UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

CAPSA SOLUTIONS LLC	)	
	)	
Plaintiff,	)	
	)	Case No.: 2:22-cv-00065-HSO-BWR
v.	)	
	)	
HOWARD INDUSTRIES, INC.	)	JURY TRIAL DEMANDED
	)	
	)	
Defendant.	)	

DEFENDANT HOWARD INDUSTRIES, INC.'S
PRELIMINARY CLAIM CONSTRUCTION REPLY BRIEF

TABLE OF CONTENTS

I. INTRODUCTION 1

II. THE PRIOR CONSTRUCTION OF THE '650 PATENT 1

III. DISPUTED CONSTRUCTIONS 3

A. U.S. Pat. Nos. 7,594,668 ("the '668 patent") and 8,215,650 ("the '650 patent") 3

1. "height adjustment mechanism" 3

2. "work platform" 6

3. "work surface" 7

4. "wherein the work surface is moveable" 10

5. "movable platform" 11

6. "compartment(s)" 12

7. "at least one compartment" / "disposed above the compartment(s)" / "disposed above a top of the at least one compartment" 14

8. "driver" 16

9. "actuator"/ "actuator for controlling the driver" 21

10. "drawer slides" 25

11. "wherein the height adjustment mechanism is configured to releasably lock the work platform at a plurality of heights" / "wherein the height adjustment mechanism is configured to releasably position the work platform at a plurality of heights" 27

B. U.S. Patent No. 8,109,527 ("the '527 patent") 28

1. "track" 28

2. "platform" 29

3. "arm" 31

4. "substantially coextensive" 32

C. U.S. Patent No. 9,039,016 ("the '016 patent") 33

1. "means for automatically adjusting a height of the platform" 33

IV. CONCLUSION 35

TABLE OF AUTHORITIES

Page(s)

Cases

Acumed LLC v. Stryker Corp.,
483 F.3d 800 (Fed. Cir. 2007).....5, 24

Allergan, Inc. v. Apotex Inc.,
754 F.3d 952 (Fed. Cir. 2014).....19

Amgen Inc. v. Hoechst Marion Roussel, Inc.,
314 F.3d 1313 (Fed. Cir. 2003).....19

Amtel Corp. v. Info. Storage Devices, Inc.,
198 F.3d 1374 (Fed. Cir. 1999).....23

Arthrex. Inc. v. Smith & Nephew, Inc.
No. 2:15-CV-1047-RSP, 2016 WL 4211504 (E.D. Tex. Aug. 10, 2016).....20

ASM Am., Inc. v. Genus, Inc.,
401 F.3d 1340 (Fed. Cir. 2005).....19

Biogen Idec, Inc. v. GlaxoSmithKline LLC,
713 F.3d 1090 (Fed. Cir. 2013).....8

Bonutti Rsch., Inc. v. Lantz Med., Inc.,
No. 1:14-cv-00609-SEB-MJD, 2016 WL 247752 (S.D. Ind. Jan. 21, 2016) 20

Comcast Cable Commc'ns, LLC v. Spring Commc'ns Co.,
38 F. Supp. 3d 589 (E.D. Pa. 2014) 23, 24

Curtiss-Wright Flow Control Corp. v. Velan, Inc.,
438 F.3d 1374 (Fed. Cir. 2006).....18, 19

DoseLogix, LLC v. Reflex Med. Corp.,
No. 21-CV-1275 (ECT/DJF), 2022 WL 16849070 (D. Minn. Nov. 10, 2022).....20

Emerson Elec. Co. v. SIPCO, LLC,
826 F. App'x 904 (Fed. Cir. 2020) 4, 13, 20

Eon Corp. IP Holdings v. Silver Spring Networks,
815 F.3d 1314 (Fed. Cir. 2016).....24, 25

Fenner Invs., Ltd. v. Cellco P'ship,
778 F.3d 1320 (Fed. Cir. 2015).....10

Finisar Corp. v. DirecTV Grp., Inc.,
523 F.3d 1323 (Fed. Cir. 2008).....2

Finjan, Inc. v. Symantec Corp.,
No. 14-CV-02998-HSG, 2017 WL 550453 (N.D. Cal. Feb. 10, 2017).....2

FlatWorld Interactives LLC v. Samsung Elecs. Co.,
No. 12-804-LPS, 2014 WL 7464143 (D. Del. Dec. 31, 2014).....2

