

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

WALTER KIDDE PORTABLE EQUIPMENT
INC.,

Plaintiff,

v.

FIRST ALERT, INC. and
BRK BRANDS, INC.,

Defendants.

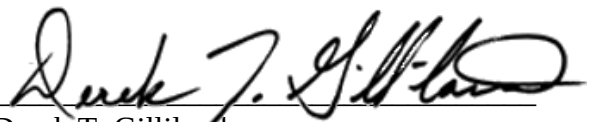
Civil Action No. 6:22-cv-566-ADA-DTG

JURY TRIAL DEMANDED

CLAIM CONSTRUCTION ORDER

Before the Court are the Parties' claim construction briefs: Defendant First Alert, Inc. and BRK Brands, Inc.'s Opening Claim Construction Brief (ECF No. 31), Plaintiff's Responsive Claim Construction Brief (ECF No. 38), Defendants' Reply Claim Construction Brief (ECF No. 45), Plaintiffs' Sur-Reply (ECF No. 50), and the Joint Claim Construction Statement (ECF No. 52). On February 12, 2023, the Court provided the parties with its Preliminary Claim Constructions, and on February 13, 2023, the Court held a *Markman* hearing. The Court issues this Order to memorialize the Court's final claim construction rulings for the parties, and to inform the parties that the Court plans to issue a more-detailed Order explaining its analysis in due course. The deadline to file any objections to the undersigned's claim construction rulings (pursuant to Federal Rules of Civil Procedure 59 and 72) do not need to be filed until 14 days after that more fulsome Order is entered upon the docket.

SIGNED this 15th day of February, 2023.


Derek T. Gilliland
United States Magistrate Judge

I. AGREED TERMS

Proposed By	Claim Term(s)	Asserted Claim(s)	Agreed Construction
Defendants	“automatically”	’158 Patent, cl. 1	Plain and Ordinary Meaning
Defendants	“manually”	’158 Patent, cl. 1	Plain and Ordinary Meaning
Defendants	“a selected threshold”	’128 Patent, cl. 5	Plain and Ordinary Meaning
Defendants	“lack of power”	’828 Patent, cl. 2	Plain and Ordinary Meaning
Defendants	“loss of power”	’828 Patent, cl. 3	Plain and Ordinary Meaning

II. DISPUTED TERMS

Term No.	Claim Term(s)	Asserted Claim(s)	Kidde’s Proposed Construction	Defendants’ Proposed Construction	Court’s Final Construction
1	“activate” /”activation”	’158 Patent, cl. 1, 12; ’445 Patent, cl. 8	Plain and Ordinary Meaning	“[supply] / [supplying of] power to the electronics”	Plain and Ordinary Meaning.
2	“deactivate”/ “deactivation”/ “deactivated”	’158 Patent, cl. 1, 12; ’445 Patent, cl. 8	Plain and Ordinary Meaning	“[removing] / [removing of] power to the electronics” / “power has been removed from the electronics”	Plain and Ordinary Meaning
3	“reactivated”	’158 Patent, cl. 1	Plain and Ordinary Meaning	“power is reapplied to the electronics”	Plain and Ordinary Meaning

4	“the second portion cannot be reactivated”	’158 Patent, cl. 1	Plain and Ordinary Meaning	“power cannot be reapplied to the electronics”	Plain and Ordinary Meaning
5	“permanent deactivation” / “permanently deactivated”	’158 Patent, cl. 12; ’445 patent, cl. 8	Plain and Ordinary Meaning	“power cannot be reapplied to the electronics”	Plain and Ordinary Meaning
6	“activation mechanism”	’158 Patent, cl. 12; ’445 Patent, cl. 8	Plain and Ordinary Meaning, not subject to §112, ¶6. If subject to §112, ¶6: <u>Function</u> : activate the second portion <u>Structure</u> : a tab and/or a switch	Subject to §112, ¶6. <u>Function</u> : activate the second portion <u>Structure</u> : the mechanism described at Figures 3-7 and 9, and 4:61-6:36, and 6:59-65 of the ’158 Patent (with structure to include, at least a three position switch)	Defendant has not overcome the presumption against means-plus-function, and the Court applies the Plain and Ordinary Meaning as understood by a Person of Ordinary Skill in the Art in light of the specification.
7	“permanent deactivation mechanism”	’158 Patent, cl. 12; ’445 Patent, cl. 8	Plain and Ordinary Meaning, not subject to §112, ¶6. If subject to §112, ¶6: <u>Function</u> : permit permanent deactivation of the second portion after the second	Subject to §112, ¶6. <u>Function</u> : permanently deactivate the second portion <u>Structure</u> : the mechanism described at Figures 4, 5, 6, 8, and 10, and 6:36-7:11 of the ’158 Patent (with	Defendant has not overcome the presumption against means-plus-function, and the Court applies the Plain and Ordinary Meaning as understood by a Person of Ordinary Skill in the Art in light of the specification.

			portion has been activated <u>Structure:</u> a tab and/or a switch	structure to include, at least a three position switch)	
8	“reattachment prevention mechanism”	’158 Patent, cl. 12; ’445 Patent, cl. 8	Plain and Ordinary Meaning, not subject to §112, ¶6. If subject to §112, ¶6: <u>Function:</u> prevent reattachment of the first and second portions once the second portion is permanently deactivated <u>Structure:</u> a physical obstruction to the connection system, such as a tab	Subject to §112, ¶6. <u>Function:</u> prevent reattachment of the first and second portions <u>Structure:</u> the mechanism described at Figures 5-10 and 6:36-7:5 of the ’158 Patent (with structure to include at least a three position switch)	Defendant has not overcome the presumption against means-plus-function, and the Court applies the Plain and Ordinary Meaning as understood by a Person of Ordinary Skill in the Art in light of the specification
9	“activate/deactivate system”	’158 Patent, cl. 1	Plain and Ordinary Meaning, not subject to §112, ¶6.	Subject to §112, ¶6. <u>Function:</u> both: (a) automatically activate the second	Defendant has not overcome the presumption against means-plus-function, and the Court applies the Plain and Ordinary Meaning as

			If subject to §112, ¶6: <u>Function:</u> automatically activate the second portion upon initial attachment of the second portion to the first portion, and enable the user to manually deactivate the second portion <u>Structure:</u> a tab, switch, slider, and protrusion working in concert	portion upon initial attachment of the second portion to the first portion, and (b) enable the user to manually deactivate the second portion <u>Structure:</u> the mechanism described at Figures 3-10 and 4:58-7:11 of the '158 Patent (with structure to include, at least a three position switch)	understood by a Person of Ordinary Skill in the Art in light of the specification
10	“cannot be reattached”	'158 Patent, cl. 1	Plain and Ordinary Meaning	“is mechanically incapable of reattachment”	Plain and Ordinary Meaning within the mechanical arts, which includes (but is not limited to) Defendants' proposed definition.
11	“prevent reattachment”	'158 Patent, cl. 12; '445 Patent, cl. 8	Plain and Ordinary Meaning	“make mechanically incapable of reattachment”	Plain and Ordinary Meaning within the mechanical arts, which includes (but is not limited to) Defendants' proposed definition.
12	“configured for one-way movement”	'158 Patent, cl. 5	Plain and Ordinary Meaning	“mechanically incapable of moving	Plain and Ordinary Meaning.

				in more than one direction”	
13	“initial activation”	’128 Patent, cl. 1	Plain and Ordinary Meaning	“first application of power”	Plain and Ordinary Meaning.
14	“recording the occurrence of the monitored event and a time stamp”	’128 Patent, cl. 1	Plain and Ordinary Meaning	“recording the occurrence of the monitored event together with a time stamp” “storing an indication of the monitored event along with a time stamp”	Plain and Ordinary Meaning, which includes “along with.”
15	“interrogating the microprocessor”	’128 Patent, cl. 1	Plain and Ordinary Meaning	“accessing the microprocessor using a nearby, external device and without communicating to any external component or network”	Plain and Ordinary Meaning.
16	“detect a first trouble condition representative of an end-of-life condition of the sensor”	’828 Patent, cl. 1	Plain and Ordinary Meaning	“determine that the sensor has actually reached the end of its life”	Plain and Ordinary Meaning.
17	“remote agent”	’828 Patent, cl. 1	Plain and Ordinary Meaning	“entity, person, or device external to and remote from the carbon monoxide detector”	Plain and Ordinary Meaning, which includes but is not limited to “entity, person, or device external to and remote from the carbon monoxide detector.”

