UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	EDCV 20-859-GW-SHKx	Date	May 14, 2021
Title	*Richard Shane v. Newell Brands, Inc., et al.*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	None Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None Present	None Present	

PROCEEDINGS: IN CHAMBERS - FINAL CLAIM CONSTRUCTION ORDER

Attached hereto is the Court's Final Claim Construction Order.

The Court has received and reviewed the parties' Joint Rule 26(f) Report (Docket No. 38) and sets the following schedule for the remainder of this case:

MATTER	DEADLINE
Production Related to Reliance Upon Advice of Counsel (N.D. Patent L.R. 3- 7(a)-(c).)	June 15, 2021
Fact Discovery Cut-Off	November 5, 2021
Last Day to Serve Initial Expert Reports on issues where party has the initial burden of proof (unrelated to claim construction)	November 19, 2021
Last Day to Serve Rebuttal Expert Reports (unrelated to claim construction)	Dececember 17, 2021
Last Day to Conduct Settlement Proceedings	January 7, 2022
Post-mediation status conference	January 13, 2022 at 8:30 a.m.
Expert Discovery Cut-Off	January 21, 2022
Last Day to hear any Motions except motions-in-limine which are heard at the pre-trial conference	February 17, 2022

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Final Pre-Trial Conference	March 10, 2022 at 8:30 a.m.
Jury Trial	March 22, 2022 at 9:00 a.m.

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I. INTRODUCTION

In this patent infringement action, Plaintiff Richard Shane ("Plaintiff") accuses Defendant Newell Brands Inc. ("Newell") and Defendant Graco Childrens Products, Inc. ("Graco") (collectively, "Defendants") of infringing U.S. Patent Nos. 8,776,285 ("the '285 Patent") and 9,883,752 ("the '752 Patent") (collectively, "the Asserted Patents"). Complaint, Docket No. 1. Defendants each filed an answer. Newell Answer, Docket No. 21; Graco Answer, Docket No. 24. The parties filed a joint Claim Construction and Prehearing Statement on February 19, 2021. Docket No. 43. On April 5, 2021, Plaintiff filed its opening brief. Docket No. 44 (Plaintiff's Opening Brief). On April 19, 2021, Defendants filed their responsive brief. Docket No. 45 (Defendants' Responsive Brief). On April 26, 2021 Plaintiff filed its reply brief. Docket No. 46 (Plaintiff's Reply Brief). The Court held a claim construction hearing on May 10, 2021.

The Court construes the disputed terms as stated herein.

II. BACKGROUND

A. The '285 Patent

The '285 Patent, entitled "Infant Soothing Device Having an Actuator," issued on July 15, 2014. Plaintiff alleges that Defendants infringe Claims 1, 2, 3, 6, 7, and 8 of the '285 Patent. Docket 1, ¶¶ 22-29. Claim 1 of the '285 Patent recites:

> A device for soothing an infant, comprising:
>
> a frame;
>
> an infant resting member coupled to the frame that retains an infant in an adjustable position including a **position in which the infant's feet are substantially below its head**; and
>
> a mechanism that moves the infant resting member in a **vertical motion** to soothe the infant, the mechanism further comprises an actuator that automatically moves the frame and the infant resting member.

'285 Patent, Claim 1 (emphasis added). The remaining claims of the '285 Patent depend directly or indirectly from Claim 1. Relevant here, Claim 6 adds the limitation that the actuator "moves the frame and infant resting member in a **selectable motion**." '285 Patent, Claim 6 (emphasis added).

For purposes of their claim construction disputes, the parties request construction of three

terms in the '285 Patent, which are emphasized in the quoted claim language above.

B. The '752 Patent

The '752 Patent, entitled "Infant Soothing Device and Method for Soothing an Infant," issued on February 6, 2018. Plaintiff alleges that Defendants infringe at least Claims 2, 3, and 4 of the '752 Patent. Docket No. 1, ¶¶ 30-32. Claim 2 of the '752 Patent recites:

> A method for soothing an infant using a mechanical motion, comprising:
>
> providing a frame, an infant resting member coupled to the frame and an actuator that automatically moves the frame and the infant resting member;
>
> securing an infant in an adjustable position including a **position in which the infant's feet are substantially below its head**;
>
> imparting, using the actuator, a **substantially vertical motion** to the infant resting member and the infant to soothe the infant by moving the frame and the infant resting member; and
>
> moving the infant resting member and the infant in one or more different **motion amplitudes**.

'752 Patent, Claim 2 (emphasis added). The '752 Patent includes one other independent claim, Claim 1. The remaining claims of the '752 Patent depend directly or indirectly from Claim 2.

The parties present four claim construction-related disputes concerning terms in the '752 Patent, with the relevant terms emphasized above.

III. LEGAL STANDARD

A. Claim Construction

Claim construction is an interpretive issue "exclusively within the province of the court." *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). It is "a question of law in the way that we treat document construction as a question of law," with subsidiary fact-finding reviewed for clear error pursuant to Fed. R. Civ. P. 52(a)(6). *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 325–29 (2015). The claim language itself is the best guide to the meaning of a claim term. *See Vederi, LLC v. Google, Inc.*, 744 F.3d 1376, 1382 (Fed. Cir. 2014). This is because the claims define the scope of the claimed invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). But a "person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent." *Id.* at 1313. Thus, claims "must be read in view of the specification," which is "always highly relevant to the claim construction analysis." *Id. at* 1315 (internal quotations omitted).

Although claims are read in light of the specification, limitations from the specification must not be imported into the claims. *Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282, 1288 (Fed. Cir. 2009). "[T]he line between construing terms and importing limitations can be discerned with reasonable certainty and predictability if the court's focus remains on understanding how a person of ordinary skill in the art would understand the claim terms." *Phillips*, 415 F.3d at 1323.

The prosecution history may lack the clarity of the specification, but it is "another established source of intrinsic evidence." *Vederi*, 744 F.3d at 1382. "Like the specification, the prosecution history provides evidence of how the PTO and the inventor understood the patent." *Phillips*, 415 F.3d at 1317 (citations omitted). "Furthermore, like the specification, the prosecution history was created by the patentee in attempting to explain and obtain the patent." *Id.* "Yet 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.*

Claim construction usually involves resolving disputes about the "ordinary and customary meaning" that the words of the claim would have had "to a person of ordinary skill in the art in question at the time of the invention." *Id.* at 1312–13 (internal quotations and citations omitted). But in some cases, claim terms will not be given their ordinary meaning because the specification defines the term to mean something else. "[A] claim term may be clearly redefined without an explicit statement of redefinition," so long as a person of skill in the art can ascertain the definition by reading the patent documents. *Id.* at 1320; *see also Trustees of Columbia Univ. in City of New York v. Symantec Corp.*, 811 F.3d 1359, 1364 (Fed. Cir. 2016).

Where the patent itself does not make clear the meaning of a claim term, courts may look to "those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean," including the prosecution history and "extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Phillips*, 415 F.3d at 1314 (internal quotations omitted). Sometimes, the use of "technical words or phrases not commonly understood" may give rise to a factual dispute, the determination of which will precede the ultimate legal question of the significance of the facts to the construction "in the context of the specific patent claim under review." *Teva*, 574 U.S. at 332. "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

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