

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

REMBRANDT DATA STORAGE, LP,

Plaintiff,

v.

SEAGATE TECHNOLOGY LLC,

Defendant.

OPINION and ORDER

10-cv-693-bbc

REMBRANDT DATA STORAGE, LP,

Plaintiff,

v.

WESTERN DIGITAL CORPORATION,

Defendant.

10-cv-694-bbc

These are patent infringement cases regarding an invention of a type of thin film head for use in the hard drive of a computer. In an opinion and order dated October 18, 2011, dkt. #95, I construed several terms that appear in U.S. Patents Nos. 5,995,342 and 6,195,232. Now plaintiff Rembrandt Data Storage, LP has filed a “motion for

reconsideration or clarification of certain claim constructions,” dkt. #120, in which it says that I erred in construing the term “elongated” to mean “has more length than width” and asks that I clarify the meaning of the terms “top magnetic pole” and “bottom magnetic pole.” I am denying the motion and adhering to the construction of “elongated” in the claim construction opinion. To the extent that the parties need further construction of any term, they may seek that at summary judgment.

OPINION

A. Elongated

In the October 18 opinion and order, I considered various pieces of evidence before adopting defendants’ proposed construction of “has more length than width.” First, I noted that neither side argued that “elongated” had a specialized meaning in the patent, so I looked to lay dictionaries to define the term. The parties agreed that “elongated” ordinarily means “has more length than width” or “made longer.” Although plaintiff sought the second definition, it did not make any sense in the context of this case because none of the parties suggested that any “elongated” portion of the invention actually increases in length. Rather, plaintiff’s position was that an “elongated” portion simply *is* longer than other portions of the magnetic pole. However, if that is what the patentees meant, they could have used the word “longer” rather than “elongated.”

Second, the specification is consistent with a construction of “has more length than width” because, in each of the figures, the “elongated” portions are longer than they are wide. In addition, this construction makes sense in the context of other uses of the word “elongated” in the specification, such as “elongated conductor bars,” ‘342 pat. at col. 12, ln. 20, which the figures also show to have more length than width. Id. at Fig. 3(a)-(d).

Plaintiff cited other passages of the specification, but none supported its proposed construction or undermined defendants’. Rather, these passages were either unrelated to the term “elongated,” ‘342 pat., col 9, lns. 15-17, or supported a general view that width and length should be “optimized,” not that the width may be greater than the length or that one portion of the invention is longer than another. ‘342 pat., col. 15. lns. 37-39, 54-60; id. at col. 25, lns. 54-60. In fact, these passages supported defendants more than plaintiff because the length was greater than the width in the specification’s examples of “optimized” ratios. Id. at col. 15, lns. 60-62 (“A desirable ratio between the width and the length of the yoke arm is about 0.4—0.7, and more preferably 0.5—0.6.”). Thus, defendants’ proposed construction is consistent with one of the purposes of the invention: to use “[a] desirable ratio between the width and length of the yoke arm,” as a way to “optimiz[e] . . . efficiency on the one hand, and inductance and coil resistance on the other.” Id. at col. 15, lns. 54-62. In contrast, plaintiff identified no purpose that is served by making one portion of the arm longer than another portion.

In addition, plaintiff relied on the doctrine of claim differentiation and a construction of the term “substantially flattened” in Playtex Products, Inc. v. Procter & Gamble Co., 400 F.3d 901, 907 (Fed Cir. 2005), but I concluded that neither supported plaintiff’s view.

Plaintiff does not take issue with any of these conclusions in its motion for reconsideration. In fact, plaintiff does not try to defend its own proposed construction or offer another one. Instead, plaintiff says that the court’s construction is wrong because it excludes tapered embodiments of the invention. I considered this argument in the claim construction opinion and rejected it:

[P]laintiff says that adopting defendants’ proposed construction would exclude a tapered embodiment in which the width of the back portion is wider than it is long. MBO Labs., Inc. v. Becton, Dickinson & Co., 474 F.3d 1323, 1333 (Fed. Cir. 2007). Plaintiff relies on two portions of the specification to support this argument:

In another embodiment, the essentially constant width back portion of the pole is replaced with other, non-constant width shapes (not shown), such as a tapered width from a wider back-end to a narrower onset point. The taper angle of the tapered back portion of the pole of such embodiment would not exceed the angle α of the fan-like transition region 21.

