

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FISHER-PRICE, INC. : CIVIL ACTION
: :
v. : :
: :
GRACO CHILDREN'S PRODUCTS, : :
INC. and NEWELL RUBBERMAID, : :
INC. : NO. 03-5405

MEMORANDUM AND ORDER

Fullam, Sr. J.

February 17, 2005

Plaintiff alleges infringement by Defendants of Patent No. 6,520,862 ("the '862 patent"). At the request of the parties, I held a hearing to determine the construction of claims pursuant to Markman v. Westview Instruments, 517 U.S. 370 (1996).

On June 14, 2004, I entered an order that determined several of the terms in the patent were indefinite. Based upon that ruling, Defendants have moved for summary judgment. Plaintiff essentially does not oppose the motion because it wishes to appeal the claims construction determination, and has moved for entry of final judgment.

As I explained in the earlier memorandum, several of the terms in the '862 patent were not "sufficiently precise to permit a potential competitor to determine whether or not he is infringing." Morton Int'l, Inc. v. Cardianl Chem. Co., 5 F.3d 1464, 1470 (Fed. Cir. 1994). For example, the meaning of "a seat coupled to said swing arm and having an upper seating surface" is

indefinite. Fisher-Price's interpretation, that the upper seating surface is the entire top surface of the swing (with the underside being the "lower seating surface") does not make sense within the context of the specification. Under Fisher-Price's construction, all chairs (or swings) have an upper seating surface, which simply does not fit with the specification that it applies to seats "having" an upper seating surface. A necessary implication of the specification is that there are other types of seats without the upper seating surface, but Plaintiff's construction does not allow for the existence of such seats. Reasonable efforts to construe "having an upper seating surface" therefore have proved futile. See Exxon Research & Eng'g Co. v. United States, 265 F.3d 1371, 1375 (Fed. Cir. 2001).

For the reasons stated herein and in the June 14, 2004 memorandum and order, I hold that as a matter of law that claims 6 and 7 of the '862 patent are invalid for indefiniteness. Defendants have not, however, established an entitlement to costs and fees.

An order follows.

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ORDER

AND NOW, this day of February, 2005, upon consideration of Defendant's Motion for Summary Judgment and the response thereto, and Plaintiff's Motion for Entry of Judgment to Enable Appeal,

It is hereby ORDERED that:

- 1) Claims 6 and 7 of Patent No. 6,520,862 are invalid as indefinite under 35 U.S.C. § 112.
- 2) Judgment is entered IN FAVOR OF DEFENDANTS, GRACO CHILDREN'S PRODUCTS, INC. AND NEWELL RUBBERMAID, INC. and AGAINST PLAINTIFF, FISHER-PRICE, INC.
- 3) The Clerk is directed to mark the case CLOSED.

BY THE COURT:

/s/John P. Fullam, Sr. J.
John P. Fullam, Sr. J.