

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WILLIAMS-PYRO, INC. §
§
VS. § CIVIL NO. 4:12-CV-546-Y
§
WARREN WATTS TECHNOLOGY, LLC, §
et al. §

ORDER ON CLAIM CONSTRUCTION

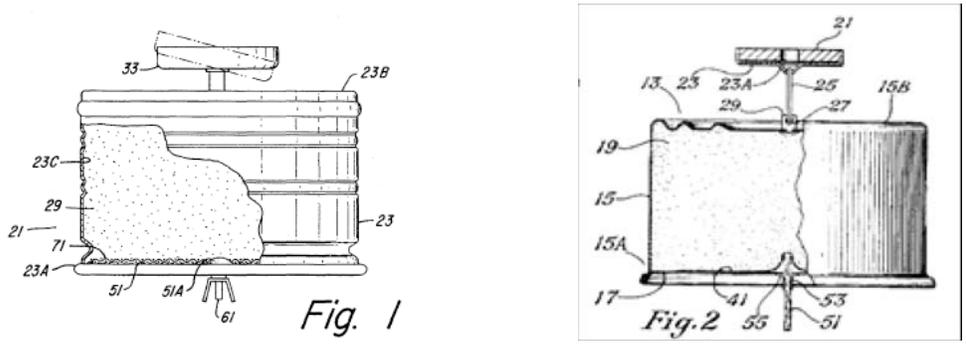
Before the Court is Plaintiff's Opening Claim Construction Brief (doc. 49). The parties have submitted a Joint Claim Construction Statement (doc. 48), in which they have agreed to the construction of many of the terms related to the patent at issue. After review of the joint statement, the Court hereby adopts the parties' Joint Claim Construction Statement as part of its claim construction. With respect to the construction of the remaining terms on which the parties could not agree, the Court enters the following order construing those terms.

I. Background

Williams-Pyro, Inc. ("WPI"), manufactures and sells a product known as the StoveTop FireStop. WPI describes the StoveTop FireStop as a small fire extinguisher that the consumer attaches to a vent hood, microwave, or any other surface located above a stove. In the event of a cooking fire, the StoveTop FireStop activates and disburses a fire-extinguishing powder.

The StoveTop FireStop is protected by several patents. The patent at issue in this lawsuit is U.S. Patent No. 5,518,075 ("the

'075 Patent"). The '075 Patent describes how the StoveTop FireStop works to extinguish cooking fires. WPI claims that defendant Warren Watts Technology, LLC ("WWT"), infringed on its '075 Patent when it began selling a competing product known as the Auto-Out in 2012.¹ A cross-section of WPI's claimed invention is depicted in Figures 1 and 2 below:



As stated, the parties have reached an agreement regarding the construction of many of the claim terms as issue. Such terms will be given their plain and ordinary meaning. The remaining disputes relate to the following underlined claim language:

explosive means located in close proximity to said one end wall of said container on the inside thereof for separating said segments from said one end wall along said scored lines and forcing said plurality of segments outward for forming a plurality of openings through said one end wall, when actuated

¹In WPI's original complaint, WTT is the only named defendant. In its second amended complaint, WPI added Safeguard Fire & Alarm, Inc.; Fire Safety Sales, Inc.; and Absolute Security Products, Inc. These businesses distributed WTT's product. For ease of reference, the Court will refer to the defendants collectively as WTT.

said container has an upper [end] and a lower end with said one end of said one end wall being located at said lower end

coupling means coupled to said upper end of said container for use for supporting said container with said lower end facing downward

The parties disagree over whether "explosive means" and "coupling means" are means-plus-function terms subject to the limitations set out in 35 U.S.C. § 112. The parties agree that the term "heat sensitive means," which appears elsewhere in the '075 Patent, is governed by § 112, but task the Court with determining the corresponding structure. Additionally, the parties disagree regarding whether the Court should refer to the specification in construing "close proximity." Finally, WTT claims that the "said on end of" language contained in claims 25 and 26 is indefinite and renders the claims invalid under 35 U.S.C. § 112(b).

II. Legal Standards for Claim Construction

Claim construction is a matter of law. *Markman v. Westview Instruments*, 517 U.S. 370, 372 (1996). "The duty of the trial judge is to determine the meaning of the claims at issue, and to instruct the jury accordingly. In the exercise of that duty, the trial judge has an independent obligation to determine the meaning of the claims, notwithstanding the views asserted by the adversary parties." *Exxon Chem. Patents v. Lubrizol Corp.*, 64 F.3d 1553, 1555 (Fed. Cir. 1995) (citation omitted). "[T]here is no magic formula or catechism for conducting claim construction." *Phillips*

v. AWH Corp., 415 F.3d 1303, 1324 (Fed. Cir. 2005). Even so, the Court's efforts in construing the patent are guided by certain well-settled basic principles of claim construction. *See id.* at 1312.

"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.'" *Id.* (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). "[T]he words of a claim 'are generally given their ordinary and customary meaning,'" which is, "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Id.* at 1312-13 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) and citing *Innova*, 381 F.3d at 1116, respectively). There is a "well-settled understanding that inventors are typically persons skilled in the field of the invention," and, therefore, "[t]he inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation." *Id.* at 1313.

In some cases the ordinary meaning of a claim's terms "may be readily apparent even to lay judges" while in others "determining the ordinary and customary meaning of the claim requires examination of terms that have a particular meaning in a field of art." *Id.* at 1314. In the latter cases, a court may look to

"those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean." *Id.* (quoting *Innova*, 381 F.3d at 1116.) Such sources include both intrinsic evidence, consisting of the words of the claims themselves, the remainder of the specification, and the prosecution history, as well as extrinsic evidence, such as dictionaries, treatises, inventor testimony, expert testimony, and the state of the art. See *id.*; see also *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995); *Vitronics*, 90 F.3d at 1582.

A court considers intrinsic evidence, understanding that the terms of a claim are to be read and understood in the context of the patent as a whole. See *Phillips*, 415 F.3d at 1313, 1315. Terms of both asserted and unasserted claims can be helpful in ascertaining the meaning of a claim term. See *id.* at 1314. Further, claims do not stand alone, but are instead a part of "a fully integrated written instrument" consisting principally of a specification that concludes with the claims." *Id.* (quoting *Markman*, 52 F.3d at 978.) "[C]laims 'must be read in view of the specification, of which they are a part.'" *Id.* (quoting *Markman*, 52 F.3d at 979.) "[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.* (quoting *Vitronics*, 90 F.3d at 1582). "The specification is . . .

the primary basis for construing the claims." *Id.* (quoting *Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448, 452 (Fed. Cir. 1985)).

Finally, with regard to intrinsic evidence, a court should consider the patent's prosecution history, if it is in evidence. *See id.* at 1317 (quoting *Markman*, 52 F.3d at 980). "[T]he prosecution history was created by the patentee in attempting to explain and obtain the patent [and] can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution." *Id.* But "because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Id.*

A court may also consider extrinsic evidence. *See id.* Extrinsic evidence "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Markman*, 52 F.3d at 980. Such evidence is, for several reasons, less reliable than intrinsic evidence and, therefore, is not as significant as intrinsic evidence. *See Phillips*, 415 F.3d at 1317, 1318-19. Thus, a court may, in its discretion, consider extrinsic evidence while keeping in mind the shortcomings of such evidence. *See id.* at 1319.

III. Analysis

A. Explosive Means

The phrase "explosive means" appears in claim 23 of the '075 Patent. In particular, "explosive means" is found in the fourth element of claim 23 as follows:

explosive means located in close proximity to said one end wall of said container on the inside thereof for separating said segments from said one end wall along said scored lines and forcing said plurality of segments outward for forming a plurality of openings through said one end wall, when actuated

WTT contends that "explosive means" is a means-plus-function term governed by § 112(f). WPI disagrees and urges this Court to construe the term as an explosive, explosive charge, or explosive substance.

The use of the word "means" in a claim term raises the presumption that the term is governed by § 112(f).² *Biomedino, LLC v. Waters Techs. Corp.*, 490 F.3d 946, 950 (Fed. Cir. 2007). The

²Section 112(f) provides:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

This section "operates to restrict claim limitations drafted in such functional language to those structures, materials, or acts disclosed in the specification (and their equivalents) that perform the claimed function." *Personalized Media Commc'ns, LLC v. Int'l Trade Comm'n*, 161 F.3d 696, 703 (Fed. Cir. 1998).

presumption may be overcome in either of two ways. First, "a claim element that uses the word 'means' but recites no function corresponding to the means does not invoke § 112." *Rodime PLC v. Seagate Tech., Inc.*, 174 F.3d 1294, 1302 (Fed. Cir. 1999). Second, "even if the claim element specifies the function, if it also recites sufficient structure or material for performing that function, § 112 [] does not apply." *Id.*

Claim 23 links "explosive means" to the following functions: "**separating said segments** from said one end wall along said scored lines and **forcing said plurality of segments outward** for forming a plurality of openings" Therefore, the first method of rebutting the presumption does not apply in this case. WPI asserts, however, that the second method does apply. That is, "explosive means" recites sufficient structure for performing the stated function. A claim term recites sufficient structure if "the term, as the name for the structure, has a reasonably well understood meaning in the art." *Watts v. XL Sys., Inc.*, 232 F.3d 877, 880-81 (Fed. Cir. 2000).

WPI asserts that "explosive means" has a reasonably well understood meaning in the art. WPI points to the declaration of Craig Waters, an individual with over twenty years' experience in the design and manufacture of stove-top fire-suppression devices. Pl.'s App. at 154. Waters declares that the term "explosive means" is understood to mean "an explosive, explosive charge, or an

explosive substance.” *Id.* The meaning asserted by WPI is also consistent with the dictionary definition of “explosive,” which includes “an explosive substance”. MERRIAM-WESTER’S COLLEGIATE DICTIONARY 410 (10th ed. 1993); Pl’s App. at 141.

Finally, WPI points out that this case is analogous to *Cole v. Kimberly-Clark Corp.*, 102 F.3d 524 (Fed. Cir. 1996). In *Cole*, the court declared that “perforation means extending from the leg band means to the waist band means through the outer impermeable layer means for tearing the outer impermeable layer” was not a means-plus-function limitation. *Id.* at 526-27. The *Cole* court determined § 112 did not apply to the claim language because “perforation means for tearing” described the structure supporting the tearing function (i.e., perforations). *Id.* at 531. Likewise, “explosive means” describes sufficient structure to rebut the presumption that § 112 applies.

The *Cole* court also found it important that the “claim describes not only the structure that supports the tearing function, but also its location.” *Id.* The claim element at issue here discloses the location of the explosive means: “located in close proximity to said one end wall of said container on the inside thereof” Finally, the ‘075 Patent uses more traditional means-plus-function language elsewhere in claim 23: “heat sensitive means for” See *Sanijet Corp. v. Lexor Int’l, Inc.*, No. 3:06-CV-1258-B, 2008 WL 1757820, *8 (N.D. Tex.

Apr. 14, 2008) (Boyle, J.). The Court agrees with WPI that the phrase "explosive means" provides sufficient structure to rebut the presumption that § 112(f) applies.

Having found that § 112 does not apply, the Court must now determine the ordinary and customary meaning of "explosive means." WPI argues that the correct construction of "explosive means" is: explosive, explosive charge, or explosive substance. WPI directs the court to the specification describing the invention, which repeatedly refers to the "explosive means" as an "explosive charge" and as an "explosive." The specification states, in relevant part:

The **explosive charge** for rupturing the bottom end along the weakened or scored lines for forcing the free ends of the segments outward comprises a small amount of **explosive charge** 51 deposited on the inside of the lid 27. The **charge** 51 is deposited as a thin layer in the area defined by the dotted circle 53 as seen in FIG 2. . . . On the inside, the fuse is held in contact with the **explosive** 51 by means 51A. . . . The fuse 61 ignites when the temperature outside of the fire extinguisher reaches a certain level to explode the **charge** 51.

Pl.'s App. at 10-11 (emphasis added). As stated, the specification "is always highly relevant" to the claim construction process and "is the single best guide to the meaning of a disputed term." *Vitronics*, 90 F.3d at 1582. Construing "explosive means" as an explosive, explosive charge, or explosive substance is consistent with the specification. This construction is also consistent with the dictionary definition for "explosive," which includes "an explosive substance." Accordingly, the Court construes "explosive

means" to mean "an explosive, explosive charge, or explosive substance."

B. Close Proximity

Claim 23 also includes the term "close proximity." WWT insists that "close proximity" requires that the explosive means be deposited as a thin layer **on** the inside of the lid. In support of its proposed construction, WWT points to the specification, which states that the "explosive charge" is "deposited on the inside of the lid." Def.'s App. at 12.

WPI contends that WWT's construction is too narrow and is inconsistent with the claim language itself. Further, WPI asserts that WWT's argument is contrary to well-established claim-construction principles. The Federal Circuit has counseled that reading limitations from the written descriptions into claims is "one of the cardinal sins of patent law." *Phillips*, 415 F.3d at 1320 (citation omitted).

WPI urges that "close proximity" should be given its plain and ordinary meaning as understood by a person of ordinary skill in the art. According to WPI, "close proximity" for purposes of the location of the explosive means, should be construed as: close enough to separate the segments from the end wall along the scored lines upon actuation or detonation of the "explosive means." This definition, WPI argues, is consistent with the claim language, which provides that the function of the "explosive means" is "for

separating said segments from said one end wall along said scored lines and forcing said plurality of segments outward for forming a plurality of openings” Pl.’s App. at 15. The Court agrees and adopts WPI’s construction of “close proximity.”

C. Heat Sensitive Means

Claim 23 includes the term “heat sensitive means.” The parties agree that this is a means-plus-function term governed by § 112(f). Accordingly, the Court’s remaining task is to “determine the corresponding structure disclosed in the specification.” *Medtronic, Inc. v. Advanced Cardiovascular Sys., Inc.*, 248 F.3d 1303, 1311 (Fed. Cir. 2001). A structure is “corresponding” only if “the specification or prosecution history clearly links or associates that structure to the function recited in the claim.” *Id.* (citation omitted).

The specification of the ‘075 Patent discloses the structure corresponding to “heat sensitive means” as a “fuse or firetrain.” Pl.’s App. at 10. Accordingly, the Court construes “heat sensitive means” as “a fuse, firetrain, and equivalents thereof.”

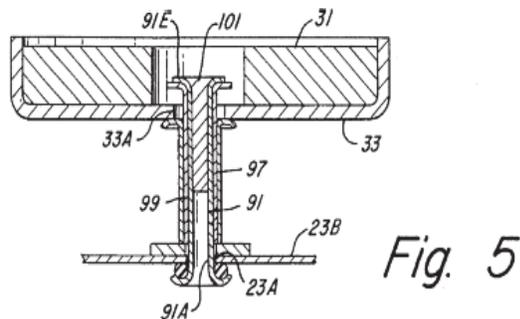
D. Coupling Means

Claims 25 and 26 include the following language: “**coupling means** coupled to said upper end of said container for use for supporting said container with said lower end facing upward.” WPI asserts that as with “explosive means,” the term “coupling means” provides sufficient structure to rebut the presumption that §

112(f) applies. WTT disagrees, arguing that "coupling means" does not disclose sufficient structure given that the term encompasses a broad range of structures, including those that do not fall in line with the invention.

In support of its argument, WTT points to *Douglas Dynamics, LLC v. Buys Products Co.*, No. 09-CV-261-bbc, 2010 WL 744253 (W.D. Wis. Mar. 2, 2010). In *Douglas Dynamics*, the district court considered whether the term "coupling means" was a means-plus-function limitation. *Id.* at * 13. The plaintiff argued that the word "coupling" provided sufficient structure to overcome the presumption that § 112(f) applied. *Id.* The court noted that under the dictionary definition, "coupling" could refer to a device defined by its function. *Id.* However, the court concluded that the presumption had not been rebutted because "the remainder of the claim language does not provide any additional information about the proper structure for the coupling means, other than the function of the coupling." *Id.* The court further explained that "'coupling' needs to be narrowed to some structure because the term standing alone could encompass too many structures that do not fall in line with the invention." *Id.* For example, a screw and a bolt could accomplish the "coupling" function, but it was clear from the patent that "coupling" was to be accomplished using plow and batter plugs. *Id.* at *13-14. Therefore, the court concluded that "coupling means" was a means-plus-function limitation. *Id.* at 13.

Although *Douglas Dynamics* is not controlling authority, the Court finds that it is persuasive, especially considering the factual similarities. Thus, the Court concludes that the presumption has not been rebutted with respect to "coupling means" and that § 112(f) applies. The Court now proceeds to identifying the claimed function. The plain language of claims 25 and 26 identify the function of the "coupling means" as "for use supporting said container with said lower end facing downward." Defs.' App. at 18. WTT points out that the only corresponding structure shown in the patent for performing this function is the magnet assembly detailed in the '075 Patent and depicted in Figure 5 below:



Accordingly, the term "coupling means" is limited to "a connection between the container and the magnet shown in Figure 5 and equivalents thereof."

E. "Said on End of" Language

Claims 25 and 26 both contain the following language: "said

container has an upper [end]³ and a lower end with **said one end of** said one end wall being located at said lower end” WWT argues that the claims are indefinite and, therefore, invalid because there is no antecedent basis for “said one end of said one end wall.” WPI contends that the phrase is merely a typo and should not render the claims invalid. The Court agrees.

A claim is indefinite if it is “not amendable to construction or [is] insolubly ambiguous. *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*, 587 F.3d 1339, 1352 (Fed. Cir. 2009). Proof of indefiniteness is a high standard met only when “an accused infringer shows by clear and convincing evidence that a skilled artisan could not discern the boundaries of the claim based on the claim language, the specification, and the prosecution history, as well as her knowledge of the relevant art.” *Halliburton Energy Servs., Inc, v. M-I LLC*, 514 F.3d 1244, 1249 (Fed. Cir. 2008).

Moreover, “it is well-settled that[] in a patent infringement suit, a district court may correct an obvious error in a patent claim.” *CBT Flint Partners, LLC v. Return Path, Inc.*, 654 F.3d 1353, 1358 (Fed. Cir. 2011). Here, claims 25 and 26 clearly contain an extraneous “said one end of.” Nothing in the specification or prosecution history contradicts WPI’s requested correction to the claim, which removes the extraneous language.

³Claim 26 includes the bracketed term, “end.” Claim 25 omits the term. WPI suggests that this subtle difference between claims 25 and 26 does not change the analysis, and the Court agrees.

Further, a person of ordinary skill in the art would understand that the "said one end of" language was extraneous. The Court adopts WPI's proposed construction and construes claims 25 and 26 as follows: "said container has an upper [end] and a lower end with ~~said one end of~~ said one end wall being located at said lower end."

IV. Conclusion

Based on the forgoing, the Court ADOPTS the parties' agreed claim construction and ORDERS that the disputed terms presented by the parties to the Court for resolution shall be construed as set out above.

SIGNED March 10, 2014.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE