

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 09-3377 PA (PJWx)	Date	April 27, 2010
Title	Accuride Int'l, Inc. v. SSW Holding Co., Inc., et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE
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Paul Songco Deputy Clerk	N/A Court Reporter	N/A Tape No.
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Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court are four motions for summary judgment: cross-motions by plaintiff Accuride International Inc. (“Plaintiff”) and defendants SSW Holding Company, Inc. (“SSW”) and American Appliance Products, Inc. (“AAP”) (collectively “Defendants”) on the issue of patent infringement (Docket Nos. 53 and 56), Defendants’ motion for summary judgment on the issue of patent invalidity (Docket No. 54), and Plaintiff’s motion for summary judgment on the issue of inequitable conduct (Docket No. 63).

I. Factual and Procedural Background

Plaintiff is the owner of two patents for extendable oven rack assemblies, U.S. Patent No. 6,938,617 (“the ‘617 patent”) and U.S. Patent No. 7,216,646 (“the ‘646 patent”). Defendants also sell extendable oven rack assemblies, which are accused of infringing on Plaintiff’s patents.^{1/} Plaintiff brought claims against Defendants for infringement of the ‘617 and ‘646 patents. Defendants filed counterclaims against Plaintiff for a declaratory judgment that the ‘617 and ‘646 patents are invalid, a declaratory judgment that Defendants’ products do not infringe on the ‘617 and ‘646 patents, and a declaratory judgment that the ‘617 and ‘646 patents are unenforceable due to Plaintiff’s inequitable conduct during prosecution of the patents.

Generally speaking, the ‘617 patent is for an oven rack assembly consisting of an oven rack connected to two telescopic slides which allow the rack to be extended completely outside of the oven without needing to be held by the user. While some ovens use grooves along the inside oven walls to support oven racks, the oven rack assembly in the ‘617 patent is supported by opposing wire frames attached to the side walls of the oven cavity. The opposing wire frames consist of horizontal bars which line the sides of the oven and extend a short distance towards the inside of the oven cavity, forming a ladder-like structure. The oven rack assembly in the ‘617 patent is attached to a single bar of the opposing wire frames using brackets. These brackets are designed to allow the user to change the oven

^{1/} AAP is a wholly-owned subsidiary of SSW which manufactures oven racks. SSW itself does not manufacture any oven racks. See Nall Decl. ¶ 2.

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rack's position to various heights within the oven with minimal effort. The '646 patent is for a similar oven rack assembly, except that it specifies that the oven rack is attached to the telescopic slides via a "subtending bar" positioned underneath the oven rack.

II. Legal Standard

Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986). "[T]he burden on the moving party may be discharged by 'showing' — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986); see also Musick v. Burke, 913 F.2d 1390, 1394 (9th Cir. 1990). The moving party must affirmatively show the absence of such evidence in the record, either by deposition testimony, the inadequacy of documentary evidence, or by any other form of admissible evidence. See Celotex, 477 U.S. at 322, 106 S. Ct. at 2552. The moving party has no burden to negate or disprove matters on which the opponent will have the burden of proof at trial. See id. at 325, 106 S. Ct. at 2554.

The nonmoving party's allegation that factual disputes persist between the parties will not automatically defeat an otherwise properly supported motion for summary judgment. See Fed. R. Civ. P. 56(e) (nonmoving party "may not rest upon the mere allegations or denials of the adverse party's pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial"). A "mere 'scintilla' of evidence will be insufficient to defeat a properly supported motion for summary judgment; instead, the nonmoving party must introduce some 'significant probative evidence tending to support the complaint.'" Fazio v. City & County of San Francisco, 125 F.3d 1328, 1331 (9th Cir. 1997) (quoting Anderson, 477 U.S. at 249, 252, 106 S. Ct. at 2510, 2512). "On summary judgment, the proper task is not to weigh conflicting evidence, but rather to ask whether the non-moving party has produced sufficient evidence to permit the fact finder to hold in his favor." Ingram v. Martin Marietta Long Term Disability Income Plan for Salaried Employees of Transferred GE Operations, 244 F.3d 1109, 1114 (9th Cir. 2001). If the adverse party does not so respond, summary judgment shall be entered.

III. Analysis

A. Patent Infringement

"An infringement analysis involves two steps. First, the court determines the scope and meaning of the patent claims asserted, and then the properly construed claims are compared to the allegedly infringing device." Cyber Corp. v. FAS Techs., Inc., 138 F. 3d 1448, 1454 (Fed. Cir. 1998). "For a court to find infringement, the plaintiff must show the presence of every element or its substantial equivalent in the accused device." Terlep v. Brinkmann Corp., 418 F.3d 1379, 1384 (Fed. Cir.

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2005)(quoting Wolverine World Wide, Inc. v. Nike, Inc., 38 F.3d 1192, 1199 (Fed Cir. 1994)). A court need not construe every single claim and limitation in the patent “[a]s long as the trial court construes the claims to the extent necessary to determine whether the accused device infringes.” Ballard Med. Prods. v. Allegiance Healthcare Corp., 268 F.3d 1352, 1358 (Fed. Cir. 2001).

“It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude.” Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1115 (Fed Cir. 2004). In interpreting claims, a court is to give terms the “meaning it would have to a person of ordinary skill in the art at the time of the invention.” Id. at 1116. “Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” Phillips v. AWH Corp., 415 F.3d 1303, 1313 (Fed. Cir. 2005).

“[T]he specification ‘is always highly relevant to the claim construction analysis. Usually it is dispositive; it is the single best guide to the meaning of a disputed term.’” Id. at 1315 (quoting Vitronics Corp. v. Conceptor, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Nevertheless, a court must be careful not to limit its interpretation of the claims to embodiments described in the specification. See id. at 1323 (“[W]e have specifically rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment.”). Conversely, a court may not read an express limitation out of the claims based on descriptions in the specification. Tex. Instruments Inc. v. U.S. Int’l Trade Comm’n, 988 F.2d 1165, 1171 (Fed. Cir. 1993).

1. The ‘617 Patent

Plaintiff asserts that Defendants’ products infringe on Claims 1 and 5 of the ‘617 patent. Claim 1 recites:

An extendable oven rack assembly comprising:

- [1] an oven rack adapted for positioning inside an oven cavity;
- [2] two full extension slides, one each coupled to opposing margins of the oven rack;
- [3] opposing wire frames positioned approximate opposing margins of the oven rack, the wire including vertically spaced cross-bars;
- [4] a first bracket coupled to each slide, the first bracket including a channel receiving a single cross-bar of the vertically spaced cross-bars of the wire frame;
- [5] a second bracket coupled to each slide, the second bracket including a

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channel and a ledge, the channel receiving the single bar and the ledge extending under the single cross bar.

(Zaitlen Decl., Ex. 1, col. 14, ll. 2-16.) Claim 5 is for an oven including the same elements as claim 1, with the addition of “an oven enclosure including sidewalls.”^{2/} *Id.* at col. 14, ll. 27-43. A picture of the oven rack assembly from the ‘617 patent is attached as Appendix A, along with a close-up of the second bracket described in the fifth element. The parties do not dispute the first three elements of the claim. Rather, the dispute centers around whether Defendants’ products include the first and second brackets mentioned in the fourth and fifth elements of the claim.

Plaintiff provides three examples of Defendants’ products which infringe on the ‘617 patent: a GE slide rack, a Whirlpool KitchenAid slide rack, and an Electrolux slide rack. Defendants have provided evidence that they do not design, manufacture, or sell the Electrolux slide rack.^{3/} Thus the only products at issue are the GE slide rack and the Whirlpool KitchenAid slide rack. Defendants have provided technical drawings depicting these accused slide racks, and Plaintiff does not dispute that these drawings provide an adequate representation of the accused products.^{4/} Technical drawings of Defendants’ products are attached as Appendix B, showing the disassembled oven rack and a side view and end view of the piece which connects the oven rack to the wire frames on the inside of the oven.

The fourth and fifth elements of Claim 1 (and the fifth and sixth elements of Claim 5) describe a “first bracket” and a “second bracket” which connect the sliding oven rack assembly to the wire frames

^{2/} Although there are a few minor differences between the elements of Claim 1 and Claim 5, none of these different elements are in dispute. The only elements of Claim 5 that are in dispute are those which are disputed in Claim 1, dealing with the “first bracket” and the second bracket.” The language of these two elements is the same in both Claims 1 and 5.

^{3/} See Nall Decl. ¶¶ 9-10. SSW’s Director of Marketing, Brad Nall, submitted a declaration stating that he has reviewed pictures of the Electrolux slide racks that were analyzed by Plaintiff’s expert and are alleged to infringe on Plaintiff’s patents. Nall declares that Defendants do not have any connection to the Electrolux slide racks. Plaintiff objects to Nall’s declaration, claiming a lack of foundation. However, Nall also declares that in his position as Director of Marketing he is familiar with the products manufactured by all of SSW’s subsidiaries, including AAP. *Id.* ¶ 1. Such a statement provides an adequate foundation for Defendants’ evidence, and Plaintiff’s objection is thus overruled.

^{4/} Plaintiff does object to Defendants’ drawings insofar that Defendants have added their own labels and “attorney comments” to the drawings. According to Plaintiff, such drawings are inadmissible because they are unsupported attorney argument, improper lay opinion, and lack foundation. The Court does not rely on the labels Defendants have affixed to their drawings; rather, the Court looks to the drawings only to understand what Defendants’ products look like. Plaintiff does not argue that Defendants’ actual products do not resemble the drawings. In fact, Plaintiff provides its own drawings of Defendants’ product, which, apart from the labels that Plaintiff has affixed to the drawing, look the same as Defendants’ drawings. See Pl.’s Reply, p. 6.

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at the side walls of the oven. In Defendants' product, the sliding oven rack assembly is connected to the wire frames through a single elongated L-bracket, part of which rests atop the cross bar. The issue of infringement can be resolved by looking at the fifth element, which requires that the second bracket include "a channel and a ledge," with "the ledge extending under the single cross bar."

As seen from the end view of Defendants' product, no part of the L-bracket extends under the cross bar of the wire frame, and thus Defendants' product cannot contain a "ledge extending under the single cross bar." Plaintiff has not addressed the lack of the ledge in Defendants' product, except by labeling the small protruding part on the right part of the L-bracket as a "ledge" in a diagram showing a side view of the L-shaped bracket. (Pl.'s Reply, p. 6.) Apparently Plaintiff believes it is enough that any piece of the bracket extends into any area of the plane under the cross bar, rather than extending directly under the cross bar, in the direction of the oven cavity. This interpretation is not supported by the specification. In describing the ledge, the specification states that it has two purposes: "[t]o provide further fixation of the slide with respect to the cross-bar," and "to prevent upward motion of the rear of the rack and slide structure, thereby safely maintaining the rack in position." (Zaitlen Decl., Ex. 1, col. 12, ll. 41-42, 51-53.) The ledge would not be capable of achieving either of these purposes unless some portion of it was located directly under the cross bar. A "ledge extending under the single cross bar" must thus be construed to mean that some portion of the ledge is located in the area directly under the cross bar. See Hockerson-Halberstadt, Inc. v. Avia Group Int'l, Inc., 222 F.3d 951, 956 (Fed. Cir. 2000) (interpreting claims so that they are "consonant with the purpose of the invention"); Carroll Touch, Inc. v. Electro Mech. Sys., Inc., 15 F.3d 1573, 1578 (Fed. Cir. 1993) (rejecting an interpretation of the claim which would make the invention "unable to achieve its stated objective"). Since Defendants' products do not include a bracket with a "ledge extending under the single cross bar" of the wire frame as construed here, Defendants are entitled to a summary judgment of non-infringement of Claims 1 and 5 of the '617 patent.

2. The '646 Patent

Plaintiff also asserts that Defendants' products infringe on Claims 1 and 4 of the '646 patent. Claim 1 of the '646 patent recites:

An oven assembly with an extendable rack, comprising:

[1] the oven rack including a pair of laterally spaced subtending bars, the subtending bars including two mounting points;

[2] a pair of extendable slide assemblies, each slide assembly coupled to a corresponding subtending bar at the two mounting points;

[3] wherein each of the extendable slide assemblies includes a slide rail having a longitudinal web, the longitudinal webs being coupled to the subtending bar at the two mounting points;

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[4] wherein the mounting points each comprise an aperture in the subtending bars; and

[5] further comprising mounting posts extending from the longitudinal webs, with a mounting post for each mounting point, the mounting posts each extending into a corresponding aperture in the subtending bars.

(Zaitlen Decl., Ex. 2, col. 10, ll. 32-48.) A picture of the oven rack assembly from the '646 patent showing the underside of the oven rack is attached as Appendix C.

The parties first dispute is over the meaning of a "subtending bar." Both parties appear to agree that a subtending bar is a piece that extends under the oven rack. However, Defendants contend that a "subtending bar" must also be a round rod with a circular cross-section. Defendants' products do not include a round rod. Instead, their oven racks are mounted to the slide assembly by a flat piece that extends under the oven rack, which they call an "L-bracket."^{5/}

The Court cannot find that a "subtending bar" is limited to being a round rod with a circular cross-section. Nowhere in the claims or the specification is the subtending bar described as a round rod. Defendants' argument relies on a drawing included in the '646 patent, which depicts the subtending bar as a round rod. However, "the mere fact that the patent drawings depict a particular embodiment of the patent does not operate to limit the claims to that specific configuration." Anchor Wall Sys., Inc. v. Rockwood Retaining Walls, Inc., 340 F.3d 1298, 1306-07 (Fed. Cir. 2003). Defendants also argue that one of Plaintiff's own witnesses explained that he understood a "subtending bar" to be a round rod. Such testimony does not limit the claims. See Markman v. Westview Instruments, Inc., 52 F.3d 967, 983 (Fed. Cir. 1995)(holding that the testimony of the inventor and his patent attorney as to the proper construction of a term was not entitled to any deference).

Defendants also contend that their products cannot infringe on Claim 1 since it requires a "mounting post" which extends "from" the longitudinal webs of the slides and "into" the aperture in the subtending bars. Defendants first point out that their products do not include mounting posts, only screws. However, as the specification makes clear, "[t]he posts may be screws extending through the web of the slide member." (Zaitlen Decl., Ex. 2, col. 10, ll. 2-3.) Furthermore, Defendants contend that the screws on their products are first inserted through the L-bracket and then into an aperture in the longitudinal webs of the slides. See Appendix B. Thus, according to Defendants, the mounting post on their products extend "from" or through the L-bracket and then "into" the slides, rather than the other way around.

^{5/} Defendants also argue that the subtending bar must be "adjacent" to the oven rack, whereas their oven rack is connected to the flat piece along its entire length. Defendants have not explained why a piece that is connected to the oven rack along its entire length is not also "adjacent" to the oven rack, and so the Court does not address this issue.

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It is unclear from Defendants' technical drawings whether Defendants' products are infringing. The technical drawing depicts a disassembled oven rack, with no indication of how the screws operate to mount the oven rack to the slides. On the one hand, if the oven rack is mounted to the slide by first passing the screw through the L-bracket and then into the slide, a reasonable jury could find that the screw does not extend from the slide and into the apertures. However, if the screw is first partially inserted, so that a portion of the screw head protrudes from the slide, and then the rack is mounted onto the slide by fitting the protruding screw head into the apertures, a reasonable jury could find that the screw extends from the slide and into the apertures. Plaintiff has provided photographs of assembled oven racks as evidence that Defendants' products are infringing; however, these photographs also do not demonstrate how Defendants use the screws to mount the oven rack to the slides. To defeat summary judgment Plaintiff must come forward with sufficient evidence to allow a fact finder to hold in his favor, whereas Defendant as the moving party has no burden to negate an element of Plaintiff's claim. See Ingram, 244 F.3d at 1114. Given Plaintiff's inability to provide facts which demonstrate that Plaintiff's products are infringing, Defendants are entitled to summary judgment on the issue of non-infringement of Claim 1.

As for Claim 4 of the '646 patent, it recites an oven rack assembly similar to that in Claim 1, except that it also includes "opposing wire frames positioned approximate opposing lateral margins of the oven rack," as well as an oven rack

wherein a forward hook couples each slide assembly to the cross-bar near a forward portion of the corresponding wire frame and wherein a rear hook couples with each slide assembly to the cross-bar near a rear portion of the corresponding wire frame.

(Zaitlen Decl., Ex. 2, col. 10, ll. 55-56; col. 11, ll. 7-8; col. 12, ll. 1-3.) Defendants argue that the term "hook" requires that the piece wrap around the cross-bar, forming a U-shaped channel into which the cross-bar fits. Under this interpretation, Defendants' products, which use an L-bracket to connect the oven rack assembly to the cross-bar, cannot infringe on Claim 4 of the '646 patent. Plaintiff, on the other hand, argues that the term "hook" should be construed more broadly, such that it includes both L-shaped and U-shaped pieces.

In describing the "hook," the specification states:

[T]he hook includes a planar portion adapted to be welded or otherwise affixed to the web of the slide member. A top portion extends from the planar portion, with the top portion and the planar portion forming the shape of an L-bracket. A front of the hook is formed of a tab extending downward from the top portion with the front of the hook largely parallel to the planar section.

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Id. at col. 8, ll. 40-46. This description reveals that a hook has three parts: a planar portion, a top portion, and a front. According to the description in the specification, a hook is more than just an L-bracket; it also includes a front which extends downward from the top portion. In view of the way the specification describes the “hook”, the Court construes “hook” to require something more than the L-bracket found in Defendants’ products. While a hook need not form a complete “U” shape, it must have, at the very least, a planar portion, a top portion, and some front portion that extends downward from the top portion, as described in the specification.^{6/}

Defendants’ products feature an L-bracket which comprise a planar portion and top portion, but not a front portion. Given that a hook requires some front portion which extends downward from the top portion, Defendants are entitled to summary judgment that their products do not infringe on Claim 4 of the ‘646 patent.

B. Invalidity

A patent is invalid “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention

^{6/} In making such construction, the Court is aware that it should avoid using descriptions in the specification to limit claims when no such limitations exist. However, this does not mean that such descriptions never serve to limit a claim. In explaining the proper way to consider descriptions in the specification, the Federal Circuit has explained:

[I]t is important to keep in mind that the purposes of the specification are to teach and enable those of skill in the art to make and use the invention and provide a best mode for doing so Much of the time, upon reading the specification in that context, it will become clear whether the patentee is setting out specific examples of the invention to accomplish those goals, or whether the patentee instead intends for the claims and the embodiments in the specification to be strictly coextensive.

Phillips, 415 F.3d at 1323; see also Autogiro Co. of Am. v. U.S., 384 F.2d 391, 398 (Ct. Cl. 1967)(“But where the specification does not refer to an embodiment or a class of embodiments in terms of ‘best mode,’ such reference may be of value in claim interpretation. This would be where the patentee describes an embodiment as being the invention itself and not only one way of utilizing it.”).

In this case, it appears that the description in the specification was not a mere preferred embodiment of the hook but rather a description of the hook itself. The description given does not refer to itself as an “embodiment” of the hook. Furthermore, the patent goes on to give an explicit example of an embodiment of the hook which also contains the same three parts. This reinforces the idea that a hook must have three parts, and suggests that the failure to identify the description as an embodiment was not accidental.

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was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103(a). The Supreme Court has stated that “when a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 417, 127 S. Ct. 1727, 1740, 167 L. Ed. 2d 705 (2007)(quoting Sakraida v. Ag Pro, Inc., 425 U.S. 273, 282, 96 S. Ct. 1532, 1532, 47 L. Ed. 2d 784 (1976)). Nevertheless, the Supreme Court also warned that

a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art [I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.

Id. at 418, 127 S. Ct. at 1741. This reason does not have to be expressly identified in the prior art, since “a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” Id. at 418, 127 S. Ct. at 1741. “When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue known options within his or her technical grasp.” Id. at 421, 127 S. Ct. at 1742.

In determining whether a patent is invalid for obviousness, a court should consider (1) “the scope and content of the prior art”; (2) “differences between the prior art and the claims at issue”; (3) “the level of ordinary skill in the pertinent art”; and (4) secondary considerations such as “commercial success, long felt but unsolved needs, failure of others, etc.” Graham v. John Deere Co. of Kan. City, 383 U.S. 1, 17, 86 S. Ct. 684, 694, 15 L. Ed. 2d 545 (1966). Since a court is directed to consider the differences between the prior art and the claims at issue, it follows that a court must construe disputed terms when deciding whether an invention is obvious. See Amazon.com, Inc. v. Barnesandnoble.com, Inc., 239 F.3d 1343, 1351 (Fed. Cir. 2001)(“Only when a claim is properly understood can a determination be made . . . whether the prior art anticipates and/or renders obvious the claimed invention.”). “Because the claims of a patent measure the invention at issue, the claims must be interpreted and given the same meaning for purposes of both validity and infringement analyses.” Id. The Court has already construed several of the disputed terms in the ‘617 and ‘646 patents, and will apply the same interpretations in determining validity.

There is a presumption that issued patents are valid, and the challenger of the patent bears the burden of proving invalidity. See Pfizer, Inc. v. Apotex, Inc., 480 F.3d 1348, 1359-60 (Fed. Cir. 2007). However, when a determination of obviousness rests on prior art that was not disclosed to the patent examiner, the presumption of validity is “much diminished.” KSR Int’l Co., 550 U.S. at 426, 127 S. Ct. at 1745.

1. Scope and Content of the Prior Art

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Here Defendants have identified several pieces of prior art which allegedly render the '617 and '646 patents obvious. The first is U.S. Patent No. 6,789,861 (the "Dobberstein patent"), and it was cited as prior art during the prosecution of both the '617 and '646 patents. The Dobberstein patent teaches an oven rack which can slide completely out of an oven. This is achieved by attaching an oven rack to telescopic slides which have two tracks. The rack is attached to the slides through a "connection piece" which the patent suggests can be "releasable" by using screws or "plug insertion." The Dobberstein patent also teaches that this oven rack assembly can be easily removed and installed to different heights within the oven through the use of recesses in the side walls of the oven. A front view of the oven rack assembly from the Dobberstein patent is attached as Appendix D.

U.S. Patent No. 6,643,900 (the "Jahrling patent") was also cited as prior art during the prosecutions of the '617 and '646 patents. The Jahrling patent teaches a "quick-fixing element" used to easily fasten guide rails to the wire frames which line the sides of household appliances such as dishwashers and ovens. The quick-fixing element is designed to attach the guide rails to wire frames with double parallel bars. The quick-fixing element includes an upper portion which curves around the top bar and a lower portion which curves around the bottom bar. Between the two portions is a "nose" which juts out under the top bar and rests against the top of the bottom bar. The nose helps further secure the quick-fixing element to the bar and provides support so that the quick-fixing element can withstand heavy vertical loads without disengaging from the bar. A picture of the quick-fixing element is attached Appendix E, showing a side view of the element, as well as an illustration of the element when it is attached to the double parallel bars.

U.S. Patent No. 6,148,813 (the "Barnes patent") was cited as prior art for the '646 patent only. Like the Dobberstein patent, the Barnes patent also teaches a sliding oven rack that can extend further out of the oven than a conventional nonsliding rack.^{7/} However, instead of using telescopic slides with two tracks, the Barnes patent teaches an oven rack that is mounted to a roller wheel which slides within a single track, the track being attached to a rack frame. The rack frame rests on opposing wire frames running along the side walls of the oven and can also be pulled partially out of the oven. In one embodiment of the invention, the rack is mounted to the roller wheel through use of a "lateral support bar" that extends underneath the oven rack. The lateral support bar includes an aperture for mounting the oven rack to the roller wheel. The Barnes patent recommends that the roller wheel be secured to the lateral support bar through the aperture by using a nut and bolt arrangement. A picture of the oven rack assembly from the Barnes patent is attached as Appendix F, showing the entire rack assembly as well as a view of the underside of the oven rack.

Finally, U.S. Patent No. 7,316,179 (the "Geberzahn patent") was not cited as prior art during prosecution of the '617 or '646 patents. Like the Dobberstein patent, the Geberzahn patent also discloses a full extension sliding oven rack assembly which is easily removed and installed to different heights. However, unlike the Dobberstein patent, the assembly in the Geberzahn patent has hooks attached, which engage in recesses in the side wall of the oven. The hooks are fitted into the recesses

^{7/} It is unclear whether the assembly in the Barnes patent can extend fully outside of the oven.

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and then the entire assembly is pushed downwards so that the hook encloses a portion of the side wall of the oven. A picture of a front view of the oven rack assembly from the Geberzahn patent is attached as Appendix G.

Plaintiff argues that the Geberzahn patent cannot be considered prior art because the corresponding international patent application was not published in English until January 8, 2004.^{8/} In contrast, the earliest priority date provided for both the '617 and '646 patents is July 10, 2002, the date of filing of the provisional applications. Under 35 U.S.C. § 102(e), an international patent application can become prior art upon its date of publication in English. However, an international patent application can also become prior art under 35 U.S.C. § 102(a), which states that printed publications in foreign countries may also be prior art. Section § 102(a) does not require that the publication be in English. See, e.g., In re Hall, 781 F.2d 897, 899-900 (Fed. Cir. 1986)(holding that a dissertation written in German constituted prior art because it was sufficiently accessible to the public to qualify as a "printed publication"); Manual of Patent Examining Procedure § 901.05.II.C (8th ed. 2008) (in assessing foreign patent documents, "[i]f anyone can inspect or obtain copies of the laid open application, then it is sufficiently accessible to the public to constitute a 'publication' within the meaning of 35 U.S.C. 102(a) and (b)"). Here Plaintiff admits that the application for the Geberzahn patent could be considered prior art under Section 102(a) since it was published in German on April 25, 2002 in a World Intellectual Property Organization publication. Thus it may properly be considered prior art for purposes of determining obviousness.

2. Differences Between Prior Art and Claims at Issue

The parties do not dispute that both the Dobberstein and Geberzahn patents teach the first two elements of Claim 1 of the '617 patent and the first three elements of Claim 5 of the '617 patent, consisting of: the use of an oven enclosure with side walls, an oven rack positioned within the enclosure, and a pair of full extension slides attached to opposite sides of the oven rack. These structures are also present in Claims 1 and 4 of the '646 patent. As depicted in the Dobberstein patent, the "connection piece" which attaches the oven rack to the slides is a flat piece which extends underneath the oven rack, the same as the "subtending bar" in the '646 patent. The Dobberstein and Geberzahn patents do not, however, teach the use of apertures and mounting posts to attach the subtending bar to the slide. Plaintiff also points out that the Dobberstein and Geberzahn patents do not teach the use of the opposing wire frames along the sides of the oven cavity. The Dobberstein and Geberzahn patents teach that it is desirable to have an oven rack assembly that can be easily removed and installed at different heights, but they do so by using recesses in the walls. In the Dobberstein patent the oven rack assembly simply fits into these recesses. In the Geberzahn patent the oven rack assembly is fitted with "hooks" that engage

^{8/} Curiously, Plaintiff does not make this argument in its Opposition to the Motion for Summary Judgment on the issue of invalidity; rather, the issue of whether the Geberzahn patent is properly considered prior art is only raised in Plaintiff's Motion for Summary Judgment on the issue of inequitable conduct.

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in recesses in the wall. Unlike the brackets in the '617 patent, the hooks in the Geberzahn patent do not include a ledge extending underneath a bar of the wire frame.

The Jahrling patent teaches a device which can be used to quickly remove and install guide rails to wire frames on the sides of household appliances such as ovens. Unlike the '617 patent, the Jahrling patent contemplates the use of opposing wire frames in which each "rung" of the ladder structure is formed by double parallel bars instead of a single bar. Because of these double bars, the quick-fixing element has two portions for holding bars instead of one. In some embodiments, the upper holding portion is symmetrical to the lower holding portion. The Jahrling patent suggests that two quick-fixing elements can be used to mount a sliding "pull-out guide" to wire frames. The Jahrling patent depicts the quick-fixing elements attached to a single guide rail which is essentially the same structure as one of the two tracks on a sliding oven rack assembly. The Jahrling patent further depicts two quick-fixing elements attached to either end of the single guide rail.

To the extent that Defendants argue that the quick-fixing element of the Jahrling patent renders the first and second "brackets" of the '617 patent obvious, the Court must construe the term "bracket," which is disputed by the parties. Defendants argue that the brackets in the '617 patent must be U-shaped. Plaintiff argues that the '617 patent does not require that the piece reach around the bar. Instead, it is sufficient if the bracket merely extends over the bar in an L-shape. The relevant parts of Claims 1 and 5 recite: "the first bracket including a channel receiving a single cross bar of the vertically spaced cross bars of the wire frame," and then "the second bracket including a channel and a ledge, the channel receiving the single bar and the ledge extending under the single cross bar." (Zaitlen Decl., Ex. 1, col. 14, ll. 9-15.)

The specification refers to an "L-bracket" several times to describe other parts of the oven rack assembly, which suggests that a bracket can be L-shaped. However, the brackets in Claims 1 and 5 must also include a "channel" which can "receive" a cross bar. Elsewhere the specification uses the word "receiver" as a synonym for a "U shaped cut-out." *Id.*, col. 13, ll. 44-49. The specification also describes a "receiving bracket" as being "somewhat U-shaped." *Id.*, col. 13, ll. 56-57. This leads the Court to conclude that, while a bracket may be merely L-shaped, a bracket which "receives" a bar must be at least somewhat U-shaped, with some portion of the bracket reaching around the bar.

In light of this construction, there is little difference between the brackets of the '617 patent and the quick-fixing element in the Jahrling patent. The Jahrling patent states that the portions which hold the bars of the opposing wire frames must "reach[] at least partially around" the bar. (Dilger Decl., Ex. G, col. 5, ll. 13-14.) The Jahrling patent also includes a "nose" which extends directly underneath the bar to provide extra support, just like the "ledge" in the second bracket. As compared to the '646 patent, the Jahrling patent differs from the forward and rear "hooks" mentioned in Claim 5 only insofar that the hooks do not include a "nose" which extends underneath the bar.

As for the Barnes patent, it does not teach the full extension slides with two tracks used in the '617 and '646 patents, instead using a single guide and a roller wheel to achieve a sliding effect.

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Nevertheless, the “lateral support bar” depicted in the Barnes patent has the same structure as the “subtending bar” in the ‘646 patent. Like the subtending bar, the lateral support bar extends beneath the oven rack and helps to mount the oven rack to the sliding assembly through an aperture in the lateral support bar. While the subtending bar in the ‘646 has two apertures, the Barnes patent uses only one. Unlike the ‘646 patent, the Barnes patent does not specify that a mounting point extend from the slide assembly and into the aperture. Instead, the Barnes patent suggests that the roller wheel can be secured to the subtending bar through the aperture using any method known in the art, such as a nut and bolt arrangement.

3. Level of Ordinary Skill in the Art

The parties agree that a person of ordinary skill in the art would have an undergraduate degree in mechanical engineering or an equivalent subject matter such as industrial design. Plaintiff asserts that the person of ordinary skill would also have three to five years of experience in designing consumer home products, whereas Defendants assert that this person would have only one to two years of linkage design experience.

The Court does not find that the difference in the level of ordinary skill proposed by the parties is significant. A person with experience in designing home products would likely have some knowledge or experience in linking pieces together; after all, very few home products consist of only one piece. Moreover, the parties do not argue that the invention would be obvious to a person with three years of experience but not to a person with two years of experience. Determining the level of ordinary skill in the art is necessary because the court must evaluate “what a hypothetical ordinarily skilled artisan would have gleaned from the cited references at the time that the patent application leading to the [patent at issue] was filed.” Amazon.com, Inc., 239 F.3d at 1364. As discussed below, a person with the level of ordinary skill as defined by either of the parties would have found the Claims of the ‘617 and ‘646 patents obvious given the content of the prior art references that were available.

4. Secondary Considerations

A group leader of Plaintiff’s appliance market team testified that during the time the patents were being developed, the American market was heading in the direction of full extension slides which allowed the oven rack to be pulled completely outside of the oven cavity. In meeting with different appliance manufacturers, the group leader also learned that there was demand for a sliding oven rack assembly which could be easily removed and installed at different heights without modification to inside of the oven cavity. Moreover, the group leader testified that the American market required that the oven could be compatible with both sliding and non-sliding oven racks. Ovens which used cutouts or recesses in the side walls of the oven could not accommodate non-sliding racks, but ovens which used wire frames could accommodate both sliding and non-sliding oven racks.^{9/}

^{9/} Plaintiff has also submitted evidence which supposedly proves that Plaintiff enjoyed great commercial success with the ‘617 and ‘646 patents and that Plaintiff “created” the market for full

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5. The '617 Patent

Having considered all the Graham factors, the Court finds that Claims 1 and 5 of the '617 patent are obvious. All of the elements of Claims 1 and 5 can be found in the prior art.^{10/} The Dobberstein and Geberzahn patents both teach how to construct a full extension slide which is attached to an oven rack. The use of opposing wire frames to support an oven rack assembly was known in the prior art. Although the Dobberstein and Geberzahn patents do not use such a structure, they both acknowledge that such structures are common, and suggest that the sliding oven rack assembly could be configured for use with such structures.^{11/} A person of ordinary skill seeking to modify the Dobberstein and

extension slide oven racks. However, such evidence is inadmissible hearsay, as it consists of Plaintiff's expert repeating statements that he read in the deposition transcript of another witness, William Hayes. Plaintiff has not provided the actual deposition transcript of William Hayes.

^{10/} Plaintiff spends most of its Opposition pointing out that no single piece of prior art discloses all of the elements of the Claims in the '617 and '646 patents. However, a finding of obviousness does not require that a single piece of prior art teach all the elements of a claim. "[A]n invention may be obvious even though it is not identically disclosed anywhere in the prior art." 2-5 Donald S. Chisum, Chisum on Patents § 5.01 (Matthew Bender).

^{11/} For example, in explaining the background of the invention the Dobberstein patent states: "In other known ovens, grids with horizontal bars, on which the product supports are guided, are arranged in front of the side walls." (Dilger Decl., Ex. C, col. 1, 50-52.). Likewise, the Geberzahn patent states: "In the case of other known baking ovens, in front of the side walls, lattices are arranged with horizontal bars, on which the carriers for products to be cooked are guided." (Zaitlen Decl., Ex. F, col.1, ll. 51-53.). When giving a summary of the invention the Dobberstein patent suggests that the "stationary track of the telescopic guides . . . is attached in a releasable manner to the side walls or the wall-mounted holders provided for this Furthermore, grids arranged in front of the side walls or folded sheets with corresponding attachment devices can also serve as wall-mounted holders." (Dilger Decl., col. 3, ll. 20-23; 28-30.) The Geberzahn patent also suggests: "The fixing devices can be openings, slits or recesses provided in the side walls, into which the telescopic guides are suspended, engaged, or otherwise fixed. Moreover, fixing devices can be lattices or folded sheets, arranged in front of the side walls, with corresponding openings, slits or recesses." (Zaitlen Decl., Ex. F, col. 6, ll. 28-33.)

Plaintiff asserts that the Dobberstein and Geberzahn patents actually teach away from the use of opposing wire frames. Plaintiff cites a statement from the Dobberstein patent that opposing wire frames "have the disadvantage that the product support can only be pulled a certain distance out of the oven before tilts downwards or has to be held at the front." (Dilger Decl., Ex. C., col. 1, ll. 55-58.) The Geberzahn patent contains a similar statement. However, Plaintiff has taken these statements out of context. The Dobberstein and Geberzahn patents both make these statements during a discussion of the behavior of non-sliding oven racks. In discussing sliding oven racks, the Dobberstein and Geberzahn patents clearly contemplate that they can be used effectively in ovens with opposing wire frames.

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Geberzahn oven rack assemblies for use on ovens with opposing wire frames would have found it obvious to use the quick-fixing element from the Jahrling patent. After all, the whole purpose of the quick-fixing element in the Jahrling patent was to fasten sliding rails to opposing wire frames such as those found in ovens. The Geberzahn patent, which was not cited to the patent examiner, had already suggested that one way to easily install an oven rack assembly was by attaching hooks to the assembly. The Jahrling patent states that it is an improved version of the hook-like structures that were previously used for attaching sliding rails to wire frames.^{12/} The quick-fixing element was designed to be used with double parallel bars, and so it contains two holding portions. In some embodiments of the Jahrling patent the upper portion and the lower portion are symmetrical. It would not have been difficult for a person of ordinary skill in the art to realize that adapting the quick-fixing element for use with a wire frame with single bars was just a matter of using half of the quick-fixing element.

In sum, Claim 1 of the '617 patent is just a combination of elements already known in the prior art, with each element performing in an expected and predictable way. Claim 5, which merely adds an oven enclosure, is also such a combination of known elements. Such claims are obvious and thus invalid. See *KSR Int'l Co.*, 550 U.S. at 417, 127 S. Ct. at 1740. Furthermore, there are reasons why a person of ordinary skill would have thought to combine these elements. First, the Dobberstein and Geberzahn patents suggest that the sliding oven rack assembly could be configured to attach to wire frames on the side walls of the oven. Next, and more importantly, the evidence shows that Plaintiff's customers were looking for a full extension slide oven rack which could be used in ovens with opposing side frames. Faced with this request, a person of ordinary skill in the art would not have had to take a huge creative leap to combine the Dobberstein, Geberzhan, and Jahrling patents to arrive at the '617 patent. Based on these considerations, Claims 1 and 5 of the '617 patent are obvious and thus invalid.

6. The '646 Patent

The Court also finds that Claim 1 of the '646 patent is obvious in light of the prior art. As already discussed, the use of full extension slides on oven rack assemblies had been disclosed by the Dobberstein and Geberzahn patents. The Barnes patent illustrates how a subtending bar with an aperture can be used to attach an oven rack to a slide assembly. Although the slide assembly in the Barnes patent was a roller wheel, it is not difficult to imagine that the subtending bar could attach to a slide rail in the same manner. Indeed, the Dobberstein patent shows a subtending bar being used to attach the oven rack to a slide rail. The only thing that Barnes teaches in addition to the Dobberstein patent is the use of apertures in the subtending bars. Modifying the subtending bar in Barnes to include two apertures instead of one would not be beyond the technical grasp of a person with ordinary skill in the art, nor cause the subtending bar to perform in any new way. The mounting post which extends from the slide rail and into the aperture of the subtending bar does not look or perform any differently

^{12/} In describing the devices that were currently available, the Jahrling patent states: "The present sheet metal clips have an essentially C-shaped construction, and, by means of an upper section, reach around an upper rod and, by means of a lower section, reach around a lower rod of the lateral element." (Dilger Decl., Ex. G., col. 1, ll. 26-28.)

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than the common structures that Dobberstein and Barnes previously suggested for attaching the subtending bar to the slide assembly, such as screws and nut and bolt arrangements. The '646 patent itself notes that the mounting posts can be "screws extending through the web of the slide member," "rivets extending through the web of the slide member or other protruding structures, and may include threaded ends for use of a nut to securely hold the mounting bar to the slide." (Zaitlen Decl., Ex. 2, col. 10, ll. 2-7.)

Claim 4 is similar to Claim 1, except that it adds opposing wire frames and a forward and rear hook to install the sliding oven rack assembly in the oven. As already explained, using sliding oven rack assemblies in ovens with opposing wire frames had been suggested in the prior art. The use of a "hook" to fasten the slide rails to the wire frame could also have been deduced from the prior art. Such structures were already used in the Geberzahn patent, with the hook wrapping around a portion of the side wall. It would have been obvious that the hook in the Geberzahn patent would function equally when wrapped around a bar, especially given the prior art mentioned in the Jahrling patent. The Jahrling patent mentions that its goal was to improve upon prior devices which did nothing more than reach around the bar, without providing a ledge under the bar for stability. The "hook," as construed in the '646 patent, is no different from devices that were already in use for attaching rails to bars of wire frames.

Moreover, like the '617 patent, there were market demands which would have motivated a person of ordinary skill in the art to combine the elements found in the '646 patent. As mentioned earlier, Plaintiff's customers were looking for a full extension sliding oven rack which could be used in ovens with opposing wire frames. A person of ordinary skill in the art looking to adapt a sliding oven rack assembly to wire frames would not have had any difficulty realizing that fitting the assembly from the Dobberstein patent with hooks would fulfill this market need. For these reasons, Claims 1 and 4 of the '646 patent are obvious and thus invalid.

C. Inequitable Conduct

Defendants have asserted a claim of inequitable conduct against Plaintiff, arguing that the inventors of the '617 and '646 patents improperly withheld prior art from the Patent and Trademark Offices, and these patents are thus unenforceable. Since the Court has found that the relevant claims of the patents are invalid because of obviousness, the Court need not reach these issues. Plaintiff's Motion for Summary Judgment on the issue of inequitable conduct is thus denied as moot.

Conclusion

For the foregoing reasons, Defendants' Motion for Summary Judgment on the Issue of Invalidity is granted. Defendants' Motion for Summary Judgment on the Issue of Non-Infringement is also granted. Plaintiff's Motion for Summary Judgment on the Issue of Infringement is denied. Plaintiff's Motion for Summary Judgment on the Issue of Inequitable Conduct is denied as moot. All of Plaintiff's evidentiary objections that have not already been addressed in this Order are denied as moot.

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Defendants' Objection and Motion to Strike the Reply Declaration of John Anders (Docket No. 86) is also denied as moot.

IT IS SO ORDERED.