

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NANOBEBE US INC.,

*Plaintiff and
Counterclaim Defendant,*

v.

**MAYBORN (UK) LIMITED,
MAYBORN USA, INC.,
MAYBORN GROUP LIMITED.**

*Defendants and
Counterclaim Plaintiffs.*

Civ. A. No. 1:21-cv-08444-GHW

JURY TRIAL DEMANDED

MAYBORN'S OPENING CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

By the early 2000s, the classic baby-bottle nipple/collar combination had been available for decades. These products bore little resemblance to the human body. Then, in the early 2000s, new designs attempted to mimic the human breast in operation. The patents-in-suit claim improvements that solve important problems that persisted even with these new designs. Simply put, the patents-in-suit claim a nipple/collar arrangement that more closely mimics the human breast, better controls and defines nipple flexing to prevent flow blockage from nipple collapse, and improves the air vent structure and arrangement so as to more predictably and reliably reduce the risk of colic. These inventions are embodied in Mayborn's Closer to Nature Products, which were launched in 2006 and have become some of Mayborn's most important products:



The claim language at issue in this case is plain and its meaning is clear. Indeed, Nanobebe's counsel admitted as much at the recent technical-tutorial hearing:¹

Because one thing I do agree with, with regard to what Mayborn's counsel said today, is that **these terms really should be terms that don't require construction.** The problem is that the position that Mayborn is taking with regard to infringement compel us to provide specific definitions for these terms

¹ At the hearing, Nanobebe presented a video that was both factually and legally unsound. For example, the amount of money Mayborn was acquired for is irrelevant, Nanobebe is based out of Israel, not South Carolina, and the sticking-nipple test is a trick. The upshot is that none of this is relevant for purposes of claim construction as none of it has anything to do with Mayborn's patents.

(Ex. A at 30:4–9.) In other words, Nanobebe agrees the terms should be given their plain and ordinary meaning, and it only advocates for other constructions to avoid infringement.

The problem with Nanobebe’s approach is that it contradicts black letter law. “It is well settled that claims may not be construed by reference to the accused device.” *Neomagic Corp. v. Trident Microsystems, Inc.*, 287 F.3d 1062, 1074 (Fed. Cir. 2002). This “rule forbids a court from tailoring a claim construction to fit the dimensions of the accused product or process and to reach a preconceived judgment of infringement or noninfringement” and “it forbids biasing the claim construction process to exclude or include specific features of the accused product or process.” *Wilson Sporting Goods Co. v. Hillerich & Bradsby Co.*, 442 F.3d 1322, 1331 (Fed. Cir. 2006). Instead, “the words of a claim are generally given their ordinary and customary meaning . . . [which] 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.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005). Nanobebe’s products, which did not even exist at the time of the invention, are simply irrelevant.

Mayborn thus respectfully urges the Court to reject Nanobebe’s constructions because they depart from the plain meaning in a transparent effort to manufacture non-infringement.

II. DISPUTED CONSTRUCTIONS

A. The ’930 Patent

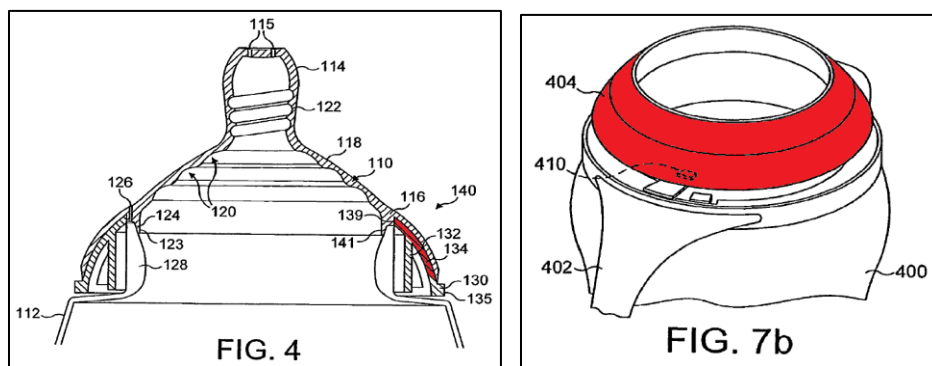
1. “sloping portion that extends outwardly and downwardly relative to said upper rim” (claim 14)

Mayborn’s Construction	Nanobebe’s Construction
ordinary meaning	“a portion that extends at an angle outwardly and downwardly relative to said upper rim”

Nanobebe improperly restricts the claim to a constant slope by replacing “sloping” with “extend[ing] at an angle.” In pertinent part, claim 14 recites “a collar having an upper rim and a lower rim comprising: . . . an outermost surface having a **sloping** portion that extends outwardly

and downwardly relative to said upper rim.” (’930 Pat. at cl. 14.)² By limiting the collar’s “**sloping portion**” to “a portion that extends **at an angle** outwardly and downwardly,” Nanobebe reads out all slopes that extend at more than one angle (*i.e.*, at a varying angle). In other words, Nanobebe rewrites the claim by limiting the slope to a straight line and forbidding an arc. *See Olaf Sööt Design, LLC v. Daktronics, Inc.*, 220 F. Supp. 3d 458, 467 (S.D.N.Y. 2016) (rejecting “proposed construction [that] removes references . . . and adds information . . . that is not in the claim”)

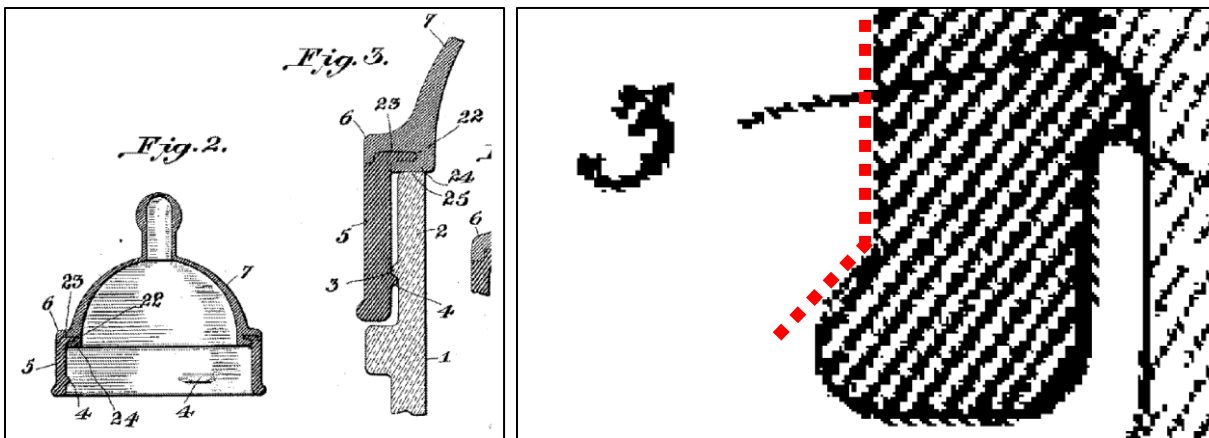
Nanobebe’s proposal also impermissibly reads out the embodiments disclosed in the specification. *See Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1305 (Fed. Cir. 2007) (rejecting similar proposal); *Invitrogen Corp. v. Biocrest Mfg., L.P.*, 327 F.3d 1364, 1369 (Fed. Cir. 2003) (same); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996) (reading out a preferred embodiment “is rarely, if ever, correct and would require highly persuasive evidentiary support”). For example, Figure 4 shows an embodiment of the “screw collar 130” of claim 14 that includes “a downwardly domed peripheral portion 134 surrounding it and extending from an upper end of the cylindrical portion 132,” and Figures 7a and 7b likewise depict “a test screw collar 404, corresponding to the screw collar 130 described above”:



As the claim itself requires, these sloping portions each extend outwardly and downwardly relative to the upper rim, and they each do so at a varying angle, unlike Nanobebe’s proposal.

² All emphasis is added unless otherwise indicated.

Nanobebe's proposal also contradicts the file history. During prosecution, the Applicant argued that the Reilly reference did not "disclose a collar having 'an outermost surface having a sloping portion that extends outwardly and downwardly relative to said upper rim.'" (Ex. B at 10 of 12.) Instead, "the lower portion (5) of the nipple in Reilly extends vertically downwards until the bump out at the bottom end, wherein the majority of the surface is straight up and down." (*Id.*)



Id. (annotation added). The Examiner agreed and issued a Notice of Allowance. (*Id.* at 5 of 12.) And as the figures above show, Reilly did not satisfy this claim element even though the bump out at the bottom end of the lower portion (5) seemingly "extends at an angle outwardly and downwardly relative to said upper rim" as Nanobebe's construction requires. Nanobebe's proposal is thus incompatible with both the patent and the file history and should be rejected.

2. "a majority of the collar's outermost surface" (claim 14)

Mayborn's Construction	Nanobebe's Construction
plain meaning	"more than half of the collar's outermost surface"

Nanobebe unnecessarily construes "majority" as "more than half." "Claim construction is a matter of resolution of disputed meanings and technical scope, to clarify and when necessary to explain what the patentee covered by the claims, for use in the determination of infringement. It is not an obligatory exercise in redundancy." *U.S. Surgical Corp., v. Ethicon, Inc.*, 103 F.3d 1554,

1558 (Fed. Cir. 1997); *see also Medline Inds., Inc. v. C.R. Bard, Inc.*, Case No. 16-3529, 2018 U.S. Dist. LEXIS 217218, 2018 WL 6830327, at *2 (N.D. Ill. Dec. 28, 2018) (“construction is unnecessary where, as here, the parties merely dispute which synonym to use”). Here, the jurors would readily understand the meaning of “majority,” rendering construction unnecessary. *See Leveraged Innovations, LLC v. Nasdaq OMX Grp.*, 2012 U.S. Dist. LEXIS 132531, at *31 (S.D.N.Y. Sep. 14, 2012) (“Courts should not construe terms that are plain on their face.”).

3. “nipple” (claim 14)

Mayborn’s Construction	Nanobebe’s Construction
plain meaning	“teat”

Once again, Nanobebe improperly replaces a well-known term with a synonym, injecting confusion. Claim 14 already requires the “nipple” to have “a teat portion,” so Nanobebe’s proposal would rewrite the claim to recite “a teat having: a teat portion.” This is especially confusing because the US population uses the word “nipple” more frequently than “teat.” Indeed, the patentee intentionally used the word “nipple” for the ’930 patent, even though the priority UK applications used “teat” instead. (*Compare* ’930 Pat at 1:21 (“The invention relates to a drinking vessel with a nipple”) *with* Ex. C at 15 of 43 (“The invention relates to a teat”) *and id.* at 30 of 43 (“The invention relates to a feeding teat”).) Nanobebe’s proposal should thus be rejected.

4. “a teat portion” (claim 14)

Mayborn’s Construction	Nanobebe’s Construction
“part projecting generally perpendicular to the mouth of the vessel and disposed above the areola portion”	“the entire part projecting generally perpendicular to the mouth of the vessel, disposed above the areola portion, which extends into a baby’s mouth for feeding”

Nanobebe’s proposal differs from Mayborn’s in one erroneous way.³ Specifically,

³ Both parties agree that the teat portion is a “part projecting generally perpendicular to the mouth of the vessel” that is “disposed above the areola portion.” (*See* ’930 Pat. at 4:27–30 (“The teat portion 114 projects generally perpendicular to the mouth of the vessel 112 . . .”).)

Nanobebe improperly defines the teat portion as “the *entire part* . . . which extends into the baby’s mouth for feeding.” This is wrong for two reasons. First, the function of “extend[ing] into the baby’s mouth for feeding” is not required by the claim itself, and Nanobebe’s introduction of such a function through claim construction is improper. *See Ecolab v. Envirochem*, 264 F.3d 1358, 1367 (Fed. Cir. 2001) (“Where the function is not recited in the claim itself by the patentee, we do not import such a limitation.”); *Transmatic, Inc. v. Gulton Indus.*, 53 F.3d 1270, 1278 (Fed. Cir. 1995) (“The district court erred by importing unnecessary functional limitations into the claim.”). Indeed, this Court has rejected similar proposals because “functional limitations expressed in the specification but not in the claim may not be read into the claim.” *Pourchez v. Diatek, Inc.*, 265 F. Supp. 2d 192, 195–199 (S.D.N.Y. 2003). Second, compounding these problems, Nanobebe’s construction requires that the claimed “teat portion” be “the entire” part that goes into the baby’s mouth. But of course babies of different sizes will use the product. Under Nanobebe’s proposed construction, the *meaning* of “teat portion” *changes* depending on the size of the baby using the product. This absurdity illustrates nicely why courts refuse to import functional limitations into an apparatus claim. Nanobebe’s proposal should be rejected.

5. “a teat portion having a variable wall thickness” (claim 14)

Mayborn’s Construction	Nanobebe’s Construction
plain meaning	“a teat portion having a helical groove”

Nanobebe improperly imports limitations from the specification and conflates “a variable wall thickness” with “a helical groove.” The Federal Circuit has explained that courts must “avoid the danger of reading limitations from the specification into the claim.” *Phillips*, 415 F.3d at 1323. Even where the disclosed embodiments include a feature, “[t]his is not enough . . . to limit the patentee’s clear, broader claims.” *Kara Tech. Inc. v. Stamps.com Inc.*, 582 F.3d 1341, 1347 (Fed. Cir. 2009). “The patentee is entitled to the full scope of his claims, and we will not limit him to

his preferred embodiment or import a limitation from the specification into the claims.” *Id.* at 1348.

Besides improperly importing a limitation, Nanobebe’s proposal also fails because the patent differentiates a variable wall thickness from a groove. While claim 14 requires “a teat portion having a variable wall thickness,” dependent claim 15 adds the limitation that “the teat portion has a groove,” and “the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim.” *Phillips*, 415 F.3d at 1314–15. The specification similarly differentiates a variable wall thickness from a groove and describes that “[t]he teat 110 is formed from an elastomer with **walls of decreasing thickness**,” where the “areola portion 118 **further includes undulating grooves 120**” that “increase[e] the flexibility especially **in conjunction with the decreasing wall thickness**.” (’930 Pat. at 4:11–26; *see also id.* at 4:30–34 (“teat portion has a . . . tight pitch helical groove 122 of groove depth 0.9 mm (half the wall thickness)”). In sum, the patent does not equate having a variable wall thickness with having a groove, and Nanobebe cannot read a groove into claim 14.

6. “base portion” (claim 14)

Mayborn’s Construction	Nanobebe’s Construction
“part below the areola portion”	“the lowest portion of the nipple, beginning where the nipple meets the top rim of the vessel, that is mountable to the vessel”

Nanobebe’s proposal ignores the “flange” of claim 14 and reads another limitation from the specification into the claims. In the specification’s description of the Figure 4 embodiment, “[t]he teat assembly 140 includes . . . a base portion 116 **mountable to the drinking vessel**,” just like Nanobebe’s proposal. (’930 Pat. at 3:59–62.) On the other hand, claim 14 requires “a nipple having: . . . a base portion” and “a flange depending from the base portion,” with “the nipple being secured to the vessel **by capturing the flange** of the nipple between the collar and the open top of the vessel.” (*Id.* at cl. 14.) The language of Claim 14 itself thus states that what is mountable to

the drinking vessel is the “flange depending from the base portion”—not the base portion itself.

Nanobebe’s construction also contradicts the file history, which differentiated the base portion from the flange. During the prosecution of the ’800 parent patent, the Examiner conceded that the Uehara reference did not disclose a “slit air valve connected to the base portion” because it was located on the “flange.” (Ex. C at 7 of 43.) When another Examiner took a contrary position during prosecution of the ’810 parent patent, the Applicant pointed to the prior file history and explained that “[t]he flange and base portion . . . are **two different structures**.” (Ex. D at 27 of 58.) The Examiner agreed and withdrew the rejection. (*Id.* at 4–9 of 58.) Yet Nanobebe’s proposal treats the base portion as if it is the flange itself by requiring the base portion to “begin[] where the nipple meets the top rim of the vessel” and to be “mountable to the vessel.” This is wrong.

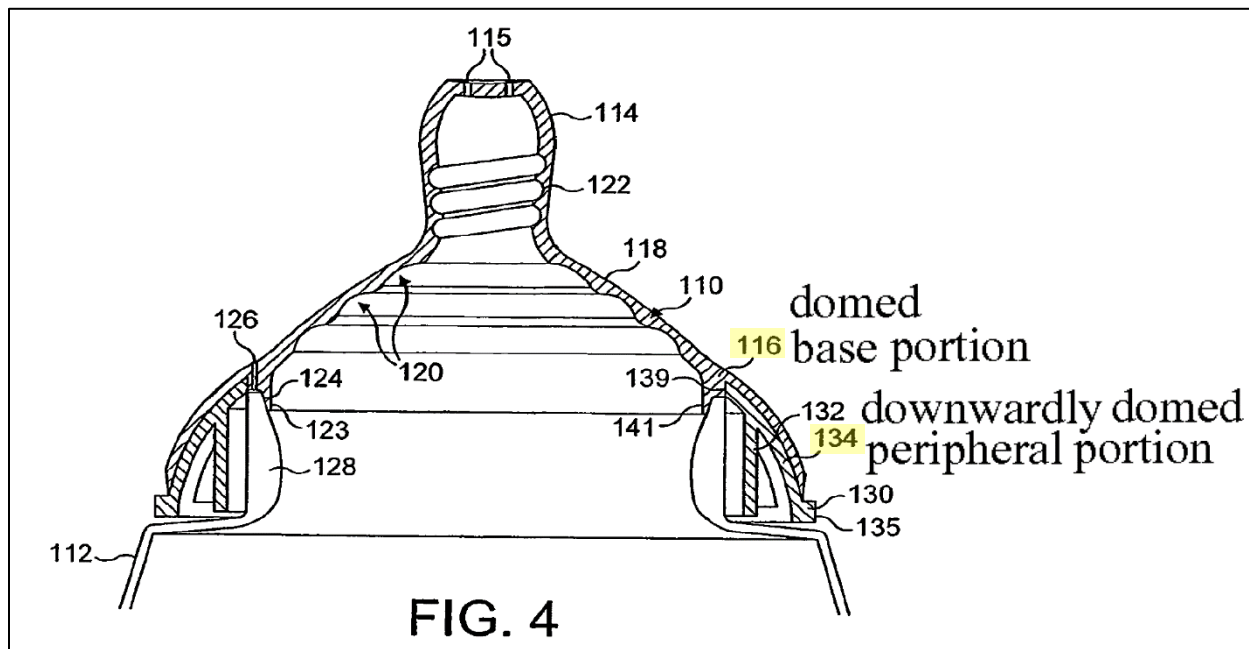
Mayborn’s proposal of “part below the areola portion” prevents confusion, unlike “lowest portion of the nipple.” Claim 14 requires the nipple to have “a teat portion,” “a base portion,” and “an areola portion between the teat portion and the base portion,” so the base portion must be “below the areola portion.” By describing the location in relation to the claimed areola portion, Mayborn’s proposal provides clarity. Nanobebe’s use of “lowest,” however, causes confusion because the nipple could have other parts that extend lower than the base portion, such as the “flange depending from the base portion.” Nanobebe’s proposal should thus be rejected.

7. “domed configuration” / “a base portion having a domed configuration” (claim 14)

Mayborn’s Construction	Nanobebe’s Construction
“wide circular base with an arc-shaped cross-sectional profile”	“having a rounded shape in profile”

Mayborn’s proposal aligns with the patent’s use of “domed,” while Nanobebe’s does not. Claim 14 requires the nipple’s base portion to have “a domed configuration,” and the nipple’s shape in Figure 4 is described as “similar to the human breast, [with] the base portion 116 being

shaped like a breast and having a **wide, domed configuration.**” (’930 Pat. at 4:1–3.) The patent also explains that the “screw collar 130 includes . . . a downwardly **domed** peripheral portion 134 surrounding it and extending from an upper end of the cylindrical portion 132.” (*Id.* at 4:59–63.)

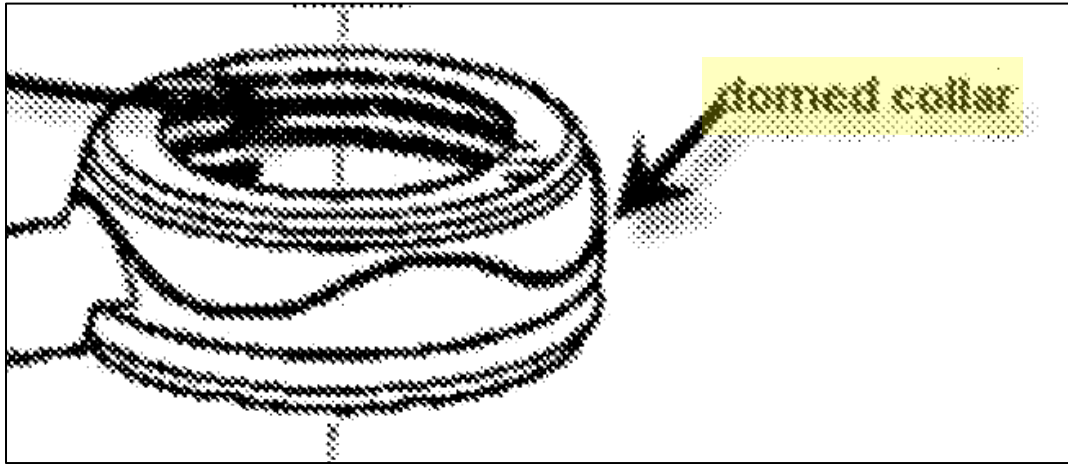


Both the “domed” base portion 116 and the “domed portion 134” are depicted as having a “wide circular base with an arc-shaped cross-sectional profile” as Mayborn’s proposal requires. Indeed, the patent states that “domed portion 134 terminates at a central **circular** orifice.” (*Id.* at 4:65–66.)

On the other hand, the patent never describes the domed portions as “having a rounded shape in profile” as Nanobebe demands. Neither the word “round” nor the word “rounded” appears in the specification. And while both “domed” portions of Figure 4 have an “arc-shaped cross-sectional profile” as Mayborn’s proposal requires, domed base portion 116 arcs at a gentler angle than domed portion 134, which is rather steep. Neither arc approximates a circle, so neither can be described as simply “having a rounded shape.”

Nanobebe’s proposal also contradicts the file history. During the prosecution of the ’810 parent patent, the Examiner cited the Morano prior art reference as disclosing a “downwardly

domed peripheral portion of the collar.” (Ex. D at 48–57 of 58.)



(*Id.* at 52 of 58.) The Applicant disagreed, noting that “[n]one of Morano’s figures (including the figure [above]) show a domed collar.” (*Id.* at 28 of 58.) The Examiner agreed and withdrew the rejection based on Morano. (*Id.* at 4–9 of 58.) If “domed” simply meant “having a rounded shape in profile” as Nanobebe contends, then the Examiner would not have agreed that the above figure from Morana lacked a domed collar. Nanobebe’s proposal should thus be rejected.

8. “an areola portion” (claim 14)

Mayborn’s Construction	Nanobebe’s Construction
“part extending beyond the bottom of the teat portion”	“a surface area, that includes a different characteristic and functionality than the rest of the nipple, surrounding and extending beyond the bottom of the teat portion [as construed by Nanobebe]”

Nanobebe’s proposal differs from Mayborn’s in two clearly incorrect ways.⁴

First, Nanobebe contradicts the patent by improperly defining the areola portion as “a surface area.” The claims make clear that the areola portion refers to part of the nipple—not just a surface area. For example, dependent claim 18 states that the “areola portion has a flex region **on its inner surface** comprised of a plurality of thinned regions.” (*See also* ’930 Pat. at Cls. 1, 9,

⁴ The parties agree that the areola portion “extend[s] beyond the bottom of the teat portion.”

13.) The specification similarly explains that, in the Figure 1 embodiment, “[t]he areola portion 16 includes a flex region 20 comprising three grooves or flex channels 22 **extending around an inner surface of the areola portion.**” (*Id.* at 2:64–66.) If the areola portion was just “a surface area . . . surrounding and extending beyond the bottom of the teat portion” as Nanobebe contends, it would not have separate inner and outer surfaces as the patent explains.

Nanobebe’s other proposals also contradict its proposal of “a surface area.” Claim 14 requires “a nipple having: a teat portion . . . a base portion . . . [and] an areola portion.” Nanobebe proposes that the teat portion is an “entire **part** . . .” of the nipple and that the base portion is “the lowest **portion** of the nipple . . .,” yet Nanobebe inexplicably defines the areola portion as just a surface area—not a part or portion of the nipple at all.

Second, Nanobebe impermissibly reads in the requirement that the areola portion “includes a different characteristic and functionality than the rest of the nipple.” As discussed above, claim 14 merely requires “an areola portion between the teat portion and the base portion.” The specification explains that in certain embodiments “[t]he areola portion 16 includes a flex region 20,” which is a region having surface characteristics that control flexing, but claim 14 does not require a flex region. (*Id.* at 2:64.) Nor does it require the areola portion to have any other “different characteristic and functionality.” See *Kara Tech.*, 582 F.3d at 1348 (“The patentee is entitled to the full scope of his claims . . .”). Indeed, when the patentee wanted to claim certain types of characteristics for the areola portion, such as a flex region, he knew how to do so. (See, e.g., ’930 Pat. at cl. 1 (“said areola portion has a flex region”); cl. 18 (“an inner surface of the areola portion has a groove extending circumferentially”).) Nanobebe’s proposal thus fails.

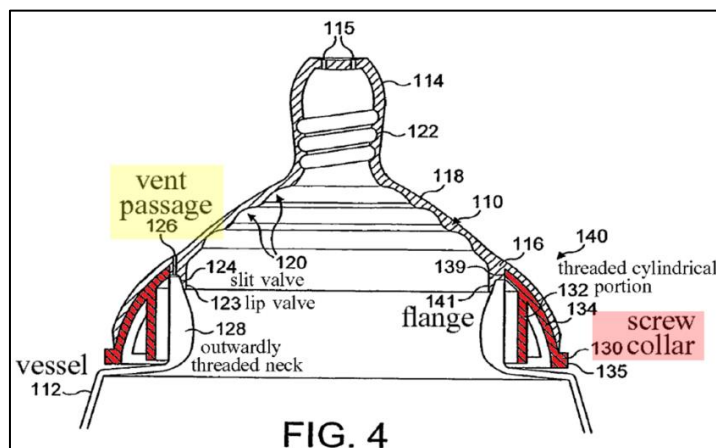
9. “at least partially inwardly” (claim 14)

Mayborn’s Construction	Nanobebe’s Construction
plain meaning	indefinite

Nanobebe mistakenly demands that the specification provide a standard for evaluating whether “a one-way air inlet valve [is] . . . disposed at least partially inwardly from the collar.” But the Federal Circuit has consistently rejected this approach, instead holding that as long as the Supreme Court’s *Nautilus* test⁵ is employed, “relative terms and words of degree do not render patent claims invalid.” *One-E-Way, Inc. v ITC*, 859 F.3d 1059, 1063 (Fed. Cir. 2017). Moreover, “[w]e presume that patents are valid, so ‘[a]ny fact critical to a holding on indefiniteness . . . must be proven by the challenger by clear and convincing evidence.’” *Id.* at 1062.

The ’930 patent provides sufficient guidance to enable a POSITA to determine the scope of the claimed “one-way air inlet valve . . . disposed at least partially inwardly from the collar.”

Figure 4 shows an air inlet valve disposed at least partially inwardly from the collar (red):



The specification explains that “[t]he teat 110 includes a vent passage 126” where “[a] discontinuous flap or lip valve portion 123 projects down from the flange 141” or “a slit valve 124 can comprise a flap.” (’930 Pat. at 5:15–19, 5:33.) The vent passage is shown at least partially inwardly from “screw collar 130,” which “includes an internally threaded cylindrical portion 132” that “screws on to the outwardly threaded neck 128 of the vessel 112.” (*Id.* at 4:59–67.) A POSITA

⁵ “[W]e hold that a patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014).

would thus understand the claim scope with reasonable certainty, precluding indefiniteness.

B. The '244 Patent

1. “mouthpiece” (claims 21, 24, 27)

Mayborn’s Construction	Nanobebe’s Construction
“part projecting generally perpendicular to the mouth of the vessel and disposed above the areola portion”	“teat portion, i.e., the entire part projecting generally perpendicular to the mouth of the vessel, disposed above the areola portion, which extends into a baby’s mouth for feeding”

The parties agree that the “mouthpiece” of the '244 patent is equivalent to the “teat portion” of the '930 patent, so Nanobebe’s proposal should be rejected for the reasons above.

2. “flex region” (claim 21)

Mayborn’s Construction	Nanobebe’s Construction
“a region having surface characteristics that control flexing”	“a region having characteristics, e.g., grooves or channels, specifically designed to enable flexing”

Mayborn’s proposal differs from Nanobebe’s in four ways.⁶

First, Mayborn’s construction properly focuses on “**surface** characteristics” instead of “characteristics” at large. The patent explains the prior art “allows stretching of the nipple but only in a constrained direction.” ('244 Pat. at 1:44–47.) The patent also explains that in the prior art “the amount of flexing and the point at which flexing takes place is undefined and unpredictable.” (*Id.* at 1:40–43.) The patent solved these problems with the claimed flex region, which is described in terms of its *surface* characteristics. For example, the specification explains that in one embodiment the “flex region 20 compris[es] three grooves or flex channels 22 extending around an inner **surface** of the areola portion.” (*Id.* at 2:66–3:1; *see also id.* at 6:34–37 (“the flex channels in the flex region can be of any appropriate **profile** for example square, semi-

⁶ The parties agree that the flex region is a region having characteristics that control or enable flexing.

circular or triangular in cross-section and can be provided on the **inner or outer surface** of the teat”).) The claims similarly focus on surface characteristics, as dependent claim 7 captures the embodiment where “the flex region comprises a plurality of grooves in an inward facing **surface** of the nipple” and dependent claim 9 captures “wherein the flex region further comprises a thinned circumferential region in the inward facing **surface** of the nipple.” In sum, when the patent describes the flex region, it always refers to **surface** characteristics that control flexing.

Second, Nanobebe’s proposal wrongly imports “grooves or channels” into the claim. The embodiment of Figure 1 is described as “includ[ing] a flex region 20 comprising three grooves or flex channels 22,” but “[t]his is not enough . . . to limit the patentee’s clear, broader claims.” *Kara Tech.*, 582 F.3d at 1347. Nanobebe may argue that adding “e.g.” does not limit the claim to those examples, but at the very least, including examples is likely to mislead the jury. See *C&M Oilfield Rentals, LLC v. Apollo Lighting Sols. Inc.*, No. 6:21-CV-00544-ADA, 2022 U.S. Dist. LEXIS 65180, at *17 (W.D. Tex. Apr. 7, 2022) (“the Court excludes the examples because they may potentially mislead the jury”); *Owen Oil Tools LP v. Hunting Titan, Ltd.*, No. 2:12-CV-34-JRG-RSP, 2013 U.S. Dist. LEXIS 71566, at *14 (E.D. Tex. May 21, 2013) (rejecting construction because it “seeks to import examples of frangible elements found in the specification and to include language describing the function of the frangible element”).

Third, Nanobebe’s use of “specifically designed” adds an intent requirement that would impermissibly require Mayborn to prove the state of mind of the accused infringer.⁷

⁷ See *United Servs. Auto. Ass’n v. PNC Bank N.A.*, No. 2:20-CV-00319-JRG, 2021 U.S. Dist. LEXIS 224395, at *57 (E.D. Tex. Nov. 22, 2021) (“introducing a ‘goal’ into the construction is unclear, lacks sufficient support in the intrinsic record, and would tend to confuse rather than clarify the scope of the claims”); *Pac. Bioscience Labs., Inc. v. Nutra Luxe MD, LLC*, No. C10-0230JLR, 2012 U.S. Dist. LEXIS 201548, at *21 (W.D. Wash. Mar. 21, 2012) (“the court is unwilling to read an intent requirement into the disputed claim terms [because] [d]oing so would

Finally, Mayborn’s proposal that the flex region includes characteristics that “**control flexing**” should be adopted over Nanobebe’s requirement that these characteristics be “designed to **enable** flexing.” Flexing was known. The patent teaches improved flexing by way of a flex region that allows “the teat to move and stretch as skin moves and stretches.” (’244 Pat at 3:37–39.) Indeed, the patent admits that the prior art already “includ[ed] a series of parallel annular grooves on the inner surface of the nipple” that allowed the nipple to stretch “only in a constrained direction and with the **risk of flow blockage if the nipple collapses**.” (*Id.* at 1:44–48.) The patent also explains that in the prior art “the amount of flexing and the point at which flexing takes place is **undefined and unpredictable**.” (*Id.* at 1:40–43.) To solve these problems, the patent presents a preferred embodiment where the “flex region 20 compris[es] three grooves or flex channels 22” (*id.* at 2:66–67), and these surface characteristics control flexing in a more defined and predictable way than the prior art, “allowing the teat to move and stretch as skin moves and stretches” (*id.* at 3:37–39). Thus, unlike the prior art, the patent makes clear the flex region is designed to control flexing—making it more defined and predictable. Mayborn’s proposal should thus be adopted.⁸

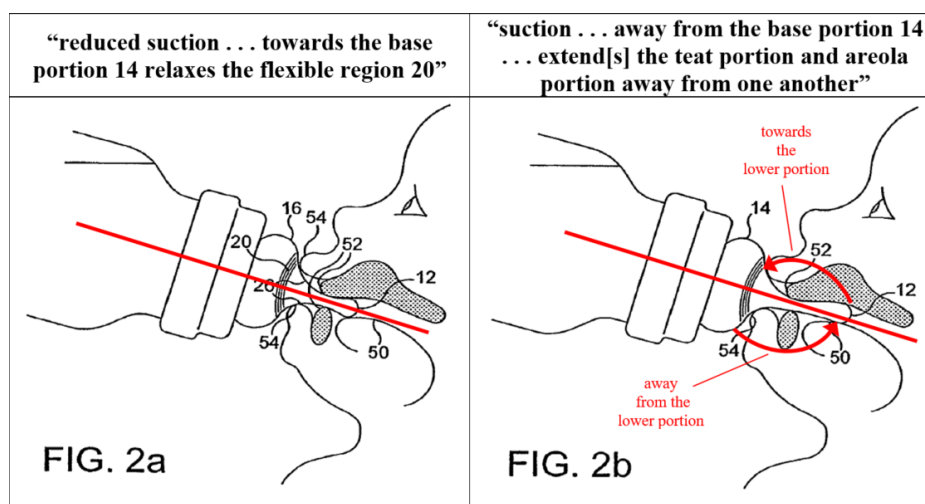
improperly limit the disputed terms based on the subjective experience of a hypothetical user of the apparatus”); *Am. Seating Co. v. Kustom Seating Unlimited, Inc.*, No. 1:07-CV-1284, 2010 U.S. Dist. LEXIS 9377, at *9 (W.D. Mich. Feb. 4, 2010) (“American Seating’s proposed construction lacks objectivity. It hinges on the necessarily subjective experience.”); *see also Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1353 (Fed. Cir. 2001) (“Amazon’s reading of the key passage from the file history injects subjective notions into the infringement analysis. . . . We are not prepared to assign a meaning to a patent claim that depends on the state of mind of the accused infringer.”).

⁸ As confirmed at the recent hearing, Nanobebe’s proposal wrongly addresses infringement issues during claim construction. *See Neomagic Corp. v. Trident Microsystems, Inc.*, 287 F.3d 1062, 1074 (Fed. Cir. 2002) (“It is well settled that claims may not be construed by reference to the accused device.”). Besides being improper, the only way to construe “flex region” to establish non-infringement would be to limit the “flex region” to a series of concentric grooves, but doing so would violate the principle of not reading a preferred embodiment into the claim. *See Kara Tech.*, 582 F.3d at 1348 (“The patentee is entitled to the full scope of his claims, and we will not limit

3. “flex of the mouthpiece towards and away from a lower portion of the nipple” (claim 21)

Mayborn’s Construction	Nanobebe’s Construction
plain meaning	“up and down movement of the mouthpiece relative to a lower portion of the nipple”

Nanobebe seeks to limit the plain language of “a flex region configured to allow **flex** of the mouthpiece **towards and away from** a lower portion” to just “a flex region configured to allow **up and down movement** of the mouthpiece relative to a lower portion.” Put simply, an “up and down movement” is not the same as “flex” of the mouthpiece towards and away from a lower portion of the nipple. The specification makes this clear. In FIG. 2a, “reduced suction on the teat portion 12 **towards the base portion 14** relaxes the flexible [region] whereas, as shown in FIG. 2b, suction on the teat portion 12 **away from the base portion 14 . . . extend[s] the teat portion and areola portion away from one another.**” (*Id.* at 3:29–34.) This is depicted below:



Nanobebe’s “up and down” proposal suggests that the nipple flex is controlled solely along a single center axis, but as can be seen above, the tip of the nipple also flexes towards the lower portion off of that center axis, not just “up and down” that axis. This control in multiple directions

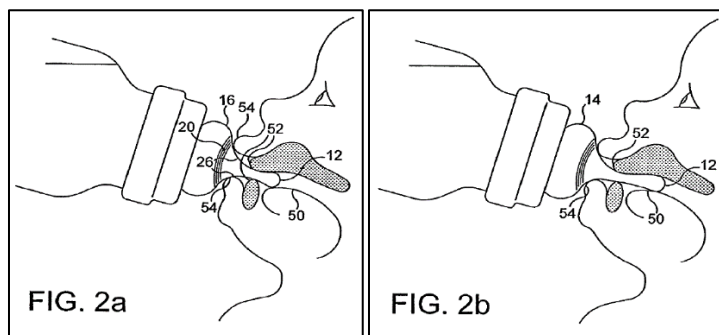
him to his preferred embodiment or import a limitation from the specification into the claims.”). As such, not even Nanobebe is urging that construction because they know it would be reversible error, and under either of the proposed constructions, infringement issues remain.

is the patent’s solution to the prior art problem of stretching “only in a constrained direction” and the associated problem of “nipple collapse” where the nipple pinches, blocking the liquid flow. (*Id.* at 1:47–48.) Thus the plain meaning of the claim properly recites language not limited to the “up and down” motion suggested by Nanobebe (language that does not appear in the specification). Nanobebe’s proposal should thus be rejected.

4. “bite region” / “the mouthpiece defining a bite region” (claim 21)

Mayborn’s Construction	Nanobebe’s Construction
“region of the nipple configured to be engaged by the infant’s teeth or gums”	indefinite

Nanobebe’s indefiniteness argument contradicts its proposal for the term “mouthpiece.” If Nanobebe understands that the nipple’s mouthpiece “goes into a baby’s mouth,” it cannot sensibly argue that a POSITA would not understand the mouthpiece’s bite region with reasonable certainty. The bite region is just as its name suggests—the region of the nipple that the baby bites as opposed to say, the areola region which is contacted by the baby’s lips and not teeth or gums. Mayborn’s proposal makes this clear by construing the term as the “region of the nipple configured to be engaged by the infant’s teeth or gums.” This is also supported by Figures 2a and 2b in the patent, which show “the infant’s teeth or gums 52 contacting the transition portion 26” of the nipple that “separat[e]s the areola portion 16 and the teat portion 12.” (*Id.* at 3:22–23, 3:6–7.)



The dependent claims also show that a POSITA would understand the scope of the bite

region with reasonable certainty. Claim 28 explains that “the bite region comprises a groove in an inward facing surface of the nipple configured to pass fluid through the bite region when the bite region is collapsed,” and claim 29 explains that “the bite region further comprises a thinned region in the inward facing surface of the nipple.” The specification gives similar examples of how the mouthpiece can comprise a “tight pitch helical groove 122 . . . to form a flow passage even when the teat portion is collapsed” (Fig. 4) or be “thinner in cross-section than the remainder of the teat” (Fig. 1). Taken together, a POSITA would understand the location, purpose, and scope of the bite region with reasonable certainty, and Nanobebe therefore cannot meet its burden of showing indefiniteness by clear and convincing evidence.

5. “domed shape” (claim 21)

Mayborn’s Construction	Nanobebe’s Construction
“wide circular base with an arc-shaped cross-sectional profile”	“having a rounded shape in profile”

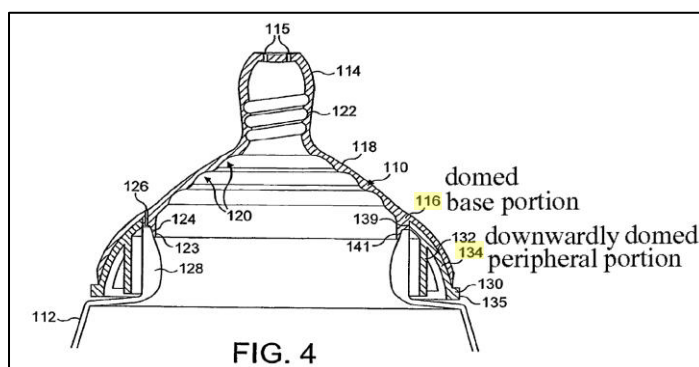
The parties agree that “domed” as it is used in the ’244 patent has the same meaning as it does in the ’930 patent, so Nanobebe’s proposal for “domed shaped” should be rejected for the reasons articulated above regarding “domed configuration.”

Claim 21 itself also supports Mayborn’s proposal. The claim recites that “the collar and the lower portion of the nipple together define a downward domed shape that **extends outwardly and downwardly** from the flex region of the nipple **towards a widest circumferential edge of the collar.**” The domed shape “extends towards a widest circumferential edge,” language that of course itself suggests a “wide circular base.” And because the domed shape “extends outwardly and downwardly from the flex region” toward that circular base, it must have “an arc-shaped cross-sectional profile.” Mayborn’s proposal should thus be accepted.

6. “downward domed shape that extends outwardly and downwardly from the flex region” (claim 21)

Mayborn’s Construction	Nanobebe’s Construction
ordinary meaning	indefinite

A POSITA would understand the scope of claim 21’s “downward domed shape” with reasonable certainty in light of the patent’s figures, specification, and claims. Claim 21 recites a “cover assembly” comprising “a nipple” and “a collar,” “wherein the collar and the lower portion of the nipple together define a **downward domed shape that extends outwardly and downwardly from the flex region** of the nipple towards a widest circumferential edge of the collar.” An example of this claim limitation is depicted in the Figure 4 embodiment:

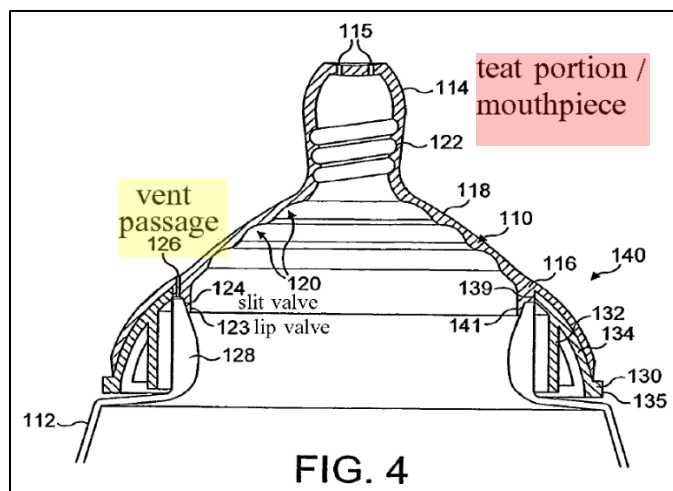


As the figure shows and the patent explains, the shape of nipple 110 is “similar to the human breast, [with] the base portion 116 being shaped like a breast and having a **wide, domed configuration**,” and “[t]he screw collar 130 includes . . . a **downwardly domed peripheral portion 134** surrounding it and extending from an upper end of the cylindrical portion 132.” (’244 Pat. at 4:3–5, 4:59–62.) Like claim 21, “the collar and the lower portion of the nipple together define a downward domed shape that extends outwardly and downwardly from the flex region,” which is represented by “undulating grooves 120” in this embodiment. A POSITA would thus understand this claim limitation with reasonable certainty.

7. “apart from the mouthpiece” (claim 24)

Mayborn’s Construction	Nanobebe’s Construction
ordinary meaning	indefinite

Nanobebe’s argument here fails for the same reasons as its indefiniteness argument regarding “at least partially inwardly.” While claim 14 of the ’930 patent required the location of the air vent to be “at least partially inwardly from the collar,” claim 24 here requires “an air vent apart from the mouthpiece.” As shown below, the Figure 4 embodiment provides an example of such an air vent, which is not part of the mouthpiece. A POSITA would thus understand the scope of the claim with reasonable certainty, precluding indefiniteness.



III. CONCLUSION

Mayborn’s proposed constructions align with the intrinsic and extrinsic record and add clarity to the plain claim language. The numerous limitations that Nanobebe attempts to import should be rejected as improper.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 6, 2022, a true and correct copy of the foregoing document was served on all counsel of record.

/s/ John S. Goetz

John S. Goetz