

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

SUMMER INFANT (USA), Inc.            )  
    Plaintiff/Counter Defendant        )  
  )  
                  v.                        )     C.A. No. 1:17-cv-00549-MSM-PAS  
  )  
TOMY INTERNATIONAL, Inc.            )  
    Defendant/Counter Claimant        )

MEMORANDUM AND ORDER

This matter is before the Court on the objections of both the plaintiff (ECF No. 56) and the defendant (ECF No. 55) to the Report and Recommendation of Magistrate Patricia Sullivan (“R & R”, ECF 54) respecting the Motion for Claim Construction filed by TOMY, Inc. (ECF No. 34). While there were initially six disputed terms, the parties resolved two. (R & R at 2.)

Both corporations construct, market and sell infant/toddler bathing tubs. TOMY holds U.S. Patent No. 6,578,209, titled “Tubs for Bathing Infants and Toddlers,” issued on June 17, 2003. On November 14, 2017, TOMY sent Summer Infant a cease and desist letter asserting patent infringement. The Motion for Claim Construction involves definitional meanings relevant to whether Summer Infant’s tub is sufficiently similar to TOMY’s to constitute patent infringement. The four terms allegedly requiring construction are “molded plastic body,” “seating surface(s),” “distal edges joined at a bottom surface apex,” and “wale.” (R & R, ECF No. 54 at 3.)

I have reviewed the Magistrate's R & R, read and considered the submissions of the parties, held a hearing on the objections, and independently reviewed the record. The Magistrate's analysis is a painstaking, thorough and deliberative analysis of the exhibits, the arguments, and the relevant law. I therefore ADOPT it in its entirety. TOMY's motion (ECF No. 34) is GRANTED in part and DENIED in part. The constructions recommended by the Magistrate in the R & R at p. 21, are adopted.

SO ORDERED:

A handwritten signature in blue ink that reads "Mary S. McElroy". The signature is written in a cursive style and extends to the right of a horizontal line.

Mary S. McElroy  
United States District Judge

March 31, 2020