UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EKO BRANDS, INC.,

Plaintiff,

v.

ADRIAN RIVERA MAYNEZ ENTERPRISES, INC., and ADRIAN RIVERA,

Defendants.

Case No. C15-0522RSL

ORDER CONSTRUING CLAIMS

Plaintiff Eko Brands, LLC, is the owner of United States Patent No. 8,707,855 ("the '855 patent) which relates to a reusable cartridge filter for use with single-serve beverage brewing devices. Defendant ARM Enterprises, Inc., is the owner of United States Patent No. 8,720,320 ("the '320 patent) which relates to an adapter for single-serve beverage brewing devices configured for cup-shaped cartridges so that (a) the devices can be used to brew beverages from pods and/or (b) the coffee is tamped to produce better-flavored extraction.

The claims of the patent define the invention and the scope of the patentee's right to exclude. Halliburton Energy Servs., Inc. v. M-I LLC, 514 F.3d 1244, 1249 (Fed. Cir. 2008). The proper construction of the asserted patent claims is decided by the Court as a matter of law. Markman v. Westview Instruments, Inc., 517 U.S. 370, 384-91 (1996). To accomplish this task, the Court focuses on how a person of ordinary skill in the art at the time the patent application was filed would have understood the claim terms. Phillips v. AWH Corp., 415 F.3d 1303, 1312-13 (Fed. Cir. 2005).

> It is the person of ordinary skill in the field of the invention through whose eyes the claims are construed. Such person is deemed to read the words used in the patent documents with an understanding of their meaning in the field, and to have knowledge of any special meaning and usage in the field. The inventor's words that are used to describe the invention -- the inventor's lexicography -- must be understood and interpreted by the court as they would be understood and interpreted by a person in that field of technology. Thus the court starts the decisionmaking process by reviewing the same resources as would that person, *viz.*, the patent specification and the prosecution history.

Phillips, 415 F.3d at 1313 (quoting Multiform Desiccants, Inc. v. Medzam, Ltd., 133 F.3d 1473, 1477 (Fed. Cir. 1998)).

The Phillips decision sets out a framework for claim construction that synthesizes prior law while rejecting the earlier tendency to over-emphasize extrinsic evidence. If the meaning of the claim language is "readily apparent even to lay judges," claim construction "involves little more than the application of the widely accepted meaning of commonly understood words." Phillips, 415 F.3d at 1315. If, however, "the meaning of a claim term as understood by persons of skill in the art is . . . not immediately apparent" or the patentee used terms idiosyncratically, "the court looks to those sources available to the public to show what a person of skill in the art would have understood [the] disputed claim language to mean." Philips, 415 F.3d at 1314 (internal quotation marks and citation omitted). The claims themselves, rather than dictionaries, encyclopedias, and treatises, will often provide a context for the contested terms and comparisons against which to measure the scope of the various claims. Phillips, 415 F.3d at 1314-15. The court also relies heavily on the patentee's written description of the invention (Phillips, 415 F.3d at 1317), giving the claims "their broadest reasonable construction 'in light of the specification as it would be interpreted by one of ordinary skill in the art'" (Phillips, 415 F.3d at 1316 (quoting In re Am. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004))). Indeed, the specification is usually "dispositive; it is the single best guide to the meaning of a disputed term." Akzo Nobel Coatings, Inc. v. Dow Chem. Co., __ F.3d __ , 2016

WL 363443, at *4 (Fed. Cir. Jan. 29, 2016) (quoting Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Other intrinsic evidence from the prosecution history may also shed light on how the patentee and the PTO understood the claims at the time, although the Federal Circuit warns that this resource sometimes lacks the clarity of the patent itself. Phillips, 415 F.3d at 1317.

While the Federal Circuit has stated that claim construction "typically begins and ends with the intrinsic evidence" (Ericsson, Inc. v. D-Link Sys., Inc., 773 F.3d 1201, 1218 (Fed. Cir. 2014)), it recognizes that other evidence external to the patent and prosecution history may also be helpful (Phillips, 415 F.3d at 1317 (quoting Markman, 52 F.3d at 980)). For instance, expert and inventor testimony, dictionaries, and learned treatises may assist the court in understanding the underlying technology, explaining how an invention works, and establishing the way in which one skilled in the art would use the claim terms. Phillips, 415 F.3d at 1318. Courts should not, however, put too much emphasis on extrinsic evidence as the starting point for construing claim terms because such evidence "is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence." Phillips, 415 F.3d at 1319. The Federal Circuit specifically rejected a claim construction methodology that encouraged district courts to rely on dictionary definitions when ascertaining the ordinary meaning of particular claim terms, with recourse to the specification serving only as a check on the dictionary definition:

> The main problem with elevating the dictionary to such prominence is that it focuses the inquiry on the abstract meaning of words rather than on the meaning of claim terms within the context of the patent. Properly viewed, the "ordinary meaning" of a claim term is its meaning to the ordinary artisan after reading the entire patent. Yet heavy reliance on the dictionary divorced from the intrinsic evidence risks transforming the meaning of the claim term to the artisan into the meaning of the term in the abstract, out of its particular context, which is the specification.

Phillips, 415 F.3d at 1321.

Having reviewed the memoranda and exhibits submitted by the parties[1] and having heard the arguments of counsel on February 17, 2016, the Court finds as follows:

**Claim 8 of the '855 Patent**

The first disputed term is "substantially vertical sidewall" and appears in claim 8 of the '855 patent, reproduced here with the term in italics:

> 8. A beverage brewing device for use with a single serve beverage brewer having a brewing holster, an inlet probe for dispensing water, the inlet probe moveable between a non-brewing position and a brewing position, and an outlet probe extending upwardly into the brewing holster for outleting the brewed beverage, the beverage brewing device comprising:
>
> (a) a body removably receivable within a brewing holster of a single serve beverage brewer, the body having at least one *substantially vertical sidewall*, a top opening, and a bottom surface intersecting the at least one *substantially vertical sidewall*, wherein the at least one *substantially vertical sidewall* and the bottom surface of the body define a brew chamber configured to contain a dry beverage medium;
>
> (b) at least one outlet probe receptacle defined in the body and extending from the bottom surface of the body and into the brew chamber such that the at least one outlet probe receptacle is configured to receive an outlet probe of the single serve beverage brewer when the body is received within the brewing holster, wherein the at least one outlet probe receptacle is fluidly isolated from the brew chamber to prevent the outlet probe from penetrating the brew chamber, thereby preventing fluid from exiting the brew chamber through the outlet probe;

[1] Eko Brands' objections to the Phillips Report are overruled. The expert disclosure deadline in this matter is April 16, 2016. The fact that the parties chose to ignore the Court's instruction to submit the resumes of three qualified individuals who are willing to serve as a technical advisor in this action (Dkt. # 30 at 4) does not preclude reliance on extrinsic evidence during claim construction.

(c) a lid removably securable to the body, the lid engageable with the body to selectively enclose a top opening of the body;

(d) an inlet probe opening defined in the lid, the inlet probe opening configured to receive an inlet probe of the single serve beverage brewer in a brewing position for placing the inlet probe into fluid communication with the brew chamber; and

(e) at least one filter defined within the body, the at least one filter configured to retain the dry beverage medium within the brew chamber while allowing a brewed beverage to exit the brew chamber.

Eko Brands contends that the term "substantially vertical sidewall" should be given its plain and ordinary meaning, but that if construction is necessary, it means that the invention has "at least one substantially vertical and cylindrical sidewall that corresponds to the interior of the brewing holster of the beverage brewer." Dkt. # 36 at 24. ARM Enterprises argues that the term is indefinite because a person of ordinary skill in the art would be unable to determine the outer boundaries of "substantial verticality."

The Patent Act requires that the specification "conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor . . . regards as the invention." 35 U.S.C. § 112, ¶ 2. "It has long been understood that a patent must describe the exact scope of an invention and its manufacture to 'secure to [the patentee] all to which he is entitled, [and] to apprise the public of what is still open to them.'" Markman, 517 U.S. at 373 (alterations in original) (quoting McClain v. Ortmayer, 141 U.S. 419, 424 (1891)). The Supreme Court recently rejected the Federal Circuit's test for indefiniteness to the extent it relied on the phrases "insolubly ambiguous" and "amenable to construction." Nautilus, Inc. v. Biosig Instruments, Inc., 134 S. Ct. 2120 (2014). Those expressions, the Court found, set too low a bar to satisfy the requirements of § 112, ¶ 2.

It cannot be sufficient that a court can ascribe *some* meaning to a patent's claims;

> the definiteness inquiry trains on the understanding of a skilled artisan at the time of the patent application. To tolerate imprecision just short of that rendering a claim "insolubly ambiguous" would diminish the definiteness requirement's public-notice function and foster the innovation-discouraging "zone of uncertainty" against which this Court has warned.

Nautilus, 134 S. Ct. at 2130 (internal citation omitted, emphasis in original). Taking into consideration the competing policy goals of § 112, ¶ 2, the Court held that a patent's claims, construed in light of the specification and prosecution history, must be capable of informing those skilled in the art about the scope of the invention with reasonable certainty.

ARM Enterprises maintains that, absent a clear statement regarding the maximum allowable angle or other precise geometrical relationship between the bottom surface and the sidewall, one of ordinary skill in the art would be unable to ascertain whether a particular sidewall is "substantially vertical." When a word of degree or an imprecise qualifier is used, the court must determine whether the patent, properly construed, provides a standard for one skilled in the art to measure the degree and put the invention into practice. See Enzo Biochem., Inc. v. Applera Corp., 599 F.3d 1325, 1332 (Fed. Cir. 2010). In this case, there does not seem to be any dispute regarding the meanings of "vertical" (perpendicular to the plane of the horizon; upright) or "substantially" (for the most part; to a great or significant extent). ARM Enterprises argues that one skilled in the art would construe the phrase to mean that the inventor's intent is for the sidewall to be vertical, but that some leeway for measurement errors, manufacturing tolerances, and other unintentional variations is provided by using the adverb "substantially." Because the specification uses the phrase in a more flexible way, the argument goes, the failure to specify the outer boundary of verticality makes the claim indefinite. The Court disagrees.

The intrinsic evidence shows that the patented invention is cup-shaped, essentially cylindrical (as opposed to conical), and corresponds to the interior of the brewing holster of the single-serve beverage brewer. Neither absolute verticality nor a limitation to manufacturing

tolerances/measurement errors is appropriate given the many written and graphic descriptions of the beverage brewing device disclosing a more cup-shaped (off-vertical) device that fits into the cup-shaped (off-vertical) brewing holster. The prosecution history provides an outer limit to the slope of the sidewall: a shape resembling a cone, rather than a cylinder, falls outside of the claimed invention. The Court finds that "substantially vertical" has been adequately defined in the intrinsic evidence such that one skilled in the art could ascertain the scope of the invention with reasonable certainty and the jury will be able to understand its meaning when determining whether defendant's product infringes the '855 patent.

**Claim 9 of the '855 Patent**

The second disputed term is "substantially 180° apart" and appears in claim 9 of the '855 patent, reproduced here with the term in italics:

> 9. The device of claim 8, wherein first and second outlet probe receptacles are defined in the body and extend from the bottom surface of the body into the brew chamber, and wherein the first and second outlet probe receptacles are positioned *substantially 180° apart* on the bottom surface of the body.

Eko Brands contends that the term "substantially 180° apart" should be given its plain and ordinary meaning, but that if construction is necessary, it means that the outlet probe receptacles are positioned "opposite of each other." Dkt. # 36 at 27. ARM Enterprises argues that the term is indefinite because a person of ordinary skill in the art would be unable to determine how many degrees off of 180 the outlet probe receptacles can be and still be the claimed invention. ARM Enterprises previously acknowledged that one skilled in the art would generally understand "substantially" to allow some deviation from the engineer's intended design to account for "measurement errors, manufacturing tolerances, and other natural variations." Dkt. # 34 at 10. Whereas the Court has found that the inventor utilized "substantially" in a broader way when describing the verticality of the sidewalls in Claim 8, its meaning in Claim 9 is consistent with

that proffered by Mr. Phillips at ¶ 50 of his report. Dkt. # 35-3 at 20-21. Reading the claim and specification together, it is clear that the outlet probe receptacles described in Claim 9 are designed and engineered to be 180° apart (or directly opposite) from each other, and the word "substantially" is used to include embodiments in which the exact placement varies because of measurement errors, manufacturing tolerances, or other unintentional causes. When construed in light of the intrinsic history, "substantially 180° apart" means opposite each other with some amount of unintentional deviation from 180° permissible. As construed, the term is capable of informing one skilled in the art about the placement of the receptacles with reasonable certainty.

**Claim 5 of the '320 Patent**

Many of the disputed terms are used throughout the '320 patent. Except as noted below, the parties have not argued that the terms have variable meanings, so any construction ascribed to the disputed terms will have equal effect throughout the claims at issue. The Court utilizes Claim 5 of the '320 patent for purposes of this discussion, reproduced here with the six disputed terms in italics:

> 5. A beverage brewer, comprising:
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> a *brewing chamber*;
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> a container, disposed within the *brewing chamber* and adapted to hold *brewing material* while brewed by a beverage brewer, the container comprising:
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> a receptacle configured to receive the *brewing material*; and
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> a cover;
>
> wherein the receptacle includes
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> a *base, having an interior surface and an exterior surface*, wherein at least a portion of the base is disposed a *predetermined*

*distance above a bottom surface of the brewing chamber*, and

at least one sidewall extending upwardly from the interior surface of the base,

wherein the receptacle has at least one *passageway* that provides fluid flow from an interior of the receptacle to an exterior of the receptacle;

wherein the cover is adapted to sealingly engage with a top edge of the at least one sidewall, the cover including an opening; and

wherein the container is adapted to accept input fluid through the opening and to provide a corresponding outflow of fluid through the *passageway*;

an inlet port, adapted to provide the input fluid to the container; and

a *needle-like structure*, disposed below the base;

wherein the predetermined distance is selected such that a tip of the *needle-like structure* does not penetrate the exterior surface of the base.

**1. "Brewing Chamber"**

The brewing chamber set forth in Claim 5 is a component of the single-serve beverage brewer. The dispute between the parties centers on whether the "chamber" must be an enclosed space or simply an assembly – enclosed or not – in which brewing occurs. "Chamber" is not a term of art and has no special meaning to one skilled in beverage brewing. The inventor used "brewing chamber" to mean the area of a single-serve beverage brewer that is adapted to receive disk-shaped pods or cup-shaped cartridges of coffee or beverage extract for brewing. Although all of the beverage brewers discussed in the specification utilize beverage chambers that have a lid of some sort, the chambers were not sealed or fully-enclosed. Nor is there anything in the specification or claim terms that would require that the "brewing chamber" have a lid. If an

open-topped or bottomless compartment adapted to receive specifically-shaped pods or cartridges for brewing existed, it would fall within the claim term. While the plain and ordinary meaning of the word "chamber" certainly conveys the idea of a compartment or defined area, it does not necessarily have to be sealed or fully-enclosed. An open-sided cavity, for instance, can create an "echo chamber." The Court finds that "brewing chamber" should be construed as "a compartment in which brewing occurs."

Eko Brands points out that the inventor also uses the phrase "brewing chamber" to describe a container for a beverage pod that is itself disposed within the beverage brewer's brewing chamber. See Col. 2:61-62; Col. 3:36-39; Col. 7: 16-23. This is not, however, how the term is used in Claim 5 or Claim 18 of the '320 patent. Both claims expressly state that the "brewing chamber" is part of the beverage brewer itself, and the discussion of an alternative embodiment does not alter its meaning.

**2. "Brewing Material"**

Eko Brands argues that the term "brewing material" comprehends no more than a "dry beverage material used to create a consumable beverage upon application of hot water." Dkt. # 36 at 10. ARM Enterprises points out that such a definition would include dehydrated beverages such as instant coffee and argues that "brewing" is a more complex concept than simply adding hot water to create a beverage. Although ARM Enterprises states that "brewing material" should be given its plain and ordinary meaning, it argues that the phrase includes the concepts of "exposing organic materials (such as ground coffee, tea leaves, or other plant material) to water," thereby extracting "volatile and non-volatile components from the organic material, resulting in beverage that now has flavors, aromas, colors and other chemicals." Dkt. # 34 at 18.

Although the specification exhibits the inventor's interest in brewing coffee from grounds and improving the flavor profile of the coffee generated by single-serve brewers, neither

the description of the invention nor the claims require that a particular type of material be placed in the pod or cartridge. The "material" is variously described as "ground coffee," "beverage extract," "dry beverage medium," "other beverage," "coffee," and "brewing material." The Court finds that one skilled in the art would understand that as long as the material generates a beverage when hot water is added, it falls within the term "brewing material" as used in Claim 5 of the '320 patent.

**3. "Needle-like Structure"**

"Needle-like structure" will be given its plain, ordinary meaning. To the extent the "needle-like structure" is located in a particular place – such as below the base of the container – and/or put to a particular use – such as to puncture a container or to carry an outflow of brewed beverage – those criteria and characteristics are specified in the surrounding text and need not be incorporated into this term.

**4. "Base, Having an Interior Surface and an Exterior Surface"**

With regards to "base, having an interior surface and an exterior surface," the parties have not identified any word or phrase therein that is confusing or in need of construction. Thus, the term will be given its plain, ordinary meaning. To the extent the base has characteristics other than an interior surface and an exterior surface, they are described elsewhere in the claims and need not be incorporated into this term.

**5. "Predetermined Distance Above a Bottom Surface of the Brewing Chamber"**

As discussed above, the brewing chamber is the compartment of the beverage brewer in which brewing occurs. Claim 5 states that the base of the receptacle placed into the brewing chamber has some portion that is a "predetermined distance" from the bottom of the brewing chamber. That "predetermined distance" is selected based on the length of the needle-like structure that extends from the bottom of the brewing chamber: Claim 5 specifies that the tip of the needle-like structure cannot penetrate the exterior surface of the receptacle's base. Thus, the

"predetermined distance" is something greater than the length of the needle-like structure when fully extended upward from the bottom of the brewing chamber toward the receptacle. This analysis is based on the claim language and requires no construction. Eko Brands' attempt to rely on figures and descriptions of preferred embodiments to contradict the language of the claim is unavailing.

**6. "Passageway"**

Eko Brands proposes a construction of "passageway" as "an opening in the base receiving the needle-like structure and permit[ting] the outflow of the brewed beverage." Dkt. # 36 at 21. This construction incorporates both location and use parameters into the term. Those attributes and purposes are specified in the surrounding text, however, and need not be incorporated into the meaning of the term "passageway." (With regards to the requirement that the passageway be located in the base of the receptacle, importing that limitation into Claim 5 would be improper for the additional reason that it is the subject of the separate Claim 6.)

ARM Enterprises suggests that the term means "way through which the brewed beverage exists the container." Again, this construction incorporates limitations from the surrounding text and, repeats the concept of flow out of the receptacle that is separately stated in the claim. ARM Enterprises' proposal is also too broad. A passageway includes concepts of narrowness, length, and connection that are missing if the term is construed as simply a means of exit. To the extent ARM Enterprises' proposed construction would encompass a receptacle that had no bottom or that utilized a broad, thin mesh, it is rejected.

The Court finds that one skilled in the art would, in light of the intrinsic evidence, construe passageway as a narrow space of some depth or length connecting one place to another.

IT IS SO ORDERED.

Dated this 24th day of February, 2016.

Robert S. Lasnik
United States District Judge