

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)	
HESCO BASTION LIMITED,)	
)	
Plaintiff,)	
)	
v.)	Civ. A. No. 08-266 (GMS)
)	
ACS HOLDINGS USA, LLC,)	
)	
Defendant.)	
_____)	

ORDER CONSTRUING THE TERMS OF U.S. PATENT NOS. 5,333,970 AND 5,472,297

After having considered the submissions of the parties and hearing oral argument on the matter, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, as used in the asserted claims of U.S. Patent Nos. 5,333,970 (the “‘970 patent”) and 5,472,297 (the “‘297 patent”):

A. Terms Appearing in Both the ‘970 and ‘297 Patents

1. The term “transporting to the site a cage structure in a collapsed flattened form” is construed to have its plain and ordinary meaning.¹

¹ In making its ruling, the court rejects the plaintiff’s construction. “In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.” *Phillips*, 415 F.3d at 1314 (citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001)).

2. The term “wherein the cage is erectable to the shape of the block to be provided by moving the panels apart” is construed to mean “the cage can be erected into the shape of a block by unfolding the panels from the collapsed flattened form.”²
3. The term “said side walls being folded concertina fashion when the cage is in the collapsed condition” is construed to mean “the side walls are folded in a face to face or accordion manner when the cage is in the collapsed form.”³

B. Terms Appearing in Only the ‘970 Patent

1. The term “and the cage being erectable into a condition for filling whereby the cage defines a row of side by side cavities for receiving the filling material” is construed to mean “The cage can be erected into a row of cavities to be filled with the filling material.”⁴
2. The term “arranging the sheet material to unfold with the cage when it is moved to the erected condition” is construed to have its plain and ordinary meaning.⁵
3. The term “and erecting the cage by moving the panels apart into a condition for filling with particulate material” is construed to have its plain and ordinary meaning.⁶

² In making its ruling, the court agrees with the defendants that the panels must be pre-connected.

³ The court uses the word “or” in its conjunctive, not disjunctive form. Additionally, the court finds that this claim term contains no requirement that the cavities formed by the folding be limited to hexagonal cavities.

⁴ See footnotes 1 and 2.

⁵ See footnote 1.

⁶ Id.

4. The term “means which permit the cage structure to be moveable from a flattened condition to an erected condition by moving the panels apart” is a means-plus-function term pursuant to 35 U.S.C. § 112(6). The function of the term is “permitting the cage structure to be moveable from a flattened condition to an erected condition by moving the panels apart.” The corresponding structure is “stainless steel clips, galvanized steel clips, helical spring binders, clip hinge rings” for hingedly connecting the panels, and equivalents thereof.⁷
5. The term “and the cage can be moved to a collapsed condition in which the side panels are folded concertina fashion” is construed to mean “the cage can be moved to a collapsed form in which the side walls are folded in a face to face or accordion manner.”⁸
6. The term “an erection means is provided and serves as a means for erecting the cage structure to cause the cage to erect” is a means-plus-function term pursuant to 35 U.S.C. § 112(6). The function of the term is “erecting the cage structure.” The corresponding structure is “stainless steel clips, galvanized steel clips, helical spring binders, clip hinge rings” for hingedly connecting the panels, and equivalents thereof.⁹
7. The term “wherein said lining material is connected to the insides of the panels forming the walls of the cage and folds with the folding of the cage panels between the collapsed and the

⁷ In order for a structure to be corresponding, it must be necessary to perform the claimed function. *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1321 (Fed. Cir. 2005). The defendants proposed corresponding structure includes “a cord or rope attached to respective panels for unfolding.” The ‘970 patent, however, describes at least one embodiment which permits the cage structure to be moveable from the flattened condition to the erected condition without the use of a rope or cord. See ‘970 Patent col. 9, ll. 21-41 and Figs. 8-11.

⁸ See footnote 3.

⁹ See footnote 7.

erected condition” is construed to mean “the lining material, which is connected to the inside walls of the panels, unfolds with the cage as the cage is unfolded from the collapsed form to the erect form.”¹⁰

C. Terms Appearing in Only the ‘297 Patent

1. The term “and erecting the cage by moving the panels apart into a condition for filling whereby the cage defines a row of side by side hexagonal cavities for receiving the filling material” is construed to mean “unfolding the panels from the collapsed flattened form into the shape of hexagonal cavities for receiving the filling material.”¹¹
2. The term “wherein said cage structure is transformable between a flattened condition and an erected condition” is construed to have its plain and ordinary meaning.¹²
3. The term “the improvement being that said side panels said end panels, and each said partition panel are permanently pivotally interconnected in both said flattened condition and said erected condition so as to allow said cage structure to be transformed from said flattened condition to said erected condition by relatively pivoting said end panels and said side panels” is construed to mean “the improvement is that the side, end and partition panels are permanently pivotally interconnected when the cage is in the flattened form and also when

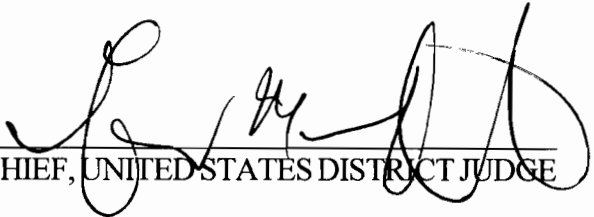
¹⁰ The court rejects the plaintiff’s construction, which invites it to add limitations to the claim, namely that the lining material “is able to bend without breaking.” *See Comarck Communications, Inc. v. Harris Corp.*, 156 F.3d 1182, 1186 (Fed. Cir. 1998) (“[w]hile . . . claims are to be interpreted in light of the specification and with a view to ascertaining the invention, it does not follow that limitations from the specification may be read into the claims.”).

¹¹ See footnote 1.

¹² See *id.*

it is erected, and the cage can be moved from the flattened form to the erect form by pivoting the end and side panels.¹³

Dated: October 20th, 2009


CHIEF, UNITED STATES DISTRICT JUDGE

¹³ In making its ruling, the court rejects the plaintiff's proposed construction, as it finds that the above-written phrase should be construed in its entirety, rather than in sections. Additionally, the court concludes that the panels must be pre-connected.