

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|-------------------------------------|---|------------------|
| GENZYME CORPORATION, GENZYME |) | |
| SURGICAL PRODUCTS CORPORATION, |) | |
| DONALD P. ELLIOTT, LYNN HALSETH, |) | |
| NICHOLAS F. D'ANTONIO, and NICHOLAS |) | |
| J. D'ANTONIO, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | 00-958-RRM (GMS) |
| ATRIUM MEDICAL CORPORATION, |) | |
| |) | |
| Defendant. |) | |

**ORDER DENYING ATRIUM MEDICAL CORPORATION'S MOTION FOR SUMMARY
JUDGMENT OF NONINFRINGEMENT OF U.S. PATENT NO. 4,889,531**

Plaintiffs Genzyme Corporation, Genzyme Surgical Products Corporation, Donald P. Elliot, Lynn Halseth, Nicholas F. D'Antonio, and Nicholas J. D'Antonio (collectively, "Genzyme") filed this patent infringement suit against defendant Atrium Medical Corporation on November 14, 2000. Genzyme alleges that Atrium's "Oasis" and "Express" chest drainage devices infringe certain claims of five of its patents that relate to chest drainage devices. One of the five Genzyme patents-in-suit is U.S. Patent No. 4,889,531 ("the '531 patent" or "the D'Antonio patent").

Presently before the court is defendant Atrium Medical Corporation's motion for summary judgment on noninfringement of the '531 patent. The '531 patent relates to a chest-drainage device that uses a mechanical "dry" suction regulator. Genzyme has

asserted that Atrium's accused devices infringe two independent claims of the '531 patent, claims 1 and 16.

Claim 1 requires, inter alia, (i) "a suction chamber . . . connectable to a suction source;" (ii) a suction regulator that contains two compartments; (iii) a dividing means with an opening that separates the two compartments, (iv) a closing means for opening and closing the opening in the dividing means, and (v) a biasing means. The first compartment has "a first chamber communicating with the atmosphere, while the second compartment has "a second chamber communicating with said suction chamber and having an outlet for connecting said second compartment and the suction source." Claim 16 and the claims that depend therefrom, disclose a number of shared elements, including the "closing means," and also include some additional elements.¹

Determining whether a patent claim is infringed involves two steps. Pickholtz v. Rainbow Technologies, Inc., 284 F.3d 1365, 1365 (Fed. Cir. 2002)(citing Cybor Corp. v. FAS Techs., Inc., 138 F.3d 1448, 1454 (Fed. Cir. 1998) (en banc)). First, the court must determine its scope and meaning of the asserted claim terms by rendering its construction of those terms. Markman v. Westview Instruments, Inc., 52 F.3d 967, 970-71 (Fed. Cir. 1995) (en banc). Second, the court must compare the properly construed claims to the accused devices to determine whether each limitation is found either literally or equivalently in the accused product. Id. at 976.

¹ For a more complete review of the asserted claims of the D'Antonio patent, see the court's claim construction opinion of this date. The description of the claims in this order is intended only to cover the claim limitations that are germane to Atrium's motion.

Summary judgment under Federal Rule of Civil Procedure 56 is appropriate when after discovery, “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits” demonstrate that there is no genuine issue as to any material fact and “the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see also Avia Group Int’l, Inc. v. L.A. Gear Calif., Inc., 852 F.2d 1557, 1561 (Fed. Cir. 1988) (noting that “summary judgment is as appropriate in a patent case as in any other,” where there is no genuine issue of material fact and the moving part is entitled to judgment as a matter of law). The moving party, in this case Atrium, bears the initial burden of demonstrating the absence of material issues of fact. Celotex Corp., 477 U.S. at 323. When deciding a motion for summary judgment, the court views the facts, and all permissible inferences therefrom, in the light most favorable to the non-moving party, Genzyme. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986).

In its motion for summary judgment of non-infringement, Atrium contends that its accused devices do not contain, either literally or equivalently, at least two of the limitations required by the asserted claims of the D’Antonio patent, as properly construed, and therefore cannot infringe.

First, Atrium contends that its devices do not contain the claimed “closing means” that is required in independent asserted claims 1 and 16. The Atrium devices use a valve-seat structure to perform the opening and closing function. In its claim construction briefing and at the May 16, 2002 Markman hearing, Atrium argued that the corresponding structure of the claimed “closing means” was limited to the disclosed

spherical ball and – based on a disclaimer made in prosecuting the patent – excluded cylindrical wall, or valve seat, structures found in a certain prior art reference. In opposition, Genzyme argued that the corresponding structure of the “closing means” includes not only the spherical ball, but other closing members, such as a hinged door, and other gas port closing means. Genzyme also argued that valve seat structures were not excluded, because no disclaimer was made.

Second, Atrium contends that its devices do not contain both “a suction chamber . . . connectable to a suction source” and “a second chamber communicating with said suction chamber and having an outlet for connecting said second compartment and the suction source,” as required by claim 1. The Atrium devices have one connection to the suction source. In its claim construction briefing, Atrium contends that the above claim language requires an infringing device to have two separate connections to a source of suction. Conversely, Genzyme argues that this language does not require two separate connections to the source.

The success of Atrium’s motion turns on the court’s construction of the disputed claim terms. See Telemac Cellular Corp. v. Topp Telecom, Inc., 247 F.3d 1316, 1323 (Fed. Cir. 2001) (“[s]ummary judgment of noninfringement is appropriate where the patent owner’s proof is deficient in meeting an essential part of the legal standard for infringement, since such failure will render all other facts immaterial.”). In its memorandum opinion of this date, the court construed the disputed terms of the D’Antonio patent, including the two claim limitations that are the focus of Atrium’s current motion. After a thorough review of the claims, specification, and prosecution history of the ‘531 patent, the court construed those limitations as follows:

| Claim Limitation | The Court's Construction |
|---|---|
| "suction chamber being connectable to a suction source of a suction pressure level" and "second compartment [of the suction regulator]... having an outlet for connecting said second compartment and the suction source" | These limitations together do not require two separate and independent connections to suction. Rather, the latter may be satisfied by a pathway between second compartment of the suction regulator and the suction chamber, which in turn is connectable to a source of suction. |
| "closing means" | The corresponding structure is a ball that is disposed within the opening in the dividing means, or a hinged door, and structural equivalents thereof. |

Under the court's construction, genuine issues of material fact remain as to whether Genzyme may prove infringement. First, under the court's construction, claim 1 of D'Antonio patent does not require two separate outlets to suction source; therefore, the fact that the accused devices have only one outlet to suction source is not a basis for finding that the devices cannot infringe claim 1 of the D'Antonio patent as a matter of law. Second, the "closing means" required in the asserted claims of the D'Antonio patent is not limited to the disclosed spherical ball, nor does it necessarily exclude valve seat structures. Whether the valve seat structure of Atrium's accused devices is a structural equivalent of the corresponding structure of a ball disposed within the opening in the dividing means or a hinged door is a disputed issue of material fact. As the court must draw all factual inferences in favor of the non-moving party, Genzyme, the court cannot resolve this issue by summary judgment.

Accordingly, for the reasons stated and based on the court's construction of the disputed claim terms of the D'Antonio patent, **IT IS HEREBY ORDERED** that:

1) Atrium's Motion for Summary Judgment of Noninfringement of U.S. Patent No. 4,889,531 (D.I. 157) is **DENIED**.

Mary Pat Thyng
UNITED STATES MAGISTRATE JUDGE

Dated: July 19, 2002