

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Cardiac Science, Inc.,
a Delaware Corporation,

Civil No. 03-1064 (DWF/RLE)

Plaintiff,

v.

**MEMORANDUM
OPINION AND ORDER**

Koninklijke Philips Electronics N.V.,
a Netherlands corporation d/b/a
Royal Philips Electronics;
Philips Electronics North America
Corporation, a Delaware corporation; and
Philips Medical Systems North America
Company, a Delaware corporation,

Defendants;

and

Koninklijke Philips Electronics N.V.,
a Netherlands corporation; and
Philips Electronics North America
Corporation, a Delaware corporation,

Counter Claimants,

v.

Cardiac Science, Inc.,
a Delaware corporation,

Counter Defendant.

Adam R. Wichman, Esq., Bruce E. Black, Esq., David K. Tellekson, Esq., Heather C. Wilde, Esq., James E. Hanft, Esq., and Robert L. Jacobson, Esq., Darby & Darby PC; and Dennis C. Bremer, Esq., and Matthew J. Goggin, Esq., Carlson Caspers Vandenburg & Lindquist, counsel for Plaintiff and Counter Defendant.

Adam R. Steinert, Esq., Eugene L. Chang, Esq., Gary Serbin, Esq., John M. DiMatteo, Esq., Kimberly May Rosen, Esq., Spyros S. Loukakos, Esq., Steven H. Reisberg, Esq., Willkie Farr & Gallagher LLP; and Lawrence J. Field, Esq., David D. Axtell, Esq., Douglas R. Boettge, Esq., and Harold D. Field, Jr., Esq., Leonard Street and Deinard, PA, counsel for Defendant and Counter Claimant.

Introduction

The above-entitled matter came before the undersigned United States District Judge on February 7-8, 2006, on the issue of patent claim construction pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996).

Background

This litigation involves numerous patents for automatic external defibrillators (“AEDs”), which are portable electronic devices that allow a person with no medical training to administer a defibrillation shock to a person who is in sudden cardiac arrest. Plaintiff Cardiac Science, Inc. (“Cardiac Science”) asserts that defibrillator products made and sold by Defendants Koninklijke Philips Electronics, N.V., Philips Electronics North America Corporation, and Philips Medical Systems North America, Inc. (collectively, “Philips”) infringe ten U.S. Patents owned by Cardiac Science, namely, U.S. Patent Nos. 5,402,884 (the “884 Patent”); 5,579,919 (the “919 Patent”); 5,645,571 (the “571 Patent”); 5,700,281 (the “281 Patent”); 5,797,969 (the “969 Patent”); 5,984,102 (the “102 Patent”); 6,088,616 (the “616 Patent”); 5,897,576 (the “576 Patent”); 6,029,085 (the “085 Patent”); and 6,366,809 B1 (the “809 Patent”) (collectively, the “Cardiac Science Patents”). Cardiac Science further asserts a declaratory judgment action for invalidity and noninfringement of the following

U.S. Patents owned by Philips: U.S. Patent No. 6,016,059 (the “’059 Patent”); 5,879,374 (the “’374 Patent”); 5,800,460 (the “’460 Patent”); 6,047,212 (the “’212 Patent”); and 5,607,454 (the “’454 Patent”). Philips’ Third Amended Answer with Amended Counterclaims (the “Answer”) asserts noninfringement and invalidity of the Cardiac Science Patents. Philips also asserts unenforceability due to inequitable conduct of the ‘571 Patent, the ‘969 Patent, the ‘281 Patent, and the ‘616 Patent. Finally, the Answer contends that Cardiac Science has infringed the following U.S. Patents owned by Philips: the ‘059 Patent, the ‘374 Patent, the ‘460 Patent, the ‘212 Patent, the ‘454 Patent, and U.S. Patent Nos. 5,591,213 (the “’213 Patent”), 6,230,054 B1 (the “’054 Patent”), 5,773,961 (the “’961 Patent”), 5,899,926 (the “’926 Patent”), 5,904,707 (the “’707 Patent”), and 5,868,792 (the “’792 Patent”). In its Reply to Defendants’ Third Amended Answer with Amended Counterclaims (the “Reply”), Cardiac Science asserts, among other affirmative defenses, that the following Philips patents are unenforceable due to inequitable conduct: the ‘213 Patent, the ‘059 Patent, the ‘374 Patent, the ‘460 Patent, the ‘212 Patent, the ‘454 Patent, the ‘961 Patent, and the ‘054 Patent.

