

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ASETEK DANMARK A/S,

Plaintiff,

v.

SHENZHEN APALTEK CO., LTD., A/K/A
SHENZHEN ANG PAI TECHNOLOGY CO.,
LTD., and GUANGDONG APALTEK LIQUID
COOLING TECHNOLOGY CO., LTD., A/K/A
GUANGDONG ANG PAI LIQUID COOLING
TECHNOLOGY CO., LTD., OR DONGGUAN
APALCOOL,

Defendants.

Civil Action No. 6:21-cv-00501-ADA

JURY TRIAL DEMAND

DEFENDANTS' REPLY CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

This case involves liquid cooling technology for personal computers. According to Asetek, prior art devices had a pump and a heat exchanger (or “cold plate”) that were physically separable and connected via tubes, gaskets, or the like. But the separate pump and heat exchanger occupied more space, and the connectors tended to leak. Asetek’s purported innovation was to combine the pump and heat exchanger into a unitary and seamless “single receptacle” device, shrinking its footprint and eliminating leakage by removing any need for a connector. Others in the industry adopted a similar unitary design. But Asetek then asserted its patents across the industry from its home base in San Jose, California, obtaining settlements and at least one notable trial win. So the industry returned to the old systems with separable pumps and heat exchangers, while improving the connecting tubes and gaskets to reduce leakage. Now, Asetek asserts the same patents against these prior-art designs, attempting to recapture what it has disclaimed in the prior California cases.

II. ADDITIONAL AGREED CONSTRUCTIONS

Asetek initially asked for new constructions for “reservoir,” “vertically displaced chambers,” “vertically spaced apart,” “spaced apart ... in a vertical direction,” “stator,” and “fluidly coupled”—even though all these terms already had been construed by the Northern District of California and (in the case of “reservoir”) affirmed by the Federal Circuit. ECF No. 55 at 1-2; *see Asetek Danmark A/S v. CMI USA Inc.*, 852 F.3d 1352, 1357-58 (Fed. Cir. 2017). Apaltek asked only for a construction of “chamber.” ECF No. 55 at 1. But two-and-a-half weeks after Apaltek’s opening brief—which proposed the same seven constructions ordered by two federal district judges in California—Asetek reversed course and agreed to abide by the Northern District’s constructions of six terms (ECF No. 56 at 8):

Claim Term	Stipulated Construction
“reservoir”	“single receptacle defining a fluid flow path”
“chamber”	“compartment within the reservoir” (with “reservoir” construed as above)
“vertically displaced chambers”	“vertically arranged (with reference to each other and the heat exchanging interface) chambers” (with “chamber” construed as above)
“vertically spaced apart”	“vertically arranged (with reference to each other and the heat exchanging interface) chambers” (with “chamber” construed as above)
“spaced apart ... in a vertical direction”	“vertically arranged (with reference to each other and the heat exchanging interface) chambers” (with “chamber” construed as above)
“stator”	“stationary parts of the motor that perform or support an electrical or magnetic function of the motor”

The parties agreed to the emendation (*with “chamber” construed as above*) in an email on April 12. The confirming email is attached hereto as Exhibit 1 to the Shaneyfelt declaration.

III. ARGUMENT: “FLUIDLY COUPLED”

Claim term	Apaltek proposed construction	Asetek proposed construction
“fluidly coupled” ’362 pat. cls. 1, 13, 14, 17 ’764 pat. cls. 1, 9, 15, 28, 30	“fluidly connected, and where a means of coupling is specified, that is the exclusive means of connection”	Prior proposal: “fluidly connected (directly or indirectly)” Current proposal: “fluidly connected”

The only remaining issue is how the Court should construe the one remaining disputed term: *fluidly coupled*. Asetek has previously litigated the meaning of this claim term, which appears in many claims of both asserted patents. It means “fluidly connected,” and “where a means of coupling is specified, that is the exclusive means of connection” under the court’s ruling. ECF

No. 55-13 at 12 (Exhibit 12: *Asetek v. CMI*, Cl. Constr. Order). Asetek is estopped from arguing otherwise. That Asetek refuses to accept the same construction should tell the Court all it needs to know about why it exercised its “prerogative,” *see* ECF No. 46-2 at 14 (depo. at 48:5-12), to sue here instead of its hometown court in California.

As explained in Apaltek’s opening brief, this term was construed by the U.S. District Court for the Northern District of California to mean “fluidly connected.” The California court rejected Asetek’s proposal, “fluidly connected (directly or indirectly),” which it makes again here. The court added a clarification that “where a means of coupling is specified, that is the exclusive means of connection.” ECF No. 55-13 at 12.

Asetek’s current position is somewhat unclear. It originally wanted the phrase interpreted to mean *fluidly connected (directly or indirectly)*, Ex. 2 at 1, but after Apaltek filed its opening claim construction brief (ECF No. 55) Asetek attempted to drop the term altogether. Ex. 1 at 5. Apaltek refused, and in Asetek’s responsive claim construction brief, Asetek agreed to drop *directly or indirectly*, but at the cost of dropping the court-ordered clarification that *where a means of coupling is specified, that is the exclusive means of connection*. Compare ECF No. 56 at 8 with Ex. 2 at 1. So it seems that the parties now agree to interpret “fluidly coupled” as “fluidly connected,” but Asetek wants to preserve the idea that there could be multiple means of fluidly connecting the pump and heat-exchange chambers within the same device.

Asetek is estopped from proposing this truncated definition, and it is wrong on the merits.

A. Asetek is estopped from disputing the construction of “fluidly coupled.”

First, “fluidly coupled” was disputed and construed in *Asetek v. CMI*. *See* ECF No. 55-13. That case reached a judgment in favor of Asetek following a jury verdict. ECF Nos. 55-8; 55-14. And the Federal Circuit then affirmed that judgment. *Asetek Danmark A/S v. CMI USA Inc.*, 852 F.3d at 1370. Asetek is collaterally estopped from relitigating the same definition, even though

Apaltek was not involved in the prior case. *Aspex Eyewear, Inc. v. Zenni Optical LLC*, 713 F.3d 1377, 1380 (Fed. Cir. 2013) (collateral estoppel “precludes a plaintiff from relitigating identical issues by merely switching adversaries”) (cleaned up). “[C]ollateral estoppel applies if (1) the issue at stake is identical, or substantially similar, to the one in the prior action, (2) the issue was actually litigated in the prior action, and (3) the determination of the issue in the prior action was a necessary part of the *judgment* in that earlier action.” *Mirror Imaging, LLC v. PNC Bank, N.A.*, 2022 WL 229363 *5 (W.D. Tex., Jan. 26, 2022) (Albright, J.) (emphasis original). Here, the “fluidly coupled” term appeared in both the asserted claims in the prior case and *this* case (e.g., ‘362 patent claims 14 and 17), so “the issue at stake is identical, or substantially similar.” *Id.* This claim construction issue was “actually litigated” and ruled upon in California in a claim construction order. *Id.* The jury verdict in the prior case found infringement of claims 14 and 17 in the ‘362 patent, so satisfaction of this claim limitation as previously construed “was a necessary part of the judgment in that earlier action.” *Id.* Asetek may not relitigate this term.

Asetek argues that the Northern California court did not intend to restrict “fluidly coupled” with the added limitation that “where a means of coupling is specified, that is the exclusive means of connection.” ECF No. 56 at 10. But that language comes verbatim from the trial court’s ruling (ECF No. 55-13 at 12)—a ruling this court specifically noted “the parties ... should be mindful of.”

In California, the court held that

the term “coupled” as used in the patents is not in isolation but is usually accompanied by a phrase specifying the means of the connection. For example, claim 1 of the ‘362 patent describes “the reservoir including an upper chamber and a lower chamber, the upper chamber and the lower chamber being vertically displaced chambers that are separated from each other by at least a horizontal wall and fluidly coupled together *by a plurality of substantially circular passages.*” ‘362 patent, claim 1 (emphasis added). ***Where the means of connection are specified***, the Court concludes that ***that is the exclusive means by which the coupling can be accomplished.*** Thus, for claim 1 of the ‘362 patent, the chambers must only be connected by a plurality of substantially circular passages and nothing more. The

heat radiator, for example, could not be inserted as a part of the connection without violating the language of the claim.

ECF No. 55-13 at 10-11 (*italic emphasis original; italic boldface added*). As the court there noted, in claim 1 of the '362 patent the chambers can “only” be connected “by a plurality of substantially circular passages and nothing more”—Asetek could not, “for example,” assert the patent against a product where “the heat radiator [is] inserted as part of the connection.” *Id.* This general rule applies with equal force here: “Where the means of connection are specified ... that is the exclusive means by which the coupling can be accomplished.” *Id.* at 10. Asetek suggests that the prior order only distinguishes the location of the heat radiator, ECF No. 56 at 9, but that belies the court’s plain language, which identifies the placement of the heat radiator as part of the connection as merely one “example” of a broader class of non-infringing designs. ECF No. 55-13 at 11.

B. The interpretation of “fluidly coupled” is at issue in this case.

Asetek argues that the prior dispute—whether the fluid connection must be direct or could also be indirect—is not at issue in this case. ECF No. 56 at 9. But it is Asetek that wishes to vary from the way prior courts construed this term, while Apaltek wants to preserve the prior claim constructions—constructions that it and others in the industry relied upon to design around Asetek’s patents. Asetek’s refusal to abide by the prior construction means that the term is indeed in dispute.

C. Apaltek’s proposed construction lines up with the agreed constructions.

Apaltek’s proposed construction also is consonant with the agreed-on meaning of other terms in the patent, while Asetek’s is not. The California trial court held that the exclusive means of connection “by a plurality of substantially circular passages” in claim 1 of the '362 patent was critical to its construction of “reservoir” and, ultimately, the jury’s verdict:

[T]he claimed “reservoir” in Asetek’s invention is a single receptacle that is divided into an upper chamber and a lower chamber, with the upper chamber

providing the pumping function and the lower chamber providing the thermal exchange function.

ECF No. 55-9 at 5 (Exhibit 8: Findings of Fact and Conclusions of Law); *see also* ECF No. 55-15 at 4. A purported advantage of Asetek's alleged invention is *the elimination of leakage-reducing connectors such as the tubes and gaskets* to connect the upper chamber and the lower chamber, which are *divided* compartments *within* the reservoir and thus do not need connectors. That is, the "plurality of substantially circular passages" *inside* the reservoir must be the exclusive means of connection between the upper and lower chambers as divided compartments *within* the reservoir, *without* any addition of, *e.g.*, tubes or gaskets for connection as those in the prior art. The adjudicated fact that the reservoir is "a single receptacle that is divided into an upper chamber and a lower chamber" means that those chambers can only be connected "by the one or more passageways" *inside* the reservoir ('362 patent claims 14 and 17) or "by the one or more passages" *inside* the reservoir ('764 patent claim 1).

D. Asetek's construction does not ignore the word "comprising" or violate the doctrine of claim differentiation.

Asetek suggests that the claims' preambles use the word "comprising," thus allowing the addition of other componentry. ECF 56 at 11. But using the word "comprising" does not allow Asetek to recapture things it expressly disclaimed. Asetek's claimed invention is a "closed loop," *id.* at 3, so all components in the loop are "fluidly connected" by default. If the patents do not specify how the fluids are connected, the phrase "fluidly connected" is superfluous and unnecessary. Courts should not interpret claim terms to be surplusage. *See, e.g., ACQIS LLC v. Alcatel-Lucent USA Inc.*, 2015 WL 1737853, at *7 (E.D. Tex. Apr. 13, 2015) (finding that the "proposed construction would render certain claim terms superfluous, and is therefore disfavored."); *Lightforce USA, Inc. v. Leupold & Stevens, Inc.*, 2019 WL 2146245, at *2 (D. Or. May 15, 2019) ("the Federal Circuit has consistently held that interpreting a claim term in a

manner that renders subsequent claim language superfluous is improper.”) (collecting cases).

By excluding the prior court’s clarification about the exclusivity of the specified means, Asetek is treating the term “coupled” in isolation again, an approach already litigated and rejected by the prior court. ECF No. 55-13 at 10 (“the term ‘coupled’ as used in the patents is not in isolation but is usually accompanied by a phrase specifying the means of the connection”). Asetek’s proposal, which ignores the claim language surrounding “fluidly coupled” and specifying the manner of connection, should be rejected. *IGT v. Bally Gaming Int’l, Inc.*, 659 F.3d 1109, 1117 (Fed. Cir. 2011) (“We caution that claim language must be construed in the context of the claim in which it appears. Extracting a single word from a claim divorced from the surrounding limitations can lead construction astray”).

Asetek’s last argument, suggesting that Apaltek’s proposal violates the principle of claim differentiation, also is wrong. ECF No. 56 at 12-13. *Contra* Asetek, ‘362 patent claim 5 does not call for “the upper and lower chambers [being] fluidly connected ‘only through the plurality of passages that fluidly couple the upper chamber and the lower chamber.’” ECF No. 56 at 12. The actual language of claim 5 is reproduced below:

The cooling system of claim 1, wherein *the cooling liquid is transferred* between the upper chamber and the lower chamber of the reservoir *only through the plurality of passages that fluidly couple the upper chamber and the lower chamber*.

’362 patent, claim 5 (emphasis added). The phrase “fluidly coupled” does not appear, and instead the dependent claim includes a limitation that the cooling liquid is transferred through passages that “fluidly couple” the upper and lower chambers. Claim 5 thus describes the claimed patent in operation, and does not undermine the California court’s ruling that, “for claim 1 of the ’362 patent, the chambers must only be connected by a plurality of substantially circular passages and nothing more.” ECF No. 55-13 at 10.

IV. CONCLUSION

The Court should construe “fluidly coupled” to mean “fluidly connected, and where a means of coupling is specified, that is the exclusive means of connection.”

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document is being filed electronically with the Court and is being served on all counsel of record who have consented to electronic service on April 12, 2022, in compliance with Local Rule CV-5.

/s/ Joseph W. Shaneyfelt

Joseph W. Shaneyfelt