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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 FACET TECHNOLOGIES, LLC,

Case No. 2:22-cv-01717-MCS (MARx)

11 Plaintiff,

**ORDER REGARDING CLAIM
CONSTRUCTION [94, 104]**

12 v.

13 LIFESCAN, INC.,

14 Defendant.
15
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18 In this action, Plaintiff Facet Technologies, LLC (“Facet”) alleges that Defendant
19 LifeScan, Inc. (“LifeScan”) infringes U.S. Patent No. 8,840,635 (the “’635 Patent”).
20 See Complaint, ECF No. 1; Answer, ECF No. 42; “FAC,” ECF No. 93. Facet and
21 LifeScan are both in the blood glucose monitoring business. FAC at ¶¶ 2–3. The ’635
22 Patent relates to lancing devices used to obtain blood samples for medical testing
23 purposes. The parties have filed a Joint Claim Construction and Prehearing Statement
24 (“JCCPS”). ECF No. 85. The parties have also filed their opening claim construction
25 briefs and responsive claim construction briefs. See ECF No. 94 (Facet’s Opening Brief
26 (“FOB”)); ECF No. 104 (LifeScan’s Corrected Opening Brief (“LSOB”)); ECF No. 115
27 (Facet’s Responsive Brief (“FRB”)); ECF No. 112 (LifeScan’s Responsive Brief
28 (“LSRB”).

1 The Court held a Markman hearing on January 9, 2023. The disputed claim terms
2 are construed in this Order.

3 **I. BACKGROUND**

4 The '635 Patent relates to improved lancets and protective sterility caps for
5 covering the sharp tip of the lancet. '635 Patent at 1:17–19 and 1:23–26. Management
6 of certain medical conditions, such as diabetes, may require frequent blood sugar testing.
7 A lancet may be used to obtain a blood sample. *Id.* at 1:23–26. “Lancets typically
8 comprise a sharp metal tip in the form of a needle or blade. The needle or blade is
9 typically embedded in a plastic body that has a size and shape configured for releasable
10 engagement with the receiver or lancet carrier of a lancing device.” *Id.* at 1:43–47. “A
11 lancet is typically propelled by [a] drive mechanism from a retracted position shielded
12 within [a] housing to an extended position wherein a sharp tip portion of the lancet
13 projects from the housing to prick [a] subject’s skin at a desired lancing site.” *Id.* at
14 1:31–35. A used lancet can then be removed and discarded. *Id.* “The sharp tip of the
15 lancet is commonly embedded in a removable plastic cap to maintain sterility and
16 prevent inadvertent sticks prior to use. The endcap may be replaceable onto the lancet
17 after use to re-cover the sharp lancet tip for safety and hygienic purposes.” *Id.* at 1:47–
18 52. Claim 1 of the '635 Patent is representative and discloses:

- 19 1. A protective sterility cap for a lancet, said sterility cap comprising
20 a primary sheath for initial embedment of a sharp lancing tip of an unused
21 lancet therein,
22 *a secondary sheath for receiving* the sharp lancing tip of a used lancet,
23 and
24 *a gripping handle portion extending between* the primary sheath and the
25 secondary sheath, with the primary sheath attached at a first end of
26 the gripping handle portion and the secondary sheath attached at a
27 second end of the gripping handle portion when the protective
28 sterility cap is removed from the lancet.

1 '635 Patent, Claim 1 (emphasis added to show two disputed terms).

2 **II. Legal Standards**

3 **A. Claim Construction Principles**

4 Claim construction is the process of determining the meaning and scope of the
5 patent claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir.
6 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). It is a matter for the court. *Teva Pharms.*
7 *USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 331 (2015).

8 “[T]he words of a claim are generally given their ordinary and customary
9 meaning,” which is “the meaning that the term would have to a person of ordinary skill
10 in the art in question at the time of the invention, i.e., as of the effective filing date of
11 the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir.
12 2005) (internal citations and quotations omitted). “In some cases, the ordinary meaning
13 of claim language as understood by a person of skill in the art may be readily apparent
14 even to lay judges, and claim construction in such cases involves little more than the
15 application of the widely accepted meaning of commonly understood words.” *Id.* at
16 1314. “In such circumstances, general purpose dictionaries may be helpful. In many
17 cases that give rise to litigation, however, determining the ordinary and customary
18 meaning of the claim requires examination of terms that have a particular meaning in a
19 field of art.” *Id.*

20 “Because the meaning of a claim term as understood by persons of skill in the art
21 is often not immediately apparent, and because patentees frequently use terms
22 idiosyncratically, the court looks to ‘those sources available to the public that show
23 what a person of skill in the art would have understood disputed claim language to
24 mean.’” *Id.* (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381
25 F.3d 1111, 1116 (Fed. Cir. 2004)). “Those sources include ‘the words of the claims
26 themselves, the remainder of the specification, the prosecution history, and extrinsic
27 evidence concerning relevant scientific principles, the meaning of technical terms, and
28 the state of the art.’” *Id.*

1 Claim construction “begins and ends” with the words of the claims. *Renishaw*
2 *PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998). “Quite apart
3 from the written description and the prosecution history, the claims themselves provide
4 substantial guidance as to the meaning of particular claim terms.” *Phillips*, 415 F.3d at
5 1314. “[T]he context in which a term is used in the asserted claim can be highly
6 instructive.” *Id.* In addition to the words of the claim(s) being construed, “[o]ther claims
7 of the patent in question, both asserted and unasserted, can also be valuable sources of
8 enlightenment as to the meaning of a claim term. Because claim terms are normally
9 used consistently throughout the patent, the usage of a term in one claim can often
10 illuminate the meaning of the same term in other claims.” *Id.* (citations omitted).
11 “Differences among claims can also be a useful guide in understanding the meaning of
12 particular claim terms.” *Id.* “For example, the presence of a dependent claim that adds
13 a particular limitation gives rise to a presumption that the limitation in question is not
14 present in the independent claim.” *Id.* at 1314-5. However, “[c]laim differentiation is a
15 guide, not a rigid rule. If a claim will bear only one interpretation, similarity will have
16 to be tolerated.” *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1538 (Fed. Cir. 1991)
17 (*quoting Autogiro Co. of Am. v. United States*, 384 F.2d 391, 404 (Ct. Cl. 1967)).

18 “[C]laims must be construed so as to be consistent with the specification, of
19 which they are a part.” *Merck & Co. v. Teva Pharms. USA, Inc.*, 347 F.3d 1367, 1371
20 (Fed. Cir. 2003). “[T]he person of ordinary skill in the art is deemed to read the claim
21 term not only in the context of the particular claim in which the disputed term appears,
22 but in the context of the entire patent, including the specification.” *Phillips*, 415 F.3d at
23 1313. “[T]he specification ‘is always highly relevant to the claim construction analysis.
24 Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’”
25 *Id.* at 1315 (*quoting Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.
26 Cir. 1996)).

27 “[T]he specification may reveal a special definition given to a claim term by the
28 patentee that differs from the meaning it would otherwise possess. In such cases, the

1 inventor's lexicography governs." *Phillips*, 415 F.3d at 1316. To be a lexicographer,
2 the inventor must "clearly express an intent to redefine the term." *Thorner v. Sony*
3 *Computer Entertainment America, LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). "In
4 other cases, the specification may reveal an intentional disclaimer, or disavowal, of
5 claim scope by the inventor. In that instance as well, the inventor has dictated the correct
6 claim scope, and the inventor's intention, as expressed in the specification, is regarded
7 as dispositive." *Phillips*, 415 F.3d at 1316. The inventor must demonstrate intent by
8 "representing a clear disavowal of claim scope" in the specification. *Thorner*, 669 F.3d
9 at 1366.

10 Despite the importance of a specification, limitations of the described
11 embodiments of the invention must not be read into the claims. The Federal Circuit
12 "expressly rejected the contention that if a patent describes only a single embodiment,
13 the claims of the patent must be construed as being limited to that embodiment." *Phillips*
14 at 1323. Conversely, "an interpretation [which excludes a preferred embodiment] is
15 rarely, if ever, correct and would require highly persuasive evidentiary support."
16 *Vitronics*, 90 F.3d at 1583. Overall, limitations from the specification should not be read
17 into claims. *Thorner*, 669 F.3d at 1366–67.

18 The prosecution history is also relevant intrinsic evidence. "[T]he prosecution
19 history represents an ongoing negotiation between the PTO and the applicant, rather
20 than the final product of that negotiation" and for this reason "often lacks the clarity of
21 the specification." *Phillips*, 415 F.3d at 1317. However, it can nonetheless "often inform
22 the meaning of the claim language by demonstrating how the inventor understood the
23 invention and whether the inventor limited the invention in the course of prosecution,
24 making the claim scope narrower than it would otherwise be." *Id.*

25 "Although [the Federal Circuit has] emphasized the importance of intrinsic
26 evidence in claim construction, [it has] also authorized district courts to rely on extrinsic
27 evidence, which 'consists of all evidence external to the patent and prosecution history,
28 including expert and inventor testimony, dictionaries, and learned treatises.'" *Id.*

1 (quoting *Markman*, 52 F.3d at 980). The use of “technical words or phrases not
 2 commonly understood” may give rise to a factual dispute, the determination of which
 3 will precede the ultimate construction. *Teva*, 574 U.S. at 326.

4 **B. Indefiniteness**

5 A patent’s specification must conclude “with one or more claims particularly
 6 pointing out and distinctly claiming the subject matter which the inventor or a joint
 7 inventor regards as the invention.” 35 U.S.C. § 112(b); *see also* 35 U.S.C. § 112 ¶ 2
 8 (2006). In order to meet this “definiteness” requirement, “a patent’s claims, viewed in
 9 light of the specification and prosecution history, [must] inform those skilled in the art
 10 about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig*
 11 *Instruments, Inc.* (“*Nautilus I*”), 572 U.S. 898, 910 (2014). The Supreme Court in
 12 *Nautilus I* emphasized that patents must be precise enough to afford clear notice of what
 13 is claimed, thereby “appris[ing] the public of what is still open to them,” while
 14 recognizing that absolute precision is unobtainable given “the inherent limitations of
 15 language.” *Id.* at 899, 910 (quoting *Markman*, 517 U.S. at 373).

16 General claim construction principles apply to indefiniteness challenges, but the
 17 burdens are slightly different. *See Enzo Biochem, Inc. v. Applera Corp.*, 599 F.3d 1325,
 18 1332 (Fed. Cir. 2010) (“In the face of an allegation of indefiniteness, general principles
 19 of claim construction apply”) (internal quotations and citations omitted). While courts
 20 construing claim language sit in relative equipoise, a patent is “presumed valid under
 21 35 U.S.C. § 282.” *Biosig Instruments, Inc. v. Nautilus, Inc.* (“*Nautilus II*”), 783 F.3d
 22 1374, 1377 (Fed. Cir. 2015). “[C]onsistent with that principle, a fact finder is instructed
 23 to evaluate . . . whether an invalidity defense has been proved by clear and convincing
 24 evidence.” *Id.* (quoting *Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 111 (2011))
 25 (emphasis added, brackets removed); *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1345 (Fed.
 26 Cir. 2007) (“Because a patent is presumed to be valid, the evidentiary burden . . . is one
 27 of clear and convincing evidence.”).

28 **III. Claim Construction**

A. Agreed Upon Claim Terms

The parties have agreed to the following construction:

Term	Agreed Construction
“attached at a[n] . . . end of the gripping handle portion” (Claims 1 and 14)	Plain and ordinary meaning.

Exhibit A to JCCPS (ECF No. 85-1). The agreed construction is accepted and binding. *See MyMail, Ltd. v. Am. Online, Inc.*, 476 F.3d 1372, 1377–78 (Fed. Cir. 2007) (rejecting appellate challenge to agreed claim construction).

B. Disputed Claim Terms

1. “a secondary sheath for receiving” (Claims 1 and 14).

Facet’s Proposed Construction	LifeScan’s Proposed Construction
Plain and ordinary meaning. To the extent the Court elects to state the meaning explicitly, it should do so in context, as follows: “a cover separate from the primary sheath, the cover being configured to encase the sharp lancing tip of a used lancet”	Indefinite. Alternatively, this claim should be construed as: “a hollow receptacle with an interior chamber, the hollow receptacle being configured to encase a used lancet”

a. *Summary of Parties’ Arguments*

The parties dispute whether the “secondary sheath for receiving” must be a hollow receptacle into which the tip of a used lancet is placed or whether this claim element may also be satisfied if a used lancet tip is embedded into a solid portion of the lancet’s protective sterility cap.

Facet argues the specification defines “a secondary sheath for receiving” in relation to “a primary sheath,” “a gripping handle portion,” and the functions of the primary and secondary sheaths. FOB at 11; *see also* ’635 Patent, Claims 1 and 14. As disclosed in the specification, the sharp tip of a used lancet is received by the secondary sheath. ’635 Patent at 6:1–9. Facet argues the way in which the secondary sheath receives the used lancet tip depends on the structure of the secondary sheath. FOB at 12. In some embodiments, the specification describes the secondary sheath generally as

1 a “protective cover” or “for placement over” a used lancet tip. *See id.* at 1:66–2:8 and
2 2:30–35. In one embodiment, the secondary sheath has a cup with “a hollow interior
3 chamber” into which the lancet tip is received. *Id.* at 6:35–40. In another embodiment,
4 the specification discloses embedding the sharp tip into the secondary sheath. *Id.* at
5 7:12–14 and 8:24–27. Thus, the secondary sheath may receive a used lancet tip by either
6 embedding or enclosing the tip. Facet argues that LifeScan’s construction is too narrow
7 because it is limited to the “hollow interior chamber” embodiment and excludes the
8 embedding embodiment. FOB at 13. Facet further argues that the dictionary definition
9 for “receive” does not warrant such a limited construction. *Id.* at 14.

10 LifeScan argues the secondary sheath must be limited to a hollow receptable
11 because the claims disclose distinct “primary” and “secondary” sheaths with different
12 functions. LSOB at 8. The primary sheath is for “initial embedment” and the secondary
13 sheath is “for receiving.”⁶³⁵ Patent, Claim 1. LifeScan further argues that the
14 descriptions of the function of the secondary sheath in the specification are consistent
15 only with the “hollow receptacle” construction. *See id.* at 2:30–35 (describing
16 secondary sheath “for placement over” the sharp lancing tip); 6:1–5 (explaining that
17 the secondary sheath is “for receiving and protecting the sharp tip of a lancet in its final
18 or used state”); and 6:35–40 (explaining that “[t]he secondary shroud or sheath portion
19 514 comprises a cup having an outer rim and a hollow interior chamber” and “after use
20 of the lancet, the lancet tip is received within the hollow interior chamber of the cup”).

21 LifeScan also argues that Facet disavowed an embedding function of the
22 secondary sheath during prosecution of the ’635 Patent. LSOB at 9. For instance, in
23 response to a non-final office action, Facet distinguished the Morita reference by
24 arguing the “lancet body 46 is not disclosed or suggested to provide for receiving the
25 sharp lancing tip of a used lancet.” “File History,” ECF No. 96-2 at 15. LifeScan argues
26 that Facet’s statement is a disavowal because the lancet body of the Morita reference
27 can be used to embed the tip of a used lancet. LSOB at 9. In response to a final office
28 action, Facet distinguished the Gorbahn reference by arguing it “discloses a sheath 4 for
protecting the hypodermic needle 3 prior to its use, but does not disclose or suggest

1 protecting the needle after its use.” File History at 7. LifeScan argues that Facet’s
2 statements admit the “sheath 4” is a hollow receptacle. LSOB at 10. LifeScan also points
3 to two other Facet patents in the same family as the ’635 Patent as supporting the
4 “hollow receptacle” construction. LSOB at 11–12. LifeScan argues the teachings of
5 these patents are relevant to claim construction here because they claim aspects of the
6 commercial embodiment of the ’635 Patent. *Id.* Finally, LifeScan argues dictionary
7 definitions for “sheath” and “embed” support its construction. *Id.* at 12–13.

8 LifeScan argues, in the alternative, that the term “sheath” would be indefinite if
9 construed to have a broader scope than supported by the specification. LSOB at 14. In
10 other words, per LifeScan, the specification “consistently and exclusively discloses the
11 secondary sheath as a hollow cavity.” *Id.* Therefore, adopting Facet’s more expansive
12 construction would render the claim indefinite. *Id.* LifeScan points to *Graver Tank &*
13 *Mfg. Co. v. Linde Air Products Co.*, 226 U.S. 271, 277–78 (1949) as “particularly
14 instructive” regarding indefiniteness here.

15 In response, Facet reiterates that LifeScan’s construction is too narrow because
16 the specification describes two embodiments (the “hollow cup” embodiment and the
17 “flat panels” embodiment) for the secondary sheath. FRB at 8; *see also* ’635 Patent at
18 8:24–27. The fact that the claims use the term “embedment” with respect to the primary
19 sheath and “receiving” with respect to the secondary sheath does not indicate that the
20 secondary sheath cannot embed a used lancet tip. FRB at 8–9. Rather, the broader term
21 “receiving” indicates that “the secondary sheath may come in a variety of forms.” *Id.* at
22 9. With respect to LifeScan’s prosecution history disclaimer arguments, Facet argues
23 that it did not disclaim an embedding function of the secondary sheath. *Id.* at 10. Rather,
24 Facet argued that each of the identified references entirely lacked a secondary sheath
25 for protecting a needle *after* use. *Id.* Facet asks the Court to reject LifeScan’s arguments
26 regarding the commercial embodiments disclosed in the related ’159 and ’664 Patents
27 because the intrinsic evidence does not limit “secondary sheath” to a “hollow
28 receptacle.” *Id.* at 11–12. Facet also offers a dictionary definition for “receive” and
expert testimony in support of its construction. *Id.* at 13. Finally, Facet argues its

1 construction would not render “secondary sheath” indefinite because the specification
2 teaches that the secondary sheath can “cover the sharp lancet tip by embedding or
3 enclosing” it. ’635 Patent at 8:24–27. Facet also argues that LifeScan does not apply the
4 correct legal test for indefiniteness. FRB at 14.

5 LifeScan responds that Facet relies on an unclaimed embodiment to support
6 inclusion of the “embedding” function. Specifically, LifeScan argues the “flat panels”
7 embodiment “dissuades [] use as a secondary sheath” and is not related to the
8 “receiving” language used in the claims. LSRB at 9. LifeScan also expands on its
9 prosecution history disclaimer argument with respect to Morita. LSRB at 10. Facet
10 amended Claim 1 to include the language “a secondary sheath for receiving the sharp
11 lancing tip of a used lancet” to overcome Morita. *Id.* at 11. LifeScan argues Morita
12 discloses a lancet body including a flat surface which can be used to embed to the tip of
13 a used lancet. *Id.* at 12. Accordingly, the amended claim language should not be
14 construed to include the embedding function. *Id.* LifeScan also reiterates its arguments
15 regarding the related Facet patents and dictionary definitions. *Id.* at 13–14.

16 *b. Analysis*

17 First, the Court addresses whether the claims and written description of the ’635
18 Patent limit the “secondary sheath” to a “hollow receptacle.” The language of claims 1
19 and 14 provide no basis to limit construction to a “hollow receptacle.” Claims 1 and 14
20 use the terms “initial embedment” in relation to the primary sheath and “receiving” in
21 relation to the secondary sheath, respectively. ’635 Patent, Claims 1 and 14. Thus, there
22 is a presumption that the terms “for initial embedment” and “for receiving” are not
23 synonyms. *See Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 93 F.3d 1572, 1579
24 (Fed. Cir. 1996). However, “receiving” could mean something entirely different than
25 embedding, as LifeScan contends, or it could encompass embedding and other
26 functions, as Facet contends. In either scenario, “receiving” and “initial embedment”
27 would have different meanings. Therefore, the Court turns to the remainder of the
28 intrinsic evidence to resolve this dispute. *See id.* (turning to prosecution history to

1 construe claim term).

2 The best guide to determine the meaning of “receiving” within the context of the
3 ’635 Patent is the specification. *Phillips*, 415 F.3d at 1315 (*quoting Vitronics*, 90 F.3d
4 at 1582). To summarize the invention and embodiments, the written description of the
5 ’635 Patent explains that “[a]fter use, the endcap may be replaced to cover the sharp
6 lancet tip by embedding or enclosing the lancet tip into the secondary shroud or sheath
7 portion of the endcap.” ’635 Patent at 8:24–27. The specification describes two
8 embodiments, one directed to enclosing (the “hollow cup” embodiment) and one
9 directed to embedding (the “flat panels” embodiment) in detail. *See id.* at 6:35–40 and
10 7:4–19, respectively. The “receiving” language appears in connection with each of these
11 embodiments. *Id.* Accordingly, LifeScan’s construction is too narrow because it
12 eliminates the “flat panels” embodiment.¹ *See Vitronics*, 90 F.3d at 1583.

13 Next, the Court considers LifeScan’s prosecution history disclaimer arguments.
14 The portions of the prosecution history LifeScan identified do not show any disclaimer
15 of the “flat panels” embodiment. Instead, as Facet argues, the cited statements
16 distinguish the prior art by pointing out that a separate, secondary sheath receives a used
17 lancet tip. With respect to the Gorbahn reference, Applicant successfully argued:

18 In fact, Gorbahn does not disclose or suggest any type of sheath for
19 containing the needle 3 after its use. Indeed, Gorbahn discloses sheath 4
20 for protecting the hypodermic needle 3 prior to its use, but does not
disclose or suggest protecting the needle after its use.

21 File History at 7. With respect to the Morita reference, Applicant amended Claim 1 to
22 include the limitations of dependent claim 3 (cancelled) and successfully argued:

23 “[T]he lancet body 46 is not disclosed or suggested to provide for receiving
24 the sharp lancing tip of a used lancet. Morita instead discloses that the

25 ¹ LifeScan includes one line in its response brief arguing that proper construction should not include the
26 “flat panels” embodiment because the Patent Office rejected claims directed to this embodiment during
27 prosecution. LSRB at 9. However, the cited excerpts of the prosecution history show only that claim 3 was
28 cancelled. *See* ECF No. 113-4 at 16. The limitations of claim 3 were incorporated into independent claim
1. *See* LSRB at 11. Thus, LifeScan does not present evidence that claims 1 and 14 should be read to exclude
the “flat panels” embodiment.

1 convex portion 86 and the lancet body 46 (comprising the concave portion
2 88) are provided for interengagement therebetween, which provides for
3 mounting the resin portion 82 (embedding the pricking member 44) to the
4 lancet member 40 (*see* Morita, col. 10, lines 6-14). In fact, if the Examiner
5 chooses to compare Morita to the presently claimed invention, the
6 Applicant points to the resin cover 82, which comprises non-slip member
124 that is grasped and pulled to expose the pricking member 44 (*see*
Morita, col. 8, lines 60-67, col. 9, lines 1-7). But, Morita does not disclose
or suggest that the resin cover 82 comprises any secondary sheath for
receiving the sharp lancing tip of a used lancet.”

7 File History at 15. Therefore, LifeScan has not established any disclaimer of claim
8 scope with respect to the “flat panels” embodiment.

9 Next, the Court turns to the related ’159 and ’664 Patents. The ’159 and ’635
10 Patents claim priority to a common provisional application. Additionally, the ’635
11 Patent is a divisional of U.S. Patent App. No. 13/293,409, which in turn is a divisional
12 of U.S. Patent App. No. 12/751,701 (the “’701 App”) (now abandoned). The ’159 Patent
13 is a continuation-in-part (“CIP”) of U.S. App. No. 12/641,684 (the “’684 App”) which
14 in turn is a CIP of the ’701 App.² The ’684 App issued as the ’664 Patent. Thus, the
15 patents are related, though the relationship is attenuated. More importantly, though, the
16 specification of the ’635 Patent explains what the term “secondary sheath for receiving”
17 means and describes the function of the secondary sheath in detail with respect to two
18 embodiments. Therefore, the Court need not and should not rely on this extrinsic
19 evidence in support of a construction that contradicts the teachings of the ’635 Patent.
20 LifeScan’s arguments with respect to the ’159 and ’664 Patents are not persuasive for
21 at least this reason.

22 Both parties also raise dictionary definitions in support of their respective
23 constructions. While district courts may consider such extrinsic evidence, the intrinsic
24 record takes precedence. *See Phillips*, 415 F.3d at 1317. For instance, Facet argues
25 “receive” means “to take or hold (a substance, commodity, or certain amount).” FRB at
26

27
28 ² The face of the ’159 Patent indicates that the ’684 App is a CIP of the ’701 App. The face of the ’664
Patent, which issued from the ’684 App does not indicate such a relationship.

13. LifeScan argues “embed” means “to fix or become fixed firmly and deeply in a surrounding solid mass and “sheath” means “any similar close-fitting case.” LSOB at 12–13. The Court does not find any of these general definitions particularly helpful in construing “secondary sheath for receiving” in the context of lancets and protective covers, as taught by the ’635 Patent. Instead, the Court finds the written description of the ’635 Patent adequately defines “secondary sheath for receiving” with respect to the two embodiments, discussed above, and the summary statement, “[a]fter use, the endcap may be replaced to cover the sharp lancet tip by embedding or enclosing the lancet tip into the secondary shroud or sheath portion of the endcap.” ’635 Patent at 8:24–27. Though the ’635 Patent does not explicitly define the term at issue, the above cited material expresses a clear understanding of the term “secondary sheath for receiving” that is slightly more specific than a general understanding of the individual terms. Accordingly, the Court construes the term “secondary sheath for receiving, as indicated below.

Finally, the Court addresses LifeScan’s indefiniteness argument. A party must prove indefiniteness by clear and convincing evidence. Here, LifeScan argues that a broad construction for “receiving” would render the claim term indefinite because the specification supports only the “hollow receptacle” embodiment. However, LifeScan is incorrect because, as discussed above, the specification also supports “receiving” by embedding a used lancet tip. The specification adequately supports the Court’s construction, provided below. Thus, the term is not indefinite. The *Graver Tank* decision is inapposite because the Court’s construction is consistent with and adequately supported by the written description.

In sum, the Court identifies no reason to limit “receiving” to the “hollow receptacle” construction LifeScan proposes. The intrinsic evidence establishes that the secondary sheath may enclose *or* embed the used lancet tip. Accordingly, the Court

construes “a secondary sheath for receiving the sharp lancing tip of a used lancet”³ as “a secondary sheath for covering the sharp lancing tip of a used lancet by embedding or enclosing the lancet tip.”

2. **“a gripping handle portion extending between”** (Claims 1 and 14)

Facet’s Proposed Construction	LifeScan’ Proposed Construction
Plain and ordinary meaning. To the extent the Court elects to state the meaning explicitly, it should do so in context, as follows: “a portion of the protective sterility cap occupying the distance between the primary sheath and the secondary sheath, and forming a gripping handle”	Indefinite. Alternatively, this claim should be construed as “a portion of the protective sterility cap positioned between the primary sheath and the secondary sheath and forming a handle that is gripped separately from the primary and secondary sheath”

a. Summary of Parties’ Arguments

The parties principally dispute (1) whether the term “gripping handle portion” is indefinite and (2) if not indefinite, whether the “gripping handle portion” must be gripped in a particular manner.⁴

Facet argues that the specification and claims define “gripping handle portion” relative to “primary sheath” and “secondary sheath.” FOB at 15; ’635 Patent at Claims 1 and 14 (teaching a “primary sheath attached at a first end of the gripping handle portion and the secondary sheath attached at a second end of the gripping handle portion”). The specification also explains that the purpose of the gripping handle portion

³ Though the parties’ dispute the meaning of the term “secondary sheath for receiving,” the Court provides the entire claim limitation for clarity. Consistent with the Court’s construction, “for receiving” means “for covering by embedding or enclosing.”

⁴ The parties also raise arguments about the “extending between” language. Facet argues LifeScan’s construction suggests the handle may be positioned at some point in between the sheaths but need not span the full distance separating them. FOB at 17. LifeScan argues Facet’s construction improperly suggests the handle portion extends over or into the sheaths. LSRB at 15 and 23–28. However, upon review of the briefs, it does not appear that either party intends for their construction to operate as the other party argues. Further, the Court finds both proposed constructions include unnecessary language and would not assist the trier of fact.

1 is to “assist[] in removal of the cap for use of the lancet and/or for replacement of the
2 cap onto a used lancet for disposal.” ’635 Patent at 1:66-2-3. The gripping handle
3 portion makes the lancet easier and safer to use. *Id.* at 6:9-11, 6:61-7:3, and 7:26-33.
4 Facet also argues that LifeScan’s introduction of the language “gripped separately
5 from” introduces an improper and unsupported functional limitation. *Id.* at 18.

6 LifeScan argues that “gripping handle portion” is a “coined term” with no plain
7 and ordinary meaning to a POSITA. LSOB at 15-16. Therefore, because “gripping
8 handle portion” is not defined in the specification, LifeScan argues the term is
9 indefinite. *Id.* at 16.⁵ LifeScan argues the term “gripping handle portion” appears in the
10 specification only once, the specification does not individually define “gripping,”
11 “handle,” or “portion,” and that, at most, the figures depict only “three possible” forms
12 of the handle which “do not sufficiently inform a POSITA of the *boundaries* of the
13 claim term.” *Id.* at 17 (emphasis in original). LifeScan also argues that the written
14 description fails to explain which features make the “gripping handle portion” more
15 “intuitive for users to grab” than prior art devices.⁶ *Id.* at 18. LifeScan argues that the
16 claim term is indefinite because the specification identifies advantages offered by a
17 “gripping handle portion” but does not explain how the gripping handle offers those
18 advantages. *Id.* at 19. LifeScan further argues adopting a functional construction for
19 “gripping handle portion” would render the term indefinite because the claim scope
20 would depend on the subjective view of the user. *Id.* at 19-20.

21 LifeScan argues, in the alternative, that if the term “gripping handle portion” is
22 not indefinite, then it must be construed to require independent gripping of the gripping
23 handle portion versus the primary and secondary sheaths. *Id.* at 21. In support, LifeScan
24 argues the gripping handle must provide “an intuitive modality for users to grab when
25

26 ⁵ LifeScan cites to *Cap. Sec. Sys., Inc. v. NCR Corp.*, 725 F. App’x 952, 959 (Fed. Cir. 2018) (finding
27 term “transactional operator” indefinite due to lack of commonly-accepted definition and unclear scope
28 in view of intrinsic evidence). LSOB at 16.

⁶ The ’635 Patent does not claim an “intuitive” or “improved” gripping handle portion.

1 handling a lancet” and that the only way to provide such a modality is to require
2 independent gripping of the handle and sheaths. ’635 Patent at 6:61–7:3 and 7:26–33.
3 Per LifeScan, any other gripping configuration would increase the risk of accidental
4 needle sticks. *Id.* at 21–22.

5 In response, Facet argues LifeScan applies an improper indefiniteness standard.
6 FRB at 15. Facet further argues that the specification provides adequate support for the
7 term “gripping handle portion.” *Id.* at 16 (citing ’635 Patent at 1:66–2:8, 2:21–25, 2:30–
8 35, 6:1–11, 6:52–54, 6:61–7:3, 7:6–12, 7:20–33, 8:17–22, Figs. 5A–5E, 6A–6D, and
9 7). Facet also argues that the term “gripping handle portion” is structural not functional.
10 *Id.* at 17. Therefore, LifeScan’s arguments regarding functionality and indefiniteness
11 are inapplicable here. *Id.* Finally, Facet argues that LifeScan’s proposed alternative
12 construction is improper because nothing in the specification requires a user to grip the
13 “gripping handle portion” in a particular way. *Id.* at 18. In fact, importing functional
14 limitations into a structural claim term is not proper. *Id.* (citing *Schwing GmbH v.*
15 *Putzmeister Aktiengesellschaft*, 305 F.3d 1318, 1324 (Fed. Cir. 2002)).

16 LifeScan reiterates the arguments from its opening brief and primarily argues the
17 term is indefinite because the specification does not explain “what structure(s) or
18 function(s) are needed to qualify as a “gripping handle portion.” LSRB at 16. In support
19 of its position that “gripping handle portions” were not known in the art, LifeScan
20 discusses several references having sheaths but, purportedly, not having “gripping
21 handle portions.” *Id.* at 19–20. In support of its alternative construction, LifeScan argues
22 the “separate gripping” requirement is consistent with other Facet patents. *Id.* at 21.

23 *b. Analysis*

24 The Court first addresses whether the term “gripping handle portion” is
25 indefinite. A “coined term” is a term the patentee makes up. *See Acacia Media Techs.*
26 *Corp v. New Destiny Internet Group*, 405 F. Supp 2.d 1127, 1134 (N.D. Cal. 2005). If
27 a patentee chooses to coin a term, the patentee must clearly define the term in the
28 specification or file history. *Id.* (citing *Vitronics Corp.*, 90 F.3d at 1582). Otherwise, the

1 term is indefinite. *Id.*

2 Here, the Court is not convinced that “gripping handle portion” is a coined term
3 absent any plain and ordinary meaning. “In some cases, the ordinary meaning of claim
4 language as understood by a person of skill in the art may be readily apparent even to
5 lay judges, and claim construction in such cases involves little more than the application
6 of the widely accepted meaning of commonly understood words.” *Phillips*, 415 F.3d at
7 1314. “In such circumstances, general purpose dictionaries may be helpful.” *Id.* General
8 purpose dictionaries provide that a “handle” is “a part that is designed especially to be
9 grasped by the hand”⁷ and “grip” means “to seize or hold firmly.”⁸ Portion, as indicated
10 by the claim language, “a sterility cap comprising . . . ,” merely indicates that the
11 gripping handle is a portion of the claimed sterility cap. ’635 Patent, Claims 1 and 14.
12 The Court does not make much of the modifier “gripping” and finds the term merely
13 restates the purpose of the handle. In other words, all handles are “gripping handles.”
14 The specification supports this interpretation. For instance, the specification refers to “a
15 handle or grip” interchangeably and later describes a “gripping portion of the handle.”
16 ’635 Patent at 1:66–2:3 and 7:15–19.

17 Further, the specification provides adequate support to inform a POSITA of the
18 meaning of “gripping handle portion.” ’635 Patent at 6:5–9 (describing “a ‘handle’ or
19 extension arm portion 516 extending between the primary and secondary shrouds for
20 assisting in removal of the cap from the lancet, and/or for replacement of the cap onto
21 a used lancet for disposal”); 6:49–54 (“The handle or extension arm portion 516 defines
22 a forked or split configuration having first and second arms 520 transversely spaced
23 apart from one another, with an open center portion therebetween. This forked
24 arrangement provides the handle with a greater width, allowing the user to more easily
25 twist the endcap during removal from the lancet.”); 6:61–66 (“The provision of the
26

27 ⁷ <https://www.merriam-webster.com/dictionary/handle>

28 ⁸ <https://www.merriam-webster.com/dictionary/grip>

1 elongate handle portion 516 allows the user to grab the lancet further from the needle
2 during decapping and disposal, providing a larger safety margin from the needle tip,
3 protecting the patient and other persons handling the lancet from accidental needle
4 sticks.”); and 7:15–19 (“Optionally, the disc having tapered flat panels serves as a
5 gripping portion of the handle and/or as a display surface only, and not as a shroud or
6 sheath for the needle, in which case the needle is replaced into the first or primary
7 shroud or sheath portion after use.”) The specification also labels and depicts a handle
8 portion in FIGS. 5A–5E, 6A–6C, and 7 (516 (handle portion), 616 (a “handle” or
9 extension arm portion), 720 (second arms of the handle portion)).

10 In light of the commonly understood meaning of the word “handle,” the above
11 cited portions of the specification, and the clear language of claims 1 and 14, the Court
12 finds construction of the term “gripping handle portion” unnecessary. The Court also
13 does not find any support for the “separate gripping” requirement LifeScan proposes.
14 First, a handle is a structural element. Therefore, it is improper to import unclaimed
15 functional requirements, i.e. requirements that the handle be used for a certain purpose
16 or in a certain way. *See Schwing GmbH v. Putzmeister Aktiengesellschaft*, 305 F.3d
17 1318, 1324 (Fed. Cir. 2002). Further, the specification does not require that the handle
18 be gripped in any particular manner. The Court finds LifeScan’s arguments regarding
19 needle sticks unpersuasive.

20 Accordingly, for the foregoing reasons, the Court concludes that no construction
21 is necessary for “gripping handle portion.”

22 3. “lancet thickness” (Claims 6, 8, 14, and 18)

Facet’s Proposed Construction	LifeScan’s Proposed Construction
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Plain and ordinary meaning To the extent the Court elects to state the meaning explicitly, it should do so in context, as follows: “the height (i.e. depth) of the lancet body”	“the longest axis through the thickest part of a lancet”
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a. Summary of Parties’ Arguments

The parties agree that “lancet thickness” is a dimension of the lancet body but dispute whether “thickness” refers to a “longer” or “shorter” diameter of an oval-shape. The term “lancet thickness” appears in claims 6, 8, 14, and 18. Claim 6 teaches:

6. The protective sterility cap of claim 1, in combination with a lancet having a lancet body defining a ***lancet thickness***, and a sharp lancet tip initially embedded in the primary sheath, wherein the gripping handle portion defines a lateral span of at least 1.5 times the lancet thickness.

’635 Patent, Claim 6 (emphasis added to show disputed term).

Facet argues both claims 6 and 14 disclose “a lancet body having a lancet thickness.” FOB at 19; ’635 Patent, Claims 6 and 14. Thus, “lancet thickness” is clearly a dimension of the lancet body. *Id.* FIG. 1B depicts a labeled diagram of the lancet body with thickness (T):

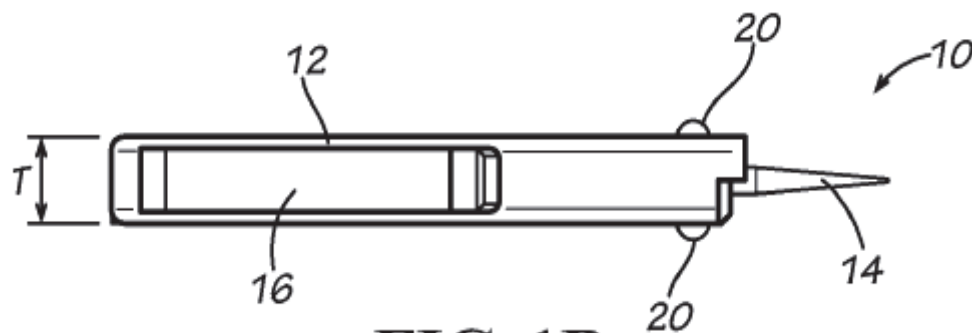


FIG. 1B

’635 Patent, FIG. 1B. The figure comports with the ordinary understanding of the term thickness, so the term does not require construction. *Id.* at 19–20. Facet argues LifeScan’s construction is improper because it focuses on the lancet as a whole instead

1 of the lancet body.⁹ *Id.* at 20.

2 LifeScan argues that its construction is correct because, “for a lancet body having
3 an elliptic-shaped base, the lancet thickness must be the longest axis or major diameter,
4 of the elliptic-shaped base.” LOB at 24. LifeScan argues FIG. 1B only shows a
5 rectangular lancet body, so it would be unclear how to determine the thickness of an
6 elliptical lancet body without an affirmative construction. *Id.* LifeScan argues that the
7 specification refers to the “diameter” of an oval-shaped lancet body but does not explain
8 which diameter since oval shapes have a longer and a shorter diameter. *Id.* at 25. Per
9 LifeScan, a proper construction needs to clarify that, in the context of an oval-shaped
10 lancet body, the “thickness” is the longer diameter. *Id.* at 25.

11 Facet responds that LifeScan’s argument regarding an oval-shaped lancet body
12 is not applicable here because the accused product includes an oval-shaped lancet but
13 the ’635 Patent is not directed to an oval-shaped lancet body. FRB at 21. Thus, this is
14 an infringement issue, not a claim construction issue. Facet further argues that even if
15 the lancet body is oval-shaped, the “thickness” must be the shorter diameter. *See* ’635
16 Patent at 7:45–49.

17 LifeScan reiterates the arguments from its opening brief and responds that the
18 portion of the specification Facet cites is not applicable because it is directed to a non-
19 elected invention. LRB at 29. LifeScan also argues that using the shorter diameter as
20 the thickness would frustrate one purpose of the invention because it would not make
21 the sterility cap easier to handle. *Id.* at 29–30. LifeScan also refers to measurements on
22 an accused product that Facet included in the original complaint but did not include in
23 the first amended complaint. *Id.*

24 *b. Analysis*

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27
28 ⁹ LifeScan agrees that “lancet thickness” is a dimension of the lancet body. LRB at 28.

The parties agree that “lancet thickness” is a dimension¹⁰ of the lancet body however they disagree regarding whether the term refers to a “shorter” or “longer” dimension if the lancet body is oval-shaped. LifeScan argues that an oval-shape features two dimensions, a longer diameter and a shorter diameter. Because the ’635 Patent does not specify which dimension is the “lancet thickness,” LifeScan argues the term is not clear and requires construction. However, LifeScan neglects to mention that a rectangle also features two dimensions. FIGS. 1B and 1C of the ’635 Patent clarify that here, the shorter dimension (labeled T) is the “lancet thickness” and the longer dimension (labeled W) is the width:

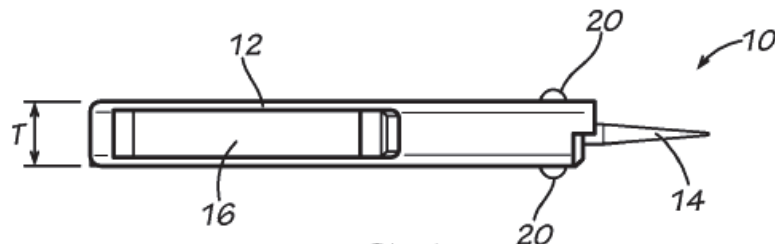


FIG. 1B

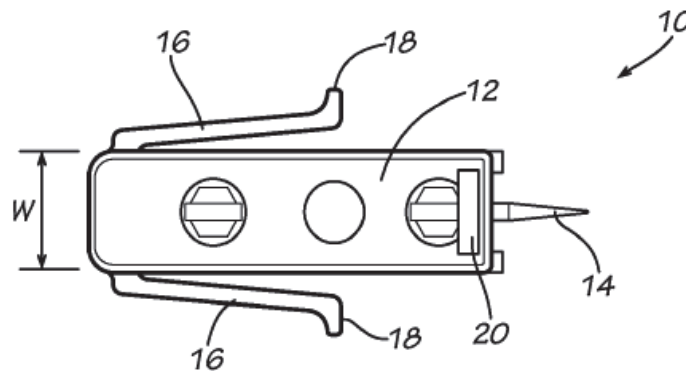


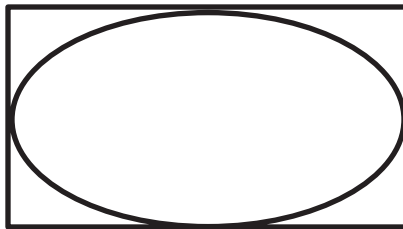
FIG. 1C

’635 Patent, FIGS. 1B and 1C. This understanding is consistent with the specification, which provides “[t]he lancet body has a thickness T and a width W, with the width W

¹⁰ According to Collins English Dictionary (7th ed. 2005), “thickness” is “the dimension through an object, as opposed to length or width.”

1 preferably being at least about 1.5 times, and more preferably at least about twice the
2 thickness T, thereby reducing potential twisting and misalignment of the lancet within
3 the receiver of the lancing device during installation” and “the lancet body is optionally
4 generally flattened, having a width that is substantially greater than its thickness, in
5 example forms having an aspect ratio of the width relative to the thickness of at least
6 about 3:2.” ’635 Patent at 3:51–56 and 7:45–49.

7 Consistent with the specification, a POSITA would understand that if the lancet
8 body were oval-shaped, the “lancet thickness” would be the shorter dimension of the
9 oval. A POSITA would also understand, based on the discussion of “lancet thickness”
10 with respect to rectangle, how to determine the “lancet thickness” of an oval-shaped
11 lancet body. For example, a POSITA may compare an oval and rectangle as show below
12 to determine the relationship between the dimensions:



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17 Thus, the Court finds that the term “lancet thickness” would be sufficiently
18 understandable to a POSITA based on the claims, disclosure, and ordinary meaning of
19 “thickness.” The term does not require construction. Further, the parties’ proposed
20 constructions are needlessly confusing and inaccurate. For instance, Facet’s proposed
21 construction introduces the additional terms height and depth, which are not helpful
22 because the “thickness” dimension is clearly labeled and described. LifeScan’s
23 construction introduces the language “the longest axis through the thickest part” which
24 appears to contradict the specification.

25 Moreover, the Court finds LifeScan’s arguments regarding non-elected
26 inventions unpersuasive. The applicant did withdraw original claims 10–18, which were
27 directed to a lancet system. However, the claims at issue are directed to “a lancet body
28

defining a lancet thickness.” The portion of the specification that LifeScan contends discusses a non-elected invention discusses a lancet body having a lancet thickness and is presumably relevant to claim construction. LifeScan cites *Uship Intellectual Properties, LLC v. U.S.*, 714 F. 3d 1311, 1315 (Fed. Cir. 2013) but *Uship* stands for the general principle that “a patent applicant’s response to a restriction requirement may be used to interpret patent claim terms or as a source of disclaimer.” LifeScan has not convinced the Court that the cited portions of the specification pertain only to a non-elected invention and *Uship* does not stand for the principle that a Court should disregard entire portions of the specification based on a response to a restriction/election requirement.

Accordingly, for the reasons stated, the Court declines to construe “lancet thickness.”

4. **“lateral span”** (Claims 6 and 14)

Facet’s Proposed Construction	LifeScan’s Proposed Construction
Plain and ordinary meaning. To the extent the Court elects to state that meaning explicitly, it should do so in context, as follows: “the width of the gripping handle portion as measured from one side of the gripping handle portion to the other side of the gripping handle portion”	“the longest measurement from one side of the gripping handle portion to the other side of the gripping handle portion”

a. *Summary of Parties’ Arguments*

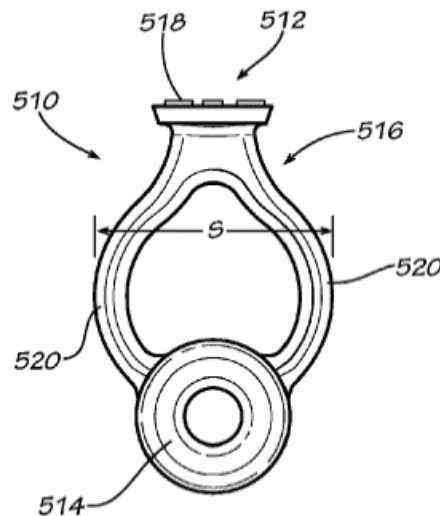
The parties dispute whether “lateral span” must specifically be the “longest measurement from one side to the other” or “a width.” The term “lateral span” appears in claims 6 and 14. Claim 6 teaches:

6. The protective sterility cap of claim 1, in combination with a lancet having a lancet body defining a lancet thickness, and a sharp lancet tip

1 initially embedded in the primary sheath, wherein the gripping handle
2 portion defines a *lateral span* of at least 1.5 times the lancet thickness.
3 '635 Patent, Claim 6 (emphasis added to show disputed term).

4 Facet argues the claims define “lateral span” relative to the “gripping handle
5 portion.” FOB at 22. Facet further argues that the specification shows “the lateral or
6 transverse span S” of the gripping handle in FIG. 5D and that the term “lateral span,”
7 as shown and described, is consistent with ordinary usage. *Id.* at 22–23. Facet argues,
8 alternatively, that if the term requires construction, lateral span should be construed to
9 mean “width” because the '635 Patent uses the terms “lateral span” and “width”
10 interchangeably. *Id.* at 23.

11 LifeScan argues the term “lateral span” appears only in the '635 Patent claims
12 with the exception of the following disclosure: “[i]n example forms, the lateral or
13 transverse span S of the forked handle portion 516 is at least about 1.5 times, and more
14 preferably at least about 2 times the diameter or thickness of the lancet body.” LSOB at
15 22–23; '635 Patent at 6:54–58. FIG. 5D also shows the labeled lateral span (S):



26 '635 Patent, FIG. 5D. LifeScan argues Facet’s construction is improper because it is
27 inconsistent with FIG. 5D and because it would allow measurement of the distance
28

between any two points of the gripping handle portion. LSOB at 23.

Facet responds that LifeScan's proposed construction is needlessly confusing and would include "the diagonal length of the gripping handle portion," which is inconsistent with FIG. 5D. FRB at 19. LifeScan responds that Facet's construction is inadequate because it is imprecise, reiterating that "width" could mean any measurement between any two points on the gripping handle portion. LSRB at 30.

b. Analysis

The parties agree that FIG. 5D accurately depicts the claimed "lateral span." LifeScan is concerned that Facet's construction would include narrower horizontal measurements separating any portions of the gripping handle. Facet is concerned that LifeScan's construction would allow a diagonal measurement. The plain meaning of the claim language precludes both of these readings. Lateral means "side-to-side."¹¹ Span clearly refers to a maximum distance.¹² Accordingly, "lateral span" can only mean the maximum side-to-side (or horizontal) distance separating the gripping handle portion. A POSITA would understand that this is the meaning of "lateral span." Reference to FIG. 5D would immediately confirm that understanding. See '635 Patent at FIG. 5D (depicting a horizontal line extending the maximum distance between one side of the gripping handle and the other side of the gripping handle). This term is not indefinite and does not require any construction. The parties' constructions are needlessly confusing and, worse, inaccurate.

5. **"length"** (Claims 8 and 18)

Facet's Proposed Construction	LifeScan's Proposed Construction
Plain and ordinary meaning	"the longest measurement from one end of the gripping handle portion to the other end of the gripping handle"

¹¹ <https://www.merriam-webster.com/dictionary/lateral>

¹² <https://www.merriam-webster.com/dictionary/span>

portion”

a. Summary of Parties’ Arguments

The parties agree that “length refers to an end-to-end measurement of the gripping handle portion but disagree regarding the language “the longest measurement.” The term “length” appears in claims 8 and 18. Claim 8 teaches:

8. The protective sterility cap of claim 6, wherein the gripping handle portion defines a *length* at least equal to the lancet thickness.

’635 Patent, Claim 8 (emphasis added to show disputed term).

Facet argues the claims define “length” relative to the “gripping handle portion.” FOB at 23–24. Facet further argues that claims 1 and 14 disclose a “gripping handle portion extending between the primary sheath and the secondary sheath” and specify that “the primary sheath [is] attached at a first end of the gripping handle portion and the secondary sheath [is] attached at a second end of the gripping handle portion.” ’635 Patent, Claims 1 and 14. Therefore, the “length” is the end-to-end distance that the gripping handle portion extends between the primary and secondary sheaths and construction is unnecessary. FOB at 24. Facet further argues that FIG. 5C depicts the length (L) in accordance with this understanding. *Id.*

LifeScan argues the term “length” appears only in the ’635 Patent claims with the exception of the following disclosure: “[i]n example forms, the length L of the handle portion is at least equal to the span S, and/or is greater than the depth D of the secondary shroud 514, and/or is greater than the diameter or thickness of the lancet body.” LSOB at 26; ’635 Patent at 6:58–61. FIG. 5C also shows the labeled length (L):

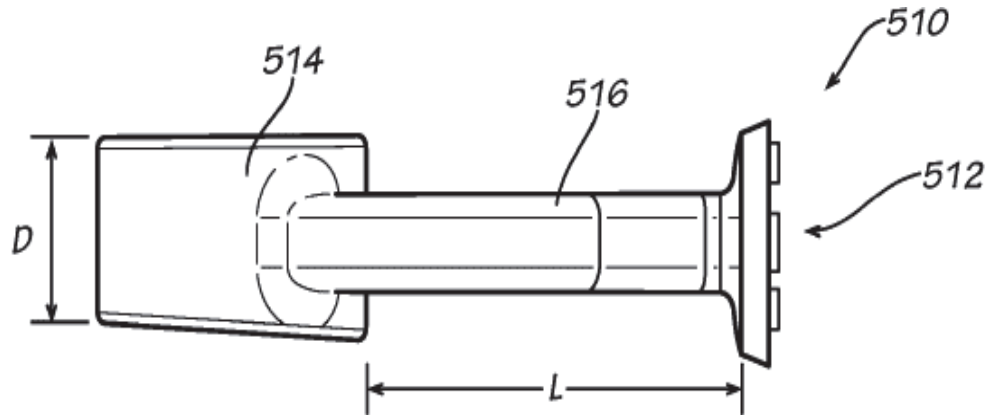


FIG. 5C

'635 Patent, FIG. 5C. LifeScan argues that, as shown by FIG. 5C, the length does not necessarily encompass the entire length of the structure between the primary and secondary sheaths, so plain and ordinary meaning should not apply. LSOB at 27–28.

Facet responds that construction of “length” should not be limited to the embodiment shown in FIG. 5C and that the specification does not provide a clear, alternative definition for “length” that would differ from the plain and ordinary meaning. FRB at 24–25. LifeScan responds that “Figure 5C illustrates length as *excluding* the portions of the arms curling towards and ultimately connection with the secondary sheath,” which is inconsistent with the plain and ordinary meaning of length. LSRB at 31. LifeScan further argues “length” is ambiguous because it is not clear whether it refers to the chord or the arc since the gripping handle portion is curved. *Id.*

b. Analysis

FIG. 5C accurately depicts the claimed “length.” It shows a straight line, labeled “L” spanning the distance between the primary sheath and the secondary sheath. A POSITA would understand that the appropriate definition of “length” here is a “dimensional measure of [a] three-dimensional [] object[.]”¹³ It is a “magnitude[] representing the “size” of an object.” *Id.* “Length is the size of a line segment.” Thus,

¹³ <https://www.britannica.com/science/length-area-and-volume>

as LifeScan puts it, “length” is a chord. Fig. 5C shows the “length” L as a line segment that terminates at each respective end of the gripping handle portion, where the primary and secondary sheaths begin. For instance, if the length “L” were labeled in FIG. 5A it would be depicted as shown below:

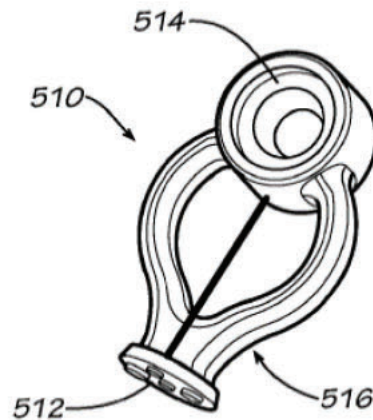


FIG. 5A

’635 Patent, FIG. 5A (annotated to show length “L”). “Length,” as shown and described, does not include the curling portions of the arms. The term “length” is not ambiguous or indefinite. LifeScan’s construction, which specifies that the length must be “the longest measurement” could actually suggest that the entire curvature is the length. This is not what a POSITA would understand “length” to mean and is not what the ’635 Patent shows, describes, and claims. Accordingly, the Court declines to construe the term “length.”

IV. CONCLUSION

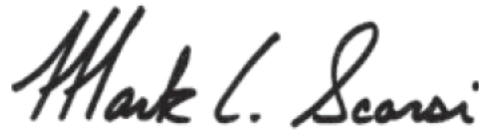
For the reasons stated above, the disputed claim terms are construed as follows:

Term	Court’s Construction
“a secondary sheath for receiving the sharp lancing tip of a used lancet”	“a secondary sheath for covering the sharp lancing tip of a used lancet by embedding or enclosing the lancet tip”
“a gripping handle portion extending between”	No construction necessary.

1	"lancet thickness"	No construction necessary.
2		
3	"lateral span"	No construction necessary.
4		
5	"length"	No construction necessary.
6		

7 **IT IS SO ORDERED.**

8
9 Dated: January 20, 2023



10 MARK C. SCARSI
11 UNITED STATES DISTRICT JUDGE
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