Graham v. John Deere Co. of Kansas City,
383 U.S. 1 (1966).....8, 11

Greenberg v. Ethicon Endo-Surgery, Inc.,
91 F.3d 1580 (Fed. Cir. 1996).....22, 24

Honeywell Int'l, Inc. v. Universal Avionics Sys. Corp.,
493 F.3d 1358 (Fed. Cir. 2007).....11

Howmedica Osteonics Corp. v. Wright Med. Tech., Inc.,
540 F.3d 1337 (Fed. Cir. 2008).....14, 15

IGT v. All. Gaming Corp.
No. 2:04-CV-1676-RCJ-RJJ, 2007 WL 6334816, (D. Nev. May 9, 2007).....24

IGT v. Bally Gaming Int'l, Inc.,
659 F.3d 1109 (Fed. Cir. 2011).....2

Interactive Gift Exp., Inc. v. Compuserve Inc.,
256 F.3d 1323 (Fed. Cir. 2001).....30

Key Pharms. v. Hercon Labs. Corp.,
161 F.3d 709 (Fed. Cir. 1998).....21

Kraft Foods, Inc. v. Int'l Trading Co.,
203 F.3d 1362 (Fed. Cir. 2000).....9

Lexion Med., LLC v. Northgate Techs., Inc.,
641 F.3d 1352 (Fed. Cir. 2011).....33

Markman v. Westview Instruments, Inc.,
52 F.3d 967 (Fed. Cir. 1995).....16

Markman v. Westview Instruments, Inc.,
517 U.S. 370 (1996).....2

Nystrom v. TREX Co., Inc.,
424 F.3d 1136 (Fed. Cir. 2005).....25

O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.,
521 F.3d 1351 (Fed. Cir. 2008).....5, 27

Omega Eng'g, Inc. v. Raytek Corp.,
334 F.3d 1314 (Fed. Cir. 2003).....14

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005) (en banc)..... *passim*

Poly-America, L.P. v. API Industries, Inc.,
839 F.3d 1131 (Fed. Cir. 2016).....10, 18

Rhine v. Casio, Inc.,
183 F.3d 1342 (Fed. Cir. 1999).....14

Seachange Int'l, Inc. v. C-COR, Inc.,
413 F.3d 1361 (Fed. Cir. 2005).....10

Sinorgchem Co., Shandong v. Int'l Trade Comm'n,
511 F.3d 1132 (Fed. Cir. 2007).....8

SIPCO, LLC v. Emerson Elec. Co.,
980 F.3d 865 (Fed. Cir. 2020).....13

Summit 6, LLC v. Samsung Elecs. Co.,
802 F.3d 1283 (Fed. Cir. 2015).....4

U.S. Surgical Corp. v. Ethicon, Inc.,
103 F.3d 1554 (Fed. Cir. 1997).....5

Vitronics Corp. v. Conceptronic, Inc.,
90 F.3d 1576 (Fed. Cir. 1996).....5

Welker Bearing Co. v. PHD, Inc.,
550 F.3d 1090 (Fed. Cir. 2008).....24

Williamson v. Citrix Online, LLC,
792 F.3d 1339 (Fed. Cir. 2015) (en banc).....4, 21, 22

Z4 Techs., Inc. v. Microsoft Corp.,
507 F.3d 1340 (Fed. Cir. 2007).....14

Statutes

35 U.S.C. § 112(2) 24

35 U.S.C. § 112(6) 4, 20, 21, 24, 25

TABLE OF EXHIBITS

Patents at Issue:

Exhibit	Patent
Dkt. 46 Ex. A	7,594,668
Dkt. 46 Ex. B	8,215,650
Dkt. 46 Ex. C	8,109,527
Dkt. 46 Ex. D	9,039,016
Dkt. 46 Ex. E	D762,339

Other Evidence:

Exhibit	Document
Dkt. 46 Ex. 1	*Rubbermaid Inc. v. Ergotron, Inc.*, No. 3:12-cv-416, Memorandum of Decision and Order (W.D.N.C. March 11, 2014)
Dkt. 46 Ex. 2	Provisional Application No. 60/484658
Dkt. 46 Ex. 3	Provisional Application No. 60/518649
Dkt. 46 Ex. 4	Provisional Application No. 60/448920
Dkt. 46 Ex. 5	Excerpts of Prosecution History of U.S. 8,215,650 (Annotated)
Dkt. 46 Ex. 6	Webster's Third New International Dictionary (2002)
Dkt. 46 Ex. 7	The American Heritage College Dictionary, Third ed. (1997)
Dkt. 46 Ex. 8	U.S. Patent No. 6,721,178 ("Clark")
Dkt. 46 Ex. 9	The Oxford English Dictionary, Second ed. (1989)
Dkt. 46 Ex. 10	Declaration of Mr. David Smith
Dkt. 46 Ex. 11	Curriculum Vitae of Mr. David Smith
Dkt. 46 Ex. 12	Merriam-Webster's Collegiate Dictionary, Eleventh ed. (2007)
Dkt. 46 Ex. 13	Excerpts of Prosecution History of Application No. 10/783,030
Ex. 14	Supplemental Declaration of Mr. David Smith

All emphases added unless otherwise noted

I. INTRODUCTION

Defendant Howard Industries, Inc. ("Howard") submits this Preliminary Claim Construction Reply Brief addressing Plaintiff Capsa Solutions LLC's ("Capsa's") proposed constructions and Opening Brief in support of constructions. Simply put, Capsa's Opening Claim Construction Brief is riddled with legal and factual errors. Capsa repeatedly misapplies case law, citing overturned decisions and otherwise mischaracterizing the facts and legal import of its cited decisions. Indeed, throughout its opening brief, Capsa selectively applies or ignores established cannons of claim construction on a term-by-term basis, never grappling with its facially inconsistent application of these rules among their proposed constructions. Capsa likewise takes liberties with the facts as it relates to the patents' intrinsic records, mischaracterizing the Specifications for alleged support while ignoring defining moments in the prosecution histories that conflict with its litigation-driven constructions. Howard therefore respectfully requests that the Court reject Capsa's inconsistent constructions and adopt Howard's proposed constructions.

II. THE PRIOR CONSTRUCTION OF THE '650 PATENT

Capsa's predecessor in interest to the '650 patent, Rubbermaid, asserted the '650 patent against Ergotron in the Western District of North Carolina ("WDNC") in 2012. The WDNC construed several terms of the '650 patent in a claim construction order issued in 2014, and the order was later vacated to facilitate settlement. Dkt. 46 Ex. 1, 16-17. Capsa disparages the order because it knows that order is fatal to its infringement case, but the Court should consider the WDNC's constructions as part of its analysis.

The Federal Circuit and district courts routinely consider prior district court constructions of the same terms in the same patents when conducting their own analyses. For example, the Federal Circuit found a later district court's claim construction order "particularly helpful because [the later court] repeatedly referred back to the [first court's] constructions" of "the same claim

terms in the same patent." *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1329 (Fed. Cir. 2008). Such analysis serves "the interest of uniformity and correctness," "[g]iven 'the importance of uniformity in the treatment of a given patent.'" *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 390, (1996)). For these reasons, courts consider these prior constructions "persuasive authority" that the court properly considers during claim construction. *IGT v. Bally Gaming Int'l, Inc.*, 659 F.3d 1109, 1117 n.1 (Fed. Cir. 2011). Indeed, district courts around the country weigh prior district court claim construction orders as persuasive evidence. *See, e.g.*, *FlatWorld Interactives LLC v. Samsung Elecs. Co.*, No. 12-804-LPS, 2014 WL 7464143, at *1 (D. Del. Dec. 31, 2014); *Finjan, Inc. v. Symantec Corp.*, No. 14-CV-02998-HSG, 2017 WL 550453, at *3 (N.D. Cal. Feb. 10, 2017) ("When engaging in claim construction, district courts have granted 'reasoned deference' to claim construction orders outside their jurisdiction that address the same term in the same patent, given the importance of uniformity in claim construction.").

Capsa nonetheless opens its briefing by criticizing the claim construction order issued by the North Carolina district court as having "no precedential value." Dkt. 45 at 20. While the prior order is not binding on this Court, Capsa's argument that it has "no precedential value" and "should not be relied upon for persuasive effect" contradicts the weight of legal authority. Capsa disparages the prior order simply because most of the prior constructions are fatal to its infringement claims in this case. This leads, in turn, to Capsa's inconsistent adoption vs. disparagement of the prior North Carolina constructions. *Compare* Dkt. 45 at 36-37 *with id.* at 9-10, 20, 23, and 28. Howard's proposed constructions, meanwhile, respect the North Carolina district court's prior constructions for the '650 patent while properly reflecting the disputes pertinent to this case.

