and valves 32, 34 which supply pressure to actuators 24 and 26 for adjusting the position of the trim tabs 12, 14 independently of each other," or equivalents thereof. FN2

FN2. The Court rejects Defendant's assertion that the structure for this claim is limited to hydraulic trim tab adjustment mechanisms. First, the specification expressly states: "It will be appreciated, of course, that the principles of the invention apply to electrical or pneumatic actuators of trim tabs, in addition to the preferred hydraulic implementation." '780 Patent, Col. 3: 53-56. Furthermore, dependent claim 4 provides that the system includes "a fluid actuator." As was the case with the number of trim tabs discussed in Claim 1, Element 3, because the limitation of "fluid actuator" is present in a dependent claim, independent Claim 1 should be read as broader than the dependent claim. Phillips, 415 F.3d at 1314-15.

Element 5 means coupled to said trimming means and to said engine, and responsive to removal of

electrical power from said engine, for automatically moving said trimming means to a predetermined position with respect to said hull upon removal of power at said engine.

The Court finds this element to be stated in means plus function terms. The function is to provide a means to respond to the stimulus of electrical power being removed from the engine, thus resulting in the trim tabs being automatically returned to the fully retracted position or other predetermined position. ('780 Patent, Col: 55-59.) The structure is the control circuit 42, fig. 1, and equivalents thereof. FN3

FN3. The Court rejects Defendant's attempt to describe the structure by way of listing all the component parts. As the Court stated in Odetics, Inc. v. Storage Tech. Corp., 185 F.3d 1259, 1268 (Fed.Cir.1999), a claim limitation written in means plus function form "is literally met by structure, materials, or acts in the accused device that perform the claimed function in substantially the same way to achieve substantially the same result. The individual components, if any, of an overall structure that corresponds to the claimed function are not claim limitations. Rather, the claim limitation is the overall structure corresponding to the claimed function. This is why structures with different numbers of parts may still be equivalent under s. 112, P 6, thereby meeting the claim limitation ... the relevant structure is that which 'corresponds' to the claimed function ... further deconstruction or parsing is incorrect."

Claim 2 The system set forth in claim 1 wherein said means response to removal of electrical power comprises means for sensing removal of electrical ignition energy from said engine to move said trimming means to said predetermined position.
The Court finds this element to be stated in means plus function terms. The function is to provide a means of sensing or detecting the removal of a specific type of power *i.e.*, the electrical current. The structure is amplifier 62 that senses when electrical power is cut off, or equivalents thereof.

Claim 3 The system set forth in claim 1 wherein said selectively-positioning means comprises actuator means extending between said hull and said trimming means for moving said trimming means toward and away from said predetermined position, and wherein said automatically-moving means comprises means for applying power to said actuator means for a predetermined time duration following removal of power at said engine sufficient to move said trimming means to said predetermined position independently of position of said trimming means when power is removed from said engine.

Element 1 The system set forth in claim 1 wherein said selectively-positioning means comprises actuator means extending between said hull and said trimming means for moving said trimming means toward and away from said predetermined position, and

The Court finds that this element is not stated in means plus function terms. The Court finds that the presumption of a means plus function that arises from the use of the word "means" is rebutted in this case. The word "actuator" is intended to describe a particular apparatus, the function of which is to adjust the trim tabs, and is not a general description of any structure that will perform this function. A person with ordinary skill in the art understands the meaning of the term actuator. As discussed previously in n. 2, the term actuator is not limited to a hydraulic actuator.

Element 2 wherein said automatically-moving means comprises means for applying power to said actuator means for a predetermined time duration following removal of power at said engine sufficient to move said trimming means to said predetermined position independently of position of said trimming means when power is removed from said engine.

The Court finds this element to be stated in means plus function terms. The function is to apply power to the actuator until it reaches a predetermined position. The structure is capacitor 48 and resistor 52 which are components of control circuit 42 and that cause the control circuit to operate for the "predetermined duration" and any equivalents thereof.

