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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HENRY CHUNG,)	2:16-cv-08586-RSWL-PLA
)	
Plaintiff,)	
)	ORDER re: CLAIM
v.)	CONSTRUCTION OF DISPUTED
)	TERM
VAPOROUS TECHNOLOGIES, LLC;)	
CHRISTIAN RADO,)	
)	
Defendants.)	

On January 23, 2018, this Court held a Markman Hearing to hear oral arguments regarding the proposed claim construction of the term "water chamber" contained in United States Patent No. 9,380,812 ("`812 Patent"). The Court, having reviewed all papers and arguments submitted pertaining to the disputed claim construction, **NOW FINDS AND RULES AS FOLLOWS:** the term "water chamber" shall be construed as a chamber for holding water and not other liquids.

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1 I. BACKGROUND

2 A. Factual Background

3 Plaintiff Henry Chung ("Plaintiff") brought this
4 Action against Defendants Vaporous Technologies, LLC
5 ("VTL") and Christian Rado ("Rado") (collectively,
6 "Defendants") for patent infringement. Plaintiff
7 alleges Defendants infringed upon Plaintiff's valid and
8 enforceable patent, the '812 Patent. Plaintiff is an
9 individual residing in Los Angeles, California, who is
10 in the business of making, selling, marketing, and
11 distributing vaporizer products. Compl. ¶¶ 1, 8, ECF
12 No. 1. Plaintiff runs his vaporizer business under his
13 corporate entity, Esquire Distribution Inc. Id. ¶ 9.
14 VTL is a Pennsylvania limited liability company, and
15 Defendant Christian Rado ("Rado") is the managing
16 member of VTL. Id. ¶¶ 2-3.

17 In early 2014, Plaintiff came up with the design
18 for an electronic cigarette with a wet scrubbing
19 section capable of removing particles from the vapor.
20 Id. ¶ 10. Plaintiff filed an application with the
21 United States Patent and Trademark Office ("PTO") on
22 March 11, 2014 and a second application on April 2,
23 2014. Id. The PTO issued the '812 Patent, entitled
24 "Wet Scrubbing Electronic Cigarette," on July 5, 2016.
25 Id., Ex. A ("'812 Patent").

26 The Wet Scrubbing Electronic Cigarette contains an
27 atomizer heating section that heats nicotine fluid.
28 Id. at 3:26-29. The vapor that results from heating

1 the nicotine fluid flows to the water chamber. Id. at
2 3:29-30. After the vapor enters the water chamber,
3 "the water chamber provides for scrubbing of incoming
4 airflow." Id. at 5:11-12. The air "bubbles are
5 cleaned and cooled so that the flow of a cooled and
6 cleaned vapor can continue . . . through the mouthpiece
7 to the user." Id. at 4:57-61.

8 Plaintiff alleges that three of Defendants'
9 products (the "Accused Products") infringe on the '812
10 Patent and include all the claimed limitations
11 contained in Claim One of the '812 Patent. Compl.
12 ¶¶ 12-13, 15-16. The Accused Products contain a wet
13 scrubbing section made up of a mouthpiece, a water
14 chamber, and a tubular air passage assembly. Id. ¶ 18.
15 In the Accused Products, liquid drips down to a ball
16 area and does not pass the ball, working to clean the
17 incoming air. Id.

18 II. DISCUSSION

19 A. Legal Standard

20 Claim construction of a patent, including terms of
21 art within claims, is exclusively within the province
22 of the court, not the jury. Markman v. Westview
23 Instruments, Inc., 517 U.S. 370, 388-89 (1996). Claim
24 construction usually involves resolving disputes about
25 the "ordinary and customary meaning" that the words of
26 the claim would have had "to a person of ordinary skill
27 in the art in question at the time of the invention."
28 Phillips v. AWH Corp., 415 F.3d 1303, 1312-13 (Fed.

1 Cir. 2005)(internal quotations and citations omitted).

2 Claim construction begins with an analysis of the
3 claim language itself. Interactive Gift Express, Inc.

4 v. Compuserve Inc., 256 F.3d 1323, 1331 (Fed. Cir.

5 2001). That is because the claims define the scope of
6 the claimed invention. Phillips, 415 F.3d at 1312.

7 But "the person of ordinary skill in the art is deemed
8 to read the claim term not only in the context of the
9 particular claim in which the disputed term appears,
10 but in the context of the entire patent." Id. at 1313.

11 Thus, claims "must be read in view of the
12 specification," which is "always highly relevant to the
13 claim construction analysis." Id. at 1315 (internal
14 quotations omitted). "Usually, it is dispositive; it
15 is the single best guide to the meaning of a disputed
16 term." Id.

17 Courts also look to the prosecution history as part
18 of the intrinsic evidence consulted during claim
19 construction. See Teleflex, Inc. v. Ficosa N. Am.

20 Corp., 299 F.3d 1313, 1324 (Fed. Cir. 2002). "Yet
21 because the prosecution history represents an ongoing
22 negotiation between the PTO and the applicant, rather
23 than the final product of that negotiation, it often
24 lacks the clarity of the specification and thus is less
25 useful for claim construction purposes." Phillips, 415
26 F.3d at 1317.

27 Finally, in addition to the use of intrinsic
28 evidence, courts can also rely on extrinsic evidence,

1 which "consists of all evidence external to the patent
2 and prosecution history, including expert and inventor
3 testimony, dictionaries, and learned treatises."

4 Markman, 52 F.3d at 980. However, extrinsic evidence
5 is viewed "as less reliable than the patent and its
6 prosecution history in determining how to read claim
7 terms." Phillips, 415 F.3d at 1318.

8 **B. Discussion**

9 The parties only dispute the construction of one
10 claim term, "water chamber." Plaintiff argues that the
11 Court should construe the term "water chamber" to mean
12 "a chamber for containing liquids, such as water."

13 Pl.'s Claim Construction Opening Br. ("Opening Br.")
14 2:12-14, ECF No. 39. Defendants, on the other hand,
15 take the position that the term "water chamber" should
16 have its plain and ordinary meaning, a chamber for
17 containing water. Defs.' Responsive Br. 3:22-23, ECF
18 No. 41. The parties' dispute is simple: is the "water
19 chamber" meant to contain only water, or was it meant
20 to contain a number of different liquids, with water
21 being just one of these liquids?

22 The Court's analysis of the claim term begins with
23 the claim language. Becton, Dickinson & Co. v. Tyco
24 Healthcare Grp., LP, 616 F.3d 1249, 1254 (Fed. Cir.
25 2010) ("Claim construction begins and ends in all cases
26 with the actual words of the claim." (citation and
27 quotations omitted)). In Claim One, the claim
28 Plaintiff asserts Defendants have infringed, the

1 reference to "water chamber" is as follows: "a wet
2 scrubbing section comprising . . . a *water chamber* in
3 fluid communication with the mouthpiece, wherein the
4 *water chamber* provides for scrubbing of incoming
5 airflow." '812 Patent at 5:8-12 (emphasis added).
6 Claim One does not identify the liquid to be used in
7 the water chamber; however, the use of the word "water"
8 in the term "water chamber" supports a construction
9 that the ordinary meaning of the term would be a
10 chamber for holding *water*.

11 While Claim One does not articulate the liquid the
12 patentee intended the water chamber to hold, the
13 specification of the '812 Patent clarifies any
14 ambiguity. The specification of the '812 Patent
15 includes a "Detailed Description of the Preferred
16 Embodiment" ("Preferred Embodiment"). See id. at 3:17-
17 5:2. The Preferred Embodiment references two liquids
18 throughout.

19 The first reference describes the atomizer fluid
20 reservoir: "The atomizer fluid reservoir may have a
21 *liquid or gel* suspended in a fibrous media that wicks
22 to a heater for atomizing a *nicotine fluid* at an
23 atomizer heating section." Id. at 3:26-29 (emphasis
24 added). The vapor produced in the atomizer heating
25 section then travels to the water chamber. Id. at
26 3:29-30.

27 The second reference is with regards to the water
28 chamber. The Preferred Embodiment makes a number of

1 references to the water chamber as holding water. In
2 discussing the water chamber's connection to the O-
3 ring, the Preferred Embodiment states that the O-ring
4 makes a "watertight" connection or seal with the walls
5 of the water chamber. See id. at 3:44-46, 3:49-50,
6 4:3-4. The Preferred Embodiment, in describing the
7 processing of cleaning the vapor air bubbles, states as
8 follows: "The vapor bubbles float upward and break at
9 the *water* level. While *underwater*, the bubbles are
10 cleaned and cooled so that the flow of a cooled and
11 clean vapor can continue through the tubular air
12 passage assembly openings" Id. at 4:56-60
13 (emphasis added). Finally, in describing the placement
14 of the tubular air passage assembly, the Preferred
15 Embodiment states, "A tubular air passage assembly fits
16 in the water chamber to provide containment for the
17 *water*." Id. at 3:63-64 (emphasis added). This is the
18 most enlightening reference, as it specifically
19 discusses the liquid (i.e., water) to be used in the
20 water chamber.

21 The many references to water in relation to the
22 water chamber throughout the Preferred Embodiment
23 clearly support the fact that the patentee intended the
24 water chamber to hold water. Importantly, nowhere in
25 the '812 Patent does it state that the Preferred
26 Embodiment was to be only one of a number of different
27 ways the Wet Scrubbing Electronic Cigarette could be
28 used. See Gen. Am. Transp. Corp. v. Cryo-Trans, Inc.,

1 93 F.3d 766, 770 (Fed. Cir. 1996)(finding the teaching
2 in the specification was "not just the preferred
3 embodiment of the invention; it is the only one
4 described"). In contrasting the numerous references to
5 water when discussing the water chamber to the
6 reference of a liquid or gel and nicotine fluid in the
7 atomizer fluid reservoir, it is clear these different
8 word choices were intentional.

9 There is nothing in the Preferred Embodiment, or
10 the specification as a whole, to suggest that the
11 patentee intended the water chamber to be a chamber for
12 any liquid other than water. See Snow v. Lake Shore &
13 M.S. Ry. Co., 121 U.S. 617, 630 (1887)(finding it was
14 clear from the specification that there was "nothing in
15 the context to indicate that the patentee contemplated
16 any alternative" embodiment to the one presented).

17 Plaintiff now asks the Court to expand the scope of the
18 term "water chamber" to include a chamber for holding
19 any liquid, or no liquid in particular. However, doing
20 so would "expand the scope of the claims far beyond
21 anything described in the specification." Kinetic
22 Concepts, Inc. v. Blue Sky Med. Grp., Inc., 554 F.3d
23 1010, 1018-19 (Fed. Cir. 2009). "[T]he court should
24 focus on how [a person of ordinary skill in the art]
25 would understand the claim term 'after reading the
26 entire patent.'" ICU Med., Inc. v. Alaris Med. Sys.,
27 558 F.3d 1368, 1375 (Fed. Cir. 2009)(quoting Phillips,
28 415 F.3d at 1321).

Plaintiff's arguments focus on the lack of language

1 limiting the water chamber to only hold water, but he
2 is unable to point to any language that affirmatively
3 suggests that the water chamber was intended to hold
4 liquids other than water. Had Plaintiff intended the
5 water chamber to hold other liquids, he certainly was
6 capable of naming the water chamber "fluid chamber" or
7 "liquid chamber." Because all references in the '812
8 Patent to the water chamber are references that mention
9 water and no other liquid, the intrinsic evidence
10 supports construing the term "water chamber" as a
11 chamber for holding water.

12 Plaintiff's arguments are based almost entirely on
13 extrinsic evidence, and the only intrinsic evidence on
14 which he relies does not alter the construction that
15 the '812 Patent supports. Plaintiff points to the
16 search terms the patent examiner used when scrutinizing
17 the '812 Patent, which included water, fluid, and
18 liquid. Opening Br. 6:8-24. However, the patent
19 examiner's search terms, part of the prosecution
20 history of the patent, offer little support for
21 Plaintiff's proposed construction of "water chamber"
22 because the prosecution history "often lacks the
23 clarity of the specification and thus is less useful
24 for claim construction purposes." See Phillips, 415
25 F.3d at 1317 (citation omitted). Additionally, the
26 search terms the patent examiner used are not the
27 patentee's statement defining the term "water chamber"
28 and thus do not explain the patentee's intent regarding

1 the scope of the term "water chamber." These search
2 terms, without any further evidence or explanation,
3 cannot support an expansion of the scope of the term
4 "water chamber" beyond what is contained in the patent.
5 It is telling that Plaintiff, in making his argument,
6 was unable to provide any support or case law
7 suggesting that a patent examiner's search terms help
8 clarify the proper construction of a claim term.

