

**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

PLAINTIFF'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

This case concerns competitor Defendants’ infringement of four Kidde patents relating to proprietary smoke and carbon monoxide (“CO”) alarm technology. U.S. Pat. Nos. 7,123,158 (the “’158 Patent”) and 7,525,445 (the “’445 Patent”) share a specification and relate to mechanical improvements to smoke and CO alarms that deter user error and misuse. U.S. Pat. No. 8,791,828 (the “’828 Patent”) relates to CO detectors with distinct signals representing “trouble” conditions, including an end-of-life condition, so that each condition can be handled efficiently. U.S. Pat. No. 7,403,128 (the “’128 Patent”) relates to detectors that record historical data for later retrieval.

Kidde’s patented inventions are claimed using straightforward, plain-English language. Defendants seek to rewrite them. The disputed claim terms recite words and phrases like “manually,” “automatically,” “activate,” “deactivate,” “reattach,” “lack of power,” and “loss of power.” These common parlance terms are easily understood by both a person of ordinary skill in the art (“POSITA”) and a lay jury. Indeed, many of these disputed claim terms are used by Defendants’ manuals to instruct users on infringing operation.

Yet Defendants, under the guise of offering their own “plain meanings,” propose constructions that move away from the claims’ commonly used language and, if adopted, would change the claim scope. Indeed, *nearly all* of Defendants’ proposed constructions seek to import exemplary structure from embodiments in the specifications into the claims without coming close to meeting the strict legal requirements for doing so. Defendants propose, for example, that the term “manually” actually means “manipulating a three-position switch” when this is clearly just an example of how something can be done manually. Likewise they transform “activate,” “deactivate,” and “reactivate,” into lengthy phrases relating to “power” and whether such “power” has been supplied, removed, or cannot be reapplied. Defendants also rely on conclusory extrinsic evidence—namely, an opinion from their retained technical expert—to insist that the Court

construe various non-“means” terms as if they were means-plus-function terms. But in reaching their conclusion, Defendants and their expert incorrectly apply the law and the facts.

The claim terms recited by the asserted patents are the best indicators of their meaning. No construction is required. Defendants’ attempt to recast them should be rejected.¹

II. THE QUALIFICATIONS OF A POSITA

For the purpose of this brief, Kidde adopts Defendants’ contention as to the qualifications of a POSITA, except that as to the ’158 and ’445 Patents, Kidde contends that the POSITA must also have familiarity with the application of mechanics to sensor based systems. *See* Ex. 1 at § III.

III. THE ’158 AND ’445 PATENTS

These patents recognize that user error can lead to incorrect installations of the battery in a safety alarm or of the alarm itself, preventing the alarm from functioning properly. ’158, 1:27–34, 1:44–50. To minimize user error, these patents describe sealing a long-life battery inside the alarm without user access. *Id.*, 1:66–2:8. The patent further describes alarms with features permitting them to be (1) activated upon installation; and (2) manually deactivated, which drains the alarm battery and prevents the alarm from being reattached to its mounting bracket. When the user first attaches the alarm to a mounting bracket, an internal switch moves from a pre-activated to an activated position, and the alarm is activated. *Id.*, 4:54–56, 5:26–33. Later, the user can detach the alarm from the bracket and manually move a slider, moving the internal switch to the deactivated position and draining the battery. *Id.*, 4:56–58. When deactivated, a reattachment prevention mechanism prevents the alarm from being reattached to the bracket. *Id.*, 6:66–7:5.

¹ Kidde disagrees with Defendants’ grouping of terms. For the Court’s ease of reference, however, Kidde addresses the terms in the same order as Defendants presented them.

A. The Asserted '158 and '445 Claims

Kidde asserts infringement of claims 1–7 and 12–15 of the '158 patent and claims 8–11 of the '445 patent. The disputed terms appear in claims 1, 5, and 12 of the '158 patent and claim 8 of the '445 patent. The disputed terms in the '158 patent claims are reproduced below to provide context for the plain-English terms that Defendants seek to construe.

Claim 1

An electronic device, comprising:
 a first portion;
 a second portion configured for attachment in the first portion, the second portion including electronics to operate the device and at least one battery for powering the electronics;
 and
 cooperating features on the first portion and the second portion that automatically **activate** the second portion upon initial attachment of the second portion to the first portion;
 wherein *the cooperating features comprise an activate/deactivate system, the activate/deactivate system being configured to automatically activate the second portion upon initial attachment of the second portion to the first portion;*
 wherein *the activate/deactivate system is configured to enable the user to manually deactivate the second portion; and*
 wherein, when *deactivated, the second portion cannot be reactivated* and the second portion *cannot be reattached* to the first portion.

Claim 5

The electronic device of claim 1, wherein
 the **activate/deactivate system** comprises a slider configured for *one-way movement* and having three positions.

Claim 12

An electronic device, comprising:
 a first portion;
 a second portion configured for attachment to the first portion, the second portion including electronics to operate the device and at least one battery for powering the electronics;
 an **activation mechanism** to **activate** the second portion; and
 a **permanent deactivation mechanism** to permit **permanent deactivation** of the second portion after the second portion has been **activated**, wherein the **permanent deactivation mechanism** is accessible when the first and second portions are detached;
 and

a *reattachment prevention mechanism to prevent reattachment* of the first and second portions once the second portion is *permanently deactivated*.

B. The “Activation”- and “Deactivation”-Related Terms (Group 1)

1. The “Activation”-Related Terms

Term	Defendants’ Proposed Construction	Kidde’s Proposed Construction
“activate”	“Supplying power to the electronics”	Plain and ordinary meaning
“activation”		

“Activate” and “activation” are plain English terms that need no construction. The patents’ specification does not establish, nor do Defendants assert, that the patentees acted as their own lexicographer for these terms. Defendants also do not assert any disclaimer of claim scope. Thus, it is undisputed that none of the legal exceptions to plain meaning are present here. *E.g., Apple Inc. v. MPH Techs. Oy*, 28 F.4th 254, 259 (Fed. Cir. 2022).

The patents make clear that these terms are being used according to their plain meaning. For example (and as noted in Defendants’ brief), the specification describes the activation process as making a device “function and operate as intended by the design of the device.” ’158, 3:40–42.

