

United States District Court,  
S.D. California.

**VENETEC INTERNATIONAL, INC,**  
Plaintiff/Counterdefendant.

v.

**MEDICAL DEVICE GROUP, INC,**  
Defendant/Counterclaimant.

No. 06CV83 IEG (WMc)

**March 6, 2007.**

Brian C. Horne, Karen Vogel Weil, Knobbe Martens Olsen and Bear, Los Angeles, CA, for  
Plaintiff/Counterdefendant.

Michael J. Wise, Joseph P. Hamilton, Steven M. Giovannetti, Perkins Coie, Santa Monica, CA, for  
Defendant/Counterclaimant.

### **ORDER ON CLAIM CONSTRUCTION**

**IRMA E. GONZALEZ, Chief Judge.**

Presently before the Court is the construction of disputed terms of the asserted claims of U.S. Patent Nos. 5,287,230 ("230 patent"), 6,290,676 ("676 patent"), and 6,786,692 ("692 patent") (collectively, the "patents-in-suit").

### **PROCEDURAL BACKGROUND**

On January 13, 2006, Venetec International ("Venetec") filed a complaint against Medical Device Group ("MDG") alleging infringement of the patents-in-suit. (Doc. No. 1.) On March 8, 2006, MDG answered the complaint and counterclaimed for a declaratory judgment of noninfringement and invalidity for each of the patents-in-suit. (Doc. No. 7.)

On December 6, 2006, the Court held a telephonic status conference to set a briefing schedule on claim construction. (Doc. No. 40.) Each party filed its opening brief on January 12, 2007. (Doc. Nos. 46 & 50.) The parties filed an amended joint claim chart on January 23, 2007. FN1 (Doc. No. 59.) Each party filed its opposition brief on January 26, 2007. (Doc. Nos. 63 & 65.) The Court held a Markman Hearing on February 16, 2007.

FN1. The parties originally filed their joint claim chart on November 17, 2006. (Doc. No. 29). The amended joint claim chart was necessary because the parties subsequently reached agreement on the construction of more terms.

## LEGAL STANDARD

In claim construction, the Court must give a term "the meaning that the term would have to a person of ordinary skill in the art in question" when the patent application was filed. *Abbott Laboratories v. Andrx Pharmaceuticals, Inc.*, 473 F.3d 1196, 1209 (Fed.Cir.2007) (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed.Cir.2005) (en banc)). Such a person reads claim terms "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.

Claim construction focuses on "the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Vitronics Corp. v. Conceptor, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996); *accord Gillette Co. v. Energizer Holdings, Inc.*, 405 F.3d 1367, 1370 (Fed.Cir.2005). "Claim construction begins with the language of the claims." *Housey Pharmaceuticals, Inc. v. Astrazeneca UK Ltd.*, 366 F.3d 1348, 1351-52 (Fed.Cir.2004). A court also considers the context in which the term appears in the claim, along with other claims. *Phillips*, 415 F.3d at 1314. Where the same term appears in different claims, the Court must interpret the term consistently in all claims. *Southwall Technologies, Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1579 (Fed.Cir.1995). By contrast, courts typically presume "a difference in meaning and scope when different words or phrases are used in separate claims." *Power Mosfet Technologies, L.L.C. v. Siemens AG*, 378 F.3d 1396, 1410 (Fed.Cir.2004) (quoting *Tandon Corp. v. U.S. Int'l Trade Comm'n*, 831 F.2d 1017, 1023 (Fed.Cir.1987)).

The specification is "always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Phillips*, 415 F.3d at 1315 (quoting *Vitronics*, 90 F.3d at 1582); *accord Yoon Ja Kim v. Conagra Foods, Inc.*, 465 F.3d 1312, 1318 (Fed.Cir.2006). *Phillips* invited courts "to rely heavily on the written description [in the specification] for guidance as to the meaning of the claims." 415 F.3d at 1317. For example, the specification may show that the inventor assigned a meaning to a claim term that differs from the claim's ordinary meaning, and, in that case, "the inventor's lexicography governs." *Id.* at 1316; *accord Anderson Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 2007 WL 188709, at \*4-\*5 (Fed.Cir. Jan.26, 2007).

Here, the parties contest whether the Court should construe certain terms (e.g., "radially extending member") consistently with all the preferred embodiments disclosed in the specification. The parties likewise dispute the legal significance of language in each patent-in-suit's abstract FN2 and background section FN3. Under Federal Circuit precedent:

FN2. "A catheter anchoring system is provided to securely anchor to a patient's skin a catheter and fluid supply tube interconnection." (Abstract.)

FN3. "The present invention relates in general to a percutaneous catheterization system, and, in particular, to a catheter anchoring system which securely interconnects an indwelling catheter with a tubing and securely anchors such interconnection to a patient's skin." This language appears in the "Field of the Invention" sub-section of each patent's background section.

a patentee's choice of embodiments can shed light on the intended scope of the claim, but a patent claim term is not limited merely because the embodiments in the specification all contain a particular feature. On the other hand, a construction that excludes a preferred embodiment is rarely, if ever, correct.

*C.R. Bard, Inc. v. United States Surgical Corp.*, 388 F.3d 858, 865 (Fed.Cir.2004) (internal citations and quotations omitted). In *Bard* the Federal Circuit held that claim terms in a patent for a hernia repair device required "pleating" because the patent's abstract and summary of invention defined the terms as having a pleated surface, even though the claims themselves made no references to pleating. *Id.*

Narrow claim construction is inappropriate, however, "unless the patentee has demonstrated a clear intention to limit the claim scope using 'words or expressions of manifest exclusion or restriction.'" *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed.Cir.2004) (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed.Cir.2002)). "General statements" describing the invention's improvement on prior art "will not be interpreted to disclaim every feature of every prior art device[.]" *Ventana Med. Sys., Inc. v. Biogenex Laboratories, Inc.*, 473 F.3d 1173, 1181 (Fed.Cir.2006). The decision whether to limit a claim to the embodiments in the specification "depends in each case on the specificity of the description of the invention and on the prosecution history." *Cultor Corp. v. A.E. Staley Mfg. Co.*, 224 F.3d 1328, 1331 (Fed.Cir.2000). The mere fact that a specification discloses a single embodiment is not enough. *Liebel-Flarsheim*, 358 F.3d at 907.

Even without limiting language, a court may nonetheless impose a limited construction of terms "when the scope of the invention is clearly stated in the specification, and is described as the advantage and distinction of the invention[.]" *On Demand Mach. Corp. v. Ingram Indus., Inc.*, 442 F.3d 1331, 1340 (Fed.Cir.2006). There, the Federal Circuit refused to construe "customer" to mean "any purchaser of goods and services" (i.e., the dictionary definition) because the patented invention's "entire focus" was on individual retail consumers. *Id.* The court disregarded the patent's failure to disavow the term's standard meaning or expressly limit the invention to a particular kind of customer. *Id.*

A patent litigant, in other words, "is not entitled to a claim construction divorced from the context of the written description and prosecution history." *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1144-45 (Fed.Cir.2005). There, the Federal Circuit affirmed the district court's construction of "board" to mean "wood cut from a log" based on the "consistent use of the term" throughout the patent's written description of the invention. *Id.* at 1144.

The prosecution history is a "public record of the patentee's representations concerning the scope and meaning of the claims[.]" *Seachange Int'l, Inc. v. C-COR Inc.*, 413 F.3d 1361, 1372 (Fed.Cir.2005). The Court may examine the prosecution history to determine whether the patentee narrowed the scope of claims by, e.g., distinguishing the patent from prior art. *Id.* at 1372-73. "Any statement" by the patentee about the patent's scope is relevant to claim construction, even if the patent examiner did not rely on the statement, because the court "will not construe the ... claims more broadly than the patentee itself clearly envisioned." *Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1350 (Fed.Cir.2004). Specifically, the court will not construe claims more broadly "than [the subject matter] which the patentee regarded as comprising its inventions and represented to the PTO." *Id.* at 1349.

The court should rely on extrinsic evidence "[o]nly if a disputed claim term remains ambiguous after analysis of the intrinsic evidence." *Pickholtz v. Rainbow Technologies, Inc.*, 284 F.3d 1365, 1372-73 (Fed.Cir.2002). Extrinsic evidence is defined as " 'all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.' " *Phillips*, 415 F.3d at 1317 (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed.Cir.1995), *aff'd* 517 U.S. 370, 116

S.Ct. 1384, 134 L.Ed.2d 577 (1996)). Extrinsic evidence is separate from the patent, prepared for litigation purposes, and not necessarily reflective of the perspective of an ordinary person skilled in the art. *Id.* at 1318. A court must not use extrinsic evidence "to vary, contradict, expand, or limit the claim language from how it is defined, even implicitly, in the specification or [prosecution] history." *Dow Chem. Co. v. Sumitomo Chem. Co., Ltd.*, 257 F.3d 1364, 1373 (Fed.Cir.2001).

Prior art is intrinsic evidence when cited in the prosecution history. *Tate Access Floors v. Interface Architectural Res., Inc.*, 279 F.3d 1357, 1371 n. 4 (Fed.Cir.2002). Prior art is extrinsic evidence if the patent examiner did not consider it. *Id.*

## CLAIM CONSTRUCTION

Having reviewed the amended joint claim chart and the patents-in-suit, the Court **ADOPTS** the agreed proposed construction of all terms for which the parties have proposed such a construction.

In addition, the Court **CONSTRUES** the disputed terms as follows:

1. "**adapted**": Suited for a particular use.
2. "**medical article adapted to be secured to the skin of a patient**": To make the medical article suitable for being secured to the skin of a patient.
3. "**tubular body**": A hollow, elongated, cylindrical body.
4. "**radially extending member**": A member extending in the direction of the radius, which is perpendicular to the longitudinal axis of the tubular body.
5. "**longitudinal axis**": A fixed axis extending in the longitudinal direction of the retainer.
6. "**opening along said longitudinal axis**": A continuous gap along the longitudinal axis.
7. "**channel**": The term "channel" is an abbreviated reference to the term "channel portions".
8. "**slot**": A passage.
9. "**thickness of the radially extending member**": The dimension of the radially extending member where the radially extending member passes through the slot in the longitudinal direction.
10. "**to provide lateral stability**": Supply with necessary support such that the medical article is unable to move relative to the retainer in the lateral direction.
11. "**a flexible anchor pad having an adhesive bottom surface and a top surface on which said retainer is mounted**": The retainer is attached on top of the anchor pad, which has an adhesive bottom surface and a top surface.
12. "**snap-fit**": As the medical article is placed in the retainer, at least one piece changes shape and springs back toward its original shape to hold the two pieces together, without the need for an additional locking

mechanism.

13. "**supporting**": To hold in position and to bear weight.

14. "**catheter**": Tubular medical device for insertion through the skin of a patient.

15. "**adaptor**": An interconnector between the catheter and another fluid line, wherein the adaptor is not integral with the catheter.

16. "**upper opening**": A continuous gap that does not face the skin of a patient.

17. "**affixed**": Attachment of distinct parts.

18. "**permanently attached**": Attached in a way such that the distinct parts cannot be separated without fundamentally changing them.

19. "**catheter hub**": Base for attaching a catheter to a fluid line.

**IT IS SO ORDERED.**

S.D.Cal.,2007.

Venetec Intern., Inc. v. Medical Device Group, Inc.

Produced by Sans Paper, LLC.