

United States District Court,  
C.D. California.

**TAYE, INC,**

v.

**DRUM WORKSHOP, INC.**

No. CV 07-4835 PSG (VBKx)

**July 28, 2008.**

Charles C.H. Wu, Wu and Cheung, Irvine, CA, for Taye, Inc.

John D. Bauersfeld, Fitch Even Tabin And Flannery, Woodland Hills, CA, Jon A. Birmingham, Fitch Even Tabin and Flannery, Chicago, IL, for Drum Workshop, Inc.

**PHILIP S. GUTIERREZ, District Judge.**

### **Proceedings: (In Chambers) Order Construing Disputed Patent Claim Terms**

On July 22, 2008, the Court conducted a claim construction hearing on disputed patent claim terms in this case. The Court now issues its claim constructions in this order.

#### ***I. BACKGROUND***

On July 26, 2007, Taye, Inc. ("Taye") brought an action for declaratory relief against Drum Workshop, Inc. ("Drum Workshop"). According to Taye, both parties manufacture drums and drum components, and the parties compete in the market for drum sales. Taye alleges that, on or about May 4, 2007, Drum Workshop's counsel notified Taye by letter that Taye's products infringed Drum Workshop's six related patents including U.S. Patent 5,396,826 ("the '826 Patent"), U.S. Patent 6,894,210 ("the '210 Patent"), U.S. Patent 5,204,485 ("the '485 Patent"), U.S. Patent 5,431,081 ("the '081 Patent"), U.S. Patent 5,936,176 ("the '176 Patent"), and U.S. Design Patent 408,436 ("the D436 Patent"). Thus, Taye believed that it was in imminent threat of a patent infringement lawsuit and believed that filing a declaratory relief action against Drum Workshop was appropriate. On September 14, 2007, Drum Workshop answered Taye's complaint and brought counterclaims against Taye for infringement of the '826 Patent, the '210 Patent, the '485 Patent, and the '176 Patent.

To facilitate orderly litigation and the claim construction process, the Court ordered the parties to meet and confer and to file a Joint Claim Construction Statement. On June 16, 2008, the parties filed this joint statement, and subsequently, the parties filed their separate claim construction briefs. Presently, the parties request that the Court construe disputed claim terms in several disputed patents.

#### ***II. LEGAL STANDARD FOR CLAIM CONSTRUCTION***

## A. Principles of Claim Construction

"[T]he interpretation and construction of patent claims, which define the scope of the patentee's rights under the patent, is a matter of law exclusively for the court." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970-71 (Fed.Cir.1995), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996).

Also, the Federal Circuit has "frequently stated that the words of a claim are generally given their ordinary and customary meaning." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed.Cir.2005) (en banc), *cert. denied*, 546 U.S. 1170, 126 S.Ct. 1332, 164 L.Ed.2d 49 (2006) (citation omitted).

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." *Phillips*, 415 F.3d at 1313 (citation omitted). "The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation." *Id.* (citation omitted). "That starting point is based on the well-settled understanding that inventors are typically persons skilled in the field of the invention and that patents are addressed to and intended to be read by others of skill in the pertinent art." *Id.* (citation omitted). "Importantly, the person of ordinary skill in the art is deemed 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." *Id.*

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. In many cases that give rise to litigation, however, determining the ordinary and customary meaning of the claim requires examination of terms that have a particular meaning in a field of art. Because the meaning of a claim term as understood by persons of skill in the art is often not immediately apparent, and because patentees frequently use terms idiosyncratically, the court looks 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. Those 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 (internal citations and quotation marks omitted).

While considering the allowable sources of evidence to construe patent claims, a Court must consider the hierarchy of importance that the Federal Circuit has created for those sources of evidence. First, "the context in which a term is used in the asserted claim can be highly instructive." *Id.* at 1314. Also, the Federal Circuit has made clear that claims "must be read in view of the specification, of which they are a part.... [T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Id.* at 1315 (internal citation and quotation marks omitted). Furthermore, although the prosecution history "often lacks the clarity of the specification and thus is less useful for claim construction purposes," *id.* at 1317, it should also be considered if it is in evidence because it is also "intrinsic evidence" that is given the most weight. *Id.* Finally, a Court may consider "extrinsic evidence, which consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Id.* (citation and internal quotation marks omitted). However, while extrinsic evidence can shed useful light on the relevant art, it is less significant than the intrinsic record in determining the legally operative meaning of claim language. *Id.*

Further, because of the importance of the specification in construing claim terms, the Federal Circuit's "cases recognize that the specification may reveal a special 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." *Id.* at 1316. However, "[t]hat claims are interpreted in light of the specification does not mean that everything expressed in the specification must be read into all the claims." *SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed.Cir.1985) (citation omitted). Thus, "although the specification often describes very specific embodiments of the invention, [the Federal Circuit has] repeatedly warned against confining the claims to those embodiments." *Phillips*, 415 F.3d at 1323.