Discussion

I. Claim Construction Principles

Patent claim construction, i.e., the interpretation of the patent claims that define the scope of the patent, is a matter of law for the court. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970-71 (Fed. Cir. 1995), *aff’d* 517 U.S. 370 (1999).

Proper claim construction requires an examination of the intrinsic evidence of record, including the claims of the patent language, the specification, and the prosecution history.

Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). The terms used in the patent are presumed to carry “the meaning that the term would have to a person of ordinary skill in the art at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc) (citation omitted), *cert. denied*, --- S.Ct. ---, 2006 WL 386393 (U.S. Feb. 21, 2006). The specification is “the single best guide to the meaning of a disputed term.” *Id.* at 1315. The specification may prescribe a special definition given to a claim term, or a disavowal of claim scope by the inventor. *Id.* at 1316. In such cases, the inventor’s intention that is expressed in the specification is dispositive. *Id.* The court may use a dictionary or technical treatise to “assist in understanding the commonly understood meaning” of a term, so long as any meaning found in such sources does not contradict the definition that is found in the patent documents. *Id.* at 1322-23. In addition, the court may not import limitations from the specification into the claims. *Id.* at 1323.

The parties have asked the Court to construe a multitude of claim terms for the various patents. For the most part, the Court will address the claim terms in the order that the parties addressed them at the *Markman* hearing.

II. The Cardiac Science Patents

A. The ‘969 Patent

The ‘969 Patent, entitled “One Button Lid Activated Automatic External Defibrillator,” was issued on August 25, 1998. (‘969 Patent at 1.) Generally, the patent describes an AED that automatically performs periodic self-tests on the operational status

of the defibrillator. (*Id.* at c. 1, ll: 14-19.) The patent is a continuation of the application that issued as the '571 Patent. (*Id.* at c. 1, ll: 5-10.)

The disputed claim language of the '969 Patent reads as follows:

1. A one button method of applying a defibrillation shock to a patient using an automated external defibrillator (AED) having a case including an electrode compartment, a pair of electrodes stored within the electrode compartment, an openable lid covering the electrode compartment, a high voltage circuit, and an operator-actuated rescue switch, the method including the steps of:

- opening the lid covering the electrode compartment to expose the electrodes therein wherein the electrodes are electrically connected to the AED prior to the opening of the lid and wherein the step of opening the lid causes the AED to be powered ON;
- retrieving the electrodes stored in the compartment;
- applying the electrodes to the patient;
- pausing while the high voltage circuit charges; and
- actuating the operator-actuating rescue switch a single time to apply a defibrillation shock to the patient via the electrodes.

...

5. An automated external defibrillator (AED) having a case and a lid and a pair of electrodes wherein the AED has a processor for performing initialization and self-checking functions including:

- a) monitoring a lid switch;
- b) powering ON the AED when the lid switch is activated;
- c) initiating a rescue mode when the lid switch is activated;
- d) initiating lid opened self-test when the lid switch is activated;
- e) initiating a place electrode prompt;
- f) monitoring the impedance of the electrodes;
- g) initiating a check electrode prompt if the impedance does not fall within a preselected range;
- h) beginning a first analyze sequence if the impedance falls within the preselected range;
- i) generating a high voltage charge when a shockable rhythm is detected;
- j) enabling an operator actuated button for release of a defibrillation shock; and
- k) initiating a push button to rescue prompt.

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