‘342 patent, col. 9, lns. 27-33.

A desirable value for α is between 30–60°, and preferably 40–50°.

Id. at col. 15, ln. 67 - col. 16, ln. 2.

According to plaintiff, if α is 30°- 60° with respect to a tapered

embodiment, this will lead to a back portion that is wider than it is long. The problem with plaintiff's argument is that it conflates two unrelated portions of the specification. The first cited passage discloses a tapered embodiment but does not assign a particular value for α . The second passage assigns a value to α , but it is in the context of a discussion of Figure 3(b), which is not a tapered embodiment[.]

Because plaintiff identifies no reason to believe that α in the context of the tapered embodiment has a value that would undermine defendants' proposed construction, this argument is not persuasive.

Dkt. #95, at 11-12.

In its motion for reconsideration, plaintiff says that I erred in concluding that the "desirable value" for α in the discussion of the embodiment in column 15 does not necessarily represent a "desirable value" for α in the discussion of the embodiment in column 9. In particular, plaintiff says that "Fig. 1A and Fig. 3(b) are depictions of the *same* thin film head embodiment." Dkt. #96, at 4 (emphasis in original). This may be true, but it does not help plaintiff. *Both* Fig. 1A and Fig. 3(b) represent *nontapered* embodiments. The tapered embodiment discussed in column 9 is not depicted in any of the figures in the specification. Again, the specification identifies 30°- 60° as a desirable value for α in the context of describing a nontapered embodiment depicted in Fig. 3(b), not the tapered embodiment described in column nine of the specification.

Plaintiff relies on the canon that the same term in the same patent should have the same meaning, but it makes no sense to apply that canon in this context. The value for α

is a *variable*. Although the specification provides a desirable range of values, this is in the context of describing a particular nontapered embodiment, not the invention as a whole. Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571 (Fed. Cir. 1988) (“[E]mbodiments and examples appearing in the specification will not generally be read into the claims.”). Plaintiff cites no evidence from the specification or anywhere else that the patentees viewed 30°- 60° as a “desirable value” for α in the context of a tapered embodiment. Particularly because plaintiff fails to address any of the other evidence that contradicts its view, its argument is not persuasive. Accordingly, I am denying its motion for reconsideration with respect to this term.

In the alternative, plaintiff asks for further construction of the phrase “has more length than width.” This request will be denied. The parties had an opportunity in their claim construction briefs and at the claim construction hearing to articulate their positions and to object on any ground to the proposals of the other side. If plaintiff believed that defendants’ proposed construction was going to lead to further disputes down the road, it could have raised an objection at that time.

One of the inherent problems in conducting claim construction separate from summary judgment is that the full context of the dispute is still unknown and the court must rely on the parties’ representations that adopting a particular construction will resolve an issue of infringement or invalidity. At this stage, I do not believe that it is a wise use of

judicial resources to engage in additional claim construction in a vacuum. If plaintiff believes that questions remain regarding the scope of the claims, it will have to present those issues at summary judgment in the context of a concrete dispute.

B. Top/bottom Magnetic Pole

In the claim construction opinion, I declined to adopt plaintiff's proposed construction of this term to mean "the upper/lower of two magnetic poles" on the ground that it was inconsistent with the ordinary meaning of "top" and "bottom." Because defendants did not propose a construction for this term, I did not construe it.

In its motion, plaintiff asks the court to construe the term to make it clear that the top and bottom poles are "the uppermost and lowermost poles in the toroidal write element and not the entire thin film head device." Dkt. #96, at 10. Plaintiff argues that it would be inconsistent with the "teachings of the patent" to require the poles to be the highest or lowest of the entire device. Id.

Again, this issue was not one that either side raised in its claim construction briefs or at the claim construction hearing. If either side needs further clarification on this term, that is another issue they may raise at summary judgment.

ORDER

IT IS ORDERED that plaintiff Rembrandt Data Storage, LP's "motion for reconsideration or clarification of certain claim constructions," dkt. #120, is DENIED.

Entered this 1st day of December, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge