

United States District Court,  
S.D. Iowa, Central Division.

**MAYTAG CORPORATION,**  
Plaintiff.

v.

**WHIRLPOOL CORPORATION,**  
Defendant.

**Nov. 23, 2004.**

Christine Lebron-Dykeman, Edmund J. Sease, Jeffrey D. Harty, R. Scott Johnson, McKee, Voorhees & Sease, PLC, Des Moines, IA, for Plaintiff.

David Kenneth Callahan, Imron T. Aly, Kathryn B. Sanderson, Christopher W. Keegan, David Rokach, Erick Ottoson, Raymond C. Woodring, Thomas G. Pasternak, Kirkland & Ellis LLP, Chicago, IL, John F. Lorentzen, Nyemaster Goode West Hansell & O'Brien, PC, Des Moines, IA, for Defendant.

## **ORDER ON CLAIMS CONSTRUCTION AND SETTING TELEPHONE HEARING ON PENDING MOTION**

**RONALD E. LONGSTAFF, District Judge.**

THE COURT HAS BEFORE IT Maytag Corporation's ("Maytag") motion for construction of claims, filed August 16, 2004. Defendant Whirlpool Corporation ("Whirlpool") submitted its memorandum in support of its proposed claim construction on September 13, 2004, and Maytag filed a reply memorandum on September 30, 2004. On October 19, 2004, the Court held a hearing pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed.Cir.1995). The matter is fully submitted

### **I. BACKGROUND**

Maytag filed the above-captioned action on October 8, 2003, alleging Whirlpool infringed claims 1, 2, 3, 5, 6 and 9-11 of U.S. Patent No. 5,056,688 ("the ' 688 patent"). FN1 Briefly, the ' 688 patent pertains to an ice cube and crushed ice dispenser installed in a home refrigerator-freezer. The ' 688 patent incorporates a reversible motor within the ice cube and crushed ice dispenser. When the motor is rotated in one direction, the unit dispenses whole ice cubes; when the motor is rotated in a second direction, the unit lifts ice cubes from the bottom of the storage receptacle through a set of crusher blades, and crushed ice is dispensed. The ' 688 patent was designed to replace then-customary ice dispensing units which relied on solenoid-operated cranks to direct ice down either a crushed or a cubed pathway.

FN1. It appears from the record that Maytag did not originally obtain the patent, but rather, subsequently purchased rights to the patent. In its resistance memorandum, Whirlpool expressly reserved the right to challenge title and standing in a later proceeding.

Defendant Whirlpool also makes an ice cube and crushed ice dispenser that is incorporated into its refrigerator-freezers and marketed nationwide. Like the dispenser of the '688 patent, Whirlpool's dispenser also uses a reversible motor and a set of crushing blades that when turned one way dispense whole ice cubes and when turned the other way dispense crushed ice. Notably, however, instead of configuring its dispenser in the horizontal orientation described as the preferred embodiment for the '688 patent, Whirlpool's dispenser sits vertically in the freezer compartment. At issue in this action is whether Whirlpool's vertically-oriented dispenser is in fact significantly different from the '688 patent, or whether, as Maytag argues, "all Whirlpool has done is taken the invention disclosed in the '688 patent and rotated it ninety degrees." Maytag's Prehearing Brief on Markman Claim Construction Issues, at 5.

In this first phase of the action, the Court must construe five terms used in the patent's three independent claims.

## **II. APPLICABLE LAW AND DISCUSSION**

### **A. Claim Interpretation Standards**

"A determination of patent infringement requires a two-step analysis. The court must first interpret the claim and determine the scope and the meaning of the asserted patent claims, and then compare the properly construed claims to the allegedly infringing device." *Liquid Dynamics Corp. v. Vaughan Co., Inc.*, 355 F.3d 1361, 1367 (Fed.Cir.2004) (citing *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996)). "The first step, claim construction, is a matter of law." *Vitronics Corp.*, 90 F.3d at 1582.

To interpret a disputed claim, a court must first evaluate the intrinsic evidence, most importantly, the patent itself, the specification, and often, the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed.Cir.1995) (en banc). First, the court should "look to the words of the claims themselves, both asserted and nonasserted, to define the scope of the patented invention." *Vitronics Corp.*, 90 F.3d at 1582. A heavy presumption exists that a term carries its ordinary and customary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed.Cir.2002).

Often, courts are asked to construe claim terms the accused infringer considers imprecise, or nonspecific. In defining these terms, the court's role at this juncture is not to "facilitate a comparison between the claim and the accused product," but rather, to construe the term "with whatever specificity and precision is warranted by the language of the claim and the evidence bearing on the proper construction." *PPG Indus. v. Guardian Indus. Corp.*, 156 F.3d 1351, 1355 (Fed.Cir.1998). "[T]he task of determining whether the construed claim *reads* on the accused product is for the finder of fact." *Id.* (citations omitted).

### **B. Claims Sought to be Constructed**

Maytag and Whirlpool dispute five terms in portions of claims 1, 5 and 11 of the '688 patent: 1) the proper construction for an ice storage container's "front plate" and "forwardly," which appear in claims 1, 5 and 11; 2) the proper construction for "means for discharging" or "means for dispensing" ice pieces "from said receptacle through said discharge opening," as used in claims 1 and 5;" 3) the proper construction for "means for selectively crushing" as used in claims 1, 5 and 11; 4) the proper construction for "a rotatable shaft passing through said receptacle and extending 'forwardly' through said discharge opening" which appears in claim 5 and in similar form in claim 11; and 5) "said feed wheel" as used in claim 11. The Court

will address each of these terms in turn.

## 1. front plate

Claim 1 identifies an ice storage receptacle "including a *front plate* having a discharge opening." Exh. A to Maytag's Pre-Hearing Brief on *Markman* Claim Construction ('688 patent") col. 9, 1.3 (emphasis added). The term "front plate" also appears in claims 5 and 11. FN2

FN2. The relevant portion of claim 5 states:  
An ice dispenser, comprising:

a receptacle for storing ice pieces said receptacle having a front plate with a discharge opening;

'688 patent, col. 10, ll. 15-17.

Claim 11 states in relevant part:

An ice dispenser, comprising:

a receptacle for storing ice pieces, said receptacle including a front plate having a discharge opening and a bottom sloped downwardly toward the front;

Id., col. 10, ll. 63-66.

Maytag does not dispute that the '688 patent discloses a horizontally-oriented unit as the preferred embodiment. Maytag argues, however, that the claim is not limited to such an orientation, and that the term "front plate" is relative to the direction of the ice as it moves. In support of this theory, Maytag submits that the plain and ordinary meaning of "front" is "the forward part of a surface," with "forwardly" defined in turn as "**a.** near, being at, or belonging to the front **b.** situated in advance." *Webster's II New Riverside University Dictionary* at 508, 500 (1988). Following this definition, the "front plate" under Maytag's proposed construction is the plate or wall situated *in advance* of the point at which ice is dispensed.

Whirlpool argues that the plain and ordinary meaning of "front plate" is a plate at the front of the ice

receptacle, with "front" defined as "the part or side of anything that *faces forward*." *See Random House Dictionary*, 2nd Ed. at 770 (1987) (emphasis added). Whirlpool contends there is no basis for a definition based on the direction of movement in the claims or specification.

The Federal Circuit repeatedly has rejected the argument that the claims of a patent that itself describes only a single embodiment must be interpreted as being limited to that embodiment. *LiebelFlarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed.Cir.2004). As clarified by the court: "Even when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using 'words or expressions of manifest exclusion or restriction.'" *Id.* (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed.Cir.2002)); *see also* *Anchor Wall Sys. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 1306-07 (Fed.Cir.2003) ("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") (internal citation omitted). No such "words or expressions of manifest exclusion or restriction" are present in claims 1, 5 or 11. Rather, each of claims 1, 5 and 11 appears carefully drafted to avoid a horizontal limitation.

Whirlpool argues in its construction brief that if Maytag's proposed construction were to be adopted, the front plate could theoretically double as the "bottom wall." Such a result, according to Whirlpool, would conflict with claim 11, which requires both a "front plate" and a "bottom sloped downwardly toward the front." *See* '688 patent, col. 10, ll. 65-66. This Court disagrees. Although the preferred embodiment obviously is a box-type structure, the front plate need not be linear. Other structures, such as a modified sphere, could match the description contained in claims 1, 5, and 11, with a "bottom" in the same "side" as the "front plate." When asked during the hearing how he could reconcile Maytag's proposed construction with the language in claim 11, counsel for Maytag responded: "You can still have a front plate in the bottom wall." The key, according to Maytag, is that the front plate remains "in advance" of the flow of ice. The Court finds this argument persuasive.

After considering the parties' arguments and the relevant caselaw, the Court construes "front plate" as the plate situated in advance of the flow of ice from the receptacle. This construction for "front plate" shall carry over to claims 5, 11, which both refer to an ice storage receptacle with a "front plate." *See, e.g.,* *Rexnord Corp. v. Latram Corp.*, 274 F.3d 1336, 1342 (Fed.Cir.2001) ("a claim term should be construed consistently with its appearance in other places in the same claim or in other claims of the same patent").

## **2. means for discharging/dispensing ice pieces**

The parties also dispute the term "means for discharging ice pieces from said receptacle through said discharge opening," as it appears in claim 1 of the '688 patent. '688 patent, col. 9, ll. 54-55. Similar language, substituting the term "dispensing," for "discharging," appears in claim 5 of the patent. FN3 Maytag contends that in construing these terms, "discharge" should not be limited to lifting or pushing, as no basis exists for adding these definitional elements to the claim language. Whirlpool disputes this interpretation, and contends the term "discharging" necessarily includes lifting the ice from the receptacle and pushing the ice pieces through the discharge opening.

FN3. Claim 5 provides in relevant part:

means positioned in said receptacle and rotatably connected to said shaft for dispensing ice pieces through said discharge opening when said shaft is rotated in one direction and also when said shaft is rotated in the opposite direction;....

'688 patent, col. 10, ll. 23-27.

A patentee may choose to describe a claim term by its *function*, rather than describing the specific component at issue. These claim terms are known as "means-plus-function" terms, and demand special rules of claim construction, set forth at 35 U.S.C. s. 112, para. 6. The parties agree the "means for discharging/dispensing" language is a means-plus-function limitation governed by 35 U.S.C. s. 112, para. 6.

"In construing a means-plus-function claim limitation, the recited function within that limitation must first be identified. 'Then, the written description must be examined to determine the structure that corresponds to and performs that function.' " *Gemstar-TV Guide Int'l, Inc. v. International Trade Comm'n*, 383 F.3d 1352, 1361 (Fed.Cir.2004) (quoting *ACTV Inc v. Walt Disney Co .*, 346 F.3d 1082, 1087 (Fed.Cir.2003)).

Courts look to the claim language itself to determine the function of limitation. *Id.* In the present case, the function of the "means for discharging ice pieces from said receptacle through said discharge opening" is both to discharge ice pieces from the receptacle and discharge the ice pieces through the discharge opening. FN4 ' 688 patent, col. 9, ll. 54-55. Similarly, the function for claim 5 is "dispensing ice pieces through said discharge opening." *Id.*, col. 10, ll. 24-25.

FN4. Maytag concedes in its reply brief that the parties do not "meaningfully dispute" either of these claimed functions. Maytag's Reply Markman Brief, at 10.

The next step is to examine the written description to identify the corresponding structure that is necessary to perform the function at issue." *Id.* If the corresponding structure does not completely perform the claimed function, additional components must be identified to ensure the structure can perform the entire function. *See, e.g., Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 296 F.3d 1106, 1119 (Fed.Cir.2002). Nevertheless, in identifying the corresponding structure, "a court may not import functional limitations that are not recited in the claim, or structural limitations from the written description that are unnecessary to perform the claimed function." *Wenger Mfg. v. Coating Machinery Sys.*, 239 F.3d 1225, 1233 (Fed.Cir.2001) (citing *Micro. Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed.Cir.1999)).

The specification of patent '688 describes the structure corresponding to the "means for discharging ..." as follows: "a rotationally symmetrical vane is provided that drives ice pieces *from the inlet end 70 to the outlet end 72* regardless of the direction of rotation of lift wheel 66." '688 patent, col. 5, ll. 45-48 (emphasis added). Although the preferred embodiment employs the lift wheel 66 in order to both discharge ice pieces from the receptacle and discharge the ice pieces through the discharge opening, it is in fact only the vanes themselves that are *critical* to the performance of both functions. The Court therefore construes the terms discharging and dispensing as used in claims 1 and 5 to mean simply "unloading," or "transferring" ice pieces, as is accomplished when the ice moves from the inlet end 70 to the outlet end 72. Lifting and pushing is necessary only for the preferred embodiment.

### **3. means for selectively crushing**

The parties next dispute the proper construction of the element "means for selectively crushing," which appears in various forms in claims 1, 5 and 11. FN5 Whirlpool contends that the Court should construe the relevant language in all three claims using a means-plus-function format. Maytag agrees that claim 5 is a means-plus-function claim, but believes that because claims 1 and 11 include sufficient information to perform the function of selectively crushing ice, there is no need to interpret these particular claim terms. *See, e.g., Rodime, PLC v. Seagate Technology, Inc.*, 174 F.3d 1294, 1304 (Fed.Cir.1999) (presumption that s. 112, para. 6 applies for "means for" limitation may be rebutted if the claim language includes "sufficient" structure to perform claimed function). Prior to resolving this latter issue, the Court will begin by construing the relevant language in claim 5 pursuant to 35 U.S.C. s. 112, para. 6.

FN5. The relevant portion of claim 1 provides:

means for selectively crushing said ice pieces discharged from said receptacle through said discharge opening, said selective ice crushing means comprising at least one ice crusher arm mounted to a rotatable shaft and at least one stationary crusher arm; and

'688 Patent, col. 9, ll. 56-61.

The relevant portion of claim 5 states:

means positioned in front of said front plate and rotatably coupled to said shaft for selectively crushing ice pieces dispensed through said discharge opening when said shaft is rotated in one direction, said selective crushing means being inoperative for crushing ice pieces when said shaft is rotated in the opposition direction.

*Id.*, col. 10, ll. 28-34.

Lastly, claim 11 states in part:

means positioned in front of said front plate for selectively crushing ice pieces fed through said discharge opening depending on whether said shaft is rotated clockwise or counterclockwise, said crushing means comprising at least one crusher arm mounted for axial rotation to said shaft and a stationary crusher arm wherein, when said shaft is rotated in one direction, ice pieces are caught and crushed between said crusher arm and said stationary crusher arm and, when said shaft is rotated in the opposite direction, said ice pieces escape from being caught and crushed.

Id., col. 11 ll.12-20-col. 12, ll. 1-3.

**a. selectively crushing pursuant to 35 U.S.C. s. 112, para. 6.**

The parties agree in substance that the function at issue is the ability of the user to choose when he or she desires crushed ice. The Court must now examine the written description to "determine the structure that corresponds to and performs that function." *Gemstar-TV Guide Int'l*, 383 F.3d at 1361. Maytag contends that the corresponding structure necessary to perform the selective crushing of ice is a first rotatable arm 94 and at least one stationary crusher arm 96. In support of this argument, it cites to language in the specification indicating "[w]hen the user has selected crushed ice, reversible motor 50 drives shaft 58 in the clockwise direction as depicted in FIG. 5A which for simplicity of illustration, is sectioned so as to show only the first rotatable crusher arm 94 and one stationary crusher arm 96 closest to the discharge opening 38." '688 patent, col. 7, ll. 34-39.

Whirlpool does not dispute that a first rotatable arm and a stationary crushing arm are *necessary* parts of the corresponding structure, but contends these two parts are not *sufficient* to perform the entire function of "selectively crushing" ice. According to Whirlpool, additional parts, known as barrier arms, also are needed to enable the structure disclosed in the '688 patent to perform the function at issue. As set forth in the specification:

[I]t was found that in the ice crushing mode of operation, when the rotatable crusher arms are moving clockwise, an ice piece would occasionally be fed through the left side of discharge opening 38 ... and it would fall down through the whole ice piece passageway 142 and be dispensed along with the crushed ice. This was an undesirable occurrence, and barrier arms 110 or baffle provides a rotatable partition to insure that it doesn't happen.

'688 patent, col. 8, ll. 8-19. In short, Whirlpool argues that barrier arms also are needed to ensure the user selecting crushed ice is not delivered a few whole ice pieces along with his or her crushed ice.

This Court disagrees that barrier arms are a critical part of the structure. As held by the Federal Circuit in *Cardiac Pacemakers, Inc. V. St. Jude Medical, Inc.*, 296 F.3d 1106, 1119 (Fed.Cir.2002), as long as the corresponding structure is sufficient to perform the recited function, "[i]t remains true, of course, that corresponding structure need not include *all things necessary* to enable the claimed invention to work." Barrier arms do not aid in the crushing process, and although they enhance the user's ability to select either whole or crushed ice, they are not essential to the performance of this latter function.

**b. selectively crushing as used in claims 1 and 11**

Having construed the term "selectively crushing" as used in claim 5 to not *require* the use of barrier arms, the Court must now determine whether that construction applies equally to the term as it appears in claims 1 and 11. Claim limitations that include the term "means for" are presumed to be governed by 35 U.S.C. s. 112, para. 6. *See, e.g.*, *Sage Prods. v. Devon Indus., Inc.*, 126 F.3d 1420, 1427 (Fed.Cir.1997). This presumption may be rebutted if the claim language includes "sufficient" structure to perform the function that is claimed, in this case, "selectively crushing ice." *Rodime*, 174 F.3d at 1304.

Maytag contends that language in claims 1 and 11 describes the structure of a shaft-mounted rotating crusher arm and a stationary crusher arm, which Maytag claims are all that is needed to perform the function of selectively crushing. Because the claims also indicate the location and operation of the structure, s. 112, para. 6 does not apply. *See, e.g.*, *TI Group Automotive Sys., Inc. v. VDO North America, L.L. C.*, 375 F.3d 1126, 1135 (Fed.Cir.2004) (claim limitation at issue included both a means and a structure, and thus, was not governed by s. 112, para. 6); *Cole v. Kimberly-Clark Corp.*, 102 F.3d 524, 530-31 (Fed.Cir.1996) (to invoke s. 112, para. 6, "the alleged means-plus-function claim element must *not* recite a definite structure which performs the described function") (emphasis added).

This Court agrees. The relevant portion of claims 1 and 11 clearly describe both the rotating and stationary arms that are necessary to perform the recited function. '688 patent, col. 9, ll. 64-67; col. 11, ll. 16-18. Furthermore, the specification clearly contemplates an embodiment of the device that does not use barrier arms. '688 patent, col. 8, ll. 14-19. Barrier arms, which themselves were the subject of a separate patent application filed by Maytag, simply *enhance the utility* of the device. *See* Exh. C to Maytag's Reply Markman Brief. *See also* *Cardiac Pacemakers*, 296 F.3d at 1119 ("corresponding structure need not include all things necessary to enable the claimed invention to work"). The Court therefore concludes the structure corresponding to the term "selectively crushing" includes a shaft-mounted rotating crusher arm 94 and a stationary crusher arm 96.

#### **4. rotatable shaft**

The parties next dispute construction of the term "rotatable shaft passing through said receptacle and extending forwardly through said discharge opening," which appears in claim 5 of the '688 patent. '688 patent, col. 10, ll. 18-20. Claim 11 similarly describes a "shaft extending through said receptacle and passing forwardly through said discharge opening." *Id.*, col. 10, ll. 67-68. Whirlpool contends that the term should be construed as describing a *horizontal* shaft. In support of this argument, Whirlpool cites to the description of the preferred embodiments, which identifies a "[m]etal shaft 58 [that] extends horizontally the entire length of receptacle 26 and has an extension portion 60 that extends forwardly through discharge opening 38...." *Id.*, col. 4, ll. 66-68.

Again, however, the fact the preferred embodiment is a horizontal structure does not mean the claims are thus *limited* to a horizontal orientation. *Anchor Wall Sys. v. Rockwood Retaining Walls, Inc.*, 340 F.3d at 1306-07 ("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"). For the reasons outlined in part II(B)(1) above, the Court adopts Maytag's proposed definition of "forward" to mean "situated in advance" of the flow of ice. *See Webster's II New Riverside University Dictionary* at 508. The corresponding construction for a shaft passing "forwardly" through the discharge opening therefore means passing in the direction that is "in advance of" the flow of ice.

#### **5. said feed wheel**

Lastly, Whirlpool argues that the term "said feed wheel" as used in claim 11 has no antecedent, and that therefore, claim 11 is invalid as indefinite. Maytag disagrees, claiming that one of ordinary skill in the art would interpret the term "feed section" as equivalent to the term "feed wheel." *See, e.g.*, *Omega Eng'g Inc. v. Raytek Corp.*, 334 F.3d 1314, 1320-21 (Fed.Cir.2003) ("Determining whether a claim is definite requires an analysis of 'whether one skilled in the art would understand the bounds of the claim when read in light of the specification.' ") (quoting *Miles Labs., Inc. v. Shandon Inc.*, 997 F.2d 870, 875 (Fed.Cir.1993)).

Specifically, Maytag contends the term "feed section" is used interchangeably with "feed wheel" throughout the background section of the patent. *See* '688 patent, col. 1, l. 21; col. 1, ll.65-66; col. 3, ll. 18-50.

Admittedly, there are several inconsistencies in the patentee's use of the terms "feed section," "feed wheel" and "lift wheel" which prevent a finding that the terms are completely interchangeable. For example, the first two references cited by Maytag equate "feed section" with "lift wheel"-not "feed wheel." *See* '688 patent, col. 1, l. 21; col. 1, ll.65-66. Secondly, the "feed section" is identified in the drawings as part 44, whereas the "lift wheel" or "feed wheel" is identified as part 66. *See* '688 patent, Figs. 1-2. In fact, in the description of the preferred embodiments describes the "feed wheel" as a *part* of the "feed section." *See* '688 patent, col. 5, ll. 15-16 ("feed section 44 further includes a plastic molded lift wheel 66 or feed wheel").

Nevertheless, the *Manual of Patent Examining Procedure* clarifies that "[t]here is no requirement that the words in the claim must match those used in the specification disclosure." *Manual of Patent Examining Procedure* s. 2173.05(e) (8th Ed.2001). Furthermore:

[T]he failure to provide explicit antecedent basis for terms does not always render a claim indefinite. If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. *Ex parte* Porter, 25 USPQ2d 1144, 1145 (Bd. Pat.App. & Inter.1992) ("controlled stream of fluid" provided reasonable antecedent basis for "the controlled fluid"). Inherent components of elements recited have antecedent basis in the recitation of the components themselves. For example, the limitation "the outer surface of said sphere" would not require an antecedent recitation that the sphere has an outer surface.

*Id.* When read in context, "said feed wheel" as used in claim 11 clearly is meant to be an inherent component of the "feed section."

A district court is authorized to correct certain minor errors in a patent only if "(1) the correction is not subject to reasonable debate based on consideration of the claim language and the specification and (2) the prosecution history does not suggest a different interpretation of the claims." *Novo Indus., L.P. v. Micro Molds Corp.*, 350 F.3d 1348, 1357 (Fed.Cir.2003). The Court believes the substitution of "feed section" for "feed wheel" in claim 11 is not subject to reasonable debate. Lacking prosecution history to the contrary, the Court constructs the term "said feed wheel" to mean "said feed section."

### **III. WHIRLPOOL'S MOTION TO COMPEL FURTHER CLAIM CONSTRUCTION**

On August 2, 2004, Whirlpool filed a motion to compel further claim construction and infringement contentions or limit Maytag to its current contentions. Maytag resisted the motion August 16, 2004. After reviewing the briefings submitted by the parties, the Court finds it has in this Order construed all terms that are genuinely in dispute in this action. *See Vivid Techs., Inc. v. American Science & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed.Cir.1999) ("only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy"). Whirlpool's motion to compel further claim construction is denied.

Whirlpool's alternative motion to compel infringement contentions or to limit Maytag to its current contentions shall come on for telephonic hearing before the undersigned at 9:00 a.m. on Wednesday, December 13, 2004. The conference call shall be placed by Whirlpool.

IT IS ORDERED.

S.D.Iowa,2004.

Maytag Corp. v. Whirlpool Corp.

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