

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUNBEAM PRODUCTS, INC.
d/b/a JARDEN CONSUMER SOLUTIONS,

Plaintiff,

v.

HOMEDICS, INC.,

Defendants.

ORDER

08-cv-0376-slc

In this civil case for patent infringement, plaintiff Sunbeam Products, Inc., alleges that defendant Homedics, Inc. is infringing claims 1-9 of its United States Patent No. 5,133,420 (the '420 patent). In compliance with this court's order, on December 18, 2008, defendant filed a motion requesting claims construction and a hearing of certain allegedly disputed terms in the '420 patent. On December 30, 2008, I issued an order denying defendant's request for an oral hearing; however, I granted plaintiff's motion with respect to the four terms of the '420 patent there were in dispute and denied their request with respect to the remaining terms. Order, dkt. 35, at 2,4.

Now before the court are defendant's motion for leave to file a reply brief regarding claim terms at issue and the parties request for a clarification of the December 30, 2008 order.

With respect to its motion for leave to file a reply brief, defendant's motion will be granted. Plaintiff contends that defendant's motion is as "untimely, out of order and incorrect." I disagree. In the pretrial conference order issued on September 9, 2008, I informed the parties that motions requesting claims construction were due on December 12, 2008 and responses to these motions were due on December 19, 2008. The purpose of giving the parties an opportunity to submit responses is with the intention of allowing the opposing party to argue why the proposed construction is incorrect or unfounded. In this case, only defendant

submitted a motion requesting claims construction in which it offered proposed constructions of the allegedly disputed terms. Plaintiff chose not to submit its own constructions at that time but it later submitted proposed constructions with in its response to defendant's construction. Therefore, plaintiff had the opportunity both to respond to defendant and offer its own construction. Defendant has had no opportunity to respond to plaintiff's proposed constructions. Thus, in keeping with the essence of the pretrial conference order and to level the playing field, I will grant defendant's request to file a reply brief and consider it for the limited purpose of responding to plaintiff's proposed constructions.

After issuing the December 30, 2008 order, the parties have asked this court for a clarification regarding this court's time line for issuing its claims construction order and the effect of my decision to deny defendant's request for construction of certain claims. In accordance with this court's typical trial schedule for patent cases, it is my intention to issue a claims construction order a week before the parties' experts' reports are due. With respect to the parties' questions regarding the court's construction of additional terms, the parties may seek construction of any additional claim terms at summary judgment or as an *in limine* motion or a jury instruction. However, the standard for construing claim terms at that time will be the same: the party seeking construction must show that an *actual dispute* with respect to invalidity or infringement exists between the parties. *O2 Micro International Ltd. v. Beyond Innovation Technology Co., Ltd.* 521 F.3d 1351 (Fed. Cir. 2008). Patent litigation is not exempt from the basic jurisdictional requirement that a case or controversy exist between the parties and without a dispute there is no controversy.

ORDER

It is ORDERED that defendant Homedics, Inc.'s motion for leave to file a reply brief is GRANTED.

Entered this 15th day of January, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge