



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 9:13-cv-80840- DMM -BRANNON EXCELSIOR MEDICAL CORPORATION,

Plaintiff, VS. IVERA MEDICAL CORPORATION, ROBERT F. LAKE, JR., and JEFFREY S. TENNANT,

Defendants and Counterclaim Plaintiffs, VS. Excelsior Medical Corporation, Ncovlex LP, and Covolen Sales, LLC,

Counterclaim Defendants.

/ MARKMAN ORDER

THIS CAUSE comes before the Court upon the Parties' Markman submissions. This case was filed by Plaintiff, Excelsior Medical Corporation ('l Excel si or) on August 22, 2013. The Court held a hearing on April 18, 2014, and makes the following determinations. In its Complaint, Plaintiff seeks a declaration that its product does not infringe the Defendant's United States Patent No. 7, 282, 186 (the ' 186 Patent ' ' ll n Defendants are Ivera Medical Corporation, Robert F. Lake, Jr., and Jeffrey S. Tennant (collectively, ' d l ver a ' '). Excel si or alternatively seeks a declaration that the 6 186 Patent is invalid. In response to Excel si or's Complaint, Ivera filed a Counterclaim which alleges 1 The ' 186 Patent is titled, S d Decontamination Device. ' ' (See DE 1-1).

1 that Excel si or , along with Coviden LP and Coviden Sales, LLC, manufacture and sell a

product which infringes the . 186 Patent . z At issue before the Court is the construction of pro
O f i v e d i s p u t e d c l a i m t e r m s i n t h e . 186 Patent. 3 For ease of reading

, the Court will refer to the Plaintiff / counterclaim Defendant as Excel si or, ' ' and the Defendant s / counterclaim Plaintiffs as ' ' I vera, ' '

The . 186 patent discloses a S ' Decontamination Device. ' ' Excel si or markets a product named S ' Swabcap, ' ' which is concededly a decontamination device.



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

LEGAL STANDARD

Claim construction is a question of law for the Court to determine. *Markman v. Westinghouse Electric Corp.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc), aff'd, 517 U.S. 370 (1996). As a standard matter, the Court will only construe a term when the need arises. "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." *Phillips B. A. WH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc) (citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001)).

When claim construction requires more, "the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Interactve GW Express, Inc. v. Compuserve, Inc.*,

2 Excel sior's product is the Sç swabcap, "which is a small plastic cap that contains a sponge and 70% isopropyl alcohol. In plain terms the product is screwed onto an intravenous line at the luer activated valve (LAV) to decant a minute into the between uses on an individual patient. The LAV is a port where intravenous injections are inserted for patient administration. 3 The Parties each filed duplicate initial and responsive briefs which dispute the same five terms. 256 F.3d 1323, 1331 (Fed. Cir. 2001) (quoting *Vitronics Corp. v. Conceptron, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996))., see also *Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) ("We cannot look at the ordinary meaning of the term... in a vacuum. Rather, we must look at the ordinary meaning in the context of the written description and the prosecution history."). "All intrinsic evidence is not equal however." *Interactve G/# Express*, 256 F.3d at 1331.

Within the "intrinsic evidence, courts first look to the words of the claims. *Te/ef/ex, Inc. v. Fico*, 299 F.3d 1313, 1324 (Fed. Cir. 2002)*, *Vitronics Corp.*, 90 F.3d at 1582. The words of the claims are "generally given their ordinary and customary meaning," "which 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." *Phillips v. AWH Corp.*, 415 F.3d at 1312-1313., accord *Inter Digital Comm'n, LLC v. Intel Trade Comm'n*, 690 F.3d 1318, 1324 (Fed. Cir. 2012)*, *Innova/Pure Nafec Inc. B. Safar/Gafer Filtration Sys'*, *Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)., *Vitronics* 90 F.3d at 1582. The ordinary and customary meaning of a claim term may be determined solely by viewing the term within the context of the claim's overall language. See *Phillips*, 415 F.3d at 1314 (the use of a term within the claim provides a firm basis for construing the term). Moreover, the use of the term in other claims may provide guidance regarding its proper construction. *Id.* ("Other claims of the patent in question, both asserted and unasserted, can also be valuable sources of enlightenment as to the meaning of a claim term."



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

'). Claims should be construed ' ' without reference to the accused device (or product l. ' ' SRI Int'l v. Matsushita Elec. Corp. of Am. , 775 F. 2d 1107, 1118 (Fed. Cir . 1985) (emphasis omitted),

3 A claim should also be construed in a manner that is consistent with the patent's specification. See Markman, 52 F. 3d at 979 (claims must be read in view of the specification, of which they are a part. ' '). Typically, the specification is the best guide for construing the claims. See Phillips, 415 F. 3d at 1315. , Vitronics, 90 F. 3d at 1582 (' ' E T) the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive, it is the single best guide to the meaning of a disputed term. ' '). Precedent forbids, however, a construction of claim terms that imposes limitations not found in the claims or supported by an unambiguous restriction in the specification or prosecution history. Laithram Corp. v. NEC Corp. , 163 F. 3d 1342, 1347 (Fed. Cir . 1998). , Comark Commc'ns, Inc. v. Harris Corp. , 156 F. 3d 1182, 1186 (Fed. Cir . 1998) . , SRI Int'l 775 F. 2d at 1121.

Another tool to supply proper context for claim construction is the prosecution record and any statements made by the patentee to the United States Patent and Trademark Office (d' PTO ' ') regarding the scope of the invention. See Markman, 52 F. 3d at 980. A patent's prosecution history is designated as part of the ' ' intrinsic evidence ' ' and ' ' consists of the complete record of the proceedings before the PTO and includes the prior art cited during the examination of the patent. ' ' Phillips, 415 F. 3d at 1317 (citation omitted). However, the Federal Circuit has warned that ' ' because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes. ' ' Id. ' ' Nonetheless, the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor or

4 I limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be. ' ' Id.

Along with reviewing the specification, the Court may use the patent prosecution to determine whether the inventor limited the claim scope or disclaimed any particular interpretations. Vitronics, 90 F. 3d at 1582- 83. However, in order to conclude that a patentee narrowed the claim, the disclaimer must have been with ' ' reasonable clarity and deliberateness. ' ' Super Guide Corp. v. DirectTV Enters. , Inc. , 358 F. 3d 870, 875 (Fed. Cir . 2004) (quoting N. Telecom Ltd. v. Samsung Elecs. Co. , 215 F. 3d 1281 , 1294 (Fed. Cir . 2000)). Thus, unless the patentee makes ' ' clear and unmistakable prosecution arguments limiting the meaning of a claim term in order to overcome a rejection, ' ' the patentee is entitled to the full scope of its claim language. SanDisk Corp. v. Memor ex Prods. , Inc. , 415 F. 3d 1278, 1286 (Fed. Cir . 2005). , see also Thorne ? . Sony Computer Entm't Am. LLC, 669 F. 3d 1362, 1366 (Fed. Cir .



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

2012).

District courts may also consider "' extrinsic evidence, "' such as dictionary entries or technical treatises, to help understand the underlying technology and the manner in which one skilled in the art might use claim terms. Phillips, 415 F. 3d at 1318. Similarly, expert testimony may aid a court in understanding the underlying technology and determining the particular meaning of a term in the pertinent field, but an expert's conclusion, unsupported assertions as to a term's definition is entitled to little weight of a court. Id. Ultimately, however, "extrinsic evidence" is "' less significant than the intrinsic record in determining the legal operative meaning of claim language." Id. at 1317 (quoting C. & Bar d, Inc. v. U. S. Surgical Corp., 388 F. 3d 858, 862 (Fed. Cir. 2004) (internal quotations omitted), and a court should discount any extrinsic evidence that is clearly at odds with the claim construction mandated by the claim itself, the written description, and the prosecution history, in other words, with the written record of the patent. "' /d. at 1318 (quoting KeyPharm. B. Hercon Labs. Corp., 161 F. 3d 709, 716 (Fed. Cir. 1998)).

Once the proper meaning of a term used in a claim has been determined, the term must have the same meaning for all claims in which it appears. Id. at 1314 (citations omitted; Inverness Med. Switzerland GmbH v. Princeton Biomedical Corp., 309 F. 3d 1365, 1371 (Fed. Cir. 2002)). (A) patent need not "describe in the specification every conceivable and possible future embodiment of his invention." CCS Fitness Inc., v. Brunswick Corp., 288 F. 3d 1359, 1366 (Fed. Cir. 2002).

There is a "' heavy presumption that a claim term carries its ordinary and customary meaning." Johnson Worldwide Assa, Inc. v. Zebco Corp., 175 F. 3d 985, 989 (Fed. Cir. 1999). \$' In order to overcome this heavy presumption in favor of the ordinary meaning . . . , a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, at the very least, point to a term or terms in the claim with which to draw in those statements. "' Id. In other words, "claim terms cannot be narrowed by reference to the written description or prosecution history unless the language of the claims invites reference to those sources." Id. At 989- 90.

" (A) court may restrict the ordinary meaning of a claim term in at least one of four ways. First, the claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history. Second, a claim term will not carry its ordinary meaning if the intrinsic evidence shows that the patentee distinguished that term from prior art on the basis of a particular embodiment, expressly

6 disclaiming subject matter, or describing a particular embodiment as impeding the invention. . . . Third, . . . a claim term also will not have its ordinary meaning if the term "chosen



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

by the patentee so deprive(s) the claim of clarity' as to require resort to the other intrinsic evidence for a definite meaning. Last, as a matter of statutory authority, a claim term will cover nothing more than the corresponding structure or step disclosed in the specification, as well as equivalent thereto, if the patentee phrased the claim in step- or means-plus-function format.' CCS Fitness, 288 F.3d at 1367. II. ANALYSIS

Ivera is a start up company based in San Diego that sells a medical device called the CUROS® Port Protector ('Cur os'). Cur os is a disinfecting cap that fits over the inlet pod of a medical apparatus called a Uteractivated valve ('LAV'). LAVs are used by medical staff to introduce fluids into an intravenous (IV) line in a patient in a hospital. Prior to the introduction of Cur os, LAVs were typically left uncovered and exposed between each intravenous access. As a result, LAVs can be a source of bloodstream infections in hospital patients if they are not properly disinfected prior to each access.

Ivera's Cur os product is a small plastic cap that contains a sponge and 70% isopropyl alcohol. Instead of swabbing the access port of the LAV to disinfect it before each intravenous access, Cur os changes the 'disinfection paradigm.' As shown below, after each access the nurse simply removes a foil cover and fits a green Cur os cap over the inlet pod of the LAV (blue) to disinfect and continuously protect the LAV from touch or airborne contamination: With Cur os the LAV is always clean and disinfected.

Overview of the Asserted Patent The \$ 186 patent was issued by Ivera from its inventors, Mr. Lake and Mr. Tennant. Ivera first learned of the \$ 186 patent when it was identified as prior art by Defendant Excelsior in a challenge to the validity of certain Ivera patents on disinfecting caps. The application that led to the issuance of the . 186 patent was filed on June 20, 2003, and the \$ 186 patent issued on October 16, 2007,

The . 186 patent discloses and claims a 'decontamination device for decontaminating medical apparatus.' Exh. A, Abstract. Generally, the invention is a disinfecting cap with a housing that contains a sponge or other dispenser and a decontaminating compound that contacts the medical apparatus when it is placed in the housing. Id., col. 1, ll. 40-48. The cap also includes a structure for 'removably engaging the housing to the medical apparatus.' Id., col. 1, ll. 47-48.

This structure may be a 'snap-on structure' such as 'an elastically deformable, inwardly directed protrusion on the housing which fits around a portion of the medical apparatus when that portion is placed in the housing.' Id., col. 1, ll. 47-54. An example of such a structure is shown in Figures 1 and 2 below, with Fig. 1 showing the device prior to use, and with Fig. 2 showing the device in use with the head of a stethoscope (36) engaged by an 'inwardly directed protrusion 44':



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

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Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

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Fl*. 2 FI*. i B . The Accused Products

I ver a accuses var i ous di si nf ect i ng cap pr oduct s manuf act ur ed by Excel si or of i nfri ngi ng cl ai ms 1, 2, 5, 7, 8, and 13 the 1186 Patent. The accused pr oduct s are sol d by Excel si or under i t s Swabcap@ br and and by Covi di en under i t s Kendal l @ br and, and i ncl ude both st and-al one di si nf ecti ng caps and di si nf ect i ng caps that are packaged t oget her wi t h or i nt egr at ed i nt o a ' l f l ush syr i nge. ' ' The st and- al one ver si on of Swabcap i s shown i n an exampl e fr om an Excel si or mar ket i ng pi ece her e:

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Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

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a n d a r e u s e d f o r t h e s a m e p u r p o s e a n d f u n c t i o n i n t h e s a m e e n v i r o n m e n t s , a n d i n c l u d e b o t h s t
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e g r a t e d i n t o a d ' f l u s h s y r i n g e . ' '

All of the accused products attach to the same

Turning to the terms that are at issue, as an initial matter, I note that Ivera claims that ' ' the
asserted claims of the 1186 Patent are sufficiently clear on their face (and) that no construction
is required. ' ' (DE 30-4). The first three disputed terms: (1) ' ' medical apparatus ' ' ; (2)
S ' i n t e r l o c k i n g s t r u c t u r e f o r r e m o v a b l y

9 engaging ' , and (3) ' ' elastically deformable, inwardly directed protrusion on said housing
ng, ' ' each come from Claim . 11. ' ' of the \$ 186. The fourth disputed term, ' ' flexible portion
on, ' ' is found in Claim . \$ 2. ' ' And the last disputed term, ' ' s i n d i c i a p r o v i d i n g i n f o r m a t i
on concerning, ' ' is found in Claim 1 \$ 7. ' '

These Claims appear as follows, with the disputed terms underlined: Claim 1 .

Claim 2.

Claim 7.

1. A decontamination device for decontaminating medical apparatus, comprising:

a housing ' , an absorbent pad carrying a decontaminating compound with said housing ' ,

and interlocking structure for removable encannc said housing to a portion of said medical
apparatus, whereby said absorbent pad is placed into contact with said portion of said
medical apparatus upon engagement and removed from contact upon disengagement, said inter
locking structure comprising at least one elastical v deformable, inwardly directed
nrotrusion on said housing 2. The decontamination device of claim 1 , wherein said housing
comprises a flexible nodion to facilitate the removable engagement to said medical i
nstrumentation 7. The decontamination device of claim 1 , wherein said housing comprises i
ndici a providing information concerning said decontamination device. THE PROPOSED



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

CONSTRUCTIONS 1 u medi cal apparat us' ' I vera' s Pr oposed Constr ucti on Excel si or' s Pr oposed Constr uct i on