## **B. Construing Means-Plus-Function Claim Terms**

Construction of a patent's claim terms may also sometimes involve construction of "means-plus-function" claim terms. 35 U.S.C. s. 112, para. 6 authorizes patent claim terms to be written in functional terms through the "means-plus-function" format, and the statute establishes:

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

35 U.S.C. s. 112, para. 6.

"The task of determining whether the relevant claim language contains a means-plus-function limitation is, as with all claim construction issues, a question of law ... Use of the word 'means' in claim language creates a presumption that s. 112 para. 6 applies.... If, in addition to the word 'means' and the functional language, the claim recites sufficient structure for performing the described functions in their entirety, the presumption of s. 112 para. 6 is overcome—the limitation is not a means-plus-function limitation.... Sufficient structure exists when the claim language specifies the exact structure that performs the functions in question without need to resort to other portions of the specification or extrinsic evidence for an adequate understanding of the structure." *TriMed, Inc. v. Stryker Corp.*, 514 F.3d 1256, 1259-60 (Fed.Cir.2008) (internal citations omitted). *See also* *Rodime PLC v. Seagate Technology, Inc.*, 174 F.3d 1294, 1304 (Fed.Cir.1999) (noting that to overcome the presumption that s. 112, para. 6 is invoked, "the claim need only recite 'sufficient' structure to perform entirely the claimed function" and not "every last detail of structure disclosed in the specification for performing the claimed" function).

Furthermore, 35 U.S.C. s. 112, para. 2 requires that patent claims "particularly point [ ] out and distinctly claim [ ] the subject matter which the applicant regards as his invention." *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1339 (Fed.Cir.2008) (citing 35 U.S.C. s. 112, para. 2). "For means-plus-function elements, which are statutorily limited to the 'corresponding structure, materials, or acts described in the specification and equivalents thereof,' ... section 112, para. 2 requires that the specification must permit one of ordinary skill in the art to 'know and understand what structure corresponds to the means limitation.'" *Id.* at 1340 (*citing* *Biomedino, LLC v. Waters Techs. Corp.*, 490 F.3d 946, 949-50 (Fed.Cir.2007)). Thus, "[f]or so-called means-plus-function limitations, claim scope is limited to structure disclosed in the specification and equivalents. And if no structure is disclosed, the claim is indefinite [and invalid under 35 U.S.C. s. 112, para. 2] ... This statutory provision was meant to preclude the overbreadth inherent in open-ended functional claims[.]" *Halliburton Energy Services, Inc. v. M-I LLC*, 514 F.3d 1244, 1256 f.n. 7 (Fed.Cir.2008)

(citations omitted).

### **III. DISCUSSION**

#### **A. Issues on Which the Parties Agree**

Pursuant to the Court's order, the parties conferred on disputed claim terms and have reached agreement on several issues. First, the parties agree that the following patents and claims are in dispute:

'176 Patent-Claims 13-17;

'210 Patent-Claims 12 and 13;

'485 Patent-Claims 1-12; and

'826 Patent-Claims 1-17.

Second, the parties agree that the D436 design patent is not in dispute. Third, the parties also agree on the construction of several terms from these patents. The parties agree:

- (1) "Actuator Spring Means" ('826 Patent, Claim 2; '081 Patent, Claim 13) should be construed with the ordinary meaning of the term "actuator spring," and the word "means" may be ignored;
- (2) "Beater Means" ('826 Patent, Claims 14, 16, and 18; '081 Patent, Claims 17, 21, 22, 28, and 29) should be construed in accordance with the ordinary meaning of the term "beater," and the word "means" may be ignored;
- (3) "Yieldable Means" ('826 Patent, Claims 5 and 11; '081 Patent, Claims 2 and 14; '485 Patent, Claim 8) should be construed to be a tension spring and equivalents thereof;
- (4) "Pillow Block" ('081 Patent, Claim 21) and "Pillow Block Means" ('081 Patent, Claim 28) should be construed in accordance with the ordinary meaning of the term "pillow block," and the word "means" appearing in Claim 28 may be ignored.

Because the parties have agreed on these claim terms, the Court finds that it is appropriate to adopt the parties' constructions for the purposes of this litigation.

#### **B. Disputed Issues**

However, the parties dispute whether the '081 Patent is in issue. Drum Workshop claims that Claims 1-9, 11-13, and 28-29 of the '081 Patent are in issue, while Taye contends that the '081 Patent is not relevant to this lawsuit. Taye argues that Drum Workshop has not yet brought infringement counterclaims on the '081 Patent, and therefore, it is unnecessary to construe any terms from the '081 Patent. However, at oral argument, Drum Workshop stated its unequivocal intention to seek to add infringement counterclaims based on the '081 Patent. Furthermore, Taye brought its initial complaint asking for declaratory relief on the '081 Patent, and during the litigation, Drum Workshop indicated to Taye that Drum Workshop intended to bring infringement counterclaims based on the '081 Patent. Thus, Taye cannot claim surprise at Drum Workshop's intended counterclaim. With these circumstances, the Court finds that it is appropriate at this point to

construe disputed terms from the '081 Patent.

Also, the parties dispute claim construction of the following key terms:

- 1) "Carrier Laterally Offset From Said Longitudinal Axis"-'176 Patent;
- 2) "Pedestal Means," "First Pedal Frame" and "First Frames"-'485, '826, and '081 Patents;
- 3) "Integrally Supported"-'485, '826, and '081 Patents;
- 4) "Means Supporting"-'826 and '081 Patents;
- 5) "Shaft Means"-'826 and '081 Patents;
- 6) "Roller Bearing Means" and "Bearing Means"-'485 and '826 Patents;
- 7) "Relatively Adjustable Movable Sections" and "Adjustably Relatively Movable Parts"-'210 Patent;
- 8) "Bearings" and "Bearing Portion"-'485 and '826 Patents

Furthermore, the parties contest the construction of a second group of less important terms. These less important terms include:

- 9) "Pushed Outwardly Relative to the Other Section"-'210 Patent;
- 10) "One Section is Pushed" and "One Part is Retained"-'210 Patent;
- 11) "Auxiliary Means"-'826 Patent;
- 12) "Retention Means"-'210 Patent;
- 13) "Coupling Means"-'826 Patent, '485 Patent, and '081 Patent;
- 14) "Plate"-'485 Patent, '081 Patent, '176 Patent, '210 Patent, and '826 Patent;
- 15) "Rotor"-'210 Patent

### **C. Construction of Key Disputed Terms**

The Court now construes the key disputed terms as follows: FN1

FN1. The Court notes that, despite the parties' jointly filed claim construction statement, Plaintiff's claim construction brief refuses to adhere to the parties' joint numbering and presentation order of disputed claim terms.

#### **1. "Carrier Laterally Offset From Said Longitudinal Axis"-(176 Patent, Claim 13)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
<p>Taye argues "that the phrase 'a carrier laterally offset from said longitudinal axis' must be interpreted in accordance with the only structure disclosed, that is, the <i>dog-leg</i> structure which accomplished the 'offset.' Specifically, there must be a lateral offset which is sufficient to place the longitudinal axes of rods 13 and 14 in the <i>same plane</i> as the lateral axis 18 of the elongated arm 20 regardless of the attached angle of the rods relative to the elongated arm. At the very least, the phrase should be interpreted to require a bend or curve in the carrier in the shape of or equivalent to the dog-leg structure shown and described in the '176 Patent.</p>	<p>The proper construction of this disputed claim element is readily apparent from the ordinary meaning of "laterally offset," e.g., not centered. (Joint Brief, p. 6, lines 15-16.)</p>

No other interpretation of Claim 13 is possible particularly in light of prior art U.S. Patent 5,836,561 (the '561 Patent) [ ... ] which was cited against the application for the '176 Patent.... This Court is specifically requested to note and take into account that 'a carrier laterally offset from said longitudinal axis' cannot include within its scope structure such as elements 30, 31, 33, 21 and 22 as illustrated and described in the '561 Patent ... e.g., a proper interpretation of the claim cannot include the '561 Patent's component 31 ... as a 'carrier laterally offset from said longitudinal axis.' " (Joint Brief, p. 5, line 23-p. 6, line 13.)

The Court construes the phrase "carrier laterally offset from said longitudinal axis" to mean that the carrier is laterally off center from the longitudinal axis. The Court bases this claim construction on the widely accepted ordinary and customary meaning of the word "offset." *Webster's New World College Dictionary, Third Edition, 1997, p. 941.*

The Court rejects Taye's proposed construction that would require reference to a particular "dog-leg" structure disclosed in the specification of the '176 Patent. Taye's proposed construction would impermissibly limit the claim scope to a preferred embodiment described in the specification, an action that the Federal Circuit has deemed verboten. *See Phillips, 415 F.3d at 1323.*

Taye also argues that its claim construction must be adopted because U.S. Patent 5,836,561 ("the '561 Patent") was cited during the application of the '176 Patent. Although not clear, Taye's argument appears to be that the '561 Patent also contains claims with an element similar to the element in Claim 13 of the '176 Patent, a "carrier laterally offset from [a] longitudinal axis." Therefore Taye claims that this element in the '176 Patent must be differentiated from similar elements in claims from the '561 Patent. However, the prosecution history of the '176 Patent does not indicate that the patent examiner rejected any claim in the '176 Patent merely because the claim recited as an element a "carrier laterally offset from [a] longitudinal axis" that may have been also found in the '561 Patent. Indeed, such a rejection would have been improper. Taye appears not to understand that Claim 13 of the '176 Patent contains several elements that together were deemed to comprise a patentable invention in light of prior art such as the '561 Patent. Each individual element of Claim 13 need not comprise a patentable invention.

**2. "Pedestal Means," "First Pedal Frame" and "First Frames" ('485 Patent: Claims 1, 6, 7 and 11; '826 Patent: Claims 1, 5, 7, 9, 11, 14, 16 and 17; '081 Patent: Claims 1, 17, 21 and 28)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
Taye argues "that the proper interpretation of the term	These terms should be construed in

'first pedestal frame' and 'pedestal means' in claim 1 and 'first' pedal frame and 'second' pedal frame in claim 11 require that the upright pedestals [11 and 12], be *integrally* attached to a bottom yoke [ 13 ] and that the arm 17 be 'integral' (i.e., made of the same continuous material) as the upright pedestal [12].

The interpretation of the terms 'pedestal means' and 'first [pedal] frame' are the same for the '826 and '081 Patents as the '485 Patent." (Joint Brief, p. 10, lines 13-19.)

accordance with their ordinary meanings, e.g., a "pedestal" is a "support" and a "frame" is "something made up of parts fitted and joined together." The word "means" following "pedestal" can be disregarded." (See Joint Brief, p. 10, lines 21-25.)

Initially, the Court determines that the phrase "pedestal means" is not a means-plus-function claim term. That term is found in the '485 Patent, Claim 1; the '081 Patent, Claim 1; and the '826 Patent, Claims 1, 5, 7, 9 and 11. Despite the use of the term "means" in the phrase, the presumption that the term invokes s. 112, para. 6 is overcome because the claim term discloses sufficient structure for performing the disclosed carrying function. That structure is the pedestal that is described in further detail in the specification. Thus, the phrase "pedestal means" is not a means-plus-function claim term.

Otherwise, the Court finds that the words "pedestal" and "frame" should be construed in accordance with their widely accepted ordinary and customary meaning. The Court construes the word "pedestal" to mean "foot or bottom support." *Webster's New World College Dictionary, Third Edition, 1997*, p. 995. Also, the Court construes the word "frame" to mean "anything composed of parts fitted together according to a design." *Id.*, p. 535. Furthermore, the Court rejects Taye's proposed construction as an improper attempt to limit the claim scope to a described embodiment.

**3. "Integrally Supporting"-( '485 Patent: Claim 1; '826 Patent: Claims 1, 5, 7, 9 and 11; and '081 Patent: Claim 1)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
<p>"Claim 1 of the '485 Patent and Claims 1, 5, The term should be construed in accordance 7, 9 and 11 of the '826 Patent recites that the with its ordinary meaning, e.g., "integral" 'first base plate integrally support[s] said first means "to unite (parts or elements), so as to pedestal means' ... and the 'first base plate' as form a whole.... Contrary to Taye's position, 'integrally supporting the first pedestal this term properly includes two parts united means' ... The disclosures indicated that the together, such as by using nuts and bolts." proper interpretation of these terms is that the first base plate and first pedestal means are integral (i.e., made of the same continuous material) and that upright pedestal 71 is integrally mounted via bottom support 73a. (Joint Brief, p. 12, line 28-p. 13, line 3.) <i>Id.</i> Accordingly, the bottom support 73a and pedestal 71 must be of the same one-piece continuous material, and 'integrally supported' must be interpreted in that manner." (Joint Brief, p. 12, lines 15-25.)</p>	<p>The term should be construed in accordance with its ordinary meaning, e.g., "integral" means "to unite (parts or elements), so as to form a whole.... Contrary to Taye's position, this term properly includes two parts united together, such as by using nuts and bolts." (Joint Brief, p. 12, line 28-p. 13, line 3.)</p>

The Court construes the phrase "integrally supporting" in accordance with its widely accepted ordinary and customary meaning. The Court construes the phrase "integrally supporting" to mean "made up of parts forming a whole together with and supporting." *Webster's New World College Dictionary, Third Edition, 1997*, p. 701.

The Court rejects Taye's construction which would require that the base plates "integrally supporting" the pedestal means be made of the same continuous material. There is no support anywhere in the patent specifications for Taye's proposed additional limitation. To the contrary, the '485 Patent Specification provides for frames, including pedestal means, to be "mounted" via a "bottom yoke" on base plates. ('485 Specification, col. 3, lines 65-69.) Thus, rather than being made of the same continuous material, the pedestal means are described as being attached to base plates by mounting the pedestal means to the base plates.

**4. "Means Supporting"-( '826 Patent: Claims 1, 5, 7, 9, and 11; '081 Patent: Claim 1)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
"It is submitted that the term 'means supporting the single pedestal and said second pedal' requires that the single pedestal support the tertiary axle at <i>only</i> one location. No other structure is shown or described in the '081 Patent." (Joint Brief, p. 14, lines 6-12.)	The term "means" in this limitation creates a presumption that s. 112, para. 6 applies. The presumption is not rebutted because (1) a function is associated with the term "means"; and (2) there is no structure recited in the claim for performing the function. This means-plus-function term that should be construed to be a plate and equivalents thereof, based on descriptions in the specifications of the; '826 and '081 Patents. (See Defendant's Opening Brief, p. 17, lines 3-14.)

Initially, the Court determines that the phrase "means supporting" is a means-plus-function claim term governed by s. 112, para. 6. The word "means" creates an un rebutted presumption that the phrase is a "means-plus-function" claim term. The function of this claim term is "supporting the single pedestal and said second pedal." The corresponding structure described in the specification is a "base plate." ('826 Specification, col. 4, lines 25-46; '081 Specification, col. 4, lines 4-26.) Thus, pursuant to s. 112, para. 6, the Court construes the phrase "means supporting" to mean a "base plate" and equivalents thereof.

Otherwise, the Court rejects Taye's proposed construction as an improper attempt to limit claim scope, in contravention of the statutory language of s. 112, para. 6.

**5. "Shaft Means"-( '826 Patent: Claims 14, 16 and 17; '081 Patent: Claims 17, 21, 22, 28 and 29)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
"The term 'shaft' is distinguished from shaft means in the '081 Patent, which defines 'shaft means' as 'two trunnions 241 that project oppositely from a larger diameter shaft 242.' ... 'Shaft means' should be integrated under 35 U.S.C. s. 112, para. 6 as the specific structure disclosed and equivalents to the specific structure disclosed." (Joint Brief, p. 15, lines 21-25.)	This is not a "means-plus-function" element, and the proper construction is not limited to that disclosed in the specifications of the '826 and '081 Patents and equivalents thereof. As such, this term should be construed in accordance with the ordinary meaning of the term "shaft," and the word "means" may be ignored. (See Joint Brief, p. 15, line 27-p. 16, line 4.)

Initially, the Court determines that the phrase "shaft means" is not a "means-plus-function" claim term. Though the phrase uses the word "means" and creates a presumption that s. 112, para. 6 is invoked, the patent claims containing the phrase "shaft means" describe no function accomplished by the "shaft means." Therefore, the presumption that "shaft means" is a means-plus-function claim term is overcome.

Otherwise, the Court construes the word "shaft" in accordance with its widely-accepted ordinary and customary meaning. The Court finds that a "shaft" is "a bar, usually round, supporting, or transmitting motion to a wheel, pulley, gear, cam, etc." *Webster's New World College Dictionary, Third Edition, 1997*, p. 1231.

**6. "Roller Bearing Means" and "Bearing Means" -('485 Patent: Claims 6 and 7; '826 Patent: Claims 4, 13 and 14; '081 Patent: Claim 8)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
<p>"Bearings are made up of component parts such as a bearing, a race and a housing. The function they provide is to aid in sliding or rotating one component relative to another. This term should be interpreted under Section 112, para. 6.</p>	<p>These are not "means-plus-function" terms. These terms should be construed in accordance with their ordinary meanings, "roller bearing" and "bearing," respectively, and the word "means" may be ignored. (See Joint Brief, p. 17, lines 8-17.)</p>

Additionally the term 'roller bearing means' in issued Claims 13 and 14 (which were originally claims 12 and 16) of the '826 Patent was added by an August 22, 1994 amendment ..., and under the *Festo* Doctrine, the Doctrine of Equivalents is not available for that term." (Joint Brief, p. 16, lines 18-26.)

Initially, the Court finds that it must construe the phrases "bearing means" and "roller bearing means" separately, despite the parties' attempts to group them together for a single construction. The Court finds that the phrase "bearing means" found in Claims 6 and 7 of the '485 Patent are means-plus-function claim terms. The phrase uses the word "means" and creates a presumption that s. 112, para. 6 is invoked. The function associated with the "bearing means" is to carry a tertiary axle, and there are no sufficiently disclosed structures in the Claims 6 and 7 that correspond to the bearing means. Thus, the presumption that the phrases are "means-plus-function" claim terms is un rebutted.

The corresponding structure for the "bearing means" described in the '485 Patent Specification are "bearing sleeves." ('485 Patent Specification, col. 4, lines 3-5.) Therefore, pursuant to s. 112, para. 6, the Court finds that "bearing means" in Claims 6 and 7 of the '485 Patent are "bearing sleeves" and equivalents thereof.

However, the Court finds that "roller bearing means" found in Claims 4, 13 and 14 of the '826 Patent and Claim 8 of the '081 Patent are not means-plus-function claim terms. Although the use of the word "means" creates a presumption that the terms are means-plus-function claim terms, this presumption is overcome because the phrase itself sufficiently describes the structure that performs the claimed function of supporting a second pedal for pivoting or rotating. The sufficiently described structure corresponding to "roller bearing means" is roller bearings. Thus, "roller bearing means" is not a means-plus-function claim term.

The Court otherwise determines that the term "roller bearing" should be construed in accordance with its

widely accepted common and ordinary meaning. The Court construes a "roller bearing" as a "bearing in which the shaft turns with rollers, generally of steel, arranged in a ringlike track: used to reduce friction." *Webster's New College Dictionary, Third Edition, 1997*, p. 1163. Finally, the Court finds that Taye's argument to limit the possible application of the doctrine of equivalents is premature because it addresses infringement, rather than construction of the claim term.

**7. "Relatively Adjustable Movable Sections" and "Adjustably Relatively Movable Parts"-(210 Patent: Claims 12 and 13)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
<p>"[T]he 'adjustably relatively movable parts' in claim 13 must be of the structure depicted in Figures 12 and 13 and discussed at column 4, lines 45-53. The recited 'parts' and 'sections' of Claims 12 and 13 are within the rotor, and the adjustment operates within the rotor's interior." (Joint Brief, p. 20, lines 13-27.) " <i>No other structures are depicted, shown or described</i> to accomplish the functions set forth in claims 12 or 13. These claims must be limited to the specific structures depicted in the drawings and specification." ( <i>Id.</i>, p. 21, lines 1-3.)</p>	<p>"Claim 12 of the '210 patent recites 'the rotor having relatively adjustable movable sections which are interconnected ....' [ ... ] Claim 13 recites 'there be adjustably relative movable parts assembled and connected as parts of the rotor [ ... ]' Thus, according to the plain language of these claims, the rotor simply has movable parts or sections which are connected." (Joint Brief, p. 21, lines 5-11.)</p>

The Court finds that the phrases "relatively adjustable movable sections" and "adjustably relatively movable parts" should be construed in accordance with their widely accepted ordinary and customary meaning. The phrase "relatively adjustable movable sections" means that there are sections which are movable and adjustable relative to each other. The phrase "adjustably relatively movable parts" means that there are parts which are adjustable and movable relative to each other.

The Court otherwise rejects Taye's proposed claim construction because it would improperly limit the claim scope to a described embodiment of the invention.

**8. "Bearings" and "Bearing Portion"-(485 Patent: Claims 1 and 11; '826 Patent: Claims 1, 5, 7, 9, 11 and 13)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
<p>"Claim 1 of the '485 Patent recites the drum beating assembly as comprising 'first, second and third bearings carried by the first pedestal means', 'a primary axle carried by the first and third bearings' and 'a secondary axle carried by the second and third bearings.' [ ... ] Claim 1 recites 'third bearing including two axially spaced bearing elements, and a housing for said elements.' [ ... ] A proper interpretation is that the second shaft must be supported by the housing and at least one bearing element of the</p>	<p>"Claim 1 of the '485 Patent recites 'first, second and third bearings carried by the first pedestal means ... said third bearing including two axially spaced bearing elements, and a housing for said elements.' [ ... ] There is 'a primary axle ... supported by said first bearing and one of said two axially spaced bearing elements' and a 'secondary axle supported by the second bearing and the other of said two axially spaced bearing elements.' [ ... ] Claim 11 omits a 'housing.' [ ... ] The claim is unambiguous, and there is no reason to deviate from its plain language.</p>

'third bearing'.

Claim 11 of the '485 recites a 'first pedal frame ... provided with first, second and third bearing portions', a 'first shaft supported by said first and third bearing portions', and a 'second shaft ... supported by said second and third bearing portions.' [ ... ] The term 'bearing portions' does not appear in the specification.

A proper interpretation of Claim 11 requires the term 'bearing portion' to be interpreted as 'bearing housing.'" (Joint Brief, p. 21, line 19-p. 22, line 5.)

Also, "the Court should interpret these terms [in Claims 1, 5, 7, 9, 11 and 13 in the '826 Patent] consistently with the interpretation given these terms in connection with the '485 Patent for the reasons set forth in above." (Id., p. 22, lines 10-12.)

With respect to claim 1, however, Taye states that 'the second shaft must be supported by the housing and at least one bearing element of the 'third bearing' Taye offers no support for its proposed construction, and thus gives no reason to deviate from the plain language of the claim.

With respect to claim 11, Taye argues that the term 'bearing portion' must be interpreted as 'bearing housing.' This is inconsistent with the usage of those two different terms in the specification.... This description in the specification confirms that the bearing portions or parts are not the same as the bearing housing." (Joint Brief, p. 22, line 16-p. 23, line 8.)

Claims 1, 5, 7, 9, 11 and 13 of the '826 Patent recite "bearings" or "bearing portions" and "should be interpreted consistently" with the interpretation for these terms for the '485 Patent. ( *Id.*, p. 23, lines 8-12.)

The Court construes the phrases "bearings" and "bearing portions" in accordance with their widely accepted ordinary and customary meaning. The Court construes the term "bearing" to mean "any part of a machine in or on which another part revolves, slides, etc." *Webster's New World College Dictionary, Third Edition*, 1997, p. 121.

The Court rejects Taye's proposed construction which would require that "the second shaft must be supported by the housing and at least one bearing element of the 'third bearing.'" Taye provides no support from the patent specifications for this proposed construction, and therefore, there is no basis for the Court to limit the patent claim terms in this way. Also, Taye's proposal that the "bearing portion" be interpreted as a "bearing housing" lacks support in the patent specifications.

### **9. "Pushed Outwardly Relative to the Other Section" FN2-( ' 210 Patent, Claim 12)**

FN2. Terms 9-14 were identified by the parties as additional disputed terms beyond the key terms which the Court stated the parties could identify.

Taye's Proposed Construction	Drum Workshop's Proposed Construction
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" 'Push' should be interpreted as meaning 'to move the section with an essentially linear force towards the rotor's periphery so as to create an adjustable gap between the sections.'" (Joint Brief, p. 23, lines 25-28.)

The language is unambiguous and requires no further interpretation. (Joint Brief, p. 24, lines 1-12.)

The Court finds that the phrase "pushed outwardly relative to the other section" requires no construction because the phrase is unambiguous, and a trier-of-fact could readily determine the phrase's meaning.

#### 10. "One Section is Pushed" and "One Part is Retained" -('210 Patent, Claim 12)

Taye's Proposed Construction	Drum Workshop's Proposed Construction
" 'Push' should be interpreted as meaning 'to move the section with an essentially linear force towards the rotor's periphery so as to create an adjustable gap between the sections.'" (Joint Brief, p. 24, lines 24-27.)	The court should not deviate from the plain language of the claim. (Joint Brief, p. 25, line 7.)
"The Court should interpret 'section' and 'part' in Claims 12 and 13, respectively, to mean that the <i>entire component</i> identified and illustrated in the specification as the 'section' or 'part' is 'pushed' or 'retained,' as not just a section or part of a component. ( <i>Id.</i> , p. 24, line 27-p. 25, line 2.)	

As an initial matter, the Court notes that the parties incorrectly contend that the phrase "one section is pushed" is found in both Claims 12 and 13 of the '210 Patent. The phrase is found only in Claim 12. Furthermore, the Court notes that the parties' proposed term for construction "one part is retained" is found nowhere in any claim of the '210 Patent. Thus, the Court finds that it can only be appropriate to construe the phrase "one section is pushed" for Claim 12.

However, the Court further notes that the phrase is unambiguous and requires no construction by the Court. A trier-of-fact could readily determine the meaning of the phrase "one section is pushed."

#### 11. "Auxiliary Means" -('826 Patent, Claims 1, 5, 7, 9 and 11; '081 Patent, Claims 1 and 2)

Taye's Proposed Construction	Drum Workshop's Proposed Construction
"[T]he term 'auxiliary means' and all terms dealing with the single pedestal require that the single pedestal support the tertiary axle at only one location. No other structure is shown or described in the '826 [or '081] Patents." (Joint Brief, p. 25, lines 24-28.)	"The plain language of the claims does not limit the number of locations at which the tertiary axle can be supported." (Joint Brief, p. 26, lines 21-22.)

As an initial matter, the Court finds that the term "auxiliary means" is not a means-plus-function claim term. The presumption that s. 112, para. 6 is invoked by the use of the word "means" is rebutted by the disclosure of the auxiliary mean's structure within the patent claims themselves. Claims 1, 5, 7, 9 and 11 of the '826 Patent all disclose "said auxiliary means including a tertiary axle and a single pedestal which is the only pedestal supporting the tertiary axle for rotation ..." Claims 1 of the '081 Patent similarly discloses this structure for the "auxiliary means." Claim 2 of the '081 Patent depends from Claim 1, and therefore, the "auxiliary means" term found in Claim 2 must be construed consistently with the construction for Claim 1.

Also, the Court rejects Taye's proposed construction because it attempts to improperly limit claim scope by including limitations described in the preferred embodiment. Otherwise, the Court finds that it is unnecessary to further construe the claim term "auxiliary means" because the term is unambiguously defined in the text of the patent claim terms themselves.

## 12. "Retention Means" -('210 Patent: Claims 12 and 13)

Taye's Proposed Construction	Drum Workshop's Proposed Construction
" 'Retention Means' should be interpreted as the combination of a 'threaded function' and a 'threaded hole' in one of the parts/sections." (Joint Brief, p. 27, lines 10-13.)	This is a means-plus-function claim term. The stated function of this term is "retaining (claim 12) or returning (claim 13) said sections (claim 12) or parts (claim 13) in selected relative positions." The court should construe this term to include structure disclosed in two embodiments in the '210 Patent including the described 'threaded fastener' and the described 'adjuster' and equivalents thereof (Joint Brief, p. 27, line 15-p. 29, line 17.)

As an initial matter, the Court determines that the "retention means" is a means-plus-function claim term. The use of the word "means" creates a presumption that the term is a means-plus-function term, and the presumption is un rebutted. The stated function of the "retention means" in Claims 12 and 13 of the '210 Patent is to retain "said sections in said selected positions" (Claim 12) and to return "said parts in selected relative positions" (Claim 13). Also, there is no structure disclosed in the patent claims. Therefore, the phrase "retention means" is a means-plus-function term.

The '210 Patent Specification discloses two corresponding structures for the "retention means." The specification describes a "threaded fastener" that serves as a retention means to retain a part in a selected outwardly displaced position. ('210 Patent Specification: col. 3, line 66-col. 4, line 2). The specification also describes an "adjuster" that can extend to move parts to adjust their relative positions. ('210 Patent Specification: col. 4, lines 45-54). Thus, the term "retention means" must be construed to include the described "threaded fastener" and "adjuster" and their equivalents.

Taye's argument regarding the doctrine of equivalents demonstrates a misunderstanding between a party's use of the doctrine of equivalents to establish infringement and a court's finding that a means-plus-function claim term includes described structure and its equivalents. Taye's argument regarding the doctrine of equivalents is premature.

## 13. "Coupling Means" -('826 Patent, Claim 6; '485 Patent, Claim 3; '081 Patent, Claim 4)

Taye's Proposed Construction	Drum Workshop's Proposed Construction
"[T]he term 'coupling means' should be interpreted under 35 U.S.C. 112, para. 6." (Taye's Opening Brief, p.	This is not a means-plus-function claim term. No function is associated with the "coupling means" recited in these terms.

19, lines 15-16.)

"In addition, the use of 'said' preceding the term 'coupling means' refers to the fact that the 'coupling means' was referenced in the claims from which these claims depend. In each of the parent claims, the 'coupling' is specifically referred to as a 'flexible coupling,' which alone identifies sufficient structure. Accordingly, the term 'coupling means' should be construed in accordance with the ordinary meaning of the term 'flexible coupling,' e.g., a link, and the word 'means' may be ignored." (Joint Brief, p. 24, lines 13-22.)

The Court finds that this is not a means-plus-function claim. The patent claims containing the term "coupling means" are all dependent claims that depend from an immediately preceding patent claim. In the immediately preceding patent claims, the "coupling means" accomplishes the function of "connecting the first pedal an[d] primary rotor." However, the immediately preceding patent claims also identify sufficient structure to accomplish the coupling function. The structure is a "flexible coupling." Thus, because sufficient structure to accomplish the function is identified in the claims, this is not a means-plus-function claim term.

Otherwise, the Court construes the term "coupling" in accordance with its widely accepted ordinary and customary meaning. The Court construes the term "coupling" to mean "a flexible or rigid mechanical device or part for joining parts together." *Webster's New World College Dictionary, Third Edition, 1997, p. 318.*

#### **14. "Plate"-( '485 Patent; '081 Patent; '176 Patent; '210 Patent; '826 Patent)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
"[I]nterpreting the term 'plate' in its ordinary meaning, as confirmed by the drawings and specifications of each of the drum beater patents, the term 'plate' should be construed as a single, integral, rigid, solid piece." (Taye's Opening Brief, p. 17, lines 16-18.)	"The ordinary meaning of the term 'plate' applies, and does not exclude a plate that is made of two components joined together, such as by welding or fasteners." (Drum Workshop's Opening Brief, p. 24, lines 24-25.)

The Court determines that the term "plate" should be construed in accordance with its widely accepted ordinary and customary meaning. The Court construes "plate" to mean "a smooth, flat, relatively thin piece metal or other material." *Webster's New World College Dictionary, Third Edition, 1997, p. 1034.* The Court rejects Taye's proposed construction that seeks to introduce new limitations into the claim scope with no support in the specification.

#### **15. "Rotor"-( '210 Patent, Claim 12 and 13)**

Taye's Proposed Construction	Drum Workshop's Proposed Construction
"[T]he 'rotor' should be interpreted as a body that extends 360N around the shaft, consistent with the Figures and the specification." (Taye's Opening Brief, p. 12, line 12-13.)	The Court should construe this term in accordance with its ordinary meaning, "a rotating part of an electrical or mechanical device." (Drum Workshop's Brief, p. 25, lines 8-10.)

The Court construes the term "rotor" in accordance with its widely accepted ordinary and customary meaning. The Court construes "rotor" to mean "a rotating part of an electrical or mechanical device." *Webster's II New Riverside University Edition, 1994, p. 1021.*

#### ***IV. CONCLUSION***

The Court construes the parties' disputed patent claim terms as described above.

**IT IS SO ORDERED.**

C.D.Cal.,2008.

Taye, Inc. v. Drum Workshop, Inc.

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