United States District Court,
C.D. California.

BRAGEL INTERNATIONAL, INC,
Plaintiff.
v.
TELEBRANDS CORPORATION,
Defendant.

No. CV 05-01141 MMM (VBKx)

Jan. 17, 2007.

Edward R. Schwartz, Pasadena, CA, for Plaintiff.

Halina F. Osinski, Law Office of Halina F. Osinski, Richard S. Rockwell, Richard S. Rockwell Law Offices, Tustin, CA, Robert T. Maldonado, William E. Pelton, Peter D. Murray, Cooper & Dunham, New York, NY, for Defendants.

CLAIM CONSTRUCTION ORDER

MARGARET M. MORROW**, District Judge.**

This case involves United States Patent No. 6,852,001, which protects a backless, strapless breast form system. The assignee of the patent, plaintiff Bragel International, Inc., alleges that the "NaturalBra" sold by defendant Telebrands Corporation infringes claims 1 through 7 of the patent. Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370, 373, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), this order sets forth the court's construction of disputed terms in the patent claims.

I. THE PATENT

United States Patent No. 6,852,001 ("the '001 Patent") was issued on February 8, 2005. FN1 It protects a backless, strapless breast form system that is designed to be worn in lieu of a traditional bra. The breast form system is comprised of two breast forms joined by a connector. Each breast form has a pressure sensitive adhesive layer that positions and secures the form on the user's breast. The connector joins the breast forms together, and allows the user to customize breast cleavage and enhancement as desired. FN2

FN1. United States Patent No. 6,852,001 ("the '001 Patent") at 1.

FN2. *Id.,* col. 1, ll. 12-21.

A. Background Of The Invention FN3

FN3. *Id.,* col. 1, l. 24-col. 2, l. 28.

The patent notes that, prior to the invention, women could enhance the size of their breasts only by using external articles, such as foam pads, or by undergoing breast implant surgery. The surgical option carried with it the dangers inherent in any surgical procedure. In addition, it was expensive, and exposed the patient to potential health hazards associated with particular types of implants. Women who sought a non-permanent and risk-free way to enhance their breasts opted for one of several types of externally worn articles.

These externally worn articles are known as breast forms. Breast forms are used both to enhance a woman's breasts and to replace a breast that has been surgically removed. They include a wide range of breast enhancers, breast inserts, and breast prostheses. A key feature of a breast form used as an enhancer is that it must look and feel natural so as to complement, and not detract from, the user's breasts. One popular type of breast form, which looks and feels natural, and enhances the self-image and confidence of the user, is made from silicone gel that is completely encased in a plastic film. Other breast forms, such as foam pads and water-filled pads, do not have these qualities; as a result, they look unnatural and feel foreign.

In addition to a demand for devices and methods that enhance breast size and shape, there is a demand for devices and methods that allow the user to wear a full range of clothing, e.g., backless dresses or halters. This has led to the development of backless, strapless bras. In the past, these bras used non-permanent adhesives, such as disposable double-sided tape, to secure; the bra to the user, and provided limited means of enhancing breast size and shape.

The patented invention was designed to address the need for (1) a breast form enhancement system that provides both the benefits of a breast form and the benefits of a backless, strapless bra; (2) a system with a permanent and reusable adhesive that allows the user to position the breast forms in a desired location without fear they will shift; and (3) a system that provides a means for pushing up the breasts and enhancing breast cleavage. It was also designed to provide a breast form enhancement system that is specially adapted to counter-balance the effect of sagging breasts. At the time of the invention, known breast forms were thicker in the area that covered the lower portion of the user's breast, and were not well suited to women with sagging breasts because they exaggerated the degree of sagging.

B. Summary Of The Invention FN4

FN4. *Id.,* col. 2, l. 63-col. 3, l. 23.

The patented invention is an attachable breast form enhancement system that is comprised of a pair of breast forms joined by a connector. The interior surface of the breast forms has a pressure sensitive adhesive layer that joins them to the user's breasts. The pressure sensitive adhesive layer can be a permanently grown pressure sensitive adhesive whose adhesion force to the breast forms is greater than its cohesion force to the user's breasts. The connector joins the individual breast forms by attaching to the inner sides of the forms and pulling the user's breasts together. The connector can be either permanently or removably attached to the breast forms. Several different configurations of breast forms and connectors are available to achieve the benefits of the system.

The breast forms provide the user with the desired amount of breast size enhancement, while the connector provides the desired amount of cleavage and push-up enhancement. Because users can control the placement of the breast forms, and the extent to which the breasts are pulled together by the connector, the invention allows them to customize the shape and size of their breasts as well as their breast cleavage and push-up enhancement.

C. Detailed Description Of The Breast Form Enhancement System FN5

FN5. *Id.,* col. 3, l. 25-col. 8, l. 42.

1. General Description

Breast form enhancement systems constructed according to the principles of the invention generally comprise a pair of breast forms joined by a connector that is positioned between opposing surfaces of the two breast forms. The breast form system can be comprised of various combinations of breast forms and connectors. Each breast form has a pressure sensitive adhesive layer that enables it to be removably attached to the user's breast. Generally, the user of the breast form system positions the pressure sensitive adhesive layer of each of the breast forms on the left and right breasts, and then joins the breast forms together by engaging the connector. The user can create varying degrees of cleavage and push-up enhancement by altering the position of the breast forms on the breasts, and by tightening or loosening the connector. The placement of the connector relative to the top and bottom of the breast forms will also impact the degree of cleavage and push-up enhancement.

2. Various Embodiments Of The Breast Forms

The breast forms are intended to include all types of externally worn articles that enhance or replace a user's breasts, including silicone gel encased by a thermoplastic film; liquid, air, or gel encased by foam, plastic, rubber, fabric, or molded unwoven fiber material; and solid material that is suitable for external breast enhancement, such as foam, soft rubber, fabric, molded unwoven fiber, or plastic. A wide range of materials, structures, and sizes of breast forms fall within the scope of the invention. Each breast form has a top, a bottom, an outer side and an inner side, divided into an inner top, an inner middle, and an inner bottom. Each also has an interior and exterior surface. The interior surface includes a pressure sensitive adhesive layer that joins the form to the user's skin.

In one embodiment, each of the breast forms includes a volume of silicone gel material encased in a flexible thermoplastic film, such as polyurethane. The thermoplastic film can be in two separate sheets that are heat sealed together along a perimeter surface where the interior and exterior surfaces meet. Additionally, there can be an optional fabric layer that is permanently joined to the thermoplastic film, as by heat lamination, at the interior, exterior, or all surfaces of the breast forms. The fabric can be any suitable material, such as a two-way or four-way stretchable material that allows the breast form to conform to the user's breast shape.

Another embodiment of the breast form system includes one or more breast forms specially designed to accommodate sagging breasts. These forms have a top and bottom, with an apex or center at approximately the midpoint between the top and the bottom. There is an upper portion of the breast form above the center, and a lower portion below. The thickness of the upper portion is greater than the thickness of the lower portion. As a result, the breast form counter-balances the sag in the user's breast by enhancing the size of

the flatter, non-sagging upper portion, and creating the appearance of a fuller, more evenly distributed breast.

3. The Pressure Sensitive Adhesive Layer

The pressure sensitive adhesive layer can include any type of pressure sensitive adhesive that is suitable for removably attaching a breast form to the user's skin, including various types and forms of double-sided tape and permanently grown pressure sensitive adhesives. The pressure sensitive adhesive layer allows the user to place each of the breast forms in a position on the user's breasts that will create a desired shape and look. The amount and type of pressure sensitive adhesive can vary, as can the portion of the interior surface to which it is attached.

The pressure sensitive adhesive layer is preferably a reusable pressure sensitive adhesive that is permanently grown to the interior surface of each breast form. Unlike known adhesives, the pressure sensitive adhesive layer will not readily shift once it is positioned on the user and can be reused repeatedly without losing its adhesive properties. Its adhesion force to the breast forms is greater than its cohesion force to the user's skin. The pressure sensitive adhesive layer is able to withstand tremendous movement and pressure from the user without slipping, and can be subjected to water or sweat without losing its adhesive properties. If the pressure sensitive adhesive layer becomes dirty or collects dust, lint, or debris, it can be cleaned with soap and water and its adhesive properties will be fully restored.

4. Various Embodiments Of The Connector

The breast forms are each adapted to accommodate a connector. The connector can have many different configurations and connect to the breast forms in many different manners Generally, however, it will have two or more portions. The first portion attaches to one breast form and the second portion to another. The first and second portions are designed to engage each other, and can be permanently or removably attached to the breast forms. For example, the first and second portions can attach to the breast forms by way of a button type assembly that snaps through a small hole in each of the breast forms. This allows both portions of the connector to be removed from the breast forms, and permits the user to wear the breast forms unjoined. The connector can also be a single unit that removably attaches to both breast forms. The manner in which the connector attaches will vary depending on the structure of the forms and the connector.

The connector can be attached to the breast form at either or both of the interior and exterior surfaces. It can attach to the thermoplastic film, the fabric layer, or both. Because the particular material used to construct the breast forms will vary (i.e., thermoplastic film, rubber, fabric, etc.), the material to which the connector is attached should be able to withstand a number of different pulling forces without separating from the breast forms.

In one embodiment, the connector has an adjustable clasp assembly. The first portion has a clasp that is adapted to fit within a plurality of loops on the second portion. Because the connector is adjustable, the user can select the loop into which she wishes to fit the clasp, thus pulling the breast forms closer to one another or placing them farther apart. This regulates the amount of cleavage between the user's breasts.

Another embodiment of the connection is a single unit, which has a body with a pair of hooks at each end. The body can be any suitable material, such as plastic, metal, or fabric. The hooks are adapted to slide into and engage a pair of loops that are permanently attached to the inner side of each breast form. The hooks should be sufficiently large that they fit snugly into the loops. The loops can be made to detach from the

breast forms and can vary in size. Generally, the user will slide one of the hooks into one of the loops, and then slide the other hook through the other loop to join the two breast forms.

Another embodiment of the connector is a single unit that engages openings extending from each breast form. The connector has a rigid body with a pair of rigid arms extending from each end of the body. The arms are adapted to snap into receptacles that extend from the inner side of each breast form. The breast forms are joined by snapping the arms into the receptacles.

The single unit connectors can be made into more than one piece, and can be configured to attach (either permanently or removably) to one or both of the breast forms. For example, rather than having a pair of hooks at both ends of the connector, a single hook can be attached at one end of the body while the other end of the body is fixed to one of the breast forms. In this configuration, one breast form would have a loop extending from its inner side, while the other would have the body of the connector with a hook attached to it.

Additional embodiments of the breast form system can be created by making minor alterations to the connector. The first and second portions of the connector could be mating portions for a velcro strap. The receptacles could be circular or could be metal or plastic rings. A piece of string could pass through the rings and tie in a knot. The connector could also be comprised of a mounting strap with holes adapted to receive a pair of plugs. The breast forms would have a receptacle, and the user would join the forms by aligning one of the holes on the mounting strap with each of the receptacles, and inserting the plugs through the receptacles and mounting strap. The user can adjust the amount of breast cleavage by joining the breast forms closer together or farther apart on the mounting strap.

The manner in which any of the permanently or removably attached portions of the connector are joined to the breast forms can also vary, as can the portions of the breast form adapted to engage the connector. Portions of the connector can be attached to the breast form by stitching, heat sealing, adhesives, or other suitable means. The connector can be part of a sub-assembly, such as a pair of connector patches that attach to the breast forms and house the loops that receive hooks on the breast forms. The loops are integrally joined to the connector patches, which are separately joined to the breast forms. The connector patches can have many different shapes and sizes, and can be made from a number of materials, including a fabric or film. If the sub-assembly is made of a thermoplastic film, it can be heat sealed to the interior or exterior surface of the breast form, or have a permanently grown adhesive that allows it to be removably attached.

5. Purpose And Use Of The Breast Form Enhancement System

The breast form system serves as a replacement for the traditional bra, and also provides breast size and shape enhancement. The pressure sensitive adhesive layer and the connector differentiate the breast form system from currently available bras and enhancement systems. Unlike traditional bras, the breast form system has no straps or cups to hold the user's breasts and no external breast form or enhancement device. Because the breast forms are positioned directly on the user's breasts, and use a specially designed pressure sensitive adhesive layer to adhere to them, the breast forms remain in their desired position until the user removes them. This allows the user to customize the amount of breast cleavage and push-up enhancement. A user can wear the breast form system with almost all types of clothing. The outline and structure of the breast form system is not visible under even the tightest clothing. Breast forms made of silicone gel are so realistic that they cannot be detected by people who are hugging the user.

The breast form enhancement system boosts users' self-esteem and avoids dangerous or cumbersome alternatives. The system is also well adapted for post-mastectomy patients because the left and right breast forms can be different sizes.

6. Scope Of The Patent

The specification states that "[i]n addition to the specific features and embodiments described ..., it is understood that the present invention includes all equivalents to the structures and systems described herein, and is not to be limited to the disclosed embodiments .... Individuals skilled in the art to which the present breast form enhancement system pertains will understand that variations and modifications to the embodiments can be used beneficially without departing from the scope of the invention." FN6

FN6. *Id.,* col. 8, ll. 32-42.

D. Claims Of The InventionFN7

FN7. *Id.,* col. 8, l. 43-col. 10, l. 31.

The patent has seven claims, each of which the parties ask the court to construe. The claims provide:

"1. A method of using an adjustable, backless, strapless breast form system comprising:

independently positioning a pair of breast forms over each of a user's breasts, wherein each breast form comprises a concave interior surface adapted for placement over the user's breasts and a volume of silicone gel encased between thermoplastic film material;

adjoining a pressure sensitive adhesive layer disposed along the interior surface of each of the breast forms to a desired position on the user's breasts, wherein the pressure sensitive adhesive layer of each breast form is sufficiently readily removed from the user's breast independently of the other breast form to be repositionable relative to the user's breast and to the adjacent breast form; and

adjoining the breast forms together by engaging a connector positioned between inner sides of each of the breast forms, wherein the connector comprises a first portion attached to the inner side of one of the breast forms and a second portion attached to the inner side of the other breast form, wherein the first portion and the second portion are adapted to cooperatively engage.

2. The method of claim 1 wherein each breast form comprises an outer side facing opposite the inner side and towards the user's armpit, and the breast form is secured to the user's breast by the pressure sensitive adhesive layer.

3. A method of using a backless, strapless bra to adjust breast cleavage comprising: independently positioning a pair of breast forms over each of a user's breasts, wherein each breast form comprises a concave interior surface adapted for placement over the user's breasts and a volume of silicone gel encased between thermoplastic film material;

adjoining a pressure sensitive adhesive layer disposed along an interior surface of each of the breast forms

to a desired position on the user's breasts, wherein the pressure sensitive adhesive layer of each breast form is sufficiently readily removed from the user's breast independently of the other breast form to be repositionable relative to the user's breast and to the adjacent breast form;

adjoining the breast forms together by engaging a connector positioned between inner sides of each of the breast forms, wherein the connector comprises a first portion attached to the inner side of one of the breast forms and a second portion attached to the inner side of the other breast form, wherein the first portion and the second portion are adapted to cooperatively engage, whereby engaging the first portion and the second portion moves the breast forms and the user's breasts together and creates an amount of breast cleavage; and

adjusting the amount of breast cleavage by removing at least one of the breast forms from the user's breasts and repositioning the breast forms at a different position on the user's breasts, such that the distance between the inner sides of the breast forms before they are adjoined together affects the amount of breast cleavage created when the breast forms are adjoined together.

4. The method of claim 3 also comprising increasing the distance between the inner sides of the breast forms before they are adjoined together to increase the amount of breast cleavage created when the breast forms are adjoined together.

5. The method of claim 3 also comprising decreasing the distance between the inner sides of the breast forms before they are adjoined together to decrease the amount of breast cleavage created when the breast forms are adjoined together.

6. The method of claim 3 wherein each breast form comprises an outer side facing opposite the inner side and towards the user's armpit, and the breast form is secured to the user's breast by the pressure sensitive adhesive layer.

7. An improved backless, strapless breast form system to be worn in place of a traditional bra, comprising:

a pair of breast forms, wherein each breast form comprises:

a volume of silicone gel encased between thermoplastic film material;

a concave interior surface facing towards a user's breast having a pressure sensitive adhesive layer for securing the breast form to the user's breast; and

a connector having a first portion secured to an inner side surface of one breast form and a second portion secured to an inner side surface of the other breast form, wherein the first portion and the second portion are adapted to cooperatively engage and adjoin the two breast forms together."

II. DISCUSSION

A. Legal Standard Governing Claim Construction

Patents grant inventors the exclusive right to make and sell their inventions in exchange for full disclosure of the invention. Markman v. Westview Instruments, Inc., 517 U.S. 370, 373, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). "It has long been understood that a patent must describe the exact scope of an invention and its manufacture to 'secure to [the patentee] all to which he is entitled, [and] to apprize the public of what is still

open to them.' " *Id*. (quoting McClain v. Ortmayer, 141 U.S. 419, 424, 12 S.Ct. 76, 35 L.Ed. 800 (1891)). Two parts of the patent fulfill this function-the specification and the claims. *Id*. The specification must describe the invention "in such full, clear, concise, and exact terms as to enable any person skilled in the art ... to make and use the same." 35 U.S.C. s. 112. The claims must "particularly point[ ] out and distinctly claim[ ] the subject matter which the applicant regards as his invention." *Id* .

"Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer's product or process,' which in turn necessitates a determination of 'what the words in the claim mean.' " Markman, 517 U.S. at 374 (quoting H. Schwartz, PATENT LAW AND PRACTICE 1, 33 (2d ed.1995) and 3 E. Lipscomb, WALKER ON PATENTS, s. 11:2, pp. 288-90 (3d ed.1985)). The Supreme Court's decision in *Markman* clarified that it is the judge, not the jury, who must determine the meaning of the claim terms. *Id*. at 387.

While *Markman* established that judges are to construe the patent claims, it did not specifically address what types of evidence they should consider in doing so. The Federal Circuit first addressed this question in a series of opinions beginning with Vitronks Corp. Conceptronic, Inc., 90 F.3d 1576 (Fed.Cir.1996). To ascertain the meaning of a claim term, the court [must] 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.' " Phillips v. AWH Corp., 415 F.3d 1303, 1314 (Fed.Cir.2005) (en banc) (quoting Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1116 (Fed.Cir.2004)), cert. denied, 546 U.S. 1170, 126 S.Ct. 1332, 164 L.Ed.2d 49 (2006). These sources include "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Id*. at 1314; Innova/Pure Water, 381 F.3d at 1116. It is important 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, 415 F.3d at 1313.

1. Intrinsic Evidence

Intrinsic evidence is the most important source in construing patent claims. *Vitronics* reiterated the "well-settled" rule "that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Id*. at 1582. The *Vitronics* court described such "intrinsic evidence" as "the most significant source of the legally operative meaning of disputed claim language," *id*., and recent Federal Circuit opinions confirm this. See Phillips, 415 F.3d at 1315 (quoting *Vitronics*); *see also* Atofina v. Great Lakes Chemical Corp., 441 F.3d 991, 996 (Fed.Cir.2006) ("Our primary focus in determining the ordinary and customary meaning of a claim limitation is to consider the intrinsic evidence of record, viz., the patent itself, including the claims, the specification and, if in evidence, the prosecution history, from the perspective of one of ordinary skill in the art").

Even within the general category of "intrinsic evidence," there are preferences. Initially, a court should look to the words of the claims themselves to define the scope of the patented invention. Vitronics, 90 F.3d at 1582. See Liquid Dynamics v. Vaughan Co. ., 355 F.3d 1361, 1368 (Fed.Cir.2004) ("We examine this intrinsic evidence seriatim. 'We look first to the claim language itself, to define the scope of the patented invention. As a starting point, we give claim terms their ordinary and accustomed meaning as understood by one of ordinary skill in the art,' " quoting Dow Chemical Co. v. Sumitomo Chemical Co., 257 F.3d 1364, 1372 (Fed.Cir.2001)); Intellectual Property Development, Inc. v. UA-Columbia Cablevision of Westchester, Inc., 336 F.3d 1308, 1314 (Fed.Cir.2003) ("We begin our claim construction analysis with the words of the

claim.... In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to particularly point[ ] out and distinctly claimf[ ] the subject matter which the patentee regards as his invention" (internal quotations omitted)); Advanced Cardiovascular v. Medtronic, 265 F.3d 1294, 1304 (Fed.Cir.2001) ("As always, we begin our construction with the words of the claim. ... After looking to the claim language we consider the rest of the intrinsic evidence, that is, the written description and the prosecution history if in evidence"); Interactive Gift Express, Inc. v. CompuServe Inc., 256 F.3d 1323, 1331 (Fed.Cir.2001) ("First, we look to the claim language").

The words used in the claims are generally given the ordinary meaning that they would have to a person skilled in the art.FN8 Phillips, 415 F.3d at 1313 ("We have made clear, moreover, that the ordinary and customary meaning of a claim term 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, i.e., as of the effective filing date of the patent application"); Intellectual Property Development, 336 F.3d at 1314 ("In the absence of an express intent to impart a novel meaning to claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art"); see also Tegal Corp. v. Tokyo Electron Am., Inc., 257 F.3d 1331, 1342 (Fed.Cir.2001) ("Throughout the construction process, it is important to bear in mind that the viewing glass through which the claims are construed is that of a person skilled in the art").

FN8. Sometimes, this meaning is the "widely accepted meaning of commonly understood words." Phillips, 415 F.3d at 1314. See also Golden Blount, Inc. v. Robert H. Peterson Co., 365 F.3d 1054, 1059 (Fed.Cir.2004) (noting that "[t]he plain language of the claim is relatively straightforward," and that "there [was] nothing to indicate that persons skilled in the art would attribute any other or different meaning" to the term than "its ordinary and customary meaning").

The person of ordinary skill in the art is presumed "to read [a disputed] 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, 415 F.3d at 1313; see also Medrad, Inc. v. MRI Devices Corp., 401 F.3d 1313, 1319 (Fed.Cir.2005) ("We cannot look at the ordinary meaning of the term ... in a vacuum. Rather, we must look at the ordinary meaning in the context of the written description and the prosecution history"); V-Formation, Inc. v. Benetton Group SpA, 401 F.3d 1307, 1310 (Fed.Cir.2005) (stating that the intrinsic record "usually provides the technological and temporal context to enable the court to ascertain the meaning of the claim to one of ordinary skill in the art at the time of the invention"); Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc., 375 F.3d 1341, 1351 (Fed.Cir.2004) (the proper definition of a claim term is the "definition that one of ordinary skill in the art could ascertain from the intrinsic evidence in the record").

Frequently, a review of the specification "may reveal a definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs." Phillips, 415 F.3d at 1316. See also Interactive Gift Express, 256 F.3d at 1331 (stating that deviation from ordinary meaning may be required where "a patentee [has chosen] to be his own lexicographer and use terms in a manner other than their ordinary meaning," quoting Vitronics, 90 F.3d at 1582); FN9 see also Forest Laboratories, Inc. v. Abbott Laboratories, 239 F.3d 1305, 1310 (Fed.Cir.2001) ("The words of a claim are generally given their ordinary and accustomed meaning, unless it appears from the specification or the file history that they were used differently by the inventor"); Biovail Corp. Int'l., v. Andrx Pharmaceuticals, Inc., 239 F.3d 1297, 1301 (Fed.Cir.2001) (quoting *Vitronics* and stating that the court "review[s] both the specification and the applicable prosecution history to determine whether the patentee defined claim

terminology in a manner inconsistent with its ordinary meaning"); Vitronics, 90 F.3d at 1585 (where the specification clearly and unambiguously defines a claim term, that definition is controlling).

FN9. Where a patentee seeks to depart from the ordinary meaning of a claim term, he must "clearly set forth" or "clearly redefine" the term in the specification so as to put persons reasonably skilled in the art on notice of the intended meaning. Bell Atlantic Network Services, Inc. v. Covad Communications Group, Inc., 262 F.3d 1258, 1268 (Fed.Cir.2001) (quoting Elekta Instrument S.A. v. O.U.R. Scientific International, Inc., 214 F.3d 1302, 1307 (Fed.Cir.2000)). See also Schering Corp. v. Amgen, Inc., 222 F.3d 1347, 1353 (Fed.Cir.2000) (stating that the specification must demonstrate an "express intent to impart a novel meaning" to claim terms); Optical Disc Corp. v. Del Mar Avionics, 208 F.3d 1324, 1334 (Fed.Cir.2000) ("Without evidence in the patent specification of an express intent to impart a novel meaning to a claim term, the term takes on its ordinary meaning"). An explicit statement of redefinition is not required, however. *Bell Atlantic,* 262 F.3d at 1334; SciMed Life Systems, Inc. v. Advanced Cardiovascular Systems, Inc., 242 F.3d 1337, 1344 (Fed.Cir.2001) (a patentee's description of the preferred embodiment "can provide guidance as to the meaning of the claims, thereby dictating the manner in which the claims are to be construed, even if the guidance is not provided in explicit definitional format"). See also Astrazeneca AB v. Mutual Pharmaceutical Co., 384 F.3d 1333, 1339-40 (Fed.Cir.2004). Stated differently, the specification may define claim terms "by implication" such that the meaning to be given to the terms is "found in or ascertained by a reading of the patent documents." Vitronics, 90 F.3d at 1582, 1584 n. 6; see also Schoenhaus v. Genesco, Inc., 440 F.3d 1354 (Fed.Cir.2006) ("The patentee is free to act as his own lexicographer, and may set forth any special definitions of the claim terms in the patent specification or file history, either expressly or impliedly").

A deviation from the ordinary meaning of a term may also be necessary if a patentee has "relinquished [a] potential claim construction in an amendment to the claim or in an argument to overcome or distinguish a reference." *Id.* (quoting Elkay Mfg. Co. v. Ebco Mfg. Co., 192 F.3d 973, 979 (Fed.Cir.1999)). See also Phillips, 415 F.3d at 1316 ("[T]he specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor. In that instance as well, the inventor has dictated the correct claim scope, and the inventor's intention, as expressed in the specification, is regarded as dispositive"); id. at 1317 ("[T]he prosecution history 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, making the claim scope narrower than it would otherwise be").

In addition to the specification, the prosecution history is "often of critical significance in determining the meaning of the claims." Vitronics, 90 F.3d at 1582. See also Phillips, 415 F.3d at 1317 ("In addition to consulting the specification, we have held that a court 'should also consider the patent's prosecution history, if it is in evidence,' " quoting *Markman,* 52 F.3d at 980). "[B]ecause 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." Phillips, 415 F.3d at 1317/ Despite this fact, it "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, making the claim scope narrower than it would otherwise be." *Id.*

Thus, the court should look to the prosecution history "to exclude any interpretation that was disclaimed during prosecution." CVI/Beta Ventures, Inc. v. Tura LP, 112 F.3d 1146, 1155 (Fed.Cir.1997), cert. denied sub nom. Marchon Eyewear v. Turn LP, 522 U.S. 1109, 118 S.Ct. 1039, 140 L.Ed.2d 105 (1998); see also

Chimie v. PPG Indus., Inc., 402 F.3d 1371, 1384 (Fed.Cir.2005) ("The purpose of consulting the prosecution history in construing a claim is to 'exclude any interpretation that was disclaimed during prosecution,' " quoting ZMI Corp. v. Cardiac Resuscitator Corp., 844 F.2d 1576, 1580 (Fed.Cir.1988)); Intellectual Property Development, 336 F.3d at 1316 ("We have noted that, like the specification, the prosecution history may demonstrate that the patentee intended to deviate from a term's ordinary and accustomed meaning, i.e., if it shows that the patentee characterized the invention using words or expressions of manifest exclusion or restriction before the United States Patent and Trademark Office .... The prosecution history limits the interpretation of claims so as to exclude any interpretation that may have been disclaimed or disavowed during prosecution in order to obtain claim allowance"); Southwall Technologies, Inc. v. Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.), cert. denied, 516 U.S. 987, 116 S.Ct. 515, 133 L.Ed.2d 424 (1995) (same). The prosecution history of a patent "cannot be used to limit the scope of a claim unless the applicant took a position before the PTO that would lead a competitor to believe that the applicant had disavowed coverage of the relevant subject matter." Schwing GMBH v. Putzmeister Aktiengesellschaft, 305 F.3d 1318, 1324 (Fed.Cir.2002).

"It is also appropriate to examine the prior art cited in the prosecution history in order to determine what the claims do not and cannot cover." Vitronics, 90 F.3d at 1583; see also *Amhil Enter., Ltd. v. Wawa, Inc.,* 81 F.3d 1544, 1560 (Fed.Cir.1996) (because a patent claim cannot be construed to encompass the prior art, "[a]n examination of the prosecution history is particularly important where ... the claimed invention is in a crowded art").

In considering a patent's prosecution history, the applicant's subjective intent is irrelevant "[r]ather, the standard for determining what subject matter was surrendered is objective and depends on what a competitor, reading the prosecution history, would reasonably conclude was given up by the applicant." Instituform Technologies, Inc. v. CAT Contracting, Inc., 99 F.3d 1098, 1107-08 (Fed.Cir.1996), cert. denied, 520 U.S. 1198, 117 S.Ct. 1555, 137 L.Ed.2d 703 (1997).

2. Extrinsic Evidence

Although intrinsic evidence is most important, the court may also look to extrinsic evidence, such as expert and inventor testimony, dictionaries and treatises. Phillips, 415 F.3d at 1317. Extrinsic evidence "cannot be used to alter a claim construction dictated by a proper analysis of the intrinsic evidence." *On-* Line Technologies, Inc. v. Bodenseewerk Perkin-Elmer GMBH, 386 F.3d 1133, 1139 (Fed.Cir.2004). See also Phillips, 415 F.3d at 1317 ("[W]hile extrinsic evidence 'can shed useful light on the relevant art,' we have explained that it is 'less significant than the intrinsic record in determining "the legally operative meaning of claim language," ' " quoting C.R. Bard, Inc. v. U.S. Surgical Corp., 388 F.3d 858, 862 (Fed.Cir.2004), and Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n, 366 F.3d 1311, 1318 (Fed.Cir.2004)); id. at 1318 ("We have viewed extrinsic evidence in general as less reliable than the patent and its prosecution history in determining how to read claim terms .... [U]ndue reliance on extrinsic evidence poses the risk that it will be used to change the meaning of claims in derogation of the 'indisputable public records consisting of the claims, the specification and the prosecution history,' thereby undermining the public notice function of patents").

While "extrinsic evidence ... is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence," the Federal Circuit has held that the district court may, in its discretion, admit such evidence to the extent it is "useful [in] ... provid[ing] background on the technology at issue, ... explain[ing] how an invention works, ... ensur[ing] that the court's understanding of

the technical aspects of the patent is consistent with that of a person of skill in the art, or ... establish[ing] that a particular term in the patent or the prior art has a particular meaning in the pertinent field." Phillips, 415 F.3d at 1319. See also Omega Engineering, Inc, v. Raytek Corp., 334 F.3d 1314, 1332 (Fed.Cir.2003) (stating that "expert testimony and declarations are useful to confirm that the construed meaning is consistent with the denotation ascribed by those in the field of the art"); Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1309 (Fed.Cir.1999) ("Thus, under *Vitronics,* it is entirely appropriate, perhaps even preferable, for a court to consult trustworthy extrinsic evidence to ensure that the claim construction it is tending to from the patent file is not inconsistent with clearly expressed, plainly apposite, and widely held understandings in the pertinent technical field. This is especially the case with respect to technical terms, as opposed to non-technical terms in general usage or terms of art in the claimdrafting art, such as 'comprising' "); Mantech Environmental Corp. v. Hudson Environmental Services, Inc., 152 F.3d 1368 (Fed.Cir.1998) (endorsing reference to extrinsic evidence as "background in the technical area at issue").

B. Patent Claim Terms In Dispute

There are four claim terms whose meaning the parties dispute.FN10 These are: "pressure sensitive adhesive layer," as used in claims 1, 3 and 7; "disposed along the interior surface of each of the breast forms," as used in claims 1 and 3; "repositionable relative to the user's breast," as used in claims 1 and 3; and "repositioning the breast forms," as used in claim 3.

FN10. Telebrands accepts Bragel's construction of the following claim terms: (1) breast form (in all claims); (2) breast form system (in claims 1 and 7); (3) independently positioning (in claims 1 and 3); (4) increasing or decreasing the distance between the inner sides of the breast forms (in claims 4 and 5). (See Defendant Telebrands' Responsive Claim Construction Brief ("Telebrands Brief") at 2.)

1. Claims 1, 3 and 7: "Pressure Sensitive Adhesive Layer" And "Disposed Along The Interior Surface Of Each of The Breast Forms"

Bragel's proposed construction of "pressure sensitive adhesive layer disposed along the interior surface" is "a layer of any type of pressure sensitive adhesive that is suitable for removably attaching a breast form to a user's skin, which layer is disposed along the interior surface of the breast forms." FN11 Telebrands counters that the claim term means "a non-disposable, reusable adhesive layer adjoining the breast form to the breast and permanently formed on or permanently affixed to the inner surface of the breast form." FN12 It contends that Bragei's definition is overbroad because it includes disposable, non-permanent, removable adhesive.FN13

FN11. Plaintiff Bragel International Inc.'s Claim Construction Brief ("Bragel Brier") at 5.

FN12. Telebrands Brief at 6.

FN13. *Id*. at 5-6.

Claims 1 and 3 each include as an element "adjoining a pressure sensitive adhesive layer disposed along the interior surface of each of the breast forms to a desired position on the user's breasts." Claim 7 claims a

backless, strapless breast form system that has as an element a pair of breast forms that have a concave interior surface with a pressure sensitive adhesive layer for securing the breast form to the user's breast. None of claims 1, 3 and 7 expressly limits the pressure sensitive adhesive layer to a non-disposable, reusable layer. This is of significance, since courts look first to the language of the claims, and give that language the ordinary meaning it would have to a person skilled in the art. See, e.g., Liquid Dynamics, 355 F.3d at 1368 ("We examine this intrinsic evidence seriatim. 'We look first to the claim language itself, to define the scope of the patented invention' " and " 'give claim terms their ordinary and accustomed meaning as understood by one of ordinary skill in the art' "); Intellectual Property Development, 336 F.3d at 1314 ("We begin our claim construction analysis with the words of the claim ...").

As noted, however, a person of skill in the art is presumed to read the claim language in the context of the patent as whole, including the specification. Phillips, 415 F.3d at 1313. Thus, it is necessary to examine the specification to determine if the inventors gave the term "pressure sensitive adhesive layer" a definition different than it would otherwise possess, or if they intentionally disclaimed or disavowed the meaning of the term they now advocate. Id. at 1316. "[T]he distinction between using the specification to interpret the meaning of a claim and importing limitations from the specification into the claim can be a difficult one to apply in practice." Id. at 1323. See also Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1186-87 (Fed.Cir.1998) ("[t]here is sometimes a fine line between reading a claim in light of the specification, and reading a limitation into the claim from the specification"). To avoid improperly importing limitations from the specification into the claims, he focus must be "on understanding how a person of ordinary skill in the art would understand the claim terms." *Id*. The Federal Circuit has "expressly 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," noting that "persons of ordinary skill in the art rarely would confine their definitions of terms to the exact representations depicted in the embodiments." *Id*.

Telebrands contends the specification clearly indicates that the pressure sensitive adhesive layer is limited to non-disposable, reusable material. It cites the inventors' discussion in the Background of the Invention section regarding existing backless, strapless bras that use non-permanent adhesives, such as disposable double-sided tape, to secure the bra to the user. The inventors note that such adhesives prevent the user from "easily remov[ing] and re-us[ing] the bra," FN14 and state that "there exists a need for a [breast form enhancement] system having a permanent and re-usable adhesive that allows the user to position the breast forms in a desired position without concern of the breast forms shifting from that position." FN15 Telebrands asserts that the inventors' reference to disposable double-sided tape, coupled with their reference to the need for a permanent, reusable adhesive, constitutes a disavowal of any invention that encompasses use of a disposable adhesive.FN16 The court cannot agree.

FN14. '001 Patent, col. 2, ll. 4-5.

FN15. Id., col. 2, ll. 9-12.

FN16. Telebrands does not contend that the inventors acted as lexicographers to give the term pressure sensitive adhesive layer a meaning other than the ordinary meaning persons skilled in the art would ascribe to it.

The Federal Circuit has stated that " 'words or expressions of manifest exclusion' or 'explicit' disclaimers in the specification are necessary to disavow claim scope." Gillette Co. v. Energizer Holdings, Inc., 405 F.3d 1367, 1374 (Fed.Cir.2005) (quoting Housey Pharms., Inc. v. Astrazeneca UK Ltd., 366 F.3d 1348, 1352 (Fed.Cir.2004)). The background discussion Telebrands cites is not sufficiently specific to constitute an express disavowal of a breast form system that uses a disposable adhesive. The Federal Circuit's decision in Ventana Medical Systems, Inc. v. Biogenex Laboratories, Inc., 473 F.3d 1173, 2006 WL 3821175 (Fed. Cir. Dec. 29? 2006), is instructive in this regard. The patent under consideration in that case included, in the Background Art section, a discussion of a number of different prior art devices that employed various dispensing techniques. *Id.* at *6. Citing this discussion, defendant argued that the claims of the patent had to be limited so to exclude the prior art techniques. The court rejected this argument. It stated:

"... [Defendant] points to only general statements by the inventors indicating that the invention is intended to improve upon prior art automated staining methods: 'The previously known devices are limited in their performance and unable to satisfy the needs for automated, high precision immunohistology. It is an object of this invention to provide a device which provides more rapid, reliable and more reproducible results than standard methods ....' Such general statements, without more, will not be interpreted to disclaim every feature of every prior art device discussed in the 'BACKGROUND ART' section of the patent." *Id.*

Defendant's argument in *Ventana Medical Systems* is similar to the argument Telebrands advances here. Essentially, Telebrands contends that the inventors' reference to problems with prior art adhesives, and their statement that there was a need for a breast form system that used a permanent, reusable adhesive, necessitates a finding that they disclaimed any system employing a disposable adhesive. As in *Ventana Medical Systems,* however, the inventors' statements are too general to constitute an "explicit disclaimer" of claim scope. This is particularly true since the Background section of the patent identifies multiple problems in the prior art that were not related to use of a disposable adhesive-e.g ., the fact that backless, strapless bras provided only limited means of enhancing breast size and shape and that known breast forms were not well suited to use by women with sagging breasts.FN17 The fact that "a patent asserts that an invention achieves several objectives does not require that each of the claims be construed as limited to structures that are capable of achieving all of the objectives." Liebel-Flarsheim Co. v. Medrad Inc., 358 F.3d 898, 908 (Fed.Cir.2004); see also Resonate Inc. v. Alteon WebSystems, Inc., 338 F.3d 1360, 1367 (Fed.Cir.2003).

FN17. *Id.,* col. 1, l. 67-col. 2, l. l; *id.,* col. 2, ll. 15-28.

The conclusion that the inventors did not explicitly disclaim disposable adhesives is reinforced by a review of the Summary of the Invention and Detailed Description sections of the specification. The Summary of the Invention states that "[t]he pressure sensitive adhesive layer *can be* a permanently grown pressure sensitive adhesive...." FN18 It does not exclude use of other types of adhesives. Similarly, the Detailed Description states: "The pressure sensitive adhesive layer 33 can include *any type* of pressure sensitive adhesive (PSA) that is suitable for removably attaching a breast form to a user's skin, *such as various types and forms of double-sided tape and permanently grown PSAs*."FN19 The inventors' statement that "any" type of pressure sensitive adhesive suitable for removably attaching the breast form to the user's breast can be used clearly signals to a person skilled in the art that non-permanent adhesives are within the scope of the invention. The specification, moreover, expressly notes that the adhesive used can include double-sided tape. While some double-sided tape is reusable, it is clear from the specification that at least *some* is disposable.FN20 Consequently, the inventors' broad reference to "various types and forms of double-sided tape" confirms that the invention is not limited to permanent, reusable adhesives. While the Detailed

Description later states that the pressure sensitive adhesive is "preferably a re-usable PSA," FN21 the law is clear that the scope of patent claims is not generally limited to the preferred embodiment. See, e .g., Fuji Photo Film Co., Ltd. v. International Trade Comm'n, 386 F.3d 1095, 1106 (Fed.Cir.2004) ("It is a familiar axiom of patent law ... that the scope of the claims is not limited to the preferred embodiments described in the specification"); Cordis Corp. v. Medtronic Ave, Inc., 339 F.3d 1352, 1365 (Fed.Cir.2003). Construing claims 1, 3 and 7 to require use of a non-disposable, permanent adhesive would violate this rule, and improperly limit the claims to the preferred embodiment.

FN18. *Id.,* col. 2, l. 67-col. 3, l. l (emphasis added).

FN19. *Id.,* col 4, ll. 19-23.

FN20. *See id.,* col. 1, ll. 65-66.

FN21. *Id.,* col. 4, ll. 33-34.

A review of the portion of the prosecution history that is in the record supports this view. Bragel has proffered evidence that on October 19, 2004, the patent examiner issued "Reasons for Allowance" that limited the adhesive layer to a "tape." Noting this in a Supplemental Notice of Allowability, the examiner removed the earlier limitation, stating that "the adhesive layer as claimed in claims 1 and 7 is just claimed as an 'adhesive layer' and is not limited to a 'tape.' The layer is any pressure sensitive adhesive layer.' " FN22

FN22. Declaration of Edward R. Schwartz in Support of Bragel International, Inc.'s Claim Construction Brief ("Schwartz Decl."), Exh. A (Supplemental Notice of Allowability).

Bragel contends that the examiner's statement that the "adhesive layer [was] *not limited* to a tape" indicates that she understood the term to include both tape and other types of adhesive .FN23 Because tape can be disposable, it argues, the prosecution history supports a construction of pressure sensitive adhesive layer that is not limited to non-disposable, reusable adhesives. FN24

FN23. Bragel Brief at 6 (emphasis original); Bragel International Inc.'s Reply Brief Regarding Claim Construction ("Bragel Reply") at 3.

FN24. *Id.*

The examiner's understanding of the scope of the claimed adhesive, as reflected in the Supplemental Notice of Allowability, is consistent with the language of the specification, which states that any type of pressure sensitive adhesive, including various types and forms of double-sided tape, can be used in the invention. Because at least some forms of double-sided tape are disposable,FN25 the prosecution history supports a construction of pressure sensitive adhesive layer that is not limited to non-disposable, reusable

adhesives.FN26

FN25. See '001 Patent, col. 1. ll. 65-66.

FN26. Prior art is part of the prosecution history. Phillips, 415 F.3d at 1317 ("The prosecution history, which we have designated as part of the 'intrinsic evidence,' consists of the complete record of the proceedings before the PTO and includes the prior art cited during the examination of the patent"). The prior art cited in the '001 Patent is inconclusive on use of a permanent, reusable adhesive. Some of the patents referenced do not discuss the useful life of the pressure sensitive adhesive employed (see, e.g., United States Patent No. 3,297,036, United States Patent No. 2,728,079), while others clearly indicate that the adhesive is disposable and not reusable (see United States Patent No. 2,869,553 ("These breast cups are preferably made of disposable paper or similar material so that they may be inexpensively disposed of after each use. The adhesive used is usually ineffective after its first use so that it is almost a necessity that the breast cups be disposed of after a single application. This not only provides a convenience in that there is no necessity to wash the elements, but also makes for a more sanitary garment at a minimum cost")). At least one prior art patent, however, claimed a permanent, reusable adhesive that had a removable protective covering; it protected a strapless brassiere or undergarment that could be built into an outer garment. (See United States Patent No. 3,280,818.) The fact that both disposable and reusable adhesives were known in the prior art indicates that the '001 Patent does not have to be construed as being limited to a reusable adhesive to avoid reading on the prior art. Rather, it is the combination of elements claimed, including an adhesive of some type, that the examiner found patentable. See Liquid Dynamics Corp., 355 F.3d at 1367-68 ("When we use the prosecution history as source material, the prior art cited and the applicant's acquiescence with regard to that prior art indicate the scope of the claims, or in other words, what the claims do not cover," citing Autogiro Co. of America v. United States, 181 Ct.Cl. 55, 384 F.2d 391, 399 (Ct.Cl.1967) ("In its broader use as source material, the prior art cited in the file wrapper gives clues as to what the claims do not cover")).

For all of these reasons, the court concludes that "pressure sensitive adhesive layer," as used in claims 1, 3 and 7 of the '001 Patent, means "a layer of any type of pressure sensitive adhesive that is suitable for removably attaching a breast form to a user's skin."

2. Claims 1 And 3: "Repositionable Relative To The User's Breast" And "Repositioning The Breast Forms"

Bragel contends that, as used in claims 1 and 3, "repositionable relative to the user's breast" means that "the breast forms may be removed from, and repositioned on, the user's breast." FN27 Telebrands asserts the phrase should be construed to mean "remov[ing] the adhesive layer from the skin and reus[ing][it] to secure the breast form in a different position." The parties' proposed definitions of claim 3's reference to "repositioning the breast forms" are similar. Bragel contends the term means "changing the position of the breast forms on the user's breast." FN28 Telebrands asserts it should be construed as "reusing the adhesive layer to secure the breast form in a different position." The parties' constructions of the terms are essentially identical, with their only dispute being whether the phrases encompass use of disposable, non-reusable adhesives.FN29

FN27. Bragel Brief at 7.

FN28. Bragel Brief at 8.

FN29. Telebrands Brief at 7-8.

Because the court has concluded that "pressure sensitive adhesive layer" includes the use of both disposable and non-disposable adhesives, it cannot adopt Telebrands's construction of "repositionable relative to the user's breasts" and "repositioning the breast forms," which reads in a limitation that is not conveyed by the ordinary meaning of the words used. See Phillips, 415 F.3d at 1314 ("In some cases, the ordinary meaning of claim language may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of widely accepted meaning of commonly understood words"). As both parties acknowledge, a person skilled in the art would understand that "repositionable relative to the user's breasts" means that a user must be able to remove the breast form from her breast and reattach it at a different location on the breast. Similarly, a person skilled in the art would interpret "repositioning the breast forms" to mean that the user repositions the breast form at a different location on her breast. Both phrases address the user's ability to change the position of the breast form on the breast to increase or decrease cleavage and push-up enhancement. Neither the language of the claims, nor the specification, requires that the court incorporate limitations regarding the properties of the pressure sensitive adhesive layer into these terms. Consequently, the court construes "repositionable relative to the user's breast" to mean that "the breast forms may be removed from, and reattached at a different location on, the user's breast." It construes "repositioning the breast forms" to mean "changing the position of the breast forms on the user's breast."

III. CONCLUSION

The court construes "pressure sensitive adhesive layer," as used in claims 1, 3 and 7 of the '001 Patent, to mean "a layer of any type of pressure sensitive adhesive that is suitable for removably attaching a breast form to a user's skin." It construes "repositionable relative to the user's breasts" to mean that "the breast forms may be removed from, and reattached at a different location on, the user's breast." Finally, the court construes "repositioning the breast forms" to mean "changing the position of the breast forms on the user's breast."

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Bragel Intern., Inc. v. Telebrands Corp.

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