Claim 4 The system set forth in claim 3 wherein said actuator means comprises a fluid actuator; said selectively positioning means comprising a pump and a valve for selectively applying fluid under pressure to extend and retract said actuator, said automatically-positioning means comprising means for operating said pump and valve so as to move said actuator and trimming means to a fully retracted position

Element 1 said actuator means comprises a fluid actuator

The Court finds that this element is not stated in means plus function terms. *See* discussion above regarding Claim 3, Element 1 and the term "actuator means." Unlike Claim 3, Element 1, however, this element is limited to fluid actuators. In this case, consistent with the holding in Phillips, 415 F.3d at 1318, this Court concludes that resort to a dictionary definition in order to construe the term "fluid actuator" is warranted. *The New Oxford American Dictionary* (2d ed.2005) defines "fluid" as "a substance that has no fixed shape and yields easily to external pressure; a gas or (esp.) a liquid." The *Merriam-Webster's Collegiate Dictionary* (10th ed.1996) defines fluid as "a substance (as a liquid or gas) tending to flow or conform to the outline of its container." These definitions do not contradict any definition found in or ascertained by a reading of the '780 patent.

Element 2 said selectively positioning means comprising a pump and a valve for selectively applying fluid under pressure to extend and retract said actuator

The Court finds that this element is not stated in means plus function terms. A person with ordinary skill in the art understands the meaning of the terms, pump, valve and actuator. *See* discussion above regarding Claim 3, Element 1 and the term "actuator means."

Element 3 said automatically-positioning means comprising means for operating said pump and valve so as to move said actuator and trimming means to a fully retracted position

The Court finds this element to be stated in means plus function terms. The function is to provide a means for running the pump and opening the valves so as to move the trim tabs to their fully retracted position. The structure is the "control circuit 42," on fig. 1, or equivalents thereof. *See* n. 3 *supra*.

Claim 5 The system set forth in claim 4 wherein said attitude-trimming means comprises a pair of laterally spaced trim tabs pivotally mounted to said hull, said selectively-positioning means comprising a pair of said actuators respectively coupled to said trim tabs, a pump and a pair of said valves for selectively extending and retracting said actuators independently of each other and wherein said automatically-positioning means comprises means for operating said motor and valves simultaneously to move said actuators and trim tabs to said fully retracted position

Element 1 said attitude-trimming means comprises a pair of laterally spaced trim tabs pivotally mounted to said hull

The Court finds that this element is not stated in means plus function terms. A person with ordinary skill in the art understands the meaning of the terms, laterally spaced trim tabs and hull.

Element 2 said selectively-positioning means comprising a pair of said actuators respectively coupled to said trim tabs, a pump and a pair of said valves for selectively extending and retracting said actuators independently of each other

The Court finds that the element is not stated in means plus function terms. A person with ordinary skill in the art understands the meaning of the terms, actuators, trim tabs, pump and valves.

Element 3 and wherein said automatically-positioning means comprises means for operating said motor

and valves simultaneously to move said actuators and trim tabs to said fully retracted position.

The Court finds this element to be stated in means plus function terms. The function is the operating of the motor and valves to move the trim tabs simultaneously to the fully retracted position. The structure is the control circuit 42, fig. 1, that includes relay contact sets 74, 76, and 78, fig. 2, coupled to pump 28 and valves 32 and 34 or their equivalents.

Claim 6 The system set forth in claim 3 wherein said means responsive to removal of electrical power comprises means for sensing removal of electrical ignition energy from said engine to move said trimming means to said predetermined position.

The Court finds this element to be stated in means plus function terms. The function is to provide a means for sensing removal of electrical ignition energy from the engine in order move the trim tabs to the predetermined position. The structure is the amplifier 62 and any equivalents thereof.

Claim 7 The system set forth in claim 6 wherein said automatically-moving means comprises an electronic switch connected between said source of electrical power and said actuator means and means for closing said switch for said predetermined time duration upon removal of ignition power from said engine.

Element 1 said automatically-moving means comprises an electronic switch connected between said source of electrical power and said actuator means

The Court finds that the element is not stated in means plus function terms. A person with ordinary skill in the art understands the meaning of the terms, "electronic switch" and "actuator means ." *See* discussion of Claim 3, Element 1 *supra*.

Element 2 and means for closing said switch for said predetermined time duration upon removal of ignition power from said engine

The Court finds this element to be stated in means plus function terms. The function is to close the switch for the predetermined duration upon removal of ignition power from the engine. The structure is amplifier 62 operating in conjunction with capacitor 48 and resistor 52, and equivalents thereof.

Claim 8 The system set for in Claim 7 wherein said switch-closing comprises electrical energy storage means, means for storing electrical energy on said storage means as long as ignition power is supplied to said engine, and means for discharging said energy storage means over said predetermined time duration upon removal of ignition energy from said engine

Element 1 said switch-closing comprises electrical energy storage means, means for storing electrical energy on said storage means as long as ignition power is supplied to said engine, and

The Court finds this element to be stated in means plus function terms. The function is for storing electrical energy while ignition power is supplied to the engine. The structure is capacitor 48 or equivalents thereof.

Element 2 means for discharging said energy storage means over said predetermined time duration upon removal of ignition energy from said engine

The Court finds this element to be stated in means plus function terms. The function is for discharging the stored energy for the predetermined time duration upon removal of the ignition energy from the engine. The structure is capacitor 48, resistor 52, or equivalents thereof.

Claim 9 A boat trim control system that comprises

a boat having a hull with a stern and an engine

at least one trim tab pivotally mounted to said hull at said stern

an actuator extending between said hull and said tab for selectively moving said tab between fully extended and retracted positions

means including a drive responsive to an operator for selectively adjusting position of said trim tab to obtain a desired attitude of said hull

means for selectively applying electrical ignition power to said engine for powering said boat

means coupled to said drive and responsive to removal of electrical power from said engine for operating said actuator for a predetermined time duration so as to move said trim tab to said fully retracted position upon removal of ignition power from said engine.

Element 1 a boat having a hull with a stern and an engine

Element 2 at least one trim tab pivotally mounted to said hull at said stern

Element 3 an actuator extending between said hull and said tab for selectively moving said tab between fully extended and retracted positions

The Court finds that elements one, two and three are not stated in means plus function terms. A person with ordinary skill in the art understands the meaning of the terms boat, hull, stern, engine, trim tab and actuator.

Element 4 means including a drive responsive to an operator for selectively adjusting position of said trim tab to obtain a desired attitude of said hull

The Court finds this element to be stated in means plus function terms. The function is to allow the boat operator to move and change the angle of the trim tabs from whatever position the tabs are in to the operator's choice of position so that a desired attitude is obtained. The structure includes "operator switch 40" that is "coupled to battery 38 for selectively applying electrical control signals to motor 30, which powers a drive that supplies pressure through valves 32, 34 to the actuators for adjusting the position of the trim tabs 12, 14 independently of each other," or an equivalent thereof. The Court finds that resort to a dictionary definition in order to construe the term "drive" is warranted. *The New Oxford American Dictionary* (2d ed.2005) defines "drive" as "the transmission of power to machinery." The *Merriam-Webster's Collegiate Dictionary* (10th ed.1996) defines "drive" as "the means of giving motion to a machine or machine part." These definitions do not contradict any definition found in or ascertained by a reading of the '780 patent.

Element 5 means for selectively applying electrical ignition power to said engine for powering said boat

The Court finds this element to be stated in means plus function terms. The function is to supply electrical ignition power to the engine. The structure is "switch," which turns the electrical power to the boat's engine on and off and equivalent thereof.

Element 6 means coupled to said drive and responsive to removal of electrical power from said engine for operating said actuator for a predetermined time duration so as to move said trim tab to said fully retracted position upon removal of ignition power from said engine

The Court finds that this element is stated in means plus function terms. The function is to provide a means to respond to the stimulus of electrical power being removed for a predetermined time from the engine, thus resulting in the trim tabs being moved to their fully retracted positions. The structure is control circuit 42, fig. 1, and any equivalents thereof.

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