9 Plaintiff's proposed construction goes up in smoke
10 when he concedes that the '812 Patent makes no
11 reference to a liquid other than water to be contained
12 in the water chamber. In fact, Plaintiff is unable to
13 point to a single section in the entire '812 Patent
14 stating a liquid other than water could be used to
15 accomplish the wet scrubbing function. Instead,
16 Plaintiff relies on other patents where he alleges a
17 person of ordinary skill in the art understood a water
18 chamber could contain a liquid other than water.¹ See
19 Opening Br. 7:8-20, Exs. D-F. These patents,
20 "Adjustable Weight Toy Ball," "Dual Chamber Nursery
21 Bottle," and "Water Filtering Bottle," are extrinsic
22 evidence that should be given less weight than the
23 intrinsic evidence of the '812 Patent. See Phillips,
24

25
26 ¹ The "Adjustable Weight Toy Ball" is the only patent
27 Plaintiff provides that actually uses the term "water chamber."
28 See Opening Br., Ex. D at 5:3-4. The "Water Filtering Bottle"
patent refers only to chambers, which are for holding water after
the water has been filtered. See id., Ex. F. The "Dual Chamber
Nursery Bottle" refers to a lower chamber that contains "a second
liquid such as water." Id., Ex. E at 2:19-20.

1 415 F.3d at 1317. Because Plaintiff did not create
2 these patents, their construction of the term "water
3 chamber," or similar terms, merits less weight than the
4 words used in the '812 Patent. See Acumed LLC v.
5 Stryker Corp., 483 F.3d 800, 809 (Fed. Cir.
6 2007)(holding reference to other patents that used the
7 same claim term merited little consideration because
8 these patents were not "created by the patentee in
9 attempting to explain and obtain the patent").

10 Further, Plaintiff offers this argument through his
11 expert, David Smith, whose curriculum vitae reveals no
12 experience with electronic cigarettes or any of the
13 patented products that form the basis of his opinions.
14 "A court construing a patent claim seeks to accord a
15 claim the meaning it would have to a person of ordinary
16 skill *in the art* at the time of the invention."

17 Innova/Pure Water, Inc. v. Safari Water Filtration
18 Sys., 381 F.3d 1111, 1116 (Fed. Cir. 2004)(emphasis
19 added). Because Mr. Smith has no experience with any
20 of the patents that form the basis of his opinions, he
21 cannot be considered a person of ordinary skill in the
22 art of these inventions. Thus, the Court finds Mr.
23 Smith's opinions to be of little help in determining
24 the understanding a person of ordinary skill in the art
25 of any of these inventions would have of the term
26 "water chamber." See Phillips, 415 F.3d at 1318 ("The
27 effect of [an expert's] bias can be exacerbated if the
28 expert is not one of skill in the relevant

1 art")(citation omitted).

2 In that same vein, the patents Plaintiff offers as
3 support are in no way related to an electronic
4 cigarette or the smoking industry. Therefore, what a
5 person of ordinary skill in the art of other industries
6 may understand "water chamber" to mean may not be the
7 same as in the electronic cigarette industry.
8 Accordingly, the Court finds the construction of terms
9 contained in the other patents Plaintiff offers to be
10 irrelevant to the construction of "water chamber" in
11 the '812 Patent.

12 Ultimately, Plaintiff is grasping at thin air to
13 broaden the meaning of "water chamber" beyond what the
14 intrinsic evidence, most specifically the '812 Patent
15 itself, provides. All references to the water chamber
16 only reference it being a chamber for holding water,
17 something with which Plaintiff agrees. The '812 Patent
18 specifically mentions other liquids when referencing
19 the atomizer fluid reservoir, and if Plaintiff had
20 intended the water chamber to hold a liquid other than
21 water, he could have included language in the '812
22 Patent to this effect. The intrinsic evidence supports
23 no other construction of "water chamber" other than a
24 chamber for holding water. Plaintiff's extraneous
25 patents and irrelevant expert testimony do nothing but
26 contradict the clear construction of the term the
27 intrinsic evidence supports. See Key Pharms. v. Hercon
28 Labs. Corp., 161 F.3d 709, 716 (Fed. Cir. 1998)(noting

1 that a court should discount expert testimony "that is
2 clearly at odds with the claim construction mandated by
3 the claims themselves, the written description, and the
4 prosecution history").

5 **III. CONCLUSION**

6 For the reasons set forth above, the Court
7 **CONSTRUES** the term "water chamber" in the '812 Patent
8 as a chamber for holding water, not other liquids.

9 **IT IS SO ORDERED.**

10
11 DATED: January 25, 2018

s/ RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge