United States District Court,
C.D. California.

CALVERT RACING SUSPENSIONS,
Plaintiff.
v.
SMITH RACE CRAFT, LLC, et al,
Defendants.

No. CV 07-07855 SJO(CTx)

Aug. 21, 2008.

John E. Kelly, Michael A. Dinardo, Scott W. Kelley, Kelly Lowry and Kelley, Woodland Hills, CA, for Plaintiff.

James T. Robinson, Exclusivity-Law, Norman, OK, Paul D. Supnik, Beverly Hills, CA, for Defendants.

CLAIM CONSTRUCTION ORDER

S. JAMES OTERO**, District Judge.**

The Court is in receipt of Plaintiff Calvert Racing Suspensions ("Calvert") and Defendant Smith Race Craft, LLC's ("Smith") Joint Claim Construction Charts and Statement ("JCS"), filed May 21, 2008, and the parties' respective Claim Construction Briefs, filed June 11, 2008, and Claim Construction Opposition Briefs, filed July 9, 2008. The Court vacated the hearing date set for August 4, 2008, finding the matter suitable for disposition without oral argument. *See* Fed.R.Civ.P. 78(b). The Court's claim construction follows.

I. *BACKGROUND*

Calvert and Smith are competitors in the sale of traction devices for motor vehicles. Calvert contends that it owns U.S. Patent No. 5,354,092 (the "'092 patent") and that Smith sells a traction device that infringes the '092 patent.

The traction device disclosed in the '092 patent is used in the rear suspensions of motor vehicles-chiefly, drag racing vehicles-to limit "wrap-up" of the leaf spring during rapid acceleration. The device is comprised of three main components: (1) "a rear support assembly which is positioned proximate to a rear axle"; (2) "a front support assembly pivotally attached to a front end of the leaf spring"; and (3) a "rigid link [that] extends between the rear support assembly and the front support assembly." ('092 Patent, col. 2 ll. 13-18.)

The parties seek construction of seven claim terms, all of which relate to the front support assembly. FN1 According to the parties, "the determinative issue in this case is whether the Calvert claim elements relating

to the front support assembly read on the front rocker support assembly of the accused device." (Def.'s Br. 4; *see also* Pl.'s Reply Br. 2-3.)

II. *DISCUSSION*

A. *Legal Standard*

Claim construction is a question of law. Markman v. Westview Instruments, Inc., 52 F.3d 967, 970-71 (Fed.Cir.1995). Claim terms are given their ordinary and customary meaning as understood by a person of ordinary skill in the art. Phillips v. AWH Corp., 415 F.3d 1303, 1312-13 (Fed.Cir.2005). In ascertaining this meaning, the Court primarily focuses on the intrinsic evidence of record, i.e., the claims, the specification, and, if in evidence, the prosecution history. Id. at 1312-17. The Court may also consult extrinsic evidence, such as dictionaries, although this evidence is entitled less weight than the intrinsic record. Id. at 1317.

"Although claims must be read in light of the specification of which they are part, ... it is improper to read limitations from the written description into a claim...." Tate Access Floors, Inc. v. Maxcess Techs., Inc., 222 F.3d 958, 966 (Fed.Cir.2000). However, "the prosecution history (or file wrapper) [may] limit[ ] 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." Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1326 (Fed.Cir.2002) (internal quotation marks omitted).

Here, the parties ask the Court to construe the following claim terms in light of the above principles: (1) "front support assembly"; (2) "including"; (3) "attachment means for interconnecting the rear support assembly and the front support assembly"; (4) "pivot stop"; (5) "means for limiting pivotal movement"; (6) "means for engaging an upper surface of the leaf spring"; and (7) "pair of facing plates," "pair of facing pivot plates," and "pivot plates." FN2 Before proceeding thus, the Court recites the relevant claim language, highlighting the disputed terms (and, where applicable, their short forms). The Court also recounts the relevant prosecution history, as each of Smith's proffered constructions depends thereupon.