' ' medi cal appar atus' ' ' ' medi cal appar at us that comes i nt o contact

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10 As i ndi cated above, I vera' s posi ti on i s that thi s t erm does not requi r e constr ucti on. I ver a, however st at es t hat any ef f or t t o f or mul at e some al t er nat i ve const r uct i on i n r esponse t o Excel si or' s pr oposed const r uct i on di d not yi el d any al t er nat i ve t hat di d not i mpr oper l y i mpor t I i mi t at i ons fr om t he speci fi cat i on. I ver a' s pr oposed constr uct i on, t her ef or e, i s the pl ai n I anguage of t he cl ai m, whi ch uses t he term S ' medi cal apparatus' ' i n i t s or di nary and customar y manner. I ve ra cl ai ms th at not hi ng i n t he I anguage of t he cl ai ms I i mi t s t hi s t er m t o any padi cul ar t ype of medi cal appar at us.

Fur t her, I ver a asser t s t hat t hi s const r uct i on i s st r ongl y suppoded by t he speci fi cat i on, whi ch uses t he t er m ' s medi cal appar at us' ' br oadl y and i n accor dance wi t h i t s or di nar y meani ng. Rel yi ng on t he Abst r act, I ver a st at es t hat i t i s cl ear t hat t he cl ai med ' ' decontami nati on devi ce can be used wi th many di f fer ent medi cal apparatus. ' ' Exh. A, Abst r act . I vera I ast l y asser t s that the pati ent speci fi cat i on si mi l ar l y i ndi cat es t hat t he ' ' i nvent i on i s sui t abl e f or many di f fer ent medi ca! appar at us. ' ' I d. t col . 4, I I . 25- 26.

I n r esponse, Excel si or asseds t hat i t s pr oposed const r uct i on of ' ' medi cal appar at us' ' der i ves fr om t he di scl osur e of t he \$ 186 pati ent i t sel f. Speci fi cal l y, Excel si or asseds t hat t he speci fi cati on l ends suppod t o i t s pr oposed const r uct i on i n t wo not abl e pl aces. The fi r st i s t he ' ' Backgr ound of t he I nvent i on' ' secti on of t he \$ 186 pati ent wher e t he pr obl em t he al l eged i nvent i on i s i nt ended t o addr ess i s descr i bed. Thi s secti on i denti fi es the probl em the I nventi on i s i ntended t o sol ve i s ' ' the t r ansmi ssi on of i nfect i ous di sease. . . padi cul ar l y t hr ough t he use of medi cal appar atuses. ' ' (. 186 Pati ent at col . 1 , I I .16- 36). The I nvent or s st at e, ' ' E i l t has l ong

11 been known t hat medi cal i nst r ument s must be decont ami nat ed, i n or der t o pr event t he spr ead of i nfect i ous di sease among di f fer ent pati ent s wi t h whom t he medi cal appar at us comes i n cont act' ' (I d. at col . 1 , I I .17- 21)) (emphasi s added). The I nvent or s addi ti onal l y not e t hat ' ' I sl ome medi cal appar at us, such as st et hoscoptes, ar e decont ami nat ed onl y i nf r equent l y. ' ' (I d. at 1: 27- 28)). Accor di ng l y, Excel si or asseds t hat t he ' 186 pati ent was i nt ended t o addr ess t he t r ansmi ssi on of i nfect i ous di sease t hr ough t he use of shar ed medi cal appar at us (f or exampl e, a st et hoscope) among di f fer ent pati ent s. Accor di ng t o Excel si or , t hese st at ement s suppor t i t s const r uct i on of ' ' medi cal appar at us' ' as devi ces t hat ' l come g i nt o cont act wi t h mor e t han one pati ent. ' ' See Tr adi ng Technol ogi es I nt ' l , I nc. v. espeed, I nc. , 595 F. 3d 1



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

340, 1353 (Fed. Ci r . 2010) (I i m i t i n g s c o p e o f i n v e n t i o n w h e r e t h e s p e c i f i c a t i o n s t a t e d t h a t t h e ' ' t h e p r e s e n t i n v e n t i o n a d d r e s s e s t h i s p r o b l e m w i t h a o n e c l i c k c e n t e r i n g f e a t u r e n) .

