UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MONDO POLYMERS TECHNOLOGIES, INC.,

Plaintiff,

v.

Case No. 2:07-cv-1054
JUDGE GREGORY L. FROST
Magistrate Judge Norah McCann King

MONROEVILLE INDUSTRIAL MOLDINGS, INC.,

Defendant.

OPINION AND ORDER

On January 7, 2009, the captioned case came on for a *Markman* hearing. Prior to the scheduled commencement of that hearing, the Court met with counsel for the parties in Chambers and accepted submission of the matter on the briefs in lieu of oral argument. This decision memorializes the result of the prior discussions held with counsel.

The instant case involves a design patent owned by Plaintiff, United States Patent No. D473,954 ("the '954 patent"), which features a single claim stated as "[t]he ornamental design for an offset block, as shown and described." (Doc. # 12-2, at 2.) Accompanying this claim are five figures that present the offset block, which the '954 patent describes as follows:

> FIG. 1 is a perspective view of an offset block embodying my new design.
>
> FIG. 2 is a top plan view thereof.
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> FIG. 3 is a bottom plan view thereof.
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> FIG. 4 is an end elevational view with the opposite end being a mirror image thereof; and,
>
> FIG. 5 is a front elevational view with the back being a mirror image thereof.

(Doc. # 12-2, at 2.) The parties cannot agree on the claim construction of the '954 patent.

Although this Court has a duty to conduct a claim construction in this design patent case, there is no particular form that this construction must take. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008). In fact, the Federal Circuit has recently explained that "as a general matter, [trial] courts should not treat the process of claim construction as requiring a detailed verbal description of the claimed design, as would typically be true in the case of utility patents." *Id.* at 680. This is true because, "[a]s the Supreme Court has recognized, a design is better represented by an illustration 'than it could be by any description and a description would probably not be intelligible without the illustration.' " *Id.* at 679 (quoting *Dobson v. Dornan*, 118 U.S. 10, 14 (1886)). The Federal Circuit in *Egyptian Goddess* therefore clarified that "the preferable course ordinarily will be for a district court not to attempt to 'construe' a design patent claim by providing a detailed verbal description of the claimed design." *Id.*

Only a select few district courts have had the opportunity to discuss the notable holding of *Egyptian Goddess* in regard to construing design patent claims. In each case, the district court has noted that it was not under an obligation to present a verbal description as part of its claim-construction duty. *See Int'l Seaway Trading Corp. v. Walgreens Corp.*, No. 08-80163-CIV, 2009 WL 159805, at *5-6 (S.D. Fla. Jan. 22, 2009) (noting that although "the *Egyptian Goddess* court did not extend the new relaxed construction requirements when a court determines patent invalidity," that case teaches that a trial court need not offer a detailed verbal description of a design "but may instead rely on the actual picture of the design instead" when validity is not the issue); *Arc'teryx Equip., Inc. v. Westcomb Outerwear, Inc.*, No. 2:07-CV-59 TS, 2008 WL

4838141, at *2 (D. Utah Nov. 4, 2008) ("In light of the Federal Circuit's decision in Egyptian Goddess, it is unnecessary t construe the 715 patent by providing a detailed verbal description of the claimed design. Rather, the Court will rely upon the illustrations set out in the 715 Patent, as they better represent the claimed design.").

Similar to the judge in the *Arc'teryx Equipment* case, the Court in its discretion concludes that the best representation of the claimed design in the instant case is embodied in the '954 patent itself. The patent's figures adequately and best represent the claimed design and any attempt by this Court to present a verbal description would likely hurt rather than help the understanding of the claim by the parties and a jury. In reaching this conclusion, the Court is cognizant of the Federal Circuit's direction that a trial court "is not obligated to issue a detailed verbal description of the design if it does not regard verbal elaboration as necessary or helpful." *Egyptian Goddess*, 543 F.3d at 679. Accordingly, the Court declines to draft a verbal description of the claimed design and elects to rely upon the '954 patent and its illustrations.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE