

**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,

*Defendant and
Counterclaim Plaintiffs.*

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

NANOBEBE’S ANSWERING CLAIM CONSTRUCTION BRIEF

Dated: November 15, 2022

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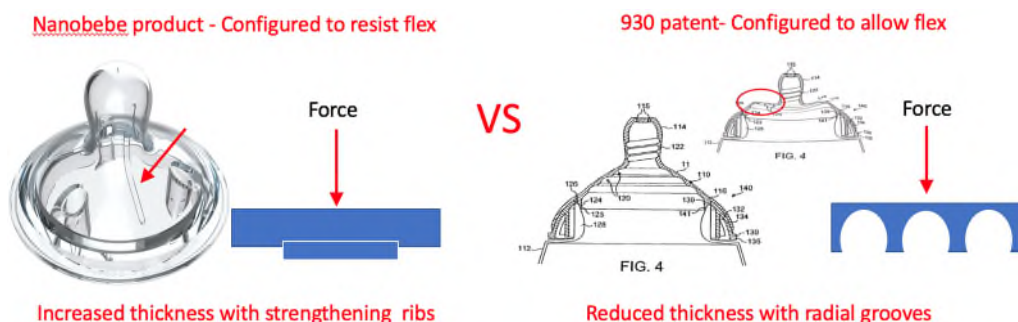
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I. INTRODUCTION

The Patents-in-Suit, entitled “Baby bottle with flexible nipple regions,” disclose and claim a synthetic nipple with increased flexibility, achieved by specially constructed and specifically located “flex regions.” The purported purpose is to make the nipple stem flex better, so that during feeding it collapses inwards and moves outwards. At the time of patent filing, this flexing design was (incorrectly) thought by some to mimic the human breast’s motion during feeding. In contrast, Nanobebe’s product is a “non-collapsible nipple.” It teaches away from the patented invention and is constructed to function in the opposite manner, using **strengthening ribs** to resist collapsing of the nipple’s stem inwards during feeding. This is because the increased flex inwards actually causes problems: the nipple stem can collapse inwards during feeding and even remain stuck in itself, and the baby can lose its latch.



It is “black letter law” that claim language should be construed so the claims’ scope align with the invention disclosed in the specification and the prosecution process. Therefore, the patent owner ordinary begins by explaining the details of the patented invention to the Court. That is not Mayborn’s approach here. Instead, it offers constructions that ignore and conflict with the disclosed and claimed inventions of the patents, because the accused products themselves have the precise opposite construction and functionality. Thus, Mayborn avoids the intrinsic record, which does not help them, and leads off its brief with attempted “gotchas,” such as mischaracterizing a

statement Nanobebe’s prior counsel made about the “plain meaning” of claim terms. Opening Brief (“OB”), ECF No. 48, at 1.

But the intrinsic record is clear. It establishes that Mayborn was neither the first to invent nipples that sought to mimic the human breast in operation, nor the first to use vents to allow better airflow to prevent colic. Rather, the inventions claimed and disclosed are narrow improvements to such nipples: a nipple construction with “increased flexibility” that allows the “teat portion” of the nipple (i.e., the nipple’s stem where the baby latches) and the areola portion (i.e., the entire area surrounding the teat portion, located between the teat portion and the base portion) to flex easier inward and outwards during feeding. The asserted claim of the ‘930 Patent requires this structure. Further, to distinguish prior art during prosecution, the claimed structure also requires a specific placement of the vent: it must “extend[] through a “base portion” that has “a domed configuration.” The asserted claims of the ‘244 Patent further describe the function of the structure above and recite “a flex region,” a specific structure that provides the “increased flexibility” that allows for the nipple’s towards-and-away motion.

Mayborn improperly asks the Court (i) to not construe certain terms and to rely on their “plain meaning” when a precise construction is more appropriate, and (ii) to adopt claim constructions that ignore the patents’ specific disclosed inventions, specification, and prosecution histories. For example, for the “flex region” of the ‘244 Patent, even though the claim language itself states that it “is configured *to allow flex*” and the disclosed invention is all about *increasing* flexibility, Mayborn seeks a construction divorced from what the patents say, because this is the only way that Mayborn could conceivably try to bring Nanobebe’s products, which resist flex, within their scope.

For the ‘930 Patent, Mayborn also seeks imprecise constructions that seek to blur the

distinction between the claimed “teat portion,” “areola portion,” and “base portion” of the ‘930 Patent and an improperly broad construction of the term “domed configuration,” so that it can attempt to incorrectly mark the locations of the portions higher on the nipple and argue that the Nanobebe product has an “air inlet valve extending through” a “base portion” that has a “domed configuration.”¹ The specification, however, clearly describes the difference between these various “portions” as well as the meaning of “domed.” Moreover, Mayborn’s constructions ignore that it was forced to narrow their claims to require a very specific configuration during prosecution to obtain the patent. Mayborn cannot now rewrite history in an attempt to broaden their claims, once narrowed.

It is ironic that Mayborn argues that Nanobebe’s proposed constructions seek to “manufacture non-infringement.” OB at 6. The opposite is true. It is Mayborn’s constructions that depart from the intrinsic record in an attempt to manufacture an infringement claim against a rising start-up competitor that is taking market share with a wholly different product and approach.

II. THE PATENTS-IN-SUIT AND THE NANOBEBE ACCUSED PRODUCTS

A. Overview of the Disclosures for U.S. Patent No. 10,952,930 and 11,207,244

The Patents-in-Suit, both entitled “Baby Bottle with Flexible Nipple Regions,” share the same disclosure. They disclose a standard baby bottle that has a nipple with “*increased flexibility*,” achieved by a set of concentric grooves (i.e., a “flex region”) specifically located in the “areola portion” of the nipple. The ‘930 Patent’s claims focus on the structure and geometry of the nipple, while the ‘244 Patent’s claims further describe the function of that structure and geometry (i.e.,

¹ Mayborn attempts to obtain broad and ambiguous constructions so it can make unsupported infringement assertions against Nanobebe’s product. For example, Mayborn at one point contended that the “teat portion” of its patent reads on half of the Nanobebe product’s “teat” and that the areola starts at the middle of the nipple stem. They did this so they could mark the other half of Nanobebe’s “teat” as a “base portion” that contains a vent, since the asserted claim requires a vent going through the “base portion.” (See Ex.1., ECF No. 1-5, p. 6)

increasing the ability of the nipple to flex inwards and outwards during feeding).

The patents' specifications repeatedly express that the invention is a new structure for increasing the flexibility of the nipple and providing the functionality of allowing for the nipple to have an inward and outwards motion during feeding, which was thought to mimic the way the human breast functions. *See e.g.*, '930 Patent, ECF No. 1-1 at Abstract (“**allowing movement of the teat portion towards and away from the base portion...**The invention includes a **flexible region** or regions to provide a more natural feeding by closely mimicking the human breast”); *Id.* at Col. 1, ll. 20-23 (“a baby bottle having **a nipple of increased flexibility** and functionality”) (emphasis added); *see also* Ex. 2).

Mayborn was neither the first to come up with a nipple that purported to mimic the human breast, nor the first to propose a nipple of increased flexibility to do so. *See* Patent at Background (“Various known teats have been designed to mimic the human breast in operation.”) Indeed, the Background section describes several examples of prior art nipples that use regions having progressively thinning walls or annular grooves to increase the flexibility of the nipple. *Id.* at Col. 1, ll. 26-24, 42-46. Mayborn was also not the first to use inlet valves (i.e., vents) on bottles “to allow air ingress to the teat” to alleviate pressure, believed to reduce the risk of colic. Various arrangements of such vents were also in the prior art. *Id.* at Col. 1, ll. 47-60.

Accordingly, the invention of the Patents-in-Suit is a nipple with a very specific structure for increasing flexibility. In a first embodiment “a flex region is provided in the areola portion, allowing the teat portion and/or the areola portion to move towards and away from one another in [a] more natural feeding action.” *Id.* at Col. 2, ll. 9-13. As explained, “because of the inclusion of the plurality of flex channels, the point of flexure is clearly defined,” thus solving a problem in prior art flexible nipple arrangements *Id.* at Col. 2., ll. 13-15; *see id.* Col. 1, 38-41. In a second

embodiment, the addition of a “helical flow formation” on the teat portion allows for continuous flow of liquid during feeding, even when the teat portion “collapses” inwardly, while allowing extension (and contraction) of the teat. *Id.* at Col. 2, 15-20.

The disclosed and claimed structure in the Patents-in-Suit is designed to enable this increased flexing and the downward and inward movement. The claims set forth a set of structural regions (or “portions”), including a “base portion” that is distinct from the nipple (i.e., the teat portion), as well as an “areola portion” that is distinct from and arranged to be in between these two portions. The patents define and explain the function and relationship of these three distinct structural regions (shown in Figs 1 and 4), as well as specific characteristics and geometries of elements in these regions and their function: The entire nipple assembly, “teat 10 for use with a feeding bottle,” includes “a teat portion 12, a base portion 14, and an areola portion 16 therebetween.” ’930 Patent at Col. 2, ll. 55-58; Fig. 1; *see also id.* at Col. 3, ll. 59-64; Fig. 4 (“teat assembly 140 includes a teat 110 forming a nipple...a base portion 116 mountable to the drinking vessel and an areola portion therebetween.”). The Figure 1 embodiment includes transition regions 24 and 26, that separate the bottom and top of the areola portion (16) from base portion (14) and teat portion (12). *Id.* at Col. 3, ll. 1-5.

Significantly, a “flex region 20,” which “allows flexing of the teat” inward during feeding is provided in the areola portion. *Id.*, Fig. 1; *see also id.* at Col. 3, ll. 5-6; Col. 4, ll. 33-41; Col. 3, ll. 50-55; *see also* Figs. 2a and 2b (“described “flex region” as “allow[ing] flexing of the teat [in a] back and forth motion”). Notably, “flex” here is a reference to **increased** flexibility; the patents use the term “flex portion” and “flexible portion” interchangeably. *See id.* at Col. 3, ll. 39-40. This “flex region” is made up of grooves or flex channels 22, which “further visually define an areola area.” The flex channels “extend[] around an inner surface of the areola portion effectively forming

circular thinned regions parallel/concentric with each other and “surrounding the teat portion.” *Id.* at Col. 2, l. 65- Col. 3, l. 1.

Similarly, in the areola portion of the Figure 4 embodiment, the flex region is provided by “undulating grooves 120,” “forming, in cross-section, a wavy profile on the inner surface of the areola portion and extending circumferentially,” to provide “flexing in a direction perpendicular to the flow direction and increasing the flexibility....” *Id.* at Col. 4, ll. 12-26. As a separate feature, the teat portion of the Figure 4 embodiment includes “helical grooves” 122 to ensure milk can flow even when the teat portion is collapsed. *Id.* at Col. 4, ll. 27-44; Fig. 4.

The specification also states that the base portion may include “a one-way air-inlet valve.” *Id.* at Col. 2, ll. 59-61. Figure 1 does not show any inlet valve, but the Figure 4 embodiment discloses vent passage 126 through base portion 116 and describes the base portion as “being shaped like a human breast and having a wide, domed configuration.” *Id.* at Col. 4, ll. 1-3; Col. 5, ll. 15-18; Fig. 4.

Further, Mayborn misleading contends in their brief, that their current Tommee Tippee nipple is covered by the patents –this is not correct. Even though it has **grooves for increased flex**, they have a vent on the *areola* surface and not on the *base*, as required by Claim 14 of the ‘930 Patent. Even Mayborn’s counsel admits the areola is the region that the lips touch (*See* Ex. 22, Tech. Tutorial H’rg Tr., Aug. 26, 2022, p. 9, ll. 18-29; p.18, ll. 2-3; p.50, l. 24 -p.51, l. 1). The following image makes it clear that the lips reach the collar and the vent is being covered by the lips:

Current Tommee tippee bottles are not covered by 930 patent because the vent is on the Areola



Source: Amazon most critical negative reviews

The vent is covered by the lips (reaches till the collar),— the lips are on the areola, thus the vent is on the areola

Since the Tommee Tippee products do contain grooves for increased flexibility they provide a good example of how increased flex is actually detrimental and makes the nipple collapse inward and get stuck. This is why Nanobebe teaches away from this function in its products (Ex. 21).

B. The Prosecution History of the '930 Patent

The '930 Patent's path to issuance included eight separate office actions and an appeal spanning a seven-year period. The claims that ultimately issued after this long prosecution, which included many narrowing amendments, are very specific regarding the vent's location and the shape of the base portion through which it must traverse: the vent must "extend[]" through" a "base portion" that has "a domed configuration." While only a few lines in the specification, the details of vent's location and the base portion's shape that the vent traverses through was what Mayborn relied upon to distinguish the prior art and to gain allowance of the claims.

Specifically, during prosecution, the U.S. Patent and Trademark Office ("USPTO") repeatedly rejected Mayborn's attempts to get broad claims. Mayborn repeatedly amended and narrowed the scope of the claims to distinguish them from the prior art. Significantly, USPTO rejected earlier versions of the claims, finding that the prior art disclosed a nipple having a teat portion, an areola portion with increased flexibility, and a base portion. *See* Ex. 3 at 4-5. Mayborn amended the claim and tried to distinguish the prior art by saying its vent was located in a different

area and extended through a base portion that was “domed.” See Ex. 4 at 5. Specifically, Mayborn amended the claim corresponding to asserted Claim 14 of the ’930 Patent to distinguish the Uehara prior art patent by narrowing the claim to specify that the *vent passage must extend through the domed base portion* of the nipple. See Ex. 4 at 5-6; Ex. 5 at 7, ¶ 137; FIG. 5.

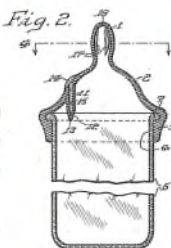
In a further office action, the USPTO found additional prior art—Ware (a 1923 patent from 1923), which discloses a vent passage extending through a domed base portion of a nipple—made even the amended claims obvious. Ex. 6 at 4. Ultimately, the Examiner rejected a further narrowed claim, and Mayborn appealed. Ex. 9. On appeal, Mayborn argued the claims should be allowed, because Ware did not disclose a collar. This mischaracterizes Ware, which clearly discloses a collar,² and contradicts Mayborn’s earlier admission that Ware discloses a collar.³ By mistake, and in large part thanks to erroneous and self-contradictory statements, the appeal was wrongly granted, and the narrowed claims were allowed. Ex. 12. This mistake is illustrated below:

’930 Patent- Appeal Brief after final rejection:

Mayborn provides misleading argument saying there is no collar, directing the examiner to the fig...

Independent claim 18 recites “at least one vent passage extending through the domed portion of the base portion with a length not to extend past the collar...” The Examiner admits that Morano does not disclose this limitation. (July 26, 2018 Office Action, p. 3, hereinafter “OAA”). Instead, the Examiner relies on Ware. *Id.* But Ware does not even have a collar.

Ware is directed to “rubber nipples” secured directly to the mouth of a nursing bottle without a collar. (Ware, col. 1, ll. 9-11). As shown in Ware’s FIG. 2 (annotated below), Ware...



However, Ware - Clearly states the nipple could be attached with a collar

“A further object of my invention is to provide a nipple with a band or rim or collar which is so shaped and which so fits over the end of the bottle or other receptacle to which it may be attached, that it tends to

* Collar is also standard part for decades, for connecting a nipple to a bottle

C. The Nanobebe Accused Products

The Federal Circuit has long recognized that claim construction does not occur in a vacuum

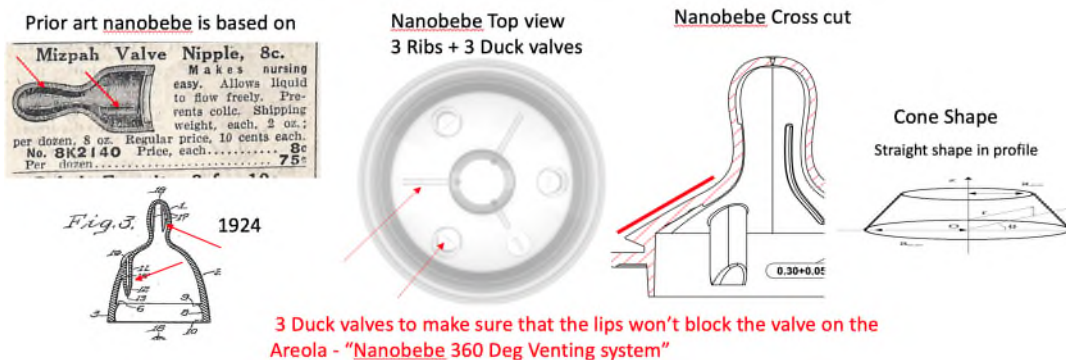
² On appeal, Mayborn argued: “Ware, however does not even have a ‘collar’...Accordingly, Ware’s ‘air tube 11’ extends not past any collar . . . but directly into the ‘receptacle 5’ and into the milk.” Ex. 9 (Brief on Appeal, at 10-12). But Ware does disclose a collar: “[a] further object of my invention is to provide a nipple with a band or rim or collar...” Ex. 8 (Col. 1, ll. 28-34) (emphasis added).

³ Mayborn had said: “[i]n Ware, the vent passage extends past the collar and into the bottle. While Ware lacks any teaching as to the particular length of the vent passage, due to its location in the narrow teat of ware, the vent passage would need to extend past the collar to function as the intended air valve.” Ex. 7 at 7-8.

and “[k]nowledge of [the accused] product ... provides meaningful context for the first step of the infringement analysis, claim construction.” See *Wilson Sporting Goods Co. v. Hillerich & Bradsby Co.*, 442 F.3d 1322, 1326-27 (Fed. Cir. 2006). Thus, the Court should understand the accused products, which frames and provides context to the parties’ claim construction disputes.

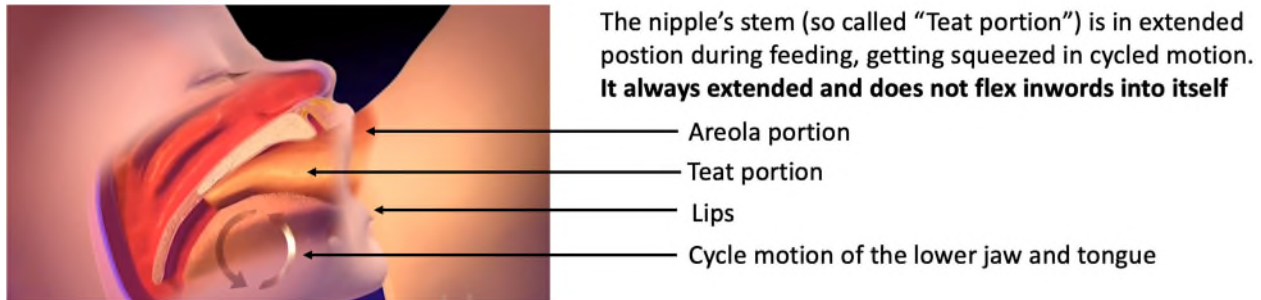
The accused Nanobebe baby bottles are award-winning products that have been featured on the cover of TIME magazine as “amazing innovations changing how we live.” See Ex. 13) Nanobebe nipples have an opposite mechanical design and utility as the Patents-in-Suit. They have an inflexible “non-collapsible” nipple design. Specifically, they employ a nipple with multiple inlet valves (i.e., vents) and vertical strengthening ribs that provide resistance to flex/deformation of the nipple at the weakest areas, providing increased rigidity rather than increased flexibility. The three-vent “Nanobebe “360 Degree Venting system” ensures that if the baby’s lips cover one of the vents, the ventilation still works and the nipple won’t collapse See Exs. 14-16. Notably, the use of vertical strengthening ribs and inlet valves are each well-known prior art technique known since the early 1900s. See Exs. 17, 18 (illustrating prior art use of both).

Nipples with Ribs and Duck valves exists since the 1900s



The Nanobebe nipple employs a uniform wall thickness with the support of the strengthening ribs and uses a cone-shaped structure, all to provide the strongest, most rigid structure that avoids collapse. Nanobebe developed its product to function this way because more recent medical

imaging revealed that, in humans, the nipple stem is durable and rigid. Rather than moving back and forth during feeding, it extends and remains in extended position, as the nipple is being squeezed by the baby's lower jaw force in cycled motion., as is show below. *See Ex. 19.*⁴



III. CLAIM CONSTRUCTION LEGAL STANDARDS

Claim construction is a question of law, the purpose of which is to determine what is covered by an asserted claim. *See Markman v. Westview Instr., Inc.*, 517 U.S. 370, 371 (1996). To properly construe patent claims, a "court must determine the meaning of disputed terms from the perspective of one of ordinary skill in the pertinent art at the time of filing." *Chamberlain Group, Inc. v. Lear Corp.*, 516 F.3d 1331, 1335 (Fed. Cir. 2008). Claim construction should start with the intrinsic evidence and focus "on how the patentee used the claim term in the claims, specification, and prosecution history, rather than starting with a broad definition and whittling it down." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1321 (Fed. Cir. 2005). While claim terms "are generally given their ordinary and customary meaning," claims "must be read in view of the specification, of which they are a part." *Id.* at 1315. "The construction that stays true to the claim language and most naturally

⁴ The central design feature of the Patents-in-Suit, i.e., providing a nipple with increased flexibility in order to enable the teat to move back and forth while the baby is feeding, was based on what was a common approach of some product designers in the early 2000s, when the application that led to the '930 and '244 Patents was originally submitted. Accordingly, as demonstrated by later medical imaging, the increased flexibility and collapsing inwards motion of the Patents-in-Suit actually works in the opposite manner to the natural breastfeeding motion. This creates "nipple confusion" and risking the entire breast-feeding journey for mothers who both breast and bottle feed. Still worse, the increased flexibility inwards that is the hallmark of the Patents-in-Suit creates a mechanical failure in nipples – the nipple collapses during feeding. *See Exs. 21* (examples of this mechanical failure).

aligns with the patent's description of the invention will be, in the end, the correct construction.” *Id.* at 1316. A court should also consider the patent’s prosecution history,” which demonstrates whether the inventor limited the invention...making the claim scope narrower.” *Id.* at 1317.

Finally, “[a] determination that a claim term ‘needs no construction’ or has the ‘plain and ordinary meaning’ may be inadequate when a term has more than one ‘ordinary’ meaning or when reliance on a term’s ‘ordinary’ meaning does not resolve the parties’ dispute.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008).

IV. ARGUMENT

A. DISPUTED CONSTRUCTIONS

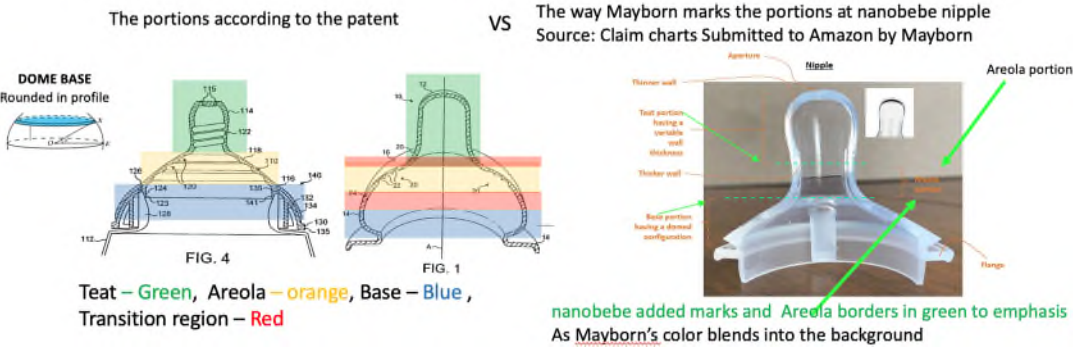
1. The ‘930 Patent⁵

Mayborn seeks constructions that (1) ignore the distinctions between the claimed “teat portion,” “areola portion,” and “base portion,” (2) are in conflict with our understanding of the anatomy of the human breast, and (3) which contradict the way they are defined in the patent. However, arriving at claim constructions that provide clear dividing lines between the claimed “teat portion,” “areola portion,” and “base portion” and that are consistent with the intrinsic record is critical. As shown below, Mayborn’s proposed constructions conflict with how the patent describes other claim elements and with basic and well-known geometric and structural terms.⁶

⁵ In order to streamline the parties’ disputes, Nanobebe does not present argument in this brief on the claim terms (a) “nipple,” (b) “sloping portion that extends outwardly and downwardly relative to said upper rim,” and (c) “a majority of the collar’s outermost surface.” For each of these terms Nanobebe has proposed constructions that are consistent with the plain meaning and the intrinsic record, and Mayborn proposes no construction (“plain meaning.”). Nanobebe’s proposed constructions should be adopted for consistency of terminology and to reduce confusion.

⁶ Playing fast and loose with the proper boundaries of these three portions allows Mayborn, for example, to try to make its infringement case by improperly labeling half of the nipple stem of an accused product as a “teat portion” and the other half of the nipple stem as “areola portion,” instead of labeling the entire nipple stem as the teat portion. Mayborn uses the same approach of blurring the dividing lines between the distinctly claimed portions of the claimed nipple to seek to argue that the “air inlet valve” extends through a “base portion having a domed configuration.”

Mayborn is trying to construct the portion's location in conflict with the patent



(a) “a teat portion” (claim 14)

Nanobebe’s Construction	Mayborn’s Construction
“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”	“part projection generally perpendicular to the mouth of the vessel and disposed above the areola portion”

Nanobebe’s proposed construction is consistent with the intrinsic record. Mayborn’s is intentionally imprecise, and inconsistent with both the intrinsic record and the well-known operation of a nipple. By not requiring the “teat portion” to be “the entire part” that extends into the infant’s mouth for feeding, Mayborn can, in its infringement contentions (as shown above), draw indefinite arbitrary lines for marking where the “teat portion” ends in conflict with the patent

As a technical matter, a baby cannot feed without latching and having the entire teat portion in its mouth. This is what is the patents show. Figs. 2a and 2b show a baby feeding where the entire teat portion is extended into the baby’s mouth. The Specification explains that Figs. 2a and 2b show “the infant’s lips 54 contacting the areola portion 16...” See ‘930 Patent at Col. 3, ll. 21-22. The only conceivable way for the infant’s lips to contact the areola portion is for the entire teat portion to in the infant’s mouth. Thus, the teat portion must be the entire part disposed above the areola portion that extends into a baby’s mouth for feeding.

Nanobebe’s construction is also consistent with the testimony of the inventors. One said

“[t]he baby, where they put their mouth is what I’m defining as the areola area.” (*See* Ex. 23 at 112:25-113:2.) This requires that the entire teat portion extend into the baby’s mouth. He marked as the “teat 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. *See* Ex. 24. Moreover, the other inventor similarly marked-up a photo of one of the accused Nanobebe products at his deposition. *See* Ex. 25.

Mayborn, however, attempts to muddy the waters with an imprecise construction that is inconsistent with the intrinsic record and black letter law. Mayborn’s proposed construction defines “teat portion” as only a “part” of the projection. It is unclear exactly what a “part projection” even refers to or encompasses. Mayborn also does not explain which portion of the nipple includes the remainder of the projection, or from where it starts, where it ends, or what function it provides. Mayborn’s endgame is clear: by advocating that a teat portion is some undefined part of a projection in the nipple above the areola portion, they will be able to mark the areola and the base portions on accused product in conflict with the way those portions are defined by the patent. This approach contradicts settled law that Mayborn itself cites which cautions against “tailoring a claim construction to fit the dimension of the accused product.” OB at 2.

(b) “an areola portion” (claim 14)

Nanobebe’s Construction	Mayborn’s Construction
“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]”	“part extending beyond the bottom of the teat portion”

All Mayborn’s construction of “areola portion” requires is for it to be a part below the teat portion. Mayborn proposes this ambiguous construction, because it would like to mark the “areola portion” to start somewhere in the middle of the actual nipple stem and to end somewhere in the

middle of the surface surrounding the “teat portion”.⁷ That interpretation cannot be correct and is indefinite. It is both inconsistent with the plain meaning of “areola” in terms of human anatomy as well as the way the ‘930 Patent describes and defines the “areola portion.” By contrast, Nanobebe’s proposed construction is both clear and consistent with the intrinsic record. It simply requires that, as the patent describes, the areola portion (a) is the surface that extends below the bottom of the teat portion – the entire area surrounding the nipple, and (b) includes the “flex region”- a different characteristic and functionality than the rest of the nipple so that “the point of flexure is clearly defined.” (‘930 Patent at Col. 2, ll. 10-15.)

In nature, the “areola” surrounds the teat and is located where the baby’s lips touch the breast, i.e., the entire area surrounding the nipple stem. *See* Ex. 27. This is also where the patent specification indicates the location of the claimed “areola portion” should be: “the infant’s lips 54 contacting the areola portion 16 . . .” ’930 Patent at Figs. 2(a), 2(b); Col. 3, ll. 21-23. In Figs 2(a) and 2(b), which show the bottle at flexed positions during feeding, the areola portion is shown to surround and extend beyond the bottom of the teat portion. Elsewhere in the specification, the areola is described as “forming a non-bite portion” of the teat, located beyond the nipple stem or the so-called “teat portion.” *Id.* at Col. 3, ll. 42-48; Fig. 3b. It surrounds and extends beyond the bottom of the teat portion and is the place where the baby’s lips contact during feeding. *Id.* at Col. 2, ll. 64-1. Indeed, the “areola portion,” like a human areola, is the widest part of the nipple structure and extends outward and outside of the baby’s lips during feeding. *See* Exs. 19, 25, 28. Inventor Webb confirmed this understanding during his deposition and admits that the areola has the *widest diameter* of the whole nipple. (Ex. 23 at 218) Another portion of the specification

⁷ For infringement purposes, Mayborn marks only a part of the actual “areola portion, as properly construed,” as “the areola portion.” This is because the claims require the vent to go through “a base portion” and not through “an areola portion.” (*See* Ex. 26, top down view below of Nanobebe product, with white circle indicated by Mayborn as the alleged “areola portion”).

describes how “[t]he areola portion 118 rises from the base portion 116 to the teat portion 114 at an angle to the horizontal...” (‘930 Patent, Col. 4, ll. 1-8).

In addition, the patent distinguishes the claimed “areola portion” from other portions of the nipple in that it includes a different characteristic and functionality than the rest of the nipple. Indeed, this is the focus of the ’930 Patent invention– the areola portion must include a “flex region” to allow increased flexibility of the nipple stem and clearly define the point of flexure. This is disclosed as radial grooves that enable that flexing. *Id.* at Fig. 1; Col. 2, ll. 64-65 (“areola portion 16 includes a flex region 20 comprising three grooves or flex channels 22”); *see also id.* at Fig. 4, Col. 4, ll. 14-18 (describing “the areola portion as including “undulating grooves 120 forming, in cross-section, a wavy profile on the inner surface of the areola portion 118 and extending circumferentially.”)). The patent states that ***these grooves or channels “visually define an areola area”*** *Id.* at Col. 3, ll. 37-38 (emphasis added).

Thus, Figures 1-4 and their accompanying disclosures inform a person of skill in the art that the “areola portion” is generally in contact with an infant’s lips during feeding. It surrounds the bottom of the teat portion and extends from below the teat portion down to the base portion mounted to a rim of the drinking vessel. *Id.* at Fig. 4, Col. 3, ll. 57-63; *see also id.* at Fig. 1; Col. 2, ll. 55-57. Moreover, the characteristic and functionality of the areola portion must be different from that of the rest of the nipple, because the areola portion includes the flex region with grooves that increase flexibility.

Nanobebe’s proposed construction is also consistent with the term “areola’s” plain and ordinary meaning. As in nature, the “areola portion” has a surface of a different characteristic and functionality than the teat portion of the nipple, and is the entire area that surrounds and extends beyond the bottom of the teat portion. *See* Ex. 27.

On the other hand, Mayborn’s proposed construction is indefinite - “a part” that starts at an undefined point (that could be above, on, or below the teat) and extends to some undefined point “beyond the bottom of the teat portion.” This impermissibly vague construction fails to provide any specific start point or end point to the areola portion, fails to identify that it has characteristics that differentiate it from the other claimed portions, and is inconsistent with the plain meaning of “areola.”

(c) “base portion” (claim 14)

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

Nanobebe’s proposed construction is precise, consistent with term’s plain meaning, and supported by the specification. By contrast, Mayborn’s construction is again hopelessly vague. “Part below the areola portion” does not indicate a precise starting point or ending point and would improperly include other separately defined and claimed structural elements, such as a flange, within the meaning of “base portion.”⁸

In human anatomy, there is no “base portion.” The areola extends to the widest diameter of the nipple. According to the patent, the “base portion” is the lowest part of the nipple, under the areola portion, that is “mountable to the [drinking] vessel.” ’930 Patent at Col. 3, ll. 61-63. The base portion is either molded together in an integral assembly, as shown in Figure 4, or attached by snapping it to the drinking vessel, via a flange, as shown in Figures 1, 2A, 2B. The snapping arrangement describes that “flange 18 extends from the base of the base portion to allow fixing to

⁸ Mayborn’s motivation here again is to obtain a broad enough construction that allows it to improperly assert that the one-way inlet valve (i.e., a vent) of an accused product, which is located in a different portion, is actually included on the “base portion,” as required by the claims. (See ECF No. 1-5, Mayborn’s Infringement Contentions at 6)

a feeding bottle (not shown) in any appropriate known manner.” *Id.* at Col. 2, ll. 57-59. In the molded arrangement, the “domed portion 134 [of the base portion] abuts the outer face of a neck 128” and flange 141 “that forms an elastomer cylindrical sealing ring.” *Id.* at Col. 5, ll. 9-15. In other words, the specification explains that the base portion is the portion at the bottom of the device that is attached to the drinking vessel, using flanges that sit below it. This is precisely how Nanobebe proposes to construe it.

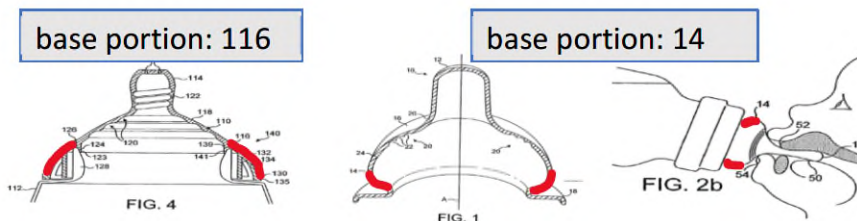
Finally, Nanobebe’s construction properly distinguishes between the “base portion” and the flange, as supported by the claim language itself and the specification, which teaches “a base portion 16 mountable to the drinking vessel.” *Id.* at Col. 3, ll. 61-62. Mayborn incorrectly argues that Nanobebe’s proposed construction of “base portion” ignores the flange of claim 14. OB at 7. It does not. Claim 14 recites “a base portion having a domed configuration” and “a flange depending from the base portion” as *separate and distinct* elements. Despite admitting that the flange and base are different claimed structures, OB at 8, Mayborn’s own proposed construction - “part below the areola portion”- ignores this distinction.

**(d) “domed configuration” / “a base portion having a domed configuration”
(claim 14 of the ‘930 Patent) and “domed shape” (claim 21 of ‘244 Patent)**

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

Nanobebe’s proposed construction is consistent with the specification and the plain meaning of “domed.” Conversely, Mayborn’s proposed construction again seeks to twist the words of the patent beyond their meaning so as to impermissibly expand its scope. Fully aware that Nanobebe’s product is not dome-shaped, Mayborn has proposed a construction that encompasses other non-rounded shapes. Furthermore, Mayborn used “domed configuration” during prosecution to obtain these claims, Mayborn must not be allowed to advance a broader view now.

The plain and ordinary meaning of “domed configuration” is a shape that is rounded. The dictionary definition of “domed” is “a ... hemispherical roof or ceiling,” (“domed” *Merriam-Webster.com. Dictionary*, <https://www.merriam-webster.com/dictionary/domed> (15 Nov. 2022)); and “hemispherical” is defined as “having the *shape of a half of a sphere*” (“hemispherical” *Merriam-Webster.com. Dictionary*, <https://www.merriam-webster.com/dictionary/hemispheric> (15 Nov. 2022)). The hallmark of a domed shape is that it is *rounded*. The specification teaches that “[t]he shape of the teat is also similar to the human breast, the base portion 116 being shaped like a breast and having a wide, domed configuration” ’930 Patent at Col. 4, ll. 1-3. Nanobebe’s proposed construction of “having a rounded shape in profile” is consistent with both the intrinsic and extrinsic record. The rounded profile of the base portion having a domed configuration is clearly seen in Figs. 4, 1, and 2b of the ‘930 Patent.



Yet, the word “rounded” is not a part of Mayborn’s proposed construction. Mayborn’s proposed construction of a “wide circular base with *an arc-shaped cross-sectional profile*” lacks support in the specification. The intrinsic record lacks disclosure of a *single* arc-shape (“*an arc shaped cross-sectional profile*”). The phrase “arc-shaped cross-sectional profile” is never used in the patent specification or during the file history to describe the disclosed dome configuration.

Moreover, to obtain the claims, Mayborn amended the claims during prosecution to require a vent that extends through a base portion *having a domed configuration* and distinguished prior art with a non-rounded base. Specifically, it argued that the base of the Uehara reference (shown at Ex. 5, Fig. 4) is “certainly not ... a base portion having a domed configuration.” (Ex. 33, at 7).

Because this same prior art could be read to have “an arc-shaped cross-sectional profile,” that cannot be the correct construction of “domed.”

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

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

The Court should adopt Nanobebe’s construction because it is consistent with the intrinsic record: the only disclosure of a variable wall thickness *on the teat portion* in the ’930 Patent is a helical groove, which varies the wall thickness of the teat portion. At minimum, this term should be construed to require increased flexibility, so it does not include characteristics with the opposite function and utility.

This limitation is shown in the second embodiment of the ’930 Patent (Fig. 4): “[B]ecause of the provision of a helical flow formation on the inner face of the teat, continuous flow of liquid is allowed even when the teat collapses via the helical flow path while allowing extension of the teat...” ’930 Patent at Col. 2, ll. 15-20; *see also id.* at Col. 4, ll. 32-39 (“A tight pitch helical groove 122...is moulded or otherwise formed around the inner cylindrical vertical surface of the teat portion 114 to form a flow passage even when the teat portion is collapsed, for example under biting pressure from an infant.”).

Mayborn is incorrect that Nanobebe’s proposed construction improperly imports limitations from the specification. The only disclosure of “a teat *portion* having a *variable* wall thickness” is helical groove 122 shown in Figure 4, which have a depth of half the wall thickness and cause the wall *of the teat portion* to have a varying thickness. *Id.* at Col. 4, ll. 32-37. Under such circumstances, courts have construed the claims to be limited to what is disclosed and linked to the limitation at issue. *See, e.g., Watts v. XL Sys., Inc.*, 232 F. 3d 877 (Fed. Cir. 2000); *Wang Labs., Inc. v. America Online, Inc.*, 197 F.3d 1377 (Fed. Cir. 1999).

Mayborn attempts to rely on the specification disclosure in Col. 4, ll. 11-13 that the *teat portion* is thinner than the base portion and areola portion. OB at 7. But this recital falls short of teaching that the teat portion itself has walls of decreasing or varying thickness. Mayborn also improperly conflates the undulating grooves of the areola portion, which cause variations in the thickness of the walls of the areola portion and provide the flex region, with the helical grooves of the teat portion. *Id.* But the cited disclosure about elements of *the areola portion* does not concern this claim limitation.⁹

(f) “at least partially inwardly” (claim 14)

Nanobebe’s Construction	Mayborn’s Construction
Indefinite	plain meaning

35 U.S.C. § 112 requires that a patent specification “conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as the invention,” (the so-called “definiteness” requirement). A patent claim is indefinite if, read in light of the specification delineating the patent, and the prosecution history, it fails to inform, with reasonable certainty, those skilled in the art about the scope of the invention. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014).

In Claim 14, “at least partially inwardly,” describes the direction/angle of the one-way air inlet valve relative to the collar: “a one-way air inlet valve...disposed at least partially inwardly from the collar.” This limitation is indefinite, because when read in light of the specification, it fails to inform, with reasonable certainty, those skilled in the art about the scope of the invention.

The ’930 Patent discloses a one-way inlet valve (i.e., a vent). In Fig. 1, it states “the base

⁹ Mayborn’s claim differentiation argument likewise fails, OB at 8, because it misstates the limitation added by dependent claim 15. Claim 15 recites the addition of not only a groove, but also a further limitation regarding the direction of flexure of the groove, i.e., “configured to flex in a direction of the liquid flow.” ’930 Patent at Claim 15. Accordingly, there is no reason that claim 14 could not be read to be limited to a groove, with claim 15 adding an additional limitation on its direction of flexure.

portion can include a one-way inlet valve...,” but its location is “not shown.” ’930 Patent at Col. 2, ll. 59-62; Fig 1. The Figure 4 embodiment shows the location of a one-way inlet valve. It “projects down from the flange 141 in a portion of the periphery only in the vicinity of the vent passage 126,” *Id.* at Col. 5, ll. 18-20; Fig. 4, and the vent passage 126 is disposed “substantially at the periphery” of the teat. *Id.* at Col. 5, ll. 16-17; Fig. 4. This limited disclosure, however, does not use the term “inward from the collar,” “inwardly,” “partially inwardly” or “at least partially inwardly” to describe or show the valve’s direction relative to the collar.

Elsewhere terms like “radially” (or “axially”) are used together with “inwardly” to at least indicate direction. *See, e.g.*, ’930 Patent at Claim 1. But not in Claim 14. The term “inwardly” could be understood in multiple ways; it could refer to inwardly in either the axial or radial direction or a valve positioned on an angle towards the center of the collar. The use of “at least partially” only adds to the confusion. There is no “partially inwardly” direction. Either a valve is disposed inwardly in a specified direction, or it is not. Because the phrase “at least partially inwardly” is nonsensical in the context of the ’930 Patent and is susceptible to multiple possible meanings, it is indefinite. (*See* Ex. 29, Declaration of Brian Silver, at ¶¶ 16-29).

2. The ‘244 Patent

Whereas the invention of the patent is based on increased flexibility, Mayborn’s cynical construction of “flex region” would include the opposite.¹⁰

(a) “flex region” (claim 21)

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

¹⁰ In order to streamline the parties’ disputes, Nanobebe has elected to drop its indefiniteness assertions for the following claim terms (a) “downward domed shape that extends outwardly and downwardly ...” (claim 21); (b) “bite region” / “the mouthpiece defining a bite region” (claim 21); and (c) “apart from the mouthpiece” (claim 24).

Less than two days before submitting the claim construction, Mayborn asked to change their construction of flex region from “deformable region” to “a region . . . that “*control[s]* flexing.” Through this wildly improper proposed construction, Mayborn is attempting to rewrite the claim to remove the requirement of a flex region, i.e., a region that increases flex or flexibility. It is intended to be a wiggle word that could be argued to encompass not only increasing flexibility (i.e., by enabling flexing, as the patent discloses) but also decreasing flexibility (or otherwise controlling flexibility, which the patent does not disclose). Such a reading cannot stand, because it would render the term “flex region” meaningless and because the ‘244 Patent invention only discloses and concerns nipples with increased flexibility. *See Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950–51 (Fed. Cir. 2006) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous”).

Significantly, Mayborn’s newly fashioned phrase, “control flexing,” does not appear anywhere in the Patents-in-Suit. In fact, the word “control” only appears once in the ‘244 Patent and that is in the context of controlled compression of lip valve 123 (‘244 Patent, Col. 5, ll. 57-58), not in regard to “a flex region configured to allow flex of the mouthpiece towards and away from a lower portion of the nipple” as recited by Claim 21. When asked, one of the inventors could not point to one place in the patent it is discussed or where the word “controls” even appears. (Ex. 23 at 238.)

By contrast, Nanobebe’s construction reflects the meaning of “flex region” as recited in the intrinsic record. First and foremost, the claim language of Claim 21 itself specifically states that the “flex region” is “configured to ***allow flex*** of the mouthpiece towards and away from a lower portion of the nipple.” Thus, the language of the claim states that the flex region “***allow[s]***” (*i.e., enables*) “***flex.***” Second, the Specification discloses that “[t]he areola portion 16 includes a

flex region 20 comprising three grooves or flex channels (‘244 Patent, Col. 2, ll. 64-65). Figs. 1 and 2a both show that the flex region 20 as having three grooves or flex channels. There is no disclosure or suggestion that these grooves or channels *control* flexing. Rather, as the Specification states, their purpose is to *increase* flexibility and provide for the inwards-outward motion of the teat relative to the base: “As an infant sucks on the teat 31, the teat portion 32 flexes back and forth as a result of the respective collapsing and extending of the flex region 37 grooves” (Col. 3, ll. 51-54). As the name “flex region” indicates, its functional purpose is to *enable* flexing.

Enabling increased flexibility is mentioned repeatedly throughout the patent disclosure, background, and summary of invention. (See Exs. 30 and 31). Indeed, the very title of the Patents-in-Suit is “Baby Bottle with Flexible Nipple Regions.” The flex region is thusly named because it “allows flexing of the teat” (‘244 Patent, Col. 3, ll. 7-8). The patents themselves say “[a]s an infant sucks on the teat 31, the teat portion 32 flexes back and forth as a result of the respective collapsing and extending of the flex region 37 grooves...this back and forth movement mimics the movement of a human breast during suckling, but with the flex region in a non-bite area” (Col. 3, ll. 53-58). The above passages confirm that the flex region allows or enables flexing back and forth in a movement that mimics the movement of a human breast.

Mayborn’s proposed construction fails for the additional reason that the specific embodiment of a flex region disclosed in the ‘244 Patent doesn’t function as such based on its “surface characteristics,” required by Mayborn’s proposed construction. The specification recites:

a flex region 20 comprising three grooves or flex channels 22 extending around an inner surface of the areola portion effectively forming circular *thinned* regions parallel/concentric with each other about the axis A and hence surrounding the teat portion...

(emphasis added) (‘244 Patent, Col. 2-3, ll. 66-8). As seen in Fig. 1 of the ‘244 Patent (a close-up detail is provided in the Appendix attached as Ex. 32), the above cited disclosure teaches that the

grooves 22 of the flex region 20 form “circular *thinned* regions” in the wall thickness of the areola portion 16. The thinned wall thickness at the location of the grooves of the flex region whose characteristics enable flexing are *three-dimensional* structures. They are not merely a “*surface* characteristic,” as Mayborn suggests.

Third, Mayborn argues that Nanobebe’s construction impermissibly reads the limitation of grooves or channels from the specification into the claim. (OB at 14). That argument is inaccurate. Nanobebe’s proposed construction is “a region having characteristics, *e.g.*, grooves or channels, specifically designed to enable flexing” The term “*e.g.*” means “for example” and does not limit the claim to the cited examples. The accusation that the inclusion of “for example, grooves or channels” could mislead a jury is nonsense; examples are helpful illustrations, and the listed examples are the very embodiments that the ‘244 Patent itself describes.

Finally, Mayborn’s accusation that Nanobebe’s proposed language of “specifically designed” impermissibly adds an intent requirement is likewise wrong. (OB at 14-15). As explained above, the ‘244 Patent teaches that the flex region “allows flexing of the teat” (‘244 Patent, Col. 3, ll. 7-8). Nanobebe’s proposal simply clarifies the relationship between the flex region’s characteristics and its function.

(b) “mouthpiece” (claims 21, 24, 26)

Nanobebe’s Construction	Mayborn’s Construction
“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”	“part projecting generally perpendicular to the mouth of the vessel and disposed above the areola portion”

The term “mouthpiece” is not recited in the Specification of the ‘244 Patent, but the specification and Figures 2a and 2b clearly illustrate that the portion extending into a baby’s mouth

for feeding is the teat portion. Both parties agree, therefore, that the “mouthpiece” recited in the ‘244 Patent should have the same meaning as the “teat portion” of the ‘930 Patent and have proposed identical constructions for this term as their constructions for that term. Nanobebe’s proposed construction should be adopted and Mayborn’s rejected for the same reasons set forth above in connection with the proposed construction of “teat portion.”¹¹

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

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

Nanobebe’s construction simply clarifies the direction of flexure in the phrase “flex...towards and away from a lower portion of the nipple” in a manner wholly consistent with the intrinsic record. The Abstract discloses that “[t]he nipple comprises a base portion, a teat portion, an areola portion allowing movement of the teat portion towards and away from the base portion.” (’244 Patent Abstract) The Summary of the Invention discloses that “...because the flex region is provided in the areola portion allowing the teat portion and/or areola portion to move towards and away from one another a more natural feeding action is provided.” (Col. 3, ll. 12-15). The Specification discloses that “as the infant sucks on the teat, the teat portion and areola portion flex towards and away from one another...” (Col. 3, ll. 25-26). In all of these instances, “towards and away” simply describes the up and down of movement of the mouthpiece relative to a lower portion of the nipple.

¹¹ Mayborn’s construction of “mouthpiece” should be rejected for an additional reason: Unlike Nanobebe’s proposed construction, it does not even require that a “mouthpiece” “extends into a baby’s mouth for feeding.” A proposed construction of a mouthpiece that doesn’t require extending into the mouth for feeding cannot reasonably be correct.

V. CONCLUSION

For the foregoing reasons, the Court should adopt Nanobebe's proposed constructions.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 15, 2022, a true and correct copy of the foregoing document was served on all counsel of record via ECF Filing.

/s/ Michael J. Kasdan