Defendants’ construction rephrasing “activate” would not help a jury to understand or apply this term. *Adv. Aerodynamics, LLC v. Spin Master Ltd.*, No. 6:21-cv-00002-ADA, 2022 U.S. Dist. LEXIS 88280, at *11 (W.D. Tex. Mar. 15, 2022) (“Merely rephrasing or paraphrasing [an ordinary English word] will not help a jury understand or apply this term, and risks distorting its plain meaning.”). Indeed, as shown by the intrinsic record (and Defendants’ own product documentation), “activate” and “activation” (and for the next group of terms, “deactivate” and “deactivation”) are commonly used terminology in smoke and CO alarms. *E.g.*, Ex. 2 at Abstract

(referring to activation).² Defendants’ construction would replace those terms with a made-up definition, and then confusingly ask the jury to assess infringement and/or invalidity by applying these made-up definitions and ignoring the straightforward terms. *Funai Electric Co., Ltd. v. Daewoo Elecs. Corp.*, 616 F.3d 1357, 1366 (Fed. Cir. 2010) (“The criterion is whether the explanation aids the court and the jury in understanding the term as it is used in the claimed invention.”).

Defendants’ construction also distorts the term’s meaning. Defendants convert “activate” into a requirement that “power is supplied to the electronics.” But the patents *do not equate* supplying power to the device with activating the device, and instead separately claim supplying power to the electronics. ’445, cl. 1 (“powering electronics to operate the electronic device with at least one battery included in a second portion”). Transforming “activate” into a requirement that “power is supplied to the electronics” conflicts with the applicants’ deliberate decision to refer to “activation” as something that differs in meaning from “powering electronics.” *Bancorp Servs., L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1373 (Fed. Cir. 2004) (“The use of both terms in close proximity in the same claim gives rise to an inference that a different meaning should be assigned to each.”).

Finally, Defendants assert that their construction is correct because “the only way the device is able to function and operate as intended is if power is supplied to the electronics.” Dkt. No. 31 at 11. But this logic is flawed. The device is electronic and of course needs power to operate as intended, just as it needs a smoke sensor and other parts. But that the device includes a

² Defendants identified Ex. 2 (U.S. Patent No. 5,578,996 to Watson et al.) as “correspond[ing] to a prior art First Alert product called the SA10.” Dkt. No. 26 at 9. It is also cited in multiple office actions in the file history, and thus, any references to it throughout this brief are to be considered intrinsic evidence. See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed. Cir. 2005) (explaining the intrinsic record “includes the prior art cited during the examination of the patent.”).

power supply and electronics does not mean that the meaning of the plain-English term “activate”—which is separately recited in the claim—must necessarily be tied to those electronics or to “power.” Defendants’ proposal is a flawed attempt to transform and narrow the scope that should be rejected.

2. The “Deactivation”-Related Terms

Claim Term	Defendants’ Proposed Construction	Kidde’s Proposed Construction
“deactivation,” “deactivate,” “deactivated”	“removing power to the electronics”	Plain and ordinary meaning.
“reactivated”	“reapplying power to the electronics”	
“the second portion cannot be reactivated”	“power cannot be reapplied to the electronics”	
“permanent deactivation” and “permanently deactivated”	“power cannot be reapplied to the electronics”	

Defendants also seek to construe several plain English terms related to “deactivation” and “reactivat[ion].” These terms also need no construction beyond their plain meaning. They are simple terms—deactivate, reactivate, permanent deactivation—whose meanings are best described by the terms themselves. Defendants do not contend that lexicography or disclaimer apply, but seek to deviate from that known plain meaning nonetheless. Defendants’ proposal (1) introduces confusion to these known English terms; (2) disregards plain language distinctions between the terms; and (3) conflicts with the intrinsic record. Defendants have not overcome the “heavy presumption . . . that [these] terms should be construed according to their plain-and-ordinary meaning.” *Ioengine, LLC v. Roku, Inc.*, No. 6:21-CV-01296-ADA, 2022 WL 10757811, at * 7-8 (W.D. Tex. Oct. 17, 2022) (finding plain meaning applies where, *inter alia*, there was no lexicography or disclaimer and intrinsic evidence did not support proposed construction).

First, Defendants replace the plain claim language with litigation-induced constructions

that shift focus to the “supply,” “reappl[ication]” and “removal” of “power”—substantive terms not in the asserted claims. As with the “Activation” terms, Defendants’ proposal would require determining the metes and bounds of, *e.g.*, “removing power from the electronics” instead of straightforward words like “deactivate” that are already used in smoke alarm and CO alarms themselves. *See* ’158, Fig. 10 (illustrating exemplary product labeling, which cautions the user not to “deactivate,” describes the effects of being “deactivated,” and instructs a user how “to deactivate”); *see also* III.B.1, *supra* (identifying evidence of “deactivate” being commonly used in product literature, including in Defendants’ products at the relevant time).

Second, there are distinctions amongst each of the claim terms and phrases due to the rules of grammar, which Defendants’ constructions disregard. For example, within the four “Deactivation” groupings, Defendants construe seven terms without regard for the part of speech (*e.g.*, construing the noun (deactivation) and the verb (deactivate) the same) and without regard for the tense (*e.g.*, construing present tense verb (deactivate) and past tense verb (deactivated) the same). The result of Defendants’ proposals is a jumbled grammatical mess that cannot be correct and is more confusing than applying the plain meaning of these phrases—as the patents, products, and prior art themselves do.

Third, Defendants’ construction conflicts with the intrinsic record. The specification refers to “deactivated” as a state differing from other alarm states, such as “activated” and “pre-activated.” *Id.*, 5:1–15. In describing this state, the patent says that, “[w]hen deactivateded, the device is no longer functional.” *Id.*, 3:46–47(emphasis added). The specification further describes how a user can use a switch to “deactivate” the alarm, which results in “deactivation”:

The user then removes the alarm portion from the mounting bracket and slides a switch on the alarm to deactivate the alarm. Deactivation of the alarm removes power from the alarm circuitry ***and drains remaining power from the batteries.*** ***Further, when deactivated, the alarm portion is mechanically prevented from***

being mounted back on the mounting bracket.

Id., 2:18-22 (emphasis added). And the claims are consistent with this explanation in the patents concerning “deactivation.” Claim 1 of the ’158 patent states that “when deactivated, the second portion cannot be reactivated and the second portion cannot be reattached to the first portion.” *Id.*, cl. 1. Claim 12 simply uses the plain English phrase “permanent deactivation.” *Id.*, cl. 12.

Defendants’ proposed construction for “deactivation” (“removing power from the electronics”) inexplicably cherry-picks a portion of the language from the preferred embodiment above concerning “deactivation,” reads it into the claim, and ignores, *e.g.*, that the remaining power is drained as part of “deactivation” in that very embodiment.

Defendants’ injection of “power” limitations into the claims and distortions of the plain meaning should be rejected, and the terms should be afforded their plain and ordinary meaning.

C. The Alleged Means-Plus Function Terms (Group 2)

Claim Term	Defendants’ Proposed Construction	Kidde’s Proposed Construction
“activation mechanism”	<u>Function</u> : both: (a) automatically activate the second 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)	Plain and ordinary meaning.
“reattachment prevention mechanism”	<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)	
“activate/deactivate system”	<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 structure to include, at least a three position switch)	
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Defendants have not shown that these terms require means-plus-function construction. As is the case here, when the word “means” is not used, there is a rebuttable presumption that the term is not governed by § 112, ¶ 6. *TEK Global v. Sealant Sys. Int’l, Inc.*, 920 F.3d 777, 785 (Fed. Cir. 2019) (citing *Williamson v. Citrix Online LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015)). The presumption against mean-plus-function can be rebutted only by showing that the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function. *Id.* This determination requires analyzing the claim term in view of the relevant intrinsic and extrinsic evidence from the perspective of a POSITA. *Id.* Indeed, courts have found “mechanisms” similar to those at issue here to *not* be means-plus-function limitations. *Uni-Sys, LLC v. U.S. Tennis Ass’n Nat’l Tennis Ctr. Inc.*, No. 17-CV-147(KAM)(CLP), 2020 WL 3960841, at *2 (E.D.N.Y. July 13, 2020) (collecting cases finding detent mechanism, locking mechanism, movement mechanism, and fastening mechanism not to be means-plus-function limitations). Defendants failed to apply any presumption, did not consider whether the disputed terms connote sufficient structure, and did not consider the requisite evidence. Defendants’ position must be rejected.

First, Defendants’ analysis did not apply the appropriate rebuttable presumption. Defendants’ primary evidence for their proposal is a declaration submitted by their expert, Dr. Pratt. But Dr. Pratt did not apply the required rebuttable presumption in forming his opinions. Ex. 4, 27:4–29:1. Instead, he was told by Defendants’ counsel that “mechanism” was a nonce term. *Id.*, 29:24–30:24 (testifying that Defendants’ counsel told Dr. Pratt that “mechanism” was a nonce term, which he confirmed by “look[ing] . . . in the MPEP” and other online sources). Defendants’

outcome-oriented approach undermines their analysis. *Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1008 (Fed. Cir. 2018) (vacating ruling because district court “legally erred by not giving effect to the presumption against the application of § 112, ¶ 6”).

Second, Defendants did not undertake the investigation necessary to determine if the Group 2 terms are subject to § 112, ¶ 6. Despite acknowledging that the analysis “begins by determining whether the words of a claim convey structure to a POSA,” Dkt. No. 31 at 13, Defendants did not:

Q. Are you providing opinions, sir, as to whether the phrase “**activation mechanism**,” “**deactivation mechanism**,” or “**reattachment prevention mechanism**” connotes structure?

A. I don’t believe I am, no.

Q. Are you providing an opinion as to whether the phrase “activate,” “deactivate system” [activate/deactivate system] connotes structure?

A. No.

Ex. 4, 42:9–19 (emphasis added). Dr. Pratt instead opined on whether he could discern the “metes and bounds” of the claim language—a test that is legally irrelevant here. *Id.*, 40:20–41:2.

Third, Dr. Pratt’s opinions are not relevant because he did not rely upon the patent specifications, the file histories, or the state of relevant arts at the filing of the patents. *Id.*, 20:5–16 (testifying that he “read the specification,” but “only relied on the claim[s]” in reaching his opinions), 17:15–25 (same), 14:5–7 (did not review the file history), 24:24–25:3 (did not investigate the state of the art), 14:12–15 (same). Thus, Dr. Pratt’s conclusions are legally irrelevant. *TEK Global*, 920 F.3d at 785 (“To determine whether the claim limitation at issue connotes sufficiently definite structure to a person of ordinary skill in the art, we look first to intrinsic evidence, and then, if necessary, to the extrinsic evidence.”).

Under the appropriate framework, none of the Group 2 terms are subject to § 112, ¶ 6.

1. “Activation Mechanism” and “Permanent Deactivation Mechanism” (’158 Patent, cl. 12; ’445 Patent, cl. 8)

“Activation mechanism” and “permanent deactivation mechanism” are not subject to

§ 112, ¶ 6 because both terms connote sufficient structure to a POSITA. Both experts agree that “mechanism” is a mechanical device with multiple components working together to move with defined relative motion. Ex. 1, ¶ 64; Ex. 5, 22-23.³ Thus, unlike “means” or other similar black box terms, “mechanism” *in this art* already connotes structure. *Id.*, ¶¶ 62-64; Ex. 4, 36:7–9 (admitting that “mechanism” connotes structure in certain contexts).

The modifiers “activation” and “deactivation” provide structural significance to place these terms beyond 35 U.S.C. § 112, ¶ 6. *See Mass. Inst. of Tech. v. Abacus Software*, 462 F.3d 1344, 1354 (Fed. Cir. 2006). An “activation mechanism” refers to a specific class of structures such as switches and tabs, and therefore does not trigger § 112, ¶ 6. Ex. 1, ¶¶ 66-69.⁴ Indeed, both Kidde and BRK refer to types of activation mechanisms in documentation describing products released in the relevant time frame. For example, a data sheet describing Kidde’s Model 0910 refers to a “self-activation mechanism.” Ex. 6. Similarly, a patent in the file history describing First Alert’s SA10 product refers to an “activation switch mechanism.” Ex. 2, Abstract. The specification and file history similarly use “activation” synonymously with known actuators, such as switches and tabs. Ex. 1, ¶ 68 (citing ’158, 5:35–43 and other statements in the intrinsic record). And during prosecution, the examiner’s understanding was the same. *Id.*, ¶¶ 43-60, 69 (analyzing file history). Consistent with this understanding, “deactivation mechanism” also refers to the same known structures such as switches and tabs. *Id.*, ¶ 70; Ex. 2, 3:61-65 (referring to “deactivation switch”).

³ In another case, Dr. Pratt previously testified that a “mechanism” is “a mechanical device where you have more than one component working in concert with one another.” Ex. 5 at 23-24. His testimony in this case is inexplicably to the contrary, for example stating that, when used in the context of the mechanical arts, “mechanism” would be understood to include chemical reactions. *Compare* Ex. 5, 23–24, *with* Ex. 4, 33:18–35:24.

⁴ Dr. Pratt “did not perform any assessment on what the phrase ‘activation’ or ‘deactivation’ means in the context of these patents,” and thus Dr. Reinholtz’s opinions on this critical issue are un rebutted. Ex. 4, 68:20–25.

Thus, activation mechanism and deactivation mechanism each connote a class of structures and do not invoke § 112, ¶ 6. *Dyfan, LLC v. Target Corp.*, 28 F.4th 1360, 1366 (Fed. Cir. 2022) (“Claim terms ‘need not connote a single, specific structure,’ and may instead ‘describe a class of structures’ and still recite ‘sufficiently definite structure’ to not invoke § 112 ¶ 6.”).

2. “Reattachment Prevention Mechanism” (’158 Pat., cl. 12; ’445 Pat., cl. 8)

“Reattachment prevention mechanism” is not subject to § 112, ¶ 6 because it connotes sufficient structure to a POSITA. As with the prior terms, both experts agree that “mechanism” is a mechanical device with multiple components working together to move with defined relative motion, and that a mechanism connotes structure in this art. *See* III.C.1, *supra*.

Additionally, the modifier “reattachment prevention” provides additional structure. An “attachment mechanism” refers to a class of structures with components that work together to create defined relative motion to create a coupling between the mounting bracket and the alarm. Ex. 1, ¶¶ 72-78. One component (*e.g.*, the mounting bracket) includes grooves and the other component (*e.g.*, the alarm) includes ridges. *Id.* The grooves and ridges work together to create a defined relative motion, in this case the twisting motion associated with attaching the alarm to the mounting bracket. *Id.* In the context of smoke alarms, the structures used to create this type of mechanical connection are well known. *Id.*; *see also* ’158, 4:14–17. Preventing attachment (through the use of a “reattachment prevention mechanism”) therefore refers to a structure that interferes with the usage of the grooves and ridges in these well-known connection systems. Ex. 1, ¶ 77 (“[B]ecause attachment mechanisms are well known in the art, a POSITA would understand how those mechanisms work, and what physical structures could be used to prevent those attachment mechanisms from working, thereby preventing reattachment”); *VDPP LLC v. Vizio, Inc.*, No. 2021-2040, 2022 WL 885771, at *3 (Fed. Cir. Mar. 25, 2022) (reversing

application of 112(6) to the terms “processor” and “storage” where the patent identifies both as “well-known” and thus, connoting structure to a skilled artisan).

3. “Activate/Deactivate System” (’158 Pat., cl. 1)

As with “activation mechanism” and “deactivation mechanism,” Defendants ignore that “activate” (and “deactivate”) in “activate/deactivate” refers to known classes of structure in the relevant arts, such as switches and tabs. *See supra*, III.C.1. Thus, § 112, ¶ 6 does not apply.

In addition, “activate/deactivate system” is not subject to § 112, ¶ 6 because the surrounding claim language connotes structure. *Dyfan*, 28 F.4th at 1370. In *Dyfan*, the Federal Circuit considered the word “system” and concluded that § 112, ¶ 6 did not apply because the surrounding claim language identified structural aspects of the claimed “system”:

The “system” limitation in the wherein clause derives antecedent basis from the “system” recited in the preamble, which the claim states comprises “a building” having “a first broadcast short-range communications unit,” “a second broadcast short-range communications unit,” “code” executed by at least one “mobile device,” and “at least one server.” ’292 patent col. 39 l. 61–col. 42 l. 18. Each of these limitations recited in the claims are structural components of the “system.”

Id.

Claim 1 from the ’158 patent uses “activate/deactivate system” similar to *Dyfan*. It recites an electronic device with three relevant parts: (a) “a first portion”; (b) “a second portion”; and (c) “cooperating features” on the two portions that interact when the two portions are connected. ’158, cl. 1. These are all structural and defendants do not contend that any are subject to analysis under § 112, ¶ 6 or even require construction. Defendants refer to “cooperating features” as vague, but the physical structure involved in connecting two portions of an alarm are well known. *Id.*, 4:14–17. The claim then defines the “activate/deactivate system” by reference to these structural elements. *Id.*, cl. 1 (“wherein ***the cooperating features comprise*** an activate/deactivate system”). Thus, the claim language is clear—the “activate/deactivate system” is comprised of “cooperating

features,” physical structures that interact when the two portions of the device are attached.

4. The Intrinsic Record Provides Additional Indicators that the Group 2 Terms Are Not Subject to § 112, ¶ 6

First, the applicant did not intend for the claims to be subject to § 112, ¶ 6. The subjective intent is relevant where “documented in the prosecution history.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 985 (Fed. Cir. 1995). Here, the applicant originally drafted some of the ’445 patent claims in “means-plus-function” format but canceled those claims in favor of new claims identifying specific structure, including “an activation mechanism,” “deactivation mechanism,” and “reattachment prevention mechanism.” *Compare, e.g.*, Ex. 7 (Sept. 14, 2006 Originally Filed Application), at 12 (original cl. 12), *with* Ex. 8 (Dec. 14, 2006 Amendment), at 3 (new cl. 37). These claim amendments in “the prosecution history establish[] that the applicant intended for the term . . . to avoid the application of § 112, ¶ 6.” *See TEK Global*, 920 F.3d at 786.

Second, the other claims require that the terms are *not* subject to § 112, ¶ 6. The ’158 patent includes dependent claims (claims 5 and 6) that identify structure that would be part of an “activate/deactivate” system. Ex. 1, ¶¶ 84-86; *TEK Glob.*, 920 F.3d at 786 (where they “add limitations that either describe particular structural features or flesh out whether the term has a particular structural meaning,” “the dependent claims suggest that § 112, ¶ 6 does not govern”). It also includes non-asserted claims that use “means-plus-function” language (claim 8). If Defendants’ proposal is adopted, those non-asserted “means-plus-function” claims would have nearly identical scope to the asserted claims. *Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1369 (Fed. Cir. 2007) (“[D]ifferent words or phrases used in separate claims are presumed to indicate that the claims have different meanings and scopes.”).

5. Kidde’s Alternative Constructions

For each of these terms other than “activation mechanism,” Defendants’ proposed

construction rewrites the claimed function without explanation. And worse, Defendants' proposed structures for all of the terms identify multiple figures and excerpts, with no guidance as to how the fact finder is to apply the large portions of the patent to an accused product or prior art. Thus, in the event that § 112, ¶ 6 applies, Kidde identifies the below alternative proposed constructions:

Claim Term	Kidde's <i>Alternative Proposed Construction</i>
"an activation mechanism to activate the second portion"	<u>Function</u> : activate the second portion <u>Structure</u> : a tab and/or a switch
a permanent deactivation mechanism to permit permanent deactivation of the second portion after the second portion has been activated;	<u>Function</u> : permit permanent deactivation of the second portion after the second portion has been activated. <u>Structure</u> : a tab and/or a switch
"a reattachment prevention mechanism to prevent reattachment of the first and second portions once the second portion is permanently deactivated."	<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
"the activate/deactivate system being configured to automatically activate the second portion upon initial attachment of the second portion to the first portion; wherein the activate/deactivate system is configured to enable the user to manually deactivate the second portion"	<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

a. "Activation" and "Permanent Deactivation Mechanism"

Function: The parties agree on the function of the "activation mechanism" but Defendants change the function for "permanent deactivation mechanism," no longer requiring that deactivation occurs after the second portion has been activated. Defendants provide no reason to change the literal language of the claim.

Structure: For both of these terms, the only structure that Defendants identify with any specificity is a "three position switch," which refers to a switch that can be moved between three

states: pre-activated, activated, and deactivated. The three position switch is not tied to the function because one of its positions (a “pre-activated state”) is not claimed. Including it as structure would therefore be error. *John Mezzalingua Assocs., Inc. v. Int’l Trade Comm’n*, 437 Fed. App’x. 886, 890 (Fed. Cir. 2010) (“Claim interpretation under § 112, ¶ 6 does not ‘permit incorporation of structure from the written description beyond that necessary to perform the claimed function.’”) (citing *Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed. Cir. 1999)).

Thus, to the extent the Court finds this term subject to § 112, ¶ 6, Defendants’ function is performed through the use of a tab and/or a switch—the structure for activating and deactivating in the specification. ’158, 5:34–44 (referring to activation), 6:18–19 (referring to deactivation).

b. “Reattachment Prevention Mechanism”

Function: Defendants remove the requirement that reattachment prevention occurs after permanent deactivation. Defendants again provide no reason to change the literal claim language.

Structure: Defendants again refer to the “three position switch,” but that switch is even less relevant here. It refers to three operational states of an unclaimed embodiment—it *does not perform reattachment prevention*, nor do the Defendants explain how it could. Even the passages Defendants cite refer to a physical obstruction on the connection system, not the operation of the three position switch. See *John Mezzalingua Assocs.*, 437 Fed. App’x. at 890 (structure should be limited to what is necessary to perform the claimed function).

Thus, to the extent the Court finds this term subject to § 112, ¶ 6, Defendants’ function is performed by a physical obstruction to the connection system, such as a tab. ’158, 6:52–56.

c. “Activate/Deactivate System”

Function: Defendants again, without explanation, change the function—this time in its entirety. There is no reason to deviate from the literal claim language.

Structure: Defendants again refer to the “three position” switch. The literal function for this limitation is similar to that of the “activation” and “permanent deactivation mechanism,” except most notably that the activation required for this limitation must be automatic. For this, the patents use the combination of a (different) tab and switch for the activation. The patent adds that the tab is moved by a slider, which is moved by a protrusion in the case (i.e., a “boss”). Thus, the structure in the patent necessary for performing the claimed function is a tab, switch, slider, and protrusion working in concert. *Id.*, 5:34–45 (referring to activation).

D. “Manually” (Group 3) (’158 Pat., cl. 1)

Defendants’ Proposed Construction	Kidde’s Proposed Construction
“by manipulating a three position switch”	Plain and ordinary meaning

The term “manually” is readily understood and does not need construction. The claim language is clear: while the activation of the device occurs “automatically” via the “cooperating features” comprising the “activate/deactivate system,” deactivation is performed “manually” by the user. ’158, cl. 1. The specification is equally clear that in some embodiments, “the alarm is designed to *automatically* activate,” (*id.*, 2:14–16 (emphasis added)), while “a *manual* deactivation mechanism . . . permit[s] *manual* deactivation . . .” (*id.*, 3:43–46 (emphasis added)). The word “manually” in the claim is used in accordance with its plain meaning—a function performed by the user, as opposed to “automatically” (a term that Defendants do not seek to construe). *Compare, e.g., id.*, 2:18–20 (“The user . . . slides a switch on the alarm to deactivate the alarm.”), *with id.*, 2:25–27 (“Alarm activation is automatic, and no interaction . . . is necessary in order to activate the alarm.”).

Defendants’ construction reads in limitations—most notably, a three-position switch—that are unnecessary to understand the term “manually.” Defendants’ argument is a reiteration of their claim that “activate/deactivate system” should be construed as subject to § 112, ¶ 6 and fails for at

least the same reasons described above. *See* III.C.3, *supra*. Regardless, it is improper to import a three-position switch limitation into the separate, plain-English term “manually.” *See, e.g., Clearwater Sys. Corp. v. Evapco, Inc.*, 394 Fed. Appx. 699, 706–08 (Fed. Cir. 2010) (vacating ruling based on erroneous claim construction where “the district court improperly imported an extraneous limitation into the claim”).

In addition, Defendants’ extrinsic evidence supports Kidde’s position: “manually” means “using your hands” or “not done automatically”—i.e., exactly what the claim recites. Dkt. No. 31 (Defendants’ dictionary evidence) at 21. There is no mention of a “three position switch” or use of a “tool,” as Defendants contend. *Id.* No further clarification or construction is needed.

E. The Terms Regarding Preventing Attachment (Group 4)

1. “Cannot be Reattached” (’158 Pat., cl. 1)

Defendants’ Proposed Construction	Kidde’s Proposed Construction
is mechanically incapable of reattachment	Plain and ordinary meaning

The term “cannot be reattached” is yet another plain English term that needs no construction. The claim language recites that “when deactivated, . . . the second portion cannot be reattached to the first portion.” ’158, cl. 1. The specification explains that the alarm is *initially attached* to a mounting bracket, then *removed* from the bracket for *deactivation*, and then *cannot be reattached* to the bracket. *Id.*, 2:14-36. In other words, “cannot be reattached” means that the alarm cannot be attached again to the bracket after deactivation, just as the claim already recites.

Indeed this much is not the dispute, as the term “reattachment” itself appears in Defendants’ proposed construction. It appears that Defendants’ principal argument is that “cannot be” must be construed as “is mechanically incapable of.” But the claim does not recite the term “mechanical” anywhere—in contrast to other claims that recite, for example, a “reattachment prevention *mechanism*.” *Compare id.*, cl. 1 *with id.*, cl. 12. If the patentees wanted to add a mechanical

limitation to claim 1, they knew how to do so and could have done so. They did not, and the Court should reject Defendants’ request to improperly rewrite the term.

2. “Prevent Reattachment” (’158 Pat., cl. 12; ’445 Pat., cl. 8)

Defendants’ Proposed Construction	Kidde’s Proposed Construction
make mechanically incapable of reattachment	Plain and ordinary meaning

Similar to “cannot be [reattached],” “prevent [reattachment]” needs no construction. The claims recite a “reattachment prevention mechanism to *prevent reattachment*” of the first and second portions of the alarm. ’158, cl. 12; ’445, cl. 8. The specification similarly describes that there is a “reattachment prevention mechanism” that “prevent[s] reattachment” of the alarm to the bracket following deactivation. *See, e.g.*, ’158, 2:14–36. Defendants do not appear to dispute this, as their proposed construction reuses the word “reattachment.”

Defendants instead seek to add “mechanically incapable” to their construction, but there is a difference between *preventing* reattachment and making reattachment *incapable*. And to the extent there is any “mechanical” component to reattachment prevention, such a component is already encompassed in the term “reattachment prevention mechanism,” appearing in both claims. ’158, cl. 12; ’445, cl. 8. Thus, there is no reason to deviate from the plain meaning of these terms.⁵

F. “Configured for One-Way Movement” (Group 5) (’158 Pat., cl. 5)

Defendants’ Proposed Construction	Kidde’s Proposed Construction
mechanically incapable of moving in more than one direction	Plain and ordinary meaning

Defendants have not shown why this Court should deviate from the plain meaning of this

⁵ Defendants cite *Interval Licensing LLC v. AOL, Inc.* to support their argument that rejecting their proposal would result in a lack of enablement. But unlike the “unobtrusive manner” term found to lack enablement in *AOL*, here the term “prevent [reattachment]” is neither “purely subjective” nor a “term of degree.” *See* 766 F.3d 1364, 1371 (Fed. Cir. 2014).

term. The claim recites a “slider configured for one-way movement.” ’158, cl. 5. These are plain-English words that a jury would have no trouble understanding and require no construction.

The term “configured for” or “configured to” is often given its plain and ordinary meaning. *E.g., Impinj, Inc. v. NXP USA, Inc.*, No. 6:21-cv-00530-ADA, Dkt. No. 56 at 5 (W.D. Tex. May 25, 2021); *Invensys Sys., Inc. v. Emerson Elec. Co.*, 63 F. Supp. 3d 663, 670-71 (E.D. Tex. 2014) (finding no construction necessary for term “configured to” in part because it is “readily accessible to the jury”). Defendants “merely propose additional limitations that are not in the plain language of the claims” by requesting that this Court import a “mechanically incapable” limitation to this plain-English term. *Id.* “One-way movement” is similarly plain language that is easily understood by jurors and a POSITA alike. The plain meaning is sufficient for these terms, and Defendants have pointed to no lexicography or clear disclaimer suggesting otherwise.

The specification does not support importing a “mechanically incapable” limitation into the claim language. The patent explains that the slider moves from the pre-activated to the activated, then to the deactivated position, and that in some embodiments, there may be mechanisms designed to prevent backward movement of the slider. *E.g.*, ’158, 5:57–67. But that does not mean that the *slider* is *mechanically incapable* of moving in that direction. Indeed, the mechanisms designed to prevent backward movement would not be necessary if the slider itself were mechanically incapable of moving in the other direction. The plain meaning of the claim language is clear, and there is no reason to import this limitation into the claims.

IV. THE ’128 PATENT

The ’128 patent is directed to smoke and CO alarms that record historical data regarding the device’s operation, such as the carbon monoxide level, with a time stamp. ’128, 1:20–27, 1:55–58, 6:7–45. This data can then be extracted from the processor. *Id.*, 7:35–42.

A. The Asserted ’128 Patent Claims

Kidde asserts '128 Patent claims 1, 5, 8 and 10. The disputed terms are found in claims 1 and 5, which are reproduced below with the disputed terms emphasized:

Claim 1

A method of operating an adverse condition detector including at least an adverse condition detection circuit and a microprocessor contained within a housing the method comprising the steps of:

activating an internal clock within the microprocessor upon the *initial activation* of the adverse condition detector;

operating the microprocessor within the adverse condition detector to monitor for the occurrence of one of a series of monitored events related to the operation of the adverse condition detector;

recording the occurrence of the monitored event and a time stamp within the microprocessor of the adverse condition detector, the time stamp being the value of the internal clock upon the occurrence of the monitored event; and

interrogating the microprocessor to extract the recorded occurrences of the monitored events and the associated time stamps

Claim 5

The method of claim 1 wherein

the adverse condition detector circuit is a carbon monoxide detection circuit and

the series of monitored events include the detection of carbon monoxide concentration levels above a *selected threshold*

B. “Initial Activation” (Group 6) ('128 Pat., cl. 1)

Defendants' Proposed Construction	Kidde's Proposed Construction
“first application of power”	Plain and ordinary meaning

“Initial activation” needs no construction. The plain and ordinary meaning of “initial activation” of the detector would be readily apparent to a POSITA. The term is not overly technical such that a jury would need an additional construction to understand it. Defendants do not contend that there is any lexicography concerning the term, nor do they contend a disavowal of scope.

The specification provides context and makes clear that a plain meaning interpretation is appropriate. It describes, for example, that “[t]he adverse condition detector is initially placed in

a location to be monitored and the internal clock within the microprocessor is activated, *such as* through the initial application of a power supply.” ’128, 2:25–28 (emphasis added). The patentees’ use of the term “such as” makes plain that the “initial application of a power supply” is *just one example* of how an activation may occur.

Defendants’ proposal, “first application of power,” again shifts the focus of the plain English term “activation” to the supply of power, and improperly reads in an example from a preferred embodiment as a limitation. Bringing into the claim such exemplary language would impermissibly narrow the scope of the invention, not to mention confuse the jury. Defendants have not shown why the Court should deviate from the plain and ordinary meaning of this term. A plain-meaning construction should be adopted.

C. “Recording the Occurrence of the Monitored Event and a Time Stamp” (Group 7) (’128 Pat., cl. 1)

Defendants’ Proposed Construction	Kidde’s Proposed Construction
“storing an indication of the monitored event along with a time stamp”	Plain and ordinary meaning

This term, too, is written in plain English and needs no further construction. Defendants have offered no valid reason why the Court should change (1) “recording” to “storing”; (2) “occurrence” to “indication”; and (3) “and” to “along with.”

First, replacing “recording” with “storing” changes the claim scope in a manner that is not consistent with the intrinsic record. The term “record” is well understood, and the intrinsic record uses it consistent with its ordinary meaning. ’128, 2:33–36 (“[T]he value of the monitored event is recorded . . .”), 2:37–40; Ex. 9 (Jan. 4, 2008 Applicant’s Remarks) at 8 (using “recording” consistent with its ordinary meaning to describe functionality in the prior art). While in some instances the act of recording could include the act of storing, the two are not synonymous—and in fact, the specification expressly distinguishes “recording” from “storing.” *Id.*, 6:7–10 (“For

example, when the level of carbon monoxide sensed exceeds a threshold level, the microprocessor 22 records **and** stores the carbon monoxide level with a time stamp.” (emphasis added)).

Second, replacing “occurrence” with “indication” provides no clarity to the fact finder and again contradicts the patent. The only reasoning Defendants offer for their construction—that “occurrence” excludes the value of the sensors—is expressly contradicted by the intrinsic record. ’128, 2:33–40 (“Once one of the monitored events has been detected, the **value** of the monitored event is recorded” (emphasis added)), 6:7–10 (“[T]he microprocessor 22 records and stores the **carbon monoxide level** with a timestamp.” (emphasis added)). Defendants’ litigation-fueled attempt to change “occurrence” to “indication” must fail.

Third, there is no reason to replace “and” with “along with.” The claim is clear on its face (reciting “recording the occurrence of the monitored event **and** a time stamp”) and the word “and” is used throughout the intrinsic record consistent with its ordinary meaning. *See, e.g., id.*, 2:37–40. And, during prosecution, when describing this limitation, the Applicant noted that “[w]hen one of the monitored events occurs, the occurrence is recorded **and** time stamped.” Jan. 4, 2008 Applicant Remarks at 6 (emphasis added). The meaning of the plain-English term “and” is clear.

Thus, Defendants’ proposed construction contradicts the intrinsic evidence.

D. “Interrogating the Microprocessor” (Group 8) (’128 Pat., cl. 1)

Defendants’ Proposed Construction	Kidde’s Proposed Construction
“accessing the microprocessor using a nearby device and without communicating to any external component or network”	Plain and ordinary meaning

No construction is needed because the term “interrogating the microprocessor” is well known in the art, as demonstrated by intrinsic evidence. The patent explains in plain terms how the detector can be “interrogated.” *E.g.*, ’128, 6:67–7:2 (“[A] field service technician can interrogate the microprocessor 22 in the field or the entire detector can be returned to the

manufacturer for interrogation.”). Defendants do not argue lexicography or clear disavowal. Thus there is no reason to deviate from the plain meaning of this term and inject Defendants’ negative limitation into the claim. *Eko Brands, LLC v. Adrian Rivera Maynez Enters., Inc.*, 946 F.3d 1367, 1381 (Fed. Cir. 2020) (“Negative limitations added during claim construction must find support either in the specification or the prosecution history.”).

Defendants’ proposal should also be rejected under the doctrine of claim differentiation. Defendants argue that “interrogation . . . must be performed by an external interrogating device.” Dkt. No. 31 at 28. But that reading would improperly confine the scope of claim 1 to that of dependent claim 3, which recites that “the microprocessor is interrogated by an external communication device” ’128, cl. 3. *See Am. Med. Sys., Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1360 (Fed. Cir. 2010) (under claim differentiation, “[d]ependent claims give rise to a presumption that the broader independent claims are not confined to that range.”).

Finally, the intrinsic evidence contradicts Defendants’ proposal. The patent explains that “[p]referably, the communication will take place utilizing a serial interface, ***although other communication protocols are clearly contemplated as being within the scope of the invention.*** If ***wireless communication protocols are utilized***, such as Bluetooth or IRDA, the interface pad 78 and pin openings 108 can be eliminated.” ’128, 7:37–42 (emphasis added); *see also id.*, 7:35–37 (“ . . . other communication protocols such as RS 232, RS 484, USB, BlueTooth, ***TCP/IP*** and IRDA are contemplated as being other types of communication methods” (emphasis added)). Thus, the patent plainly contemplates and describes using communication protocols that include intermediary devices, such as TCP/IP (used to communicate over the Internet), and the non-limiting example of Bluetooth cannot serve to limit the scope of the invention to interrogation through only “a nearby device” and “without communicating to any external component or

network.” And the passage Defendants cite from the file history is irrelevant, as it distinguishes a prior art security system that communicated CO level readings to a central control panel (instead of interpreting those readings at the sensor). Dkt. No. 31-9 at 8.

For at least the foregoing reasons, Defendants’ construction should be rejected.

E. “A Selected Threshold” (Group 9) (’128 Pat., cl. 5)

Defendants’ Proposed Construction	Kidde’s Proposed Construction
“a predetermined value”	Plain and ordinary meaning

Defendants have failed to explain why a POSITA or jury would have any trouble understanding the meaning of “a selected threshold” in the context of smoke and carbon monoxide detectors. Nor is there any good reason to alter the meaning of the claim language by replacing (1) “selected” with “predetermined”; and (2) “threshold” with “value.”

First, Defendants’ proposed inclusion of “predetermined” is inconsistent with the intrinsic evidence. “Predetermined” indicates that the threshold is pre-selected at an unspecified time, after which it would be set and not change. But, contrary to that proposal, the specification explains that the detector modifies its threshold under certain circumstances. ’128, 4:31–35 (“The hush circuit 58 *adjusts* the smoke detection level . . . *the smoke detector ASIC 54 will moderately change the sensitivity of the alarm-sensing threshold . . .*” (emphasis added)). Defendants’ construction thus impermissibly reads out an embodiment.

Second, there is no basis for construing “threshold” as “value.” The specification consistently describes monitoring the *levels* of carbon monoxide or smoke. *E.g., id.*, 6:7–9 (“For example, when the level of carbon monoxide sensed exceeds a threshold level . . .”). Even Defendants’ own dictionary definition contradicts their proposal—it states that a threshold can be “a *level*, point, *or* value above which something is true or will take place and below which it is not or will not.” Dkt. No. 31 at 30 (emphasis added). Defendants offer no reason why the term

“threshold” should be limited to simply a “value,” and their proposal should be rejected.

V. THE '828 PATENT

The patent recognizes that the prior art could not signal different types of trouble conditions, resulting in an inability to differentiate between different conditions and respond to each appropriately. '828, 1:61–2:13. The '828 patent provides for distinct signals for different conditions—one for a sensor end-of-life trouble condition and another for “standard” trouble. *Id.*, 2:17–28. These signals are also transmitted to a remote agent, of which the specification gives several non-limiting examples. *Id.*, 2:46–61, 3:42–50.

A. The Asserted '828 Patent Claims

Kidde asserts claims 1–2, 4–5, and 8. The disputed terms are found in claims 1–3, which are reproduced below with the disputed terms emphasized:

Claim 1

A carbon monoxide detector comprising:

- a sensor configured to detect a presence of carbon monoxide, and generate a signal indicative of the presence of carbon monoxide;
- a controller in signal communication with the sensor, the controller configured to measure a level of detected carbon monoxide in response to receiving the signal generated by the sensor, the controller further configured to ***detect a first trouble condition representative of an end-of-life condition of the sensor***, and a second trouble condition different from the first trouble condition;
- a transmitter operatively coupled to the controller, the transmitter configured to transmit, to ***a remote agent***, a first trouble signal indicative of the first trouble condition, and a second trouble signal indicative of the second trouble condition, the first trouble signal being different from the second trouble signal so that an end-of-life condition of the sensor detected by the controller and indicated by the first trouble signal can be distinguished at the remote agent from a second trouble condition detected by the controller and indicated by the second trouble signal.

Claim 2

The carbon monoxide detector of claim 1, wherein the second trouble condition comprises ***a lack of power*** to the carbon monoxide detector that is detected by the controller.

Claim 3

The carbon monoxide detector of claim 1, wherein the second trouble condition comprises a *loss of power* to the carbon monoxide detector that is detected by the controller.

B. “Detect a First Trouble Condition Representative of an End-of-Life Condition of the Sensor” (Group 10) (’828 Pat., cl.1)

Defendants’ Proposed Construction	Kidde’s Proposed Construction
“determine that the sensor has actually reached the end of its life”	Plain and ordinary meaning

Defendants have not shown that the term “detect a first trouble condition representative of an end-of-life condition of the sensor” requires construction. The claim term recites plain English words easily understood by a POSITA and jury. Specifically, the claim recites a controller configured to “detect a first trouble condition,” which is “representative of an end-of-life condition of the sensor.” ’828, cl. 1. Defendants identify no evidence that even suggest a POSITA would not understand the plain meaning of these words. Nor do Defendants identify clear lexicography or disavowal of claim scope that would require this phrase to take a meaning other than the plain and ordinary one. No basis exists for construction and the inquiry should end there.

Moreover, Defendants’ proposed construction is incompatible with the plain meaning of the term and the intrinsic evidence. *First*, Defendants replace the word “detect” with the word “determine,” but these words have different meanings. The claim language requires that a controller “detect” something, not that it make a determination. Defendants identify no basis for this fundamental change in claim scope.

Second, Defendants modify the claim to include an “actual” end of the sensor’s life rather than what the claim recites: a “first trouble condition *representative* of an end-of-life *condition* of the sensor.” *Id.* (emphasis added). A sensor’s end-of-life *condition* is not the same as the sensor “actually reach[ing] the end of its life.” Construing the sensor’s “end-of-life condition” as, essentially, the sensor’s “end of life,” would read the term “condition” out of the claim entirely.

The word “condition” is not meaningless—“once the end-of-life of the sensor 202 is detected, the sensor 202 may still work properly for several weeks and maybe months.” *Id.*, 5:37–45. And further, the “first trouble condition” does not necessarily relate to the actual end of the sensor’s life, or even to an end-of-life condition, it is *representative* of an end-of-life condition.

Defendants’ reliance on the prosecution of the ’828 patent’s parent application only emphasizes the flaws in their proposed construction. Specifically, Defendants contend that the patent “requires that the *sensor itself* must generate a signal indicative of the end of its life.” Dkt. No. 31 at 32 (emphasis in original). But Defendants read out the claim requirement that there be *detection of a condition*.⁶ A POSITA would understand this claim term by its plain and ordinary meaning. Defendants’ arguments, and their incompatible proposal, should be rejected.

C. “Remote Agent” (Group 11) (’828 Pat., cl. 1)

Defendants’ Proposed Construction	Kidde’s Proposed Construction
“entity, person, or device external to the carbon monoxide detector”	Plain and ordinary meaning

The term “remote agent” is another plain English phrase requiring no construction. Defendants identify no reason why these two words would be better understood by relying on any words other than those drafted by the patentee, let alone ones that Defendants have drafted for this litigation. A POSITA and jury would understand the plain meaning of “remote agent. Defendants identify no lexicography or disavowal that suggest otherwise.

Defendants’ sole basis for construing “remote agent” to be “external to the carbon monoxide detector” is Figure 1, an illustration of a “monitored CO detector” connected to a “network,” which in turn is connected to a “remote agent.” ’828, Fig. 1. Defendants do not specify

⁶ Indeed, Defendants’ reliance on this argument is perplexing given that their construction does not require that the sensor itself do anything, let alone generate a signal.

why that preferred embodiment supports Defendants’ proposed rewrite of the term. Regardless, it is a fundamental claim construction principle that limitations from the preferred embodiment should not be read into the claims. *See Creative Integrated Sys., Inc. v. Nintendo of Am., Inc.*, 526 Fed. App’x. 927, 935 (Fed. Cir. 2013) (“[C]onstruing [claim] term to be limited to figure . . . impermissibly reads a limitation from the specification into the claim”).

Defendants’ reduction of “agent” to “entity, person, or device” is similarly improper. A POSITA would understand the word agent and would not need it to be replaced with the words Defendants drafted. Nor is it appropriate to rewrite agent based on mere examples recited by the patent, as Defendants have. Dkt. No. 31 at 32 (referring to the list of examples provided by the patent and concluding that “[t]he inclusion of a ‘monitoring company’ supports Defendants’ inclusion of ‘person or entity’ and the remaining objects identified support Defendants’ inclusion of ‘device’ in this proposed construction”).

D. “Lack of Power” / “Loss of Power” (Group 12) (’828 Pat. cls. 2, 3)

Claim Terms	Defendants’ Proposed Construction	Kidde’s Proposed Construction
“lack of power”	“having no power;” alternatively indefinite	Plain and ordinary meaning
“loss of power”	“reduction of power;” alternatively indefinite	

Defendants lack a basis to construe these two terms, which have plain and ordinary meanings that a POSITA would have no trouble understanding. Indeed, “lack of power” and “loss of power” are two phrases used in common parlance. Defendants identify no reason why these plain meanings evaporate in the context of this patent such that they require constructions.

Nor do Defendants provide a reason why their litigation-motivated definitions are superior to the words drafted by the patentee. Based on Defendants’ proposal that “loss of power” means

“reduction of power,” Defendants contend that “loss” must be replaced with “reduction.” The word “loss” is simpler, more direct, more commonly used, and the word chosen by the patentee to describe the metes and bounds of the claim. With respect to the other claim phrase, Defendants propose that “lack of” must be replaced with “having no.” Again, the words chosen by the patentee are simple, direct, and have a plain meaning that is easily understood by a POSITA and a jury. Defendants provide no justification for departing from the language used by the patent.

Defendants’ feigned concern that a jury cannot distinguish between “lack of power” and “loss of power” strains credulity. *See* Dkt. No. 31 at 34 (“[A] fact finder cannot discern the difference between these terms. . . . The exercise Kidde would have the jury undertake demonstrates that the claims fail to inform, with reasonable certainty, a POSA about the scope of the invention.”). The meaning of these terms is plain on their face and distinct. The jury does not require Defendants’ reinterpretation of the claim language to understand the difference between “lack of power” and “loss of power.” These terms are not indefinite and require no construction.

VI. CONCLUSION

For the reasons presented above, and in the exhibits, Kidde respectfully requests that the Court reject Defendants proposed constructions and adopt Kidde’s proposals.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on December 27, 2022, and was served via CM/ECF on all counsel of record.

/s/ Aamir A. Kazi

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