B. *The Relevant Claim Language*

Independent claim 1 claims, in pertinent part:

A traction device ... comprising ... a ***front support assembly*** pivotally attached to a front end of the leaf spring and ***including attachment means for interconnecting the rear support assembly and the front support assembly*** at a spaced location from the front end of the leaf spring, a ***pivot stop*** extending across the upper surface of the leaf spring, for engaging an upper surface of the leaf spring to limit pivotal movement of the ***front support assembly*** relative to the front end of the leaf spring, and a ***pair of facing plates*** pivotally attached to the front end of the leaf spring and which support the ***pivot stop*** in a fixed spacial relationship to the front end of the leaf spring; and a rigid link extending between the rear support assembly and the ***attachment means of the front support assembly.***

('092 Patent, cl. 1, at col. 6 ll. 5-23.)

Dependent claim 5 claims: "A traction device as set forth in claim 1, wherein the ***pivot plates*** define the spaced location of the ***attachment means*** from the front end of the leaf spring, below the front end of the leaf spring." ('092 Patent, cl. 5, at col. 6 ll. 38-41.)

Dependent claim 8 claims: "A traction device as set forth in claim 7, wherein the front eye connector [of the rigid link] is bolted to the ***attachment means of the front support assembly,*** and wherein the rear eye connector [of the rigid link] is bolted to the rear support assembly." ('092 Patent, cl. 8, at col. 6 ll. 50-54.)

Independent Claim 10 claims, in pertinent part:

A traction device ... comprising ... a ***front support assembly*** pivotally attached to a front end of the leaf spring, ***including means for limiting pivotal movement of the front support assembly*** relative to the front end of the leaf spring, and ***attachment means for interconnecting the rear support assembly and the front support assembly*** at a spaced location from the front end of the leaf spring, the ***pivotal movement limiting means including*** a ***pivot stop*** extending across the upper surface of the leaf spring, for engaging an upper surface of the leaf spring, the ***front support assembly*** further ***including*** a ***pair of facing plates*** pivotally attached to the front end of the leaf spring and which support the ***pivot stop*** in a fixed spacial relationship to the front end of the leaf spring; and a rigid link extending between the attachment means of the rear support assembly and the ***attachment means of the front support assembly.***"

('092 Patent, cl. 10, at col. 6 ll. 60-62, col. 7 ll. 3-20.)

Dependent claim 12 claims: "A traction device as set forth in claim 10, wherein the ***pivot plates*** define the spaced location of the ***attachment means*** from the front end of the leaf spring, below the front end of the leaf spring." ('092 Patent, cl. 12, at col. 7 ll. 27-30.)

Dependent claim 14 claims, in pertinent part: "A traction device as set forth in claim 13, wherein ... the front eye connector [of the rigid link] is bolted to the ***attachment means of the front support assembly*** and the rear eye connector [of the rigid link] is bolted to the attachment means of the rear support assembly...." ('092 Patent, cl. 14, at col. 7 ll. 34-41.)

Independent claim 15 claims, in pertinent part:

A traction device ... comprising ... a ***front support assembly*** pivotally attached to a front end of the leaf spring, ***including means for limiting pivotal movement of the front support assembly*** relative to the front end of the leaf spring, and ***attachment means for interconnecting the rear support assembly and the front support assembly*** at a spaced location from the front end of the leaf spring, the ***pivotal movement limiting means including means for engaging an upper surface of the leaf spring,*** the ***upper surface engaging means*** comprising a ***pivot stop*** extending across the upper surface of the leaf spring, wherein the ***front support assembly*** further ***includes*** a ***pair of facing pivot plates*** pivotally attached to the front end of the leaf spring and which support the ***pivot stop*** in a fixed spacial relationship to the front end of the leaf spring, the ***pivot plates*** further defining the spaced location of the ***attachment means of the front support assembly*** from the front end of the leaf spring, below the front end of the leaf spring; and a rigid link extending between the attachment means of the rear support assembly and the ***attachment means of the front support assembly*** ....

('092 Patent, cl. 15, at col. 8 ll. 3-34.)

C. *The Relevant Prosecution History*

The application for what eventually issued as the '092 patent originally included 20 claims. (Def.'s Br. Ex. 2,

at 27-31.) Independent claim 1 claimed, in pertinent part:

[A] traction device ... comprising ... a front support assembly pivotally attached to a front end of the leaf spring and including attachment means for interconnecting the rear support assembly and the front support assembly at a spaced location from the front end of the leaf spring....

(Def.'s Br. Ex. 2, at 27.) Independent claim 13 claimed, in pertinent part:

[A] traction device ... comprising ... a front support assembly pivotally attached to a front end of the leaf spring, including means for limiting pivotal movement of the front support assembly relative to the front end of the leaf spring, and attachment means for interconnecting the rear support assembly and the front assembly at a spaced location from the front end of the leaf spring....

(Def.'s Br. Ex. 2, at 29.) Independent claim 20 claimed "a front support assembly" identical to that claimed in what is now independent claim 15. (Def.'s Br. Ex. 2, at 30-31.) Notably, claim 20 included the limitations "a pivot stop extending across the upper surface of the leaf spring" and "wherein the front support assembly further includes a pair of facing pivot plates pivotally attached to the front end of the leaf spring and which support the pivot stop in a fixed special relationship to the front end of the leaf spring." (Def.'s Br. Ex. 2, at 31.)

In a United States Patent and Trademark Office ("USPTO") Action mailed January 24, 1994, the USPTO examiner (the "Examiner") in charge of Calvert's application rejected independent claims 1 and 13 under 35 U.S.C. s. 102(b) as being anticipated by U.S. Patent No. 4,098,523 ("Valerio").FN3 (Def.'s Br. Ex. 2, at 42; *see also* Def.'s Br. Ex 3.) According to the Examiner, Valerio "consists of ... a front bracket (16) with a base plate (41) that extends to be attached to a leaf spring (9) via bolts (49, 51) thereby limiting any pivoting motion of the front bracket (16) about the end of the leaf spring (9), as in the claimed invention." (Def.'s Br. Ex. 2, at 42.) The Examiner found independent claim 20 allowable over the prior art of record. (Def.'s Br. Ex. 2, at 43.)

Relatedly, the Examiner objected to claims 7, 8, 16, and 17 as being dependent upon a rejected base claim, but indicated that the claims would be allowable "if rewritten in independent form including all of the limitations of the base claim and any intervening claims." (Def.'s Br. Ex. 2, at 43.) Like claim 20, these objected-to claims included the limitations "a pivot stop extending across the upper surface of the leaf spring" and "wherein the front support assembly further includes a pair of facing plates pivotally attached to the front end of the leaf spring and which support the pivot stop in a fixed special relationship to the front end of the leaf spring." (Def.'s Br. Ex. 2, at 28, 30.)

In a Response entered April 25, 1994, Calvert cancelled claims 7 and 16, amended claims 1 and 13, amended claim 8 to depend from amended claim 1, and amended claim 17 to depend from amended claim 13. (Def.'s Br. Ex. 2, at 48-51.) The '092 patent issued thereafter with amended claim 1 as independent claim 1, amended claim 13 as independent claim 10, and as-filed claim 20 as independent claim 15.

D. ***The Disputed Claim Terms***

1. " ***Front Support Assembly*** **"**

According to Calvert, the "front support assembly" means "a component of the traction device comprising a set of sub-components, which attaches the traction device to the front end of the leaf spring." (Joint Claim

Construction Charts & Statement ("JCS") Ex. A, at 3.) According to Smith, the term means "an assembly pivotally attached to the front spring eye of the leaf spring and to the front eye connector of a rigid link." (JCS Ex. A, at 3.) The Court adopts Calvert's construction.

First, Smith's construction recites a limitation that is supported by neither the claims nor the specification. Under Smith's construction, the front support assembly is "pivotally attached" to *both* the front eye of the leaf spring and the front eye connector of the rigid link. However, the adverb "pivotally" only applies to the first object-the "front eye of the leaf spring"-not the second object-the "front eye connector of the rigid link." (*See* '092 Patent, col. 3 ll. 44-45 (describing the front support assembly as "pivotally attached" only to the front spring eye of the leaf spring).)

Second, the requirement that the front support assembly be "pivotally" attached to the front eye of the leaf spring and otherwise "attached" to the front eye connector of the leaf spring imposes limitations already evident from surrounding claim language. Independent claims 1, 10, and 15 recite a "front support assembly" that is "pivotally attached to a front end of the leaf spring" and a "rigid link" that is connected to the "attachment means of the front support assembly." In construing claim terms, "the surrounding words in a claim ... must be considered in determining the ordinary and customary meaning of a disputed claim limitation." Arlington Indus., Inc. v. Bridgeport Fittings, Inc., 345 F.3d 1318 (Fed.Cir.2003). "A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so." Merck & Co. v. Teva Pharms. USA, Inc., 395 F.3d 1364, 1372 (Fed.Cir.2005). Because Smith's construction would render other claim terms superfluous, it is not adopted by the Court.

Calvert's construction, on the other hand, comports with the plain and ordinary meaning of "front support assembly." The claims and the specification support Calvert's description of the front support assembly as a "component of the traction device" (*see* '092 Patent, cls. 1, 10, 15 (claiming a traction device "comprising" (1) a rear support assembly, (2) a front support assembly, and (3) a rigid link); '092 Patent, col. 3 ll. 41-46 (describing a traction device that "comprises *three primary components* ") (emphasis added)), and as "comprising a set of sub-components" (*see* '092 Patent, cls. 1, 10, 15 (describing the front support assembly as "including" various subcomponents); ' 092 Patent, col. 3 ll. 65-68, col. 4 ll.1-28 (same); ' 092 Patent, fig. 3 (showing various subcomponents that together make up the front support assembly); *see also* Merriam-Webster's Collegiate Dictionary 69 (10th ed.2002) (defining "assembly" as "the fitting together of manufactured parts into a complete machine, structure, or unit of a machine")). Calvert's description of the "front support assembly" as that component of the traction device "which attaches the traction device to the front end of the leaf spring" is similarly supported. The "front" support assembly is distinguished from the "rear" support assembly in that the latter is "positioned proximate to a rear axle" and the former is "pivotally attached to a front end of the leaf spring." (*See* '092 Patent, cls. 1, 10, 15; '092 Patent, fig. 1.) As noted above, incorporation of the "pivotally attached" limitation into the term "front support assembly" is unnecessary as the assembly is already so limited by the surrounding words in the claims.

Accordingly, "front support assembly" means "a component of the traction device comprising a set of sub-components, which attaches the traction device to the front end of the leaf spring."

2. " *Including* "

Calvert argues that the term "including" means "having at least the following." (JCS Ex. A, at 4.) Other cases have similarly construed this term. *See, e.g.,* SanDisk Corp. v. Memorex Prods., Inc., 415 F.3d 1278, 1284 (Fed.Cir.2005) ("Neither includes, nor comprising, forecloses additional elements that need not satisfy

the stated claim limitations."); Amgen Inc. v. Hoechst Marion Roussel, Inc., 314 F.3d 1313, 1344-45 (Fed.Cir.2003) ("Comprising is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.... The word 'include' means the same thing."). In the JCS, Smith argues that, "in this case, 'including' is limited to the structure disclosed in the drawings and description of the invention and does not include additional, unrecited elements." (JCS Ex. A, at 4.) However, in Smith's Reply Brief, Smith appears to change its position, conceding that "[a]lthough 'including' can permit the addition of other elements, 'including' cannot be interpreted in a way that would eliminate an essential claim element." (Def.'s Reply Br. 12.) Smith has effectively adopted Calvert's construction.

As such, "including" means "having at least the following."

3. " ***Attachment Means for Interconnecting the Rear Support Assembly and the Front Support Assembly*** **"**

Title 35, section 112, paragraph 6 of the United States Code provides that:

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. Under this provision, "an applicant can describe an element of his invention by the result accomplished or the function served, rather than describing the item or elements to be used...." Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17, 27, 117 S.Ct. 1040, 137 L.Ed.2d 146 (1997); *see also* Apex, Inc. v. Raritan Computer, Inc., 325 F.3d 1364, 1371 (Fed.Cir.2003) ("Through the use of means-plus-function limitations, patent applicants are allowed to claim an element of a combination functionally, without reciting structures for performing those functions.").

The "attachment means for interconnecting the rear support assembly and the front support assembly" is presumed to be a means-plus-function limitation because it contains the word "means." *See* Apex, 325 F.3d at 1371. Though this presumption may be rebutted if the claim "specifie[s] no corresponding function for 'means,' " Sage Prods., Inc. v. Devon Indus., Inc., 126 F.3d 1420, 1427 (Fed.Cir.1997), or "recites structure sufficient to perform the claimed function in its entirety," Altiris, Inc. v. Symantec Corp., 318 F.3d 1363, 1375 (Fed.Cir.2003), neither ground for rebuttal is present here. Accordingly, the Court must "identify the function of the limitation," and then "ascertain[ ] the corresponding structure in the written description that is necessary to perform that function." Altiris, 318 F.3d at 1375.

The function of the "attachment means for interconnecting" appears, from the language of the term alone, to be to interconnect the front support assembly and the rear support assembly. However, a review of surrounding claim language and the specification reveals that the function is more precisely to connect the front support assembly to the rigid link, and thereby interconnect the front support assembly and rear support assembly. Independent claims 1, 10, and 15 claim "a rigid link extending between the attachment means of the rear support assembly and the attachment means of the front support assembly," indicating that the attachment means serves to attach the front support assembly to the rigid link. Dependent claims 8 and 14 support this construction in that they describe the front eye connector of the rigid link as being "bolted to the attachment means of the front support assembly." Notably, Calvert's "Summary of the Invention"

explicitly states that the "present invention" includes a "front support assembly [that] includes *attachment means for connecting the rigid link to the front support assembly* at a spaced location from the front end of the leaf spring." ('092 Patent, col. 2 ll. 18-21 (emphasis added).) FN4 In light of the above, the intrinsic record reveals that the function of the "attachment means for interconnecting" is to connect the front support assembly to the rigid link.

Having identified the relevant function, the Court must locate the structure in the written description that performs that function. According to Calvert, that structure is "aperture(s) in the front support assembly for selectively positioning a nut/bolt combination to secure the front end of the rigid link to the front support assembly." (JCS Ex. A, at 4.) Calvert, in its Reply Brief, acknowledges that "[t]he 'attachment means ...' could be construed, consistent with plaintiff's structural analysis, to be an aperture on the front support assembly for attachment of the front eye of the rigid link." (Def.'s Reply Br. 13.) The written description confirms this construction. (*See* '092 Patent, col. 4 ll. 22-28 ("Three additional pairs of apertures are provided, however, in the pivot plates which extend below the lower surface. These apertures are utilized for selectively positioning a nut and bolt combination which secures a front end of the rigid link to the front support assembly.").)

The Court thus adopts the following construction: "attachment means for interconnecting the rear support assembly and the front support assembly" means "apertures in the front support assembly for selectively positioning a nut/bolt combination to secure the front end of the rigid link to the front support assembly, and equivalents thereof."

4. " *Pivot Stop* "

According to Calvert, "pivot stop" means "a sub-component of the front support assembly for limiting rotational movement thereof." (JCS Ex. A, at 5.) Smith does not seem to disagree with Calvert's assertion that the above definition represents the plain and ordinary meaning of the term. Rather, Smith argues that "[a] construction of the term beyond the specific structure disclosed in the detailed description and the drawings would extend the meaning to speculative structures neither described nor enabled by the applicant." (Def.'s Reply Br. 13.)

In support of its argument, Smith cites the prosecution history of the ' 092 patent. As noted above, Calvert amended as-filed independent claims 1 and 13 (now claims 1 and 10) by reciting, in part, a "pivot stop" and its placement and function. According to Smith, these amendments demonstrate that the scope of the term "pivot stop" is limited to "the specific structure shown in the drawings and recited in the specification." (Def.'s Br. 9.)

The Court does not read Calvert's amendments as being so limited. The amendments were made in response to the Examiner's observation that Calvert's as-filed claims and the prior art (Valerio) both included means for limiting pivotal movement of the front structure of a traction device. Calvert sufficiently differentiated the '092 Patent from Valerio by identifying said means in the form of a "pivot stop" extending across the upper surface of the leaf spring and supported by a pair of facing plates, such that the pivotal movement of the front structure of the traction device is accomplished by the pressing of the pivot stop against the upper surface of the leaf spring. Smith's proposed further limitations regarding the exact structure of the pivot stop and the exact means by which it is supported by the pair of facing plates are not necessary to avoid anticipation by the prior art. *See* Athletic Alternatives, Inc. v. Prince Mfg., Inc., 73 F.3d 1573, 1579 (Fed.Cir.1996) ("[W]e pause to note a practical aspect of patent prosecution. Specifically, when amending

a claim so as to avoid a rejection based on a particular reference, the skilled patent prosecutor usually seeks to draft an amendment that narrows the claim only as much as is thought necessary to overcome the rejection."). Rather, such limitations impermissibly import features of the preferred embodiment into the claims.

For the above reasons, the Court adopts Calvert's construction: a "pivot stop" means "a sub-component of the front support assembly for limiting rotational movement thereof." Surrounding words in the claims provide sufficient additional limitations to narrow the invention's pivotal movement limiting means and so distinguish it from Valerio.

5. " *Means for Limiting Pivotal Movement* "

Because the "means for limiting pivotal movement" contains the word "means," it is presumed to be a means-plus-function limitation. As noted above, this presumption may be rebutted if the claim specifies no corresponding function for the "means" or recites sufficient structure to perform the claimed function. Here, the claim specifies a corresponding function, namely "limiting pivotal movement of the front support assembly relative to the front end of the leaf spring." ('092 Patent, cl. 10, at col. 7 ll. 4-6; '092 Patent, cl. 15, at col. 8 ll. 13-15.) However, the claims recite a "structure" for performing this function, namely the "pivot stop." (*See* '092 Patent, cl. 10, at col. 7 l. 11; '092 Patent, cl. 15, at col. 8 l. 22; Pl.'s Br. 15 ("The corresponding structure that performs this function is identified as the pivot stop...."); Def.'s Reply Br. ("Smith Race Craft agrees with plaintiff's assertion, regarding structure, that the 'means for limiting pivotal movement' ... mean[s] a bar (i.e., a pivot stop)....").) The question thus becomes whether the "pivot stop" is "sufficient" structure to rebut the means-plus-function presumption. *See* Altiris, 318 F.3d at 1376.

As a threshold matter, the fact that the term "pivot stop" does not necessarily evoke a specific structure-e.g., a bolt-is not dispositive. *See* Personalized Media Commc'ns, LLC v. Int'l Trade Comm'n, 161 F.3d 696, (Fed.Cir.1998) ("[N]either the fact that a 'detector' is defined in terms of its function, nor the fact that the term 'detector' does not connote a precise physical structure in the minds of those of skill in the art detracts from the definiteness of structure."). Read in the context of the surrounding claim language, the Court finds that sufficient structure is recited to overcome the presumption. First, the pivot stop is described as "extending across the upper surface of the leaf spring," which indicates that the structure is elongated. Second, it is described as "engaging an upper surface of the leaf spring," which indicates that it must be of sufficiently solid structure to arrest the pivotal movement of the front support assembly. *See* Merriam-Webster's Collegiate Dictionary 1155 (10th ed.2002) (defining a "stop" as "a device for arresting or limiting motion"). Third, it is described as being supported by "a pair of facing plates" in a fixed spacial relationship to the front end of the leaf spring," which indicates that it is located rearwardly from the front of the leaf spring, and further suggests that it is of uniform width and length. In light of these limitations, a skilled artisan would find that the term "pivot stop" conveys a narrowly circumscribed, and thus sufficiently definite universe of structures for performing the claimed function. *See* Envirco Corp. v. Clestra Cleanroom, Inc., 209 F.3d 1360, 1365 (Fed.Cir.2000) (holding that because the term "baffle" connotes some degree of structure and the claim provided additional details as to the location and formation of the structure, the means-plus-function presumption was overcome); Personalized Media, 161 F.3d at 705 ("Even though the term 'detector' does not specifically evoke a particular structure, it does convey to one knowledgeable in the art a variety of structures known as 'detectors.' ").FN5

Because the "means for limiting pivotal movement" language does not qualify for s. 112, para. 6 treatment, the Court adopts the following construction: the "means for limiting pivotal movement" means "a pivot stop

for limiting pivotal movement," the "pivot stop" having been defined above.FN6

6. "*Means for Engaging an Upper Surface of the Leaf Spring*"

As with the "means for limiting pivotal movement," the "means for engaging an upper surface of the leaf spring" raises a means-plus-function presumption. However, the Court similarly concludes that this presumption is overcome. The parties agree that the structure that performs the function of engaging an upper surface of the leaf spring is the pivot stop.FN7 For the reasons articulated above, this structure is sufficiently recited by the claim language. Accordingly, the "means" for engaging an upper surface of the leaf spring is the pivot stop, as previously defined.

With respect to the "engaging an upper surface of the leaf spring" limitation, the Court adopts Smith's construction of "engaging" as meaning "press[ing] against" rather than Calvert's "capable of contacting" construction. Although the competing constructions are similar, the relevant language in the specification supports Smith's slightly more active construction. (*See* '092 Patent, col. 5 ll. 14-17 ("Forces thus applied tend to pivot the front support assembly in a manner *forcing the pivot stop downwardly against* the upper surface of the leaf spring, thereby preventing leaf spring wrap-up.") (emphasis added).)

The "means for engaging an upper surface of the leaf spring" means "a pivot stop for pressing against the upper surface of the leaf spring," the "pivot stop" having been defined above.

7. "*Pair of Facing Plates,*" "*Pair of Facing Pivot Plates,*" and "*Pivot Plates*"

Because the parties agree that these three claim terms should be construed identically (Pl.'s Reply Br. 2 n. 2), the Court refers to them singularly by the term "pair of facing plates." According to Calvert, the term means "a sub-component of the front support assembly that includes a pair of plates that have planar surfaces oriented generally toward one another and that rotate about an axis." (Pl.'s Reply Br. 2.) According to Smith, the term "refer[s] to part of the front support assembly and, more specifically, to a pair of plates, having planar surfaces oriented generally toward one another, which bracket the front end of the leaf spring and rotate about an axis. A plate is a smooth, relatively thin rigid body having a uniform thickness." (Def.'s Reply Br. 13-14.) Smith states that its disagreement with Calvert's construction is due to Calvert's use of the term "sub-component." (Def.'s Reply Br. 14.) Calvert states that its disagreement with Smith's construction is due to Smith's incorporation of the limitation "which bracket the front end of the leaf spring." (Pl.'s Br. 16.) For the following reasons, the Court adopts Smith's proposed construction, in slightly modified form.

First, the Court agrees with Smith that Calvert's use of the term "sub-component" inaccurately describes the "pair of facing plates." The term "sub-component" connotes a singular substructure of the front support assembly, which may further include various subcomponents. However, the Court is not faced with a singular structure, but rather, two identical structures-i.e., plates-that face one another and are connected by means of other subcomponents of the front support assembly.FN8 While each individual plate is properly considered a subcomponent of the front support assembly, there is no evidence, in the claims or specification, of a singular subcomponent of the front support assembly that is the "pair of facing plates." FN9

Second, the Court agrees with Smith's incorporation of the limitation "which bracket the front end of the leaf spring." Calvert argues that this limitation "is improperly incorporated from the preferred embodiment in the specification...." (Pl.'s Br. 16.) To the contrary, the limitation is drawn from the claim language itself. The claims state that the "pair of facing plates" are "pivotally attached to the front end of the leaf spring"

and also that they "support the pivot stop in a fixed spacial relationship to the front end of the leaf spring." (*See, e.g.,* '092 Patent, cl. 1, at col. 6 ll. 17-20.) The "pivot stop" is further described as "extending across the upper surface of the leaf spring." (*See, e.g.,* '092 Patent, cl. 1, at col. 6 ll. 13-14.) These limitations inherent to the claims indicate that the "pair of facing plates" must bracket the front end of the leaf spring.

Lastly, the Court notes that Calvert, in its Reply Brief, does not include Smith's additional limitation that "[a] plate is a smooth, relatively thin rigid body having a uniform thickness." However, in the JCS, Calvert does employ this exact limitation. (*See* JCS Ex. A, at 6-7.) Accordingly, the Court incorporates this limitation into its construction.

The "pair of facing plates" means "part of the front support assembly, more specifically, a pair of plates, having planar surfaces oriented generally toward one another, which bracket the front end of the leaf spring and rotate about an axis. A plate is a smooth, relatively thin rigid body having a uniform thickness."

III. *RULING*

For the foregoing reasons, the Court adopts the following constructions:

1. "Front support assembly" means "a component of the traction device comprising a set of sub-components, which attaches the traction device to the front end of the leaf spring";

2. "Including" means "having at least the following";

3. "Attachment means for interconnecting the rear support assembly and the front support assembly" means "apertures in the front support assembly for selectively positioning a nut/bolt combination to secure the front end of the rigid link to the front support assembly, and equivalents thereof";

4. "Pivot stop" means "a sub-component of the front support assembly for limiting rotational movement thereof";

5. "Means for limiting pivotal movement" means "a pivot stop for limiting pivotal movement";

6. "Means for engaging an upper surface of the leaf spring" means "a pivot stop for pressing against the upper surface of the leaf spring"; and

7. "Pair of facing plates," "pair of facing pivot plates," and "pivot plates" mean "part of the front support assembly, more specifically, a pair of plates, having planar surfaces oriented generally toward one another, which bracket the front end of the leaf spring and rotate about an axis. A plate is a smooth, relatively thin rigid body having a uniform thickness."

IT IS SO ORDERED.

FN1. The parties initially sought construction of nineteen claim terms. Pursuant to the Court's Order of June 25, 2008, the parties limited their construction requests to seven terms.

FN2. The parties agree that the three terms relating to the front support assembly's pivot plates should be

construed identically.

FN3. Other actions were taken by the Examiner, some of which are noted below, but others of which are not referenced by the Court because they do not relate specifically to the front support assembly. (*See generally* Def.'s Br. Ex. 2, at 41-44.)

FN4. *See* Genzyme Corp. v. Transkaryotic Therapies, Inc., 346 F.3d 1094, 1099 (Fed.Cir.2003) ("Notably, the 'Summary of the Invention' explicitly states that the 'present invention,' not merely a preferred embodiment, 'involves the production of large quantities of human a-Gal A by cloning and expressing the a-Gal A coding sequence in eukaryotic host cell expression systems.' ").

FN5. The claim language does not require, as the written description does, that the pivot stop "comprise[ ] a bolt which is secured within the aligned apertures [of the pair of facing plates] by means of a nut." ('092 Patent, col. 4 ll. 15-17.) However, the Court finds that a nut and bolt combination would likely be the first choice of a skilled artisan to perform the pivot stop function. As discussed above, the claim language suggests a bolt-like structure. This suggested structure is further supported given that traction devices, such as the one at issue, typically employ bolts for installation purposes. (*See* '092 Patent, col. 1 ll. 18-21 ("In an effort to minimize leaf spring wrap-up and rear wheel 'hop' on acceleration, a number of devices have been designed. One of these is the simple bolt-on traction bar."); '092 Patent, col. 1 ll. 61-66 ("Accordingly, there has been a need for a novel traction device for motor vehicles which is of durable yet simple construction, may be manufactured efficiently utilizing modern manufacturing techniques, and which provides many of the advantages of the prior ladder bars and 4-link systems in a bolt-on device."); '092 Patent, col. 5 ll. 57-60 ("The traction device may be installed in a simple bolt-on procedure which does not require welding or other modifications to the chassis or vehicle suspension system.").) If bolts are used for the attachment function, it is likely that a skilled artisan would use bolts to perform the pivot stop function.

FN6. While "a pivot stop for limiting pivotal movement" seems somewhat redundant, the fuller claim language eliminates this redundancy by identifying the point of pivotal movement on the front support assembly, to wit "[a pivot stop] for limiting pivotal movement of the front support assembly *relative to the front end of the leaf spring* ...." (*See* '092 Patent, cl. 10, at col. 7 ll. 4-6 (emphasis added).) The Court does not construe the language "for limiting pivotal movement" as the parties have already agreed on a construction of "limit pivotal movement of the front support assembly relative to the front end of the leaf spring." (*See* JCS Ex. A, at 6.))

FN7. The pivot stop serves the overarching function of limiting pivotal movement of the front support assembly precisely by performing the specific function of engaging the upper surface of the leaf spring.

FN8. Indeed, to the extent that the facing plates, as connected, are considered a singular structure, this structure is more accurately described as the front support assembly.

FN9. This conclusion is supported by the fact that the claims and specification do not use the term "pair of facing plates" in the singular; rather, the focus is on two separate objects, or subcomponents of the front support assembly. (*See, e.g.,* '092 Patent, cl. 1, at col. 6 ll. 17-19 (describing "a pair of facing plates ... which support" as opposed to "which supports"); '092 Patent, col. 3 ll. 65-68 (describing "a pair of identical, generally triangular pivot plates *which are spaced* from one another at the front end of the leaf spring and *which include* five apertures") (emphasis added).)

C.D.Cal.,2008.
Calvert Racing Suspensions v. Smith Race Craft, LLC