For example, Howard proposes this Court adopt the prior court's constructions for the terms "work surface," "wherein the work surface is moveable," "at least one compartment,"

"disposed above the compartment / disposed above a top of the at least one compartment," "driver," and "movable platform." Dkt. 46 Ex. 1 at 16. And where Howard does not propose wholesale adoption of the prior court's construction, it provides an explanation *infra* as to why it does so. On the other hand, Capsa faults Howard for adopting the prior court's construction in some cases but not others, but it provides no justification when it does the same.[1]

III. DISPUTED CONSTRUCTIONS

A. U.S. Pat. Nos. 7,594,668 ("the '668 patent") and 8,215,650 ("the '650 patent")

1. "height adjustment mechanism"

Plaintiff's Proposal	Defendant's Proposal
A set of components for adjusting the height of an object.	No construction necessary. '668 patent, cl. 3, 4; '650 patent, cl. 1, 2

The Court need not construe "height adjustment mechanism" because the claims expressly define what "height adjustment mechanism" is. Dkt. 46 at 12-13. As Howard explained in its opening brief, Capsa's proposed construction introduces confusion by circularly defining the term and introducing redundant language. *Id.* at 13-14. Indeed, Capsa recognizes the '668 and '650 patent claims do not identically claim "height adjustment mechanism."[2] Dkt. 45 at 21. This directly supports Howard's point that the term needs no construction because the claim language

[1]Capsa proposes the prior court's construction only for "work platform." It opposes the prior court's construction for all other terms.

[2]A height adjustment mechanism with "drawer slides" is claimed only in claim 3 of the '668 patent. Unlike the '668 patent, the '650 patent omits the telescoping portion and stationary portion of the height adjustment mechanism from the independent claim, but adds these components in dependent claim 2.

sets forth the best definition of "height adjustment mechanism" in each claim. Dkt. 46 at 13. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc) ("[T]he claims themselves provide substantial guidance as to the meaning of particular claim terms."). As a general rule, the Court need not construe such a "straightforward term" when the plain and ordinary meaning is clear. *See Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015).

Capsa's assertion that "height adjustment mechanism" connotes a general class of structures under § 112(6) is simultaneously irrelevant and wrong. Capsa's argument is irrelevant because no party here advocates for a means-plus function construction of the term. Capsa's argument is wrong because, even if § 112(6) applied, the Federal Circuit has repudiated the *Flo Healthcare Solutions* decision cited by Capsa in support of its argument. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (en banc) (repudiating *Flo Healthcare* and holding that there is no heightened burden for overcoming the presumption that a limitation lacking the word "means" is not subject to construction under § 112(6)). Because *Flo Healthcare Solutions* is an overruled decision inapplicable in the first instance, Capsa is wrong to rely on it here. Indeed, Capsa's proposed construction does not attempt to limit itself to the "general class of structures" for which it advocates. Rather, Capsa argues the term conveys "gas springs, rack and pinion mechanisms, cable and pulley mechanisms, etc." Dkt. 45 at 21-22. But rather than advance a construction reciting these components, it advocates for the amorphous "set of components" more suited to a broad infringement read.

The Court should similarly disregard Capsa's reliance on cases construing terms from other patents. Extrinsic evidence concerning unrelated patents having different claims, specifications, and prosecution histories carries little if any weight. *Emerson Elec. Co. v. SIPCO, LLC*, 826 F. App'x 904, 914 (Fed. Cir. 2020). Indeed, Capsa ostensibly agrees that "extrinsic evidence is not

needed to construe the term 'height adjustment mechanism' as the term is not ambiguous in view of the intrinsic evidence." Dkt. 45 at 22. The Federal Circuit has cautioned that "[r]eliance on such [extrinsic] evidence is unnecessary, and indeed improper, when the disputed terms can be understood from a careful reading of the [intrinsic] public record," including the claims. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996); *see also Acumed LLC v. Stryker Corp.*, 483 F.3d 800, 809 (Fed. Cir. 2007).

Howard submits that Capsa's briefing confirms the Court need not construe "height adjustment mechanism" to resolve the parties' real dispute. Capsa's arguments regarding the construction of "height adjustment mechanism" focus on the driver. *See* Dkt. 45 at 21-22 (citing gas springs, rack and pinion mechanisms, cable and pulley mechanisms, ball screw or hydraulic, pneumatic, or other mechanical driving mechanisms as support for "height adjustment mechanism"); Dkt. 45-2 at ¶¶ 15-16 (citing gas springs, rack and pinion mechanisms, cable and pulley mechanisms, ball screw, and hydraulic and pneumatic devices as alleged types of drivers). Thus, the Court should instead resolve this dispute by construing the term "driver" because, in all asserted claims, the height adjustment mechanism comprises a "driver," which the parties have separately briefed for construction. "[D]istrict courts are not (and should not be) required to construe every limitation present in a patent's asserted claims." *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). "Rather, '[c]laim construction is a matter of resolution of disputed meanings and technical scope, to clarify and when necessary to explain what the patentee covered by the claims, for use in the determination of infringement.'" *Id.* (quoting *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997). The Court should therefore decline to construe "height adjustment mechanism" because (1) its meaning is expressly recited in the claim language, and (2) the parties' dispute actually revolves around

another term. Dkt. 46 at 12-14. Alternatively, the Court should construe the term to mean the list of claim elements that the "height adjustment mechanism compris[es]" in each claim.

Finally, Howard submits that in so far as the WDNC construed this term differently than what Howard proposes, the Court should consider that the asserted claims at issue here vary substantially from those construed by the WDNC. In the prior case, the parties disputed whether "height adjustment mechanism" as used in claim 9 of the '650 patent invoked means plus function limitations. Dkt. 46 Ex. 1 at 13. Claim 9 of the '650 patent is not at issue here. Furthermore, the '668 patent was not considered in the prior case. Because the claims of the '668 patent recite different components of the height adjustment mechanism compared to the '650 patent, there is reason here for the Court to deviate from the prior construction.

2. "work platform"

Plaintiff's Proposal	Defendant's Proposal
A height adjustable set of components for facilitating work configured to be raised and lowered together.	Plain and ordinary meaning '668, cl. 3, 4; '650, cl. 1, 2, 6, 8

The Court should adopt the plain and ordinary meaning of the term "work platform" because it consists of common and well-understood words used in an ordinary way by the claims. But while the plain and ordinary meaning of the term is apparent from the claim terms, Capsa suggests a separate construction is appropriate because "work platform" allegedly holds "multiple possible meanings." Dkt. 45 at 36. Notably, however, Capsa never offers any examples of the supposed other possible meanings that it seeks to exclude. The Court should therefore reject Capsa's unsupported allegations out of hand.

Indeed, the term "work platform" needs no further construction because the claims explain what the work platform is and what it does: the "work platform includ[es] a work surface and compartments for containing items." Dkt. 46 Ex. A, 14:62-67, 15:28-34; Dkt. 46 Ex. B, 14:22-29.

Capsa acknowledges this point, Dkt. 45 at 37, but still seeks a construction beyond that defined by the claims. By introducing uncertainty with its proposed construction of a nondescript "height adjustable set of components," Capsa impermissibly broadens the scope of the claim.

Without explanation, Capsa cites the WDNC claim construction order to support its position while elsewhere arguing that such order should be disregarded. Dkt. 45 at 36-37. But as recognized by Howard's opening brief, both parties agree the prior construction of "work platform" covers unrelated prior art such as construction scaffolding and scissor lifts. Dkt. 45 at 30 n.10, Dkt. 46 at 17. Accordingly, Howard urges the Court to adopt the plain and ordinary meaning as appropriately defining the scope of the claims in a manner that resolves the current parties' disputes.

3. "work surface"

Plaintiff's Proposal	Defendant's Proposal
Plain and ordinary meaning	A curved surface at the top of a cart large enough to dispense medication or hold work papers. '668 patent cl. 3, 4; '650 patent cl. 1

The Court should construe "work surface" as proposed by Howard because the principle of lexicography applies, and the applicant disavowed the full claim scope through claim amendments during prosecution. Capsa cannot obtain a construction of the plain and ordinary meaning in view of the applicant's statements in the Specification and amendments made during prosecution to overcome the prior art of record. Capsa (and its expert) never discuss the prosecution history in its opening brief. *See* Dkt. 45 at 40-43, Dkt. 45-2 at ¶¶ 30-34. Capsa also ignores the evidