

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

3M COMPANY and 3M
INNOVATIVE PROPERTIES
COMPANY,

Plaintiffs,

v.

KERR CORPORATION,

Defendant.

ORDER

07-C-087-C

The parties to this patent litigation dispute have conferred and agree that only three claims need to be construed by the court with respect to plaintiff's United States Patent No. 6,899,948 (the '948 patent). The parties have stipulated to the appropriate construction of two of these claims: they agree that a "silica particle" is a particle that includes silicon dioxide and that "visual opacity value" means the numerical value arrived at by measuring the light transmission through the thickness of a 1 mm thick disk using a Macbeth TD-903 transmission densitometer equipped with a visible light filter, or an equivalent.

That leaves only one claim in dispute. For reasons that are not entirely clear, defendant asks the court to construe the claim term "dry powder" as "a solid in the form of

fine, loose particles that are flowable but not dispersed in a liquid medium.” Although I agree that defendant’s proposed definition accurately captures the meaning of the claim term, I see no reason to say in nineteen words what could just as easily be said in two. Defendant does not suggest that the phrase dry powder as used in the ‘948 patent has any meaning other than the one given it in common parlance. Consequently, there is no need to construe the term; a jury will be perfectly capable of understanding what is, and is not, a dry powder.

ORDER

IT IS ORDERED that the relevant claims of the ‘947 patent at issue in this lawsuit are construed as follows:

1. A “silica particle” is a particle that includes silicon dioxide.
2. “Visual opacity value” means the numerical value arrived at by measuring the light transmission through the thickness of a 1 mm thick disk using a Macbeth TD-903 transmission densitometer equipped with a visible light filter, or an equivalent.
3. All remaining claims in the ‘948 patent are to be given their ordinary meaning.

Entered this 28th day of March, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge