United States District Court,
S.D. Texas, Houston Division.

SAFETCARE MANUFACTURING, INC,
Plaintiff.
v.
TELE-MADE, INC., et al,
Defendants.

July 28, 2005.

John S. Egbert, Andrew Weikeen Chu, Paul Stephen Beik, Egbert Law Offices, Houston, TX, for Plaintiff.

C. Henry Kollenberg, Crain Caton & James, Houston, TX, James H. Wallace, Jr., Michael L. Sturm, Robert J. Scheffel, Wiley Rein & Fielding LLP, Washington, DC, for Defendants.

ORDER

VANESSA D. GILMORE**, District Judge.**

Pending before the Court are the Defendant Cambridge Technologies, Inc.'s Markman Brief Regarding Claim Construction (**Instrument No. 54**), Plaintiff SafeTCare Manufacturing, Inc.'s Brief on Claim Construction (**Instrument No. 55**), and Defendants Burke, Inc's, Gendron, Inc.'s, and ConvaQuip Industries, Inc.'s Markman Brief (**Instrument No. 56**). The Court held a *Markman* hearing to resolve this claim construction dispute on July 22, 2005.

I.

This litigation centers on United States Patent No. 6,357,065 (the "'065 patent"). (Instrument No. 55, at 1). The '065 patent is held by Plaintiff SafeTCare Manufacturing, Inc. ("SafeTCare"). (Id.). SafeTCare brings this patent infringement lawsuit against Defendants TeleMade, Inc., Burke, Inc., Cambridge Technologies, Inc., ConvaQuip Industrial, Inc., Modern Medical Supply, Kinetic Concepts, Inc., and Gendron, Inc.. (Id.). The '065 patent application was filed on November 15, 1999, and the patent issued on March 19, 2002. (Instrument No. 54, at 8).

The '065 patent covers a "variable width bariatric bed for accommodation of patients that do not fit on regular size hospital beds." (Instrument No. 55, at 1). Plaintiff states that hospitals "require these special beds to maintain access to health care and to provide service to these patients, who are typically extremely obese." (Id.). Plaintiff goes on to explain,

The bariatric bed of the '065 patent includes a frame having a modular configuration with front end, rear end and middle frame sections that are detachable from one another to facilitate storage, transport and relocation through narrow entrances. A series of electric motors carried by the frame applies pushing forces

to raise a plurality of mattress support deck sections to adjust the contour of the mattress.

Claim 12 of the '065 patent covers pull-out extensions. Each of the mattress support deck sections has a pair of pull out extensions that are adapted to slide outwardly and in opposite directions from a retracted position to an extended position at which the mattress support deck sections have a relatively wide width to support a correspondingly wide mattress.

(Id., at 2).

Defendant Cambridge Technologies, Inc. ("CamTec"), like SafeTCare, is in the business of manufacturing and selling bariatric beds, which, again, are hospital beds used to provide care and to treat obese people. (Instrument No. 54, at 2). Plaintiff claims that CamTec's Expanda Bed, model number 4354, infringes the '065 patent. (Id.).

CamTec explains that a "hospital bed is typically adjustable to control both mattress contour and height above the floor." (Id., at 6). Hospital beds are normally rated for patients weighing up to 350 pounds. (Id.). In addition, a standard hospital bed is no wider than 39 inches, so it will fit through standard hospital doors. (Id.). By contrast, a bariatric bed is used to accommodate patients who weigh in excess of 350 pounds. (Id.). Bariatric beds "are capable of adjusting the contour of a mattress and raising or lowering the elevation of the mattress above the floor. A bariatric bed is often capable of lifting up to three times the weight of the typical hospital bed." (Id.). In addition, bariatric beds are typically wider than standard hospital beds, in order to accommodate larger people. (Id.). Bariatric beds may be as wide as 60 inches, which means they may not fit through standard hospital doors and may not be transported easily around a hospital. (Id.).

Bariatric beds are "well known and have been known in the art for many years," going back at least to 1983. (Instrument No. 56, at 2). In addition, bariatric beds "with movable sections powered by electric motors have also been around for many years," and "beds with expandable sides have been around for more than a century." (Id.). The claimed difference in the '065 patent bariatric bed is that it incorporates both the expandable sides and the electric motors, in one bed. (Id., at 3). CamTec states that, at the time the '065 patent application was filed, "adjustable width bariatric beds were well known, with many patents directed to this technology issued to various co-defendants in this suit." (Instrument No. 55, at 8).

Claim 12 is the only claim at issue for the purposes of this *Markman* claim construction. The language of Claim 12 provides as follows,

12. A bed comprising:

a frame;

a plurality of deck sections pivotally connected to said frame to support a mattress, each of said plurality of deck sections having first and opposite sides and first and opposite pull out extensions slidable outwardly from said first and opposite sides between a retracted position at which said plurality of deck sections have a relatively narrow width by which to support a mattress having a correspondingly narrow width and an extended position at which said plurality of deck sections have a relatively wide width by which to support a mattress having a corresponding wide width; and

a plurality of electric motors carried by said frame and coupled to respective ones of said plurality of deck

sections for exerting a *pushing force* on said plurality of deck sections for causing said deck sections to rotate upwardly relative to said frame so as to adjust the contour of the mattress.

(Instrument No. 56, Exhibit A, at 14)(emphasis added). The term in dispute is "pushing force," located in the last paragraph of the claim.

Plaintiff's construction of the claim as a whole, and of "pushing force" in particular, is simply a restatement of the exact wording of the claim. (Instrument No. 55, at 7-8). Plaintiff contends that "[t]here are no special meanings proposed by Plaintiff. The words are common, and the Court may not have any trouble understanding Claim 12 as written. Any appropriate common dictionary can be used to provide additional information, if necessary." (*Id.,* at 8). In its response brief, Plaintiff argues that " 'pushing force' as used in the claims of '065 patent should be given its ordinary meaning." (Instrument No. 58, at 1). To the Plaintiff, " 'Pushing force' means a pushing force, and any confusion with the meaning of this term is unnecessary because the meaning is clear and ordinary." (Id., at 4). In addition, Plaintiff states that "no actual construction of the term is needed." (Id.).

CamTec, however, does offer an alternative construction of the term. CamTec urges the Court to find that "pushing force" means a "force away from each electric motor." (Instrument No. 54, at 5). CamTec also addresses the use of "a pushing force" in Claims 1-4, 13, 15, 16, and 18, though none of the other parties discuss those other claims. (Id., at 14). CamTec argues that "pushing force" and "pushing" should be given the construction, throughout the patent, of "a physical force steadily applied in a direction away from the body exerting it." (Id.).

CamTec supports this construction with dictionary citations, arguing that the ordinary meaning of "pushing force" should be applied. (Instrument No. 54, at 7). CamTec also spends a great deal of time explaining that " 'pulling' is not the same as 'pushing' " and that SafeTCare's contention that CamTec's Expanda Bed infringes the patent relies upon the argument that pulling is the same as pushing. (Id., at 2). CamTec does not clarify when or how Plaintiff offered a reading of the patent that required "pushing force" to include "pulling." CamTec does, however, state the argument that pushing and pulling are antonyms and cannot be construed to mean the same thing. (Id., at 18). The most lively argument presented from CamTec states, "The difference in meaning may become even more evident if the plaintiff were teetering on the edge of a high cliff, and asked Defendant CamTec for some help, to pull him up, and Defendant CamTec walked over and gave the plaintiff a push." (Id., at 17).

Defendants Burke, Inc. ("Burke"), Gendron, Inc. ("Gendron"), and ConvaQuip Industries, Inc. ("ConvaQuip") (collectively, the "Burke Defendants") make similar claim construction arguments. (Instrument No. 56). The Burke Defendants state, first, that "Claim 12 is the only claim at issue in this litigation" because it was the only claim identified in Plaintiff's responses to interrogatories requesting the identification of the allegedly infringed claims. (Id., at 1, n. 1). The Burke Defendants state, "Thus, there presently appears to be only one relatively straightforward *Markman* issue for the Court to decide-whether the 'plurality of electric motors ... for exerting a pushing force' limitation on Claim 12, as understood by one of ordinary skill in the art and as consistently used in the '065 Patent, applies equally to a plurality of motors exerting a 'pulling force.' " (Id., at 1-2). Again, it is unclear why the parties are focused on whether or not "pushing force" would include pulling. Nevertheless, the Burke Defendants make all manner of arguments to support the finding that "pushing" and "pulling" are "polar opposites" and are antonyms. (Id., at 6).

The following table summarizes the proposed claim constructions by the three parties:

Claim 12	Plaintiff's Proposed Construction	CamTec's Proposed Construction	The Burke Defendants' Proposed Construction
... a plurality of electric motors carried by said frame and coupled to respective ones of said plurality of deck sections for exerting a *pushing force* on said plurality of deck sections for causing said deck sections to rotate upwardly relative to said frame so as to adjust the contour of the mattress.	... a plurality of electric motors carried by said frame and coupled to respective ones of said plurality of deck sections for exerting a *pushing force* on said plurality of deck sections for causing said deck sections to rotate upwardly relative to said frame so as to adjust the contour of the mattress. (Instrument No. 58, at 3).	... a plurality of electric motors carried by said frame and coupled to respective ones of said plurality of deck sections for exerting a *physical force applied in a direction away from the body exerting it* on said plurality of deck sections for causing said deck sections to rotate upwardly relative to said frame so as to adjust the contour of the mattress. (Instrument No. 54, at 2).	... a plurality of electric motors carried by said frame and coupled to respective ones of said plurality of deck sections for exerting *a pushing force (i.e., a force applied in a direction away from the body exerting it) as opposed to a pulling force (a force causing motion toward the source)* on said plurality of deck sections for causing said deck sections to rotate upwardly relative to said frame so as to adjust the contour of the mattress. (Instrument No. 56, at 3).

II.

Whoever without authority makes, uses, or sells any patented invention within the United States during the term of the patent therefor, infringes the patent. 35 U.S.C. s. 271. The determination of whether a claim of a patent has been infringed is a two-step process. First, the Court must determine the meaning and scope of the patent claims asserted to be infringed. *See* Bell Atl. Network Servs., Inc. v. Covad Comms. Group, Inc., 262 F.3d 1258, 1267 (Fed.Cir.2001); Markman v. Westview Instruments, Inc., 52 F.3d 967, 976 (Fed.Cir.1995), *aff'd,* 116 S.Ct. 1384 (1996). This step is commonly known as claim construction or interpretation. Second, the court must compare the claims alleged to be infringed to the accused device. *See* Bell Atlantic, 262 F.3d at 1267; Markman, 52 F.3d at 976.

Claim interpretation is a matter of law involving the review of patent specifications, prosecution history, language of the patent claims, and, if necessary, extrinsic evidence. *See* Texas Instruments v. U.S. Int'l Trade Com'n, 988 F.2d 1165, 1171 (Fed.Cir.1993). The court must decide and explicate its findings regarding claim construction on the record. *See* Genentech, Inc. v. Wellcome Foundation Ltd., 29 F.3d 1555 (Fed.Cir.1994).

"[A]s a general rule, all terms in a patent claim are to be given their plain, ordinary and accustomed meaning to one of ordinary skill in the relevant art." Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1342 (Fed.Cir.2001). *See also* Toro Co. v. White Consol. Indus., Inc., 199 F.3d 1295, 1299 (Fed.Cir.1999) ("[W]ords in patent claims are given their ordinary meaning in the usage of the field of the invention, unless the text of the patent makes clear that a word was used with a special meaning."). In addition, unless required to do otherwise, a court should give a claim term "the full range of its ordinary meaning as understood by an artisan of ordinary skill." Rexnord, 274 F.3d at 1342 (citing Johnson Worldwide Assocs.,

Inc. v. Zebco Corp., 175 F.3d 985, 989 (Fed.Cir.1999)).

In construing patent claims, the Court looks to the intrinsic evidence of claim meaning-the claims, the specification of the patent, and the prosecution history of the patent. *See* Vitrionics Corp. v. Conceptronic Inc., 90 F.3d 1576, 1582-83 (Fed.Cir.1996). If the intrinsic evidence is clear, "it is improper to rely on extrinsic evidence in construing the patent claims." Id. at 1583. In fact, when the meaning of a disputed claim term is clear from the intrinsic evidence, *i.e.,* the intrinsic evidence is unambiguous, then that meaning and no other must prevail; it is improper for the court to rely on extrinsic evidence to alter or supersede that meaning. *See* Bell & Howell Document Mgmt. Prods. Co. v. Altek Sys., 132 F.3d 701, 706 (Fed.Cir.1997).

It is well established that "the language of the claim defines the scope of the protected invention." Bell Communications Research, Inc. v. Vitalink Communications Corp., 55 F.3d 615, 619 (Fed.Cir.1995). The Court first must look at the claim language and ascribe the plain and ordinary meaning to the phrase. *See* Hockerson-Halberstadt, Inc. v. Avia Group Int'l, Inc., 222 F.3d 951, 955 (Fed.Cir.2000). The Federal Circuit has indicated that the claim language itself defines the scope of the claim, and a construing court does not accord the specification, prosecution history and other relevant evidence the same weight as the claims themselves. *See* Eastman Kodak Co. v. Goodyear Tire & Rubber Co., 114 F.3d 1547, 1552 (Fed.Cir.1997), *overruled on other grounds by* Cybor Corp. v. FAS Techs. Inc., 138 F.3d 1448, 1456 (Fed.Cir.1998). "A court must therefore presume that the terms in the claim mean what they say and, unless otherwise compelled, give full effect to the ordinary and accustomed meaning of claim terms." Johnson Worldwide Assocs., Inc., 175 F.3d at 989.

Although the focus should be on the ordinary meaning, the specification and prosecution history cannot be ignored. *See* Transmatic, Inc. v. Gulton Indus., Inc., 53 F.3d 1270, 1277 (Fed.Cir.1995) (claim terms are given their ordinary meaning unless the specification, prosecution history, and other claims indicate a contrary intent). This principle is consistent with *Johnson Worldwide Assocs., Inc.,* which explains that there are "two situations where a sufficient reason exists to require the entry of a definition of a claim term other than its ordinary and accustomed meaning." 175 F.3d at 990. The "addition of features does not avoid infringement, if all the elements of the patent claims have been adopted." Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 945 (Fed.Cir.1990).

Use of the specification and the prosecution history, however, must be balanced with the principle that it is impossible to read a particular embodiment into the claim. *See* Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1186-87 (Fed.Cir.1998). In other words, while claims should be read in view of the specification, it is improper to limit the scope of a claim to the preferred embodiment or specific examples disclosed in the specification. *See* Ekchian v. Home Depot, Inc., 104 F.3d 1299, 1303 (Fed.Cir.1997). The Federal Circuit has consistently found that a patent is not restricted to the examples but is defined by the words of the claims. *See* Specialty Composites v. Cabot Corp., 845 F.2d 981, 987 (Fed.Cir.1988).

What is important is what the elements of the claim require, not what they "do not cover." *See, e.g.,* NeoMagic Corp. v. Trident Microsystems, Inc., 287 F.3d 1062, 1074 (Fed.Cir.2002). Claims are not to be interpreted in view of the accused infringing device. *See* Young Dental Mfg. Co. v. Q3 Special Prods., Inc., 112 F.3d 1137, 1141 (Fed.Cir.1997). Courts have routinely rejected an accused infringer's attempt to show that his device is outside the scope of the claims by asserting a distinction that is not specifically claimed. *See, e.g.,* Shamrock Techs., Inc. v. Med. Sterilization, Inc., 903 F.2d 789, 793 (Fed.Cir.1990).

In Markman v. Westview Instruments, Inc., 52 F.3d 967 (Fed.Cir.1995), aff'd, 116 S.Ct. 1384 (1996), the

Federal Circuit majority, in an opinion by Chief Judge Archer, held that claim interpretation or construction was exclusively a matter of law. Id. at 970-71. The majority opinion discussed the principles governing claim interpretation, including the role of the specification, prosecution history, and "extrinsic evidence." It emphasized that extrinsic evidence serves a limited purpose; it facilitates a judge's understanding of the meaning of patent claim language.

The court clarified the concept of extrinsic evidence:

Extrinsic evidence consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises. This evidence may be helpful to explain scientific principles, the meaning of technical terms, and terms of art that appear in the patent and prosecution history. Extrinsic evidence may demonstrate the state of the prior art at the time of the invention. It is useful "to show what was then old, to distinguish what was new, and to aid the court in the construction of the patent."

Id. at 980 (internal citations omitted). "The court may, in its discretion, receive extrinsic evidence in order 'to aid the court in coming to a correct conclusion' as to the 'true meaning of the language employed' in the patent." *Id*. (quoting Seymour v. Osborne, 78 U.S. (11 Wall.) 516, 546 (1871) (reviewing a decree in equity).

"Extrinsic evidence is to be used for the court's understanding of the patent, not for the purpose of varying or contradicting the terms of the claims." *Id*. at 981. "When, after considering the extrinsic evidence, the court finally arrives at an understanding of the language as used in the patent and prosecution history, the court must then pronounce as a matter of law the meaning of that language." *Id*. "This ordinarily can be accomplished by the court in framing its charge to the jury, but may also be done in the context of dispositive motions such as those seeking judgment as a matter of law." *Id*.

Affirming the Federal Circuit's ruling on the issue, the issue of claim construction being an issue for the court rather than the jury, the Supreme Court did not address in detail in the role of extrinsic evidence. *See* 116 S.Ct. at 1384, 1395-96.

To construe a claim, "[e]xpert testimony, including evidence of how those skilled in the art would interpret the claims, may also be used." Markman, 52 F.3d at 979 (internal citations omitted). Expert testimony that is inconsistent with unambiguous intrinsic evidence, however, should be accorded no weight. *See* Bell & Howell, 132 F.3d at 706; Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1584 (Fed.Cir.1996); Markman, 52 F.3d at 981 (stating that extrinsic evidence can only be used "for the court's understanding of the patent, not for the purpose of varying or contradicting the terms of the claims").

The Federal Circuit recently stated,

It has been long recognized in our precedent and in the precedent of our predecessor court, the Court of Customs and Patent Appeals, that dictionaries, encyclopedias and treatises are particularly useful resources to assist the court in determining the ordinary and customary meanings of claim terms. Dictionaries are always available to the court to aid in the task of determining meanings that would have been attributed by those of skill in the relevant art to any disputed terms used by the inventor in the claims.

Texas Digital Sys., Inc. v. Telegenix, Inc., 308 F.3d 1193, 1202 (Fed.Cir.2002) (internal citations omitted).

However, "[c]ourts must exercise caution lest dictionary definitions, usually the least controversial source of extrinsic evidence, be converted into technical terms of art having legal, not linguistic, significance." Multiform Desiccants, Inc. v. Medzam, Ltd., 133 F.3d 1473, 1478 (Fed.Cir.1998). *See also* Hoechst Celanese Corp. v. BP Chemicals Ltd., 78 F.3d 1575, 1578 (Fed.Cir.1996) ("A technical term used in a patent document is interpreted as having the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning.")

Indeed, the Federal Circuit recently advised that:

While dictionaries and treatises are useful resources in determining the ordinary and customary meaning or meanings of disputed claim terms, the correct meaning of a word or phrase is informed only by considering the surrounding text. This is why consulting dictionary definitions is simply a first step in the claim construction analysis and is another reason why resort must always be made to the surrounding text of the claims in question, the other claims, the written description, and the prosecution history. Our precedent referencing the use of dictionaries should not be read to suggest that abstract dictionary definitions are alone determinative.

Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc., 334 F.3d 1294, 1300 (Fed.Cir.2003).

Therefore, the proper course in construing claims using reference sources is as follows:

In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor. "Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings." If more than one dictionary definition is consistent with the use of the words in the intrinsic record, the claim terms may be construed to encompass all consistent meanings.

Id. (internal citations omitted).

III.

A.

Plaintiff contends that no construction of the claim is necessary because the terms are clear. Plaintiff states, "this Court need not undertake to announce 'construction' on any of the [claim terms] ." (Instrument No. 55, at 1). Plaintiff argues that the claim terms should be given their "ordinary meaning." (*Id*., at 5). "There are no special meanings proposed by the Plaintiff. The words are common, and the Court may not have any trouble understanding Claim 12 as written. Any appropriate common dictionary can be used to provide additional definition information, if necessary." (*Id*., at 8). In its second brief, SafeTCare states, "the proper claim construction of 'pushing force' is 'pushing force', with its plan and ordinary meaning as proposed by the Plaintiff. No construction is necessary." (Instrument No. 58, at 5). At the *Markman* hearing, held on July 22, 2005, Plaintiff's counsel reiterated this position.

The Burke Defendants respond to this argument stating, "SafeTCare's proposed course-asking the Court

merely to parrot the verbatim language of the claim-is unsupported by any precedent and, to the contrary, is refuted by the very cases that SafeTCare cites, all of which confirm the Court's obligation to construe disputed claim language, not merely recite it." (Instrument No. 59, at 1). The Burke Defendants contend that "SafeTCare's proposed 'construction' improperly leaves for the jury the determination of the meaning of the disputed limitation. Claim interpretation is a question of law for the Court to determine, as opposed to the jury." (*Id.,* at 2). In addition, the Burke Defendants argue that SafeTCare, "having failed to articulate any viable construction of the 'pushing force' limitation in its Opening Brief ... should not be permitted to do so belatedly on reply." (*Id.*).

CamTec responds to SafeTCare's argument stating that "CamTec and SafeTCare do not differ in construing the terms used in the claims of the ' 065 patent.... That is, SafeTCare did not propose any special meaning beyond the ordinary meaning of the claim terms by dictionary definitions and normal usage, asserting, 'Any appropriate common dictionary can be used to provide additional definition information, if necessary.' " (Instrument No. 57, at 2) (citing Instrument No. 55, at 8). CamTec states that it "merely asks this Court to adopt the well-known definition of 'push' as consistent with the ordinary meaning of 'push' and 'pushing' in dictionary definitions supplied to the Court." (Instrument No. 57, at 2). Therefore, CamTec takes the position that Plaintiff's claim construction is the same as CamTec's.

While there is an abundance of case law supporting the argument that the ordinary meaning of a term should comprise the claim construction, there is no legal support for the argument that the construction of a claim term may be the very same words used in the claim.

B.

CamTec argues for a few different claim constructions. The first is that "the claimed term 'pushing force' should be construed as a physical force applied in a direction away from the body exerting it and not include pulling." (Instrument No. 54, at 2). The second is that "pushing force" should be construed as "a force away from each electric motor." (Id., at 5). Then CamTec reverts to a construction similar to its first claim construction: "A physical force steadily applied in a direction away from the body exerting it ." (Id., at 14). The common element in these three constructions is that a force be applied away from something; the differences exist in whether to specifically exclude pulling and whether to specify electric motors rather than general bodies.

In support of its constructions, CamTec refers, first, to the '065 Patent specification, which, CamTec claims, "goes to great pains to distinguish a pushing motor from a pulling motor." (Id., at 14). In support of this statement, CamTec quotes the following passage from the "Background of the Invention" portion of the patent itself:

Both the typical hospital and bariatric beds usually have one or more electric motors to lift and adjust the contour of the mattress. These electric motors are known to apply a pulling force on structural members attached to the bed frame to elevate the mattress support sections upon which the mattress is laid. However, in the event that an electric motor should break, the corresponding mattress support section has been known to rapidly fall down to its at rest position against the frame. In some cases, the rapid drop of a mattress support section will generate impact forces which are often transferred to a patient lying on the mattress. Such impact force can cause or increase injury to the patient and, therefore, pose a safety concern.

(Instrument No. 56, Exhibit A, at 1:51-63). CamTec continues, citing language from the "Summary of the

Invention" portion of the '065 patent: "The pushing (as opposed to pulling) forces applied by the electric motors to raise the frame and the mattress support deck sections avoid possible injury to a patient in the event that one of the motors should break." (Id., at 2:25-29). The parenthetical "as opposed to pulling" appears to specifically distinguish the '065 bariatric bed from the "typical hospital and bariatric beds" referred to in the Background portion of the patent. It is the claims, and not the written description, that define scope of the patent. *See* Laitram Corp. v. NEC Corp., 163 F.3d 1342, 1347 (Fed.Cir.1998). However, the summary of the invention and the written description of the patent comprise the specification of the patent, and the specification provides intrinsic evidence of the claim terms' meanings. Boss Control, Inc. v. Bombardier, Inc., 410 F.3d 1372, 1376-77 (Fed.Cir.2005).

Second, CamTec refers to dictionary definitions of "push" to support its construction. (Instrument No. 54, at 18). The definitions quoted are: (1) "to use force so as to cause to move ahead," Webster's Collegiate Thesaurus at 643 (ed.1976); (2) "to move an object by exerting force against it," The American Heritage Dictionary of the English Language: Fourth Edition (Copyright 2000 by Houghton-Mifflin Company, on-line edition, located at http://www.bartleby.com); and (3) "to move an object by exerting force against it," dictionary.com on-line dictionary of the English Language (Copyright 2000, on-line edition, located at http://www.dictionary.reference.com). (*Id.,* at 18). Accordingly, CamTec states that its construction is supported both by the specification and the common meaning of the word "push."

SafeTCare takes issue with CamTec's second proposed construction ("a force away from each electric motor") and completely ignores the other constructions. (Instrument No.58, at 4). Plaintiff argues this "electric motor" construction "is a complete artificial fiction without any basis ... [and] does not fit into the ordinary meaning of the term, and it is not supported by the four dictionary definitions presented by Defendant CamTec in their own brief." (*Id.*). SafeTCare continues to harp on the "electric motor" element of the construction, "Furthermore, 'pushing force' has never been limited to only an electric motor. A 'pushing force' can be used to describe more than just a force of a motor, such as a 'pushing force' of a shaft attached to the frame or a 'pushing force' to move the bed." (*Id.*). Besides the "electric motor" problem, SafeTCare does not address any other problem in CamTec's proposed construction of the term.

The Burke Defendants do not discuss CamTec's proposed construction(s) in their briefs.

C.

The Burke Defendants argue that the Court "should construe the limitation 'electric motors ... for exerting a pushing force' to require the motors exert a pushing force (i.e., a force applied in a direction away from the body exerting it) as opposed to a pulling force (a force causing motion toward the source), as specifically set out in the '065 Patent specification." (Instrument No. 56, at 2). It is unclear whether Burke Defendants intend the pulling force contrast to be part of their construction of the claim term.

The Burke Defendants state that the patent "does not specifically define the terms 'pushing force' and 'pulling force' in any specialized way or in a way contrary to their ordinary meaning." (Id., at 6). The Burke Defendants state that the words "pulling" and "pulling force" are not used in Claim 12 and need not be formally construed by the Court, "however the terms are used extensively in the specification as a contrast to 'pushing force.' " (Id.)(citing Instrument No. 56, Exhibit A, at 1:51-63, 2:17-29, 3:58-67, and 4:26-30).

The Burke Defendants refer to dictionary definitions to support the definitions of "push" and "pull" and to support the argument that they are antonyms. (Instrument No. 56, at 6). They argue that "push" means "a

physical force steadily applied in a direction away from the body asserting it" and that "pull" means "to apply force so as to cause or tend to cause motion toward the source of the force." (Id.)(citing Webster's Collegiate Dictionary, 1997; American Heritage Dictionary of the English Language, 4th ed.2000). The Burke Defendants attach the pages of these dictionaries as Exhibits E and F to their brief.

These Defendants argue, "The disclosure of the '065 Patent repeatedly and consistently refers to a pulling force exerted by motors as being opposite and inferior to a pushing force exerted by motors. The recitation of this 'pushing force' limitation in Claim 12 is especially significant because the patentee made numerous references in the original patent application to the importance of using a motor that exerts a 'pushing force' instead of one that exerts a 'pulling force' for raising the respective portions of the bed frame and mattress support decks." (Instrument No. 56, at 7). In support of this argument, the Burke Defendants refer the Court to the same passages highlighted by CamTec in its briefing, discussed above. The Burke Defendants also refer the Court to the "Detailed Description" portion of the patent specification, which provides,

As an important feature of the present invention, each of the shafts 28 and 34 of bed lift motors 6 and 8 apply pushing forces against their respective lift dogs 30 and 36 to cause the bed frame 1 to be lifted as needed to correspondingly elevate a mattress. This is in contrast to conventional bed frames in which lift motors exert a pulling force against the frame to cause the frame to be lifted and a mattress to be elevated. The advantage of the pushing force generated by bed lift motors 6 and 8 to lift a mattress will soon be described.

(Instrument No. 56, Exhibit A, at 3:58-67). This language clearly presents the "pushing forces" of the '065 bed to be a distinguishing feature from the "conventional" bed. The Burke Defendants also refer to the next column of the specification, in which the "pushing forces" are stated to be "an important advantage of the present invention. More particularly, and as opposed to electric motors associated with conventional bed frames which generate pulling forces to lift the frame and its components ..." the specification goes on to highlight the advantages of the pushing forces. (Id., at 4:58-5:8).

The Burke Defendants conclude that these portions of the specification "unequivocally disclaim coverage of a bed using motors that exert pulling forces rather than pushing forces." (Instrument No. 56, at 9). They argue that the prosecution history supports their construction, as well, because "[t]here was nothing in the prosecution history that suggests the patentee intended for the meaning of push to encompass pull." (Id.). In support of this statement, they refer to a statement made by the Examiner in the October 4, 2001 Notice of Allowability,

The prior art of record does not teach nor does any combination thereof fairly suggest a bed having a frame with independent first and fourth electric motors applying a pushing force to the frame and plurality of deck sections pivotally connected together with second and third motors causing the head and thigh sections to rotate.

(Instrument No. 56, Exhibit G, at 2). The Burke Defendants, therefore, argue for the construction "that motors exert a pushing force (i.e., a force applied in a direction away from the body exerting it) as opposed to a pulling force (a force causing motion toward the source)." (Instrument No. 56, at 10).

SafeTCare challenges this construction, stating that the proposed construction "does not follow principles of claim construction. The ordinary meaning of the term is lost and unsupported. There is not need to complicate the term by creating a special definition of 'pushing force' with directional limitations and the

opposite of pulling." (Instrument No. 58, at 5). Not only are there no citations supporting these statements, they seem directly contradictory of the patent specification, which spends a good deal of time highlighting why the pushing force is different from the pulling force.

CamTec does not address the Burke Defendants' arguments or proposed claim construction.

D.

In its response brief, Plaintiff states, "Defendants have discussed the specification and prosecution history regarding 'pulling force' and 'pushing force' at length. It is clear from the specification that the Applicant made a distinction between motors that exert a pulling force and motors that exert a pushing force. It is also clear from the prosecution history that the Examiner made this distinction.... Plaintiff has proposed the construction of 'pushing force' consistent with this intrinsic evidence." (Instrument No. 58, at 5-6).

The Court notes, first, that it is against precedent to support a claim construction in light of the allegedly infringing device. The Court, therefore, does not consider the devices of Defendants in reaching its conclusion.

In addition, it is against precedent to support a claim construction that defines what is *not* included in the claim. Therefore, a claim construction in this case based on distinguishing the Defendants' devices would be improper, as would a construction that includes the phrase "as opposed to a pulling force," as requested by the Burke Defendants.

Nevertheless, a claim construction that is supported by the intrinsic evidence is required. As the Federal Circuit recently stated, "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. In such circumstances, general purpose dictionaries may be helpful." Phillips v. AWH Corp., 2005 WL 1620331, at (Fed.Cir. July 12, 2005)(internal citations omitted). The Court believes that the claim language at the source of this dispute meets the Federal Circuit's description. A definition of "pushing" taken from a dictionary is, therefore, a proper construction of "a pushing force," as there is nothing in the patent's claim terms, the patent's specification, or in the prosecution history of the patent to contradict such a construction.

The Court notes that the parties present at the *Markman* hearing on July 22, 2005 agreed with this assessment by the Court and that all parties supported the Court's proposed construction of the claim term.

Accordingly, IT IS HEREBY ORDERED that the proper claim interpretation for "a pushing force" in Claim 12 of the '065 patent is "a physical force applied in a direction away from the body exerting it."

The Clerk shall enter this Order and provide a copy to all parties.

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