

Keywords: claim construction; open-ended; close-ended; ordinary meaning

General: As used in the claims at issue, the terms “containing” and “mixture” are open-ended terms that do not limit the claims to the recited elements. Further, the term “ingredients” is not limited to only those starting materials used to make the product, but instead refers to those elements of the product remaining after combination. Nothing in the specification or the prosecution history provided a sufficient reason to deviate from the ordinary meaning of these terms.

Mars Inc. v. H.J. Heinz Co.
71 U.S.P.Q.2d 1837 (Fed. Cir. 2004)
July 29, 2004

I. Facts

Mars is the owner of U.S. Patent No. 6,312,746 (“the ‘746 patent”), which is directed to a dual-textured animal food product having a soft inner component enclosed in a harder shell. Mars produces and markets several pet foods based on this technology, including Whiskas® Temptation cat food treats and Pedigree® dog food. The ‘746 patent issued on November 6, 2001. Shortly thereafter, Mars filed suit against Heinz in the United States District Court for the Central District of California alleging infringement of the ‘746 patent.

Notably, independent claim 1 of the ‘746 patent, which is representative of the asserted claims, recites “a soft inner component of a dual texture pet or animal food product containing a mixture of lipid and solid ingredients.” The central issue before the district court was the proper interpretation of this phrase. During the *Markman* hearing, Mars asserted that this limitation means that the recited “soft inner component” contains, but is not solely limited to, lipid and solid ingredients. Mars further argued that the terms “containing” and “mixture” are open-ended terms that do not exclude the presence of ingredients other than those explicitly recited by the claim. The district court, however, held that the present limitation was close-ended and must include only lipid or solid ingredients. This construction was based on various statements in the specification, such as the indication that the preferred embodiment has a soft inner component comprising “about 60 wt % solids and 40 wt % lipids.” The district court also noted that the patentee, in describing some other recited elements, employed the phrase “containing at least.” The absence of such a qualifier when describing the soft inner component, the court reasoned, was indicative of intent to limit this inner component to only solids and lipids, exclusive of any additional ingredients.

Following the court’s claim construction order, both Mars and Heinz moved for summary judgment on the infringement issue. However, the claim construction order did not construe the term “ingredients.” Thus, on summary judgment, the parties continued to argue the proper construction of the claims, with particular respect to this term. Because the Heinz products used water-based syrups that were neither lipids nor solids to make the inner portion, Mars argued that the term “ingredients” in the claims is not limited to the starting materials, but can also refer to the end components of the finished product. The district court, however, agreed with Heinz that the term “ingredients” refers only to the starting materials used to make the product. Based on this holding and the claim construction order, the district court granted summary judgment of non-infringement to Heinz. Mars subsequently appealed.

II. Issues

- A. Did the district court err in construing the terms “containing” and “mixture” as close-ended terms?
- B. Did the district court err in construing the term “ingredients” as limited to the starting materials irrespective of the resulting product?

III. Discussion

- A. Yes. The Federal Circuit panel noted that a general purpose dictionary teaches that the term “containing” is synonymous with “comprising” and “including.” Interestingly, the panel further noted that even the Manual of Patent Examining Procedure explicitly provides that “comprising” is synonymous with “containing” and is an open-ended term that does not exclude additional, unrecited elements. With respect to “mixture,” the panel held that this term does not exclude additional, unnamed ingredients.

The panel additionally addressed the district court’s conclusions that the specification was inconsistent with the ordinary, open-ended meaning of the terms “containing” and “mixture,” and that the absence of the “at least” qualification of “containing” indicated the intent to exclude any additional ingredients from the scope of the claim. With respect to the former, the panel noted that the mere indication that the inner portion is preferably 40-90% solid by weight, and 10-60% lipid by weight, does not suggest that the solid and lipid portions must combine to account for 100% of the inner portion. In discussing the latter, the panel held that the phrase “at least” need not be added to render “containing” an open-ended term. Indeed, the panel noted that the use of “containing at least,” as used with respect to the hard outer shell, indicated that at least one of the listed ingredients must be present in the outer shell, instead of requiring all of the listed ingredients. Because these terms were not used in the application or during prosecution in a manner that was inconsistent with their plain and ordinary meanings, the panel held that the “containing a mixture of lipid and solid ingredients” limitation does not exclude the presence of additional, unnamed ingredients in the soft inner component.

- B. Yes. The panel also relied on dictionary definitions in determining that the term “ingredients” was not limited to starting materials. The panel noted that the term “ingredients” may also refer to a component part of any combination or mixture. While acknowledging that either definition could be applicable in certain instances, the panel held that only this second definition is applicable in view of the use of the term “ingredients” in conjunction with the term “mixture.” The panel further noted that, even though examples in the application appear to use the term “ingredients” to refer to starting materials, the specification did not provide a sufficient basis for deviating from the customary meaning of “ingredients.” Based on this reasoning, the panel held that the term “ingredients,” as used in the “containing a mixture of lipid and solid ingredients” limitation, refers to the components of the “soft inner component” at any time after they have been mixed together.

IV. Conclusion

Because the district court erroneously construed the asserted claims, the Federal Circuit vacated the improper grant of summary judgment to Heinz and remanded the case to the district court. Subsequently, the district court granted summary judgment of infringement to Mars. Mars received a jury award of \$3.6 million for damages and was granted an injunction prohibiting the manufacture and sale of the infringing products.