United States District Court,
C.D. California.

PLUMLEY,
v.
DOUG MOCKETT COMPANY, INC.

No. CV 04-2868-GHK (Ex)

Dec. 23, 2008.

Proceedings: (In Chambers) Order Re: Joint Memorandum Regarding Claim Construction

GEORGE H. KING**, District Judge.**

Beatrice Herrera, Deputy Clerk.

This matter is before the Court on the parties' Joint Memorandum Regarding Claim Construction (the "Memo"). Having considered all of the parties' papers filed with this Memo, we deem this matter suitable for resolution without oral argument. L.R. 7-15.

I. Applicable Law

The words of the claim are generally given their ordinary and customary meaning to a person of ordinary skill in the art at the time of filing. Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed.Cir.2005); Johnson Worldwide Associates, Inc. v. Zebco Corp., 175 F.3d 985, 989 (Fed.Cir.1999). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words."

The claim itself provides substantial guidance in determining the meaning of the language. Phillips, 415 F.3d at 1314. To determine a term's meaning, a court looks to the context of the term, and also reviews the other claims and the remainder of the specification. Id at 1314-16. Where the specification provides a definition of a word different from the common usage, the inventor's lexicography governs. Id. at 1316. It is generally impermissible to limit a claim to a preferred embodiment. Bell Atlantic Network Services, Inc. v. Covad Communications Group, Inc., 262 F.3d 1258, 1273 (Fed.Cir.2001). The prosecution history, which is the complete record of the proceedings before the Patent and Trademark Office, is considered part of the intrinsic evidence. Phillips, 415 F.3d at 1317.

Dictionaries and Treatises are allowable extrinsic evidence, though they are less reliable than intrinsic evidence. Phillips, 415 F.3d at 1317, 1318.

II. Claim Construction

We have considered all the applicable rules of claim construction, as well as the constructions proposed by both parties. We rule as follows.

A. "Closure member"

We conclude this term means: a piece capable of closing an opening.

B. "Planform shape similar to but larger in dimension than a selected portion of a selected wiring aperture to be covered"

We conclude this term means: outline when viewed from above is substantially like but larger in dimension than a selected portion of the selected wiring aperture to be covered.

C. "Reverse surface of the body"

We conclude this term means: surface of the body opposite of the obverse surface.

D. "Captive to the body"

We conclude this term means: held to the body within a range of motion.

E. "[Closure member] has an edge thereof essentially continuous with the body peripheral margin adjacent the opening"

We conclude this term means: [closure member] has an edge that substantially completes the expected outline of the body absent the opening.

F. "Depends from the body reverse surface"

We conclude this term means: hangs from the body reverse surface.

G. "Mating with boundaries of the [wiring] aperture"

Plaintiff asserts that the language is clear on its face and needs no construction. Defendant asserts that the language should be construed as "mating with at least a part of the aperture," because none of the disclosed embodiments show shirts that mate continuously with the entire aperture.

We agree that the language is clear. *See* O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., 521 F.3d 1351, 1360-62 (Fed.Cir.2008). Moreover, the "boundaries" of the aperture cannot be properly substituted with "a part of" the aperture. We find that "boundaries" is the proper description.

Even clear language may require construction if the scope of the claim is unclear. *See id*. However, that is not the case here. Defendant's proposed insertion, "at least a part of" is plainly not within the claim.

Therefore, we conclude this term means: mating with boundaries of the [wiring] aperture.

IT IS SO ORDERED.

C.D.Cal.,2008.

Plumley v. Doug Mockett & Co., Inc.

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