Consi st e n t w i t h t h e B a c k g r o u n d s e c t i o n , t h e s p e c i f i c a t i o n a l s o d e s c r i b e s d ' t h e i n v e n t i o n ' ' a s ' ' s u i t a b l e ' ' f o r ' ' l a l n y m e d i c a l a p p a r a t u s w h i c h c o m e s i n t o c o n t a c t w i t h m o r e t h a n o n e p a t i e n t a n d h a s a c o n t a c t s u r f a c e s u i t a b l e f o r d e c o n t a m i n a t i n g w i t h t h e d e c o n t a m i n a t i o n d e v i c e c a n b e u s e d . ' ' (E x . A (. 186 p a t e n t) a t c o l . 4 , I I . 25- 29) . I n d o i n g s o , t h e I n v e n t o r s d e f i n e S ' m e d i c a l a p p a r a t u s ' ' a s d e v i c e s : (1) u s e d w i t h m u l t i p l e p a t i e n t s a n d (2) t h a t h a v e a c o n t a c t s u r f a c e t o b e d e c o n t a m i n a t e d . T h a t t h e o n l y m e d i c a l a p p a r a t u s e x p r e s s l y d i s c l o s e d i n t h e s p e c i f i c a t i o n - a s t e t h o s c o p e a n d a d e f i b r i l l a t o r p a d d l e - m e e t t h o s e t w o c r i t e r i a l e n d s f u d h e r s u p p o r t t o t h i s n o t i o n . E x c e l s i o r ' s c o n s t r u c t i o n t h u s e m b r a c e s t h i s d e f i n i t i o n a n d p r o v i d e s t h e s a m e t w o c r i t e r i a a s t h e I n v e n t o r s ' d e f i n i t i o n o f t ' m e d i c a l a p p a r a t u s . ' ' S e e A S M A m e r i c a , I n c . e . G e n u s ; I n c . , 401 F. 3d 1340, 1343 (Fed. Ci r . 2005) (a f f i r m i n g c o n s t r u c t i o n t h a t I i m i t e d

12 c l a i m s c o p e i n v i e w o f w h a t t h e s p e c i f i c a t i o n t a u g h t a s ' s u i t a b l e ' ' f o r t h e i n v e n t i o n) . E x c e l s i o r a s s e d s t h a t i t s p r o p o s e d c o n s t r u c t i o n d o e s n o t i n t r o d u c e I i m i t a t i o n s f r o m t h e s p e c i f i c a t i o n , b u t r a t h e r , i t i s i n t e r p r e t i n g t h e c l a i m t e r m i n a m a n n e r c o n s i s t e n t w i t h t h e s p e c i f i c a t i o n a n d h o w t h e I n v e n t o r s ' t h e m s e l v e s d e s c r i b e d t h e i r o w n i n v e n t i o n . S e e , e . g . , / C U M e t i , / n c . B . A l a r i s M e d . S y s . , 558 F. 3d 1368, 1374- 76 (Fed. Ci r . 2009).

E x c e l s i o r n e x t a s s e r t s t h a t t h e p r o s e c u t i o n h i s t o r y o f t h e \$ 186 P a t e n t p r o v i d e s a d d i t i o n a l s u p p o r t f o r i t s p r o p o s e d c o n s t r u c t i o n . F o r e x a m p l e , t h e ' 186 p a t e n t d i s c l o s e s a n a t t a c h m e n t d e v i c e (s u c h a s a I a n y a r d) , w h i c h c a n b e u s e d t o c o n n e c t t h e c l a i m d e c o n t a m i n a t i o n d e v i c e t o t h e m e d i c a l a p p a r a t u s b e t w e e n u s e s . (\$ 186 p a t e n t a t c o l . 3 , I I . 66- 4: 10) . p r o s e c u t i o n , t h e y s t a t e d t h a t ' s o n e o f t h e s i g n i f i c a n t a d v a n t a g e s o f (t h e i r) d e v i c e () i s t h a t w h e n c o n n e c t e d b y t h e I a n y a r d t o s t e t h o s c o p e t u b i n g , t h e d e c o n t a m i n a t i o n d e v i c e c a n h a n g f r o m t h e s t e t h o s c o p e t u b i n g a n d b e r e a d y f o r u s e b e t w e e n p a t i e n t s . . . F o r e x a m p l e , t h e s t e t h o s c o p e t u b i n g t o t h e e a r p i e c e s c a n b e p l a c e d a r o u n d t h e

W h e n t h e i n v e n t o r s s p o k e o f t h i s a t t r i b u t e d u r i n g

d o c t o r ' s n e c k b e t w e e n p a t i e n t s . ' ' (e m p h a s i s a d d e d) . A c c o r d i n g l y , E x c e l s i o r a s s e d s t h a t t h e o n l y r e a s o n t o h a v e t h e l a n y a r d i s b e c a u s e t h e m e d i c a l a p p a r a t u s i s u s e d w i t h d i f f e r e n t p a t i e n t s .

I n s u p p o r t o f i t s p o s i t i o n t h a t I m a y r e l y o n t h e s p e c i f i c a t i o n t o I i m i t t h e s c o p e o f t h e t e r m ' m e d i c a l a p p a r a t u s , ' ' E x c e l s i o r c i t e s t o A S M A m e r i c a , I n c . v . G e n u s , I n c . , 401

(J u n . 29, 2005 R e s p o n s e t o O f f i c e A c t i o n) a t 9-10)



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

F. 3d 1340 (Fed. Ci r . 2005). ASM Amer i ca, however , deal t wi t h cl ai m t er m t hat was speci f i cal l y def i ned i n t he cl ai m speci f i cat i on. I n ASM Amer i ca, the t er m at i ssue was

13 ' ' r eact i on space. ' ' i nvent i on' s speci f i cat i on, was an expr ess def i ni ti on' .

The Feder al Ci r cui t hel d t hat t he f ol l owi ng l anguage wi t hi n t he

t he t er m ' ' r eact i on space' ' i ncl udes bot h t he space i n whi ch t he subst r at e i s l ocat ed and i n whi ch t he vapor - phase r eact i ons ar e al l owed t o r eact wi t h t he subst r at e i n or der t o gr ow t hi n f i l ms, namel y, the r eact i on chamber , as wel l as t he gas i nf l ow/ out f l ow channel s communi cat i ng i mmedi at el y wi t h t he r eact i on chamber. . . . Accor di ng t o t he i nvent i on, t he r eact i on space i s the ent i r e vol ume t o be evacuat ed bet ween t wo successi ve vapor -phase pul ses. The l anguage Excel si or r el i es on her e cannot be sai d t o const i t ut e an expr ess defi ni ti on. Accor di ng l y, I f i nd t hat Excel si or ' s const r uct i on i s not consi st ent wi t h t he l nvent or s' own def i ni ti on, and t hat t he ' ' or di nar y meani ng of (t he) cl ai m l anguage (woul d be) under st ood by a per son of ski l l i n t he ad. ' ' The Cour t wi l l not const r ue a cl ai m when t he meani ng or scope of t he wor ds i s cl ear .See U. S. Sur gi cal Cor p. v. Et hi con, I nc. , 103 F. 3d 1554, 1568 (Fed. Ci r . 1997). Accor di ng l y, I f i nd t hat no construct i on i s necessary.

2. ç ' i nt erlocki ng structure for removabl y engagi ng' '

,

Excel si or' s Proposed Construct i on l ver a s Proposed Construct i on ' ' st r uct ur e t hat r emovabl y connect s by ' ' st r uct ur e t hat r emovabl y l ocks t oget her or hooki ng, meshi ng, over l appi ng, or f i t t i ng uni tes i n a l ocked fashi on t o secur el y t oget her ' ' r et ai n' '

As wi t h t he t er m l d medi cal appar at us, ' ' I ver a' s posi ti on i s t hat t hi s t er m does not r equi r e construct i on as i ts pl ai n meani ng i s cl ear. To the extent t hat i t i s construed, l ver a' s pr oposed const r uct i on i s i nt ended t o r ef l ect the or di nar y meani ng of t he wor ds of t he cl ai m consi st ent wi t h t he speci f i cat i on. The speci f i cat i on i ndi cat es t hat t hi s t er m

14 shoul d be gi ven a broad const r uct i on, f i r st st at i ng t hat t he u st r uct ur e f or engagi ng a podi on of t he medi cal appar at us can be any sui t abl e st r uct ur e. ' ' ' 186 pat ent at col . 3, l l . 33-34. Such a st r uct ur e ' ' can i ncl ude cooper at i ng t ongue and gr ooove st r uct ur e, sl ot s, snaps, f ast ener s, and ot her engagement st r uct ur e. ' ' I d. . at col . 3, l l . 34- 36. I n t he embodi ment shown i n Fi gur e 2 above, t he i nt er l ocki ng structur e f or removabl y engagi ng i s descr i bed as f ol l ows: ' ' an i nwar dl y di r ect ed pr ot r usi on 44 i s f or med i n t he housi ng 14. The housi ng 14 has sui tabl e fl exi bi l i ty t o per mi t fl exi ng when t he medi cal apparatus such as a st et hoscope head 36 cont act s t he pr ot r usi on 44. The head 36 wi l l t hen i nt er l ock wi t h t he housi ng 14 as shown i n FI G. 2. ' '



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

Thus, as shown in Figure 2, the 'interlocking structure for removably engaging' is a structure (44) that removably connects by overlapping and fitting together with the medical apparatus consistent with Ivera's proposed construction. Importantly, the claims

limited to this specific embodiment; so the construction of this term must allow for a full range of other interlocking structures that removably engage the medical apparatus. According to Ivera, Excel's proposed construction improperly imposes a further limitation that the engagement 'locks together or unitizes in a locked fashion to securely retain.'

I find that the Parties' proposals for this term are unnecessary. As to Plaintiff's proposal, a person of ordinary skill in the art would understand the terms 'interlocking structure for removably engaging.' The Court will not construe a claim when the meaning or scope of the words is clear.

4 Sdrl - here is shown in the drawings embodiments which are presently preferred, it being understood, however, that the invention is not limited to the precise arrangements and instrumentalities shown. 'fj. at Col. 2, 114-9.

See & S. Surgical Corp. v. Ethicon, Inc., 103

15 F.3d 1554, 1568 (Fed. Cir. 1997). Neither Ivera nor Excel's provide a convincing reason for changing those words.

Because the Parties' proposed construction would only serve to distort the ordinary and customary meaning of the disputed term, which is readily apparent, even to one not of ordinary skill in the art, I find that no construction is necessary.

3. 'elastically deformable, inwardly directed protrusion on said housing'

Ivera's Proposed Construction Excel's Proposed Construction

'\$ a flexible structure that extends inwardly and laterally elastically deformable snap-on from the housing that substantially retrains structure that extends inward over the top of its normal shape after it is deformed' medical apparatus received in the

housing' Ivera again asserts that no construction of this term is necessary as its plain meaning is clear. To the extent that it is construed, Ivera asserts that its proposed construction of this term is consistent with the ordinary meaning of the claim language, and that Excel's construction amounts to a wholesale imposition of limitations from the specific invention in violation of the most basic principles of claim construction.



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

I ver a asser t s t hat t he embodi ment shown i n Fi gur e 2 above shows an i nt er locki ng st r uct ur e for r emovabl y engagi ng t hat compr i ses ' s an i nwar dl y di r ect ed pr ot r usi on 44 i s f or med i n t he housi ng 14. ' ' Thus, t he t er m ' s i nwar dl y di r ect ed pr ot r usi on ' ' i s pr oper l y under st ood t o r ef er t o a st r uct ur e t hat ext ends i nwar dl y f r om t he housi ng of t he decont ami nat i on devi ce I i ke d l i nwar dl y di r ect ed pr ot r usi on 44. ' '

16 Thi s pr ot r usi on must al so be ' ' el ast i cal l y def or mabl e. ' ' Thi s i s descr i bed i n the speci fi cat i on wi th r espect t o Fi gur e 2, whi ch i ndi cat es t hat t he ' ' housi ng 14 has sui tabl e fl exi bi l i t y t o per mi t fl exi ng when t he medi cal appar at us such as a st ethoscope head 36 cont act s the pr ot r usi on 44. The head 36 wi l l then i nt er lock wi th the housi ng 14 as shown i n FI G. 2. ' ' By compar i ng Fi gur e 1 and Fi gur e 2, i t i s cl ear t hat t he pr ot r usi on 44 i n t he housi ng i s suf fi ci entl y fl exi bl e t o def or m t o al l ow f or i nsemi n t he medi cal appar at us, t hen r et ur n t o i t s nor mal shape af t er t hat def or mat i on.

Accordi ng t o l ver a, thi s i s consi stent wi th the ordi nary meani ng of the term ' ' el ast i c, ' ' whi ch i s commonl y under stood t o mean ' ' abl e t o r esume i ts nor mal shape spont aneously af t er cont r act i on, di lat at i on, or di st or t i on. ' ' Exh. C, New Oxf or d Ameri can Di cti onar y. means ' ' di st od t he shape or f or m of. ' ' l d. Thus, an ' ' el ast i cal l y def or mabl e ' ' st r uct ur e

The t er m ' d def or mabl e ' ' i s the adj ect i ve f or m of ' ' def or m, ' ' whi ch

must be fl exi bl e and must ' ' subst ant i al l y r et ur n t o i t s nor mal shape af t er i t i s def or med. ' '

Excel si or counters that I vera' s proposed constructi on f ai l s t o r ecogni ze that thi s pr ot r usi on has addi t i onal at t ri but es, whi ch ar e def i ned i n t he i nt r i nsi c r ecor d and r ecogni zed by i t s const r uct i on. Speci fi cal l y, t he pr ot r usi on must be an annul ar snap- on st r uct ur e t hat ext ends over t he medi cal appar at us r ecei ved i n t he housi ng because t he speci fi cat i on i t sel f i ndi cat es t hat t he pr ot r usi on i s a ' s snap- on st r uct ur e. ' '

For exampl e, when descr i bi ng t he ' ' st r uct ur e f or det achabl y engagi ng t he housi ng t o the medi cal apparatus, ' ' the I nvent ors provi de the exampl e of a t ' snap-on st r uct ur e f or engagi ng a por t i on of t he medi cal appar at us. ' ' (. 186 Pat ent) at col . 1, l i . 49- 51). And, as an exampl e of such a d ' snap- on st r uct ur e, ' ' t he I nvent or s descr i be ' ' a el ast i cal l y

17 def or mabl e, i nwar dl y di r ect ed pr ot r usi on on t he housi ng. ' ' (I d. at col . 1, l i . 51 -54). I n ot her wor ds, i n t he I nvent or s' vi ew, whi l e al l ' s snap- on st r uct ur el sl ' ' ar e not ' ' an el ast i cal l y def or mabl e, i nwar dl y di r ect ed pr ot r usi onr ' ' a// such ' ' el ast i cal l y def or mabl e, i nwar dl y di r ect ed pr ot r usi on ' ' ar e i ndeed t ' snap- on st r uct ur el sl. ' ' l t f ol l ows, t her ef or e, t hat when t he I nvent or s cl ai med ' d an el ast i cal l y def or mabl e, i nwar dl y di r ect ed pr ot r usi on ' ' - t he exact I anguage seen i n thi s passage of t he speci fi cat i on - t hey wer e cl ai mi ng a



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

snap-on structure.

In further support of its construction, Excel si or poi nt s t o t he I nvent or s' st at ement s bef ore the BPAI wher e they st at ed:

In cl ai m 3, t he st ructur e f or det achabl y engagi ng t he housi ng t o t he medi cal appar at us can be el ast i cal l y def or mabl e d snap- on' st r uct ur e f or engagi ng a podi on of t he medi cal appar at us. . . . In cl ai m 4, 8 t he snap- on str uct ure can be an el asti cal l y deformabl e, i nwardl y di r ect ed protr usi on on the housi ng . (Appeal Br i ef at 3) (ci t at i on omi t t ed).Addi t i onal l y, Excel si or asser t s t hat t he I nvent or s poi nt ed t o Fi gs. 1 and 2 above as depi ct i ng such S ' el ast i cal l y def or mabl e ' snap- on' st r uct ur e. ' ' (/ d.)

I ver a st at es t hat Excel si or ' s pr oposed const r uct i on i s over l y br oad because i t does not r efl ect t he r equi r ement of an i nwar dl y di r ect ed pr oject i on on t he housi ng, and at t he same ti me i t i s over l y nar r ow because i t i mposes t he r equi r ement t hat such structur e be ' ' annul ar' ' and I i mi t ed to a t ' snap-on structur e that ext ends i nwar d over the medi cal apparatus r ecei ved i n the housi ng. ' '

As I f ound wi th the terms S ' medi cal apparatus' ' and ' ' i nterl ocki ng structur e for r emovabl y engagi ng, ' ' ther e i s not suff i ci ent suppod f or ei t her t he br oadeni ng or nar r owi ng aspect s of Excel si or ' s pr oposed const r uct i on. Rat her l f i nd t hat t he i nt r i nsi c

18 r ecor d est abl i shes t hat t he ' ' snap- on' ' di scussi on Excel si or poi nt s t o wer e mer el y exampl es, and not cl ear I i mi t at i ons. constr uct i on i s l egal l y appr opr i at e.

Accor di ngl y, I f i nd t hat I ver a' s pr oposed

4. ' ' flexi bl e podi on' ' I ver a' s Pr oposed Construct i on Excel si or' s Pr oposed Constr uct i on

t d podi on that can bend wi thout breaki ng' ' ' a por ti on of the housi ng that out war dl y

yi el ds, whi ch i s not the el asti cal l y def or mabl e, i nwar dl y di r ect ed pr otr usi on' ' As I di d pr evi ousl y wi t h the t er m ' ' i nterl ocki ng st r uct ur e f or r emovabl y engagi ng, ' ' l f i nd t hat t he Padi es' pr oposa s f or t hi s t er m ar e unnecessar y. As t o Pl ai nt i ff s' pr oposa l , a per son of or di nar y ski l l i n t he ar t woul d under st and t he t er m ' ' f l exi bl e por ti on, ' ' The Coud wi l l not const r ue a cl ai m when t he meani ng or scope of t he wor ds i s cl ear. See U. S. Sur gi cal Cor p. v. Et hi con, I nc. , 103 F. 3d 1554, 1568 (Fed. Ci r . 1997), I f i nd t hat l ver a' s pr oposa l i s a good def i ni ti on, but t hat i t i s unnecessar y. Excel si or does not pr ovi de a convi nci ng r eason f or changi ng t hose wor ds. The or di nar y and cust omar y meani ng of t he di sput ed t er m i s r eadi l y appar ent , even t o one not of or di nar y ski l l i n t he ad. Accor di ngl y, I f i nd t hat no const r uct i on i s necessar y.



Excelsior Medical Corp. v. Ivera Medical Corp. et al

2014 | Cited 0 times | S.D. Florida | April 29, 2014

5. 6 ' i n d i c i a p r o v i d i n g i n f o r m a t i o n c o n c e r n i n g ' ' I v e r a ' s P r o p o s e d C o n s t r u c t i o n E x c e l s i o r ' s P r o p o s e d C o n s t r u c t i o n

' ' s i g n , m a r k , o r o t h e r i n d i c a t i o n o f a p r o p e d y ' ' m a r k i n g s i n d i c a t i n g p r o p e r t i e s o r o r c h a r a c t e r i s t i c ' ' c h a r a c t e r i s t i c s o f

U n l i k e s o m e o f t h e o t h e r t e r m s a t i s s u e i n t h i s c a s e , t h i s t e r m d o e s r e q u i r e s o m e c l a r i f i c a t i o n . T h e P a d i e s c o n s t r u c t i o n s a r e a l m o s t i d e n t i c a l , a n d d u r i n g t h e

19 H e a r i n g , t h e y a g r e e d t o t h e f o l l o w i n g c o n s t r u c t i o n , w h i c h i s s i m p l y a r e s t a t e m e n t o f b o t h o f t h e i r p r o p o s e d c o n s t r u c t i o n s : ' ' m a r k i n g s , s i g n s , o r c o l o r i n d i c a t i n g p r o p e r t i e s o r c h a r a c t e r i s t i c s o f . ' '

I n c o n c l u s i o n , i t i s O R D E R E D a n d A D J U D G E D t h a t t h e d i s p u t e d t e r m s s h a l l h a v e t h e c o n s t r u c t i o n s s e t f o r t h h e r e i n .

D O N E a n d O R D E R E D i n C h a m b e r s , a t W e s t P a l m B e a c h , F l o r i d a t i s Z Y d a y o f A p r i l , 2014.

1 //

A L D M , M I D D L E B R O O K S N I T E D S T A T E S D I S T R I C T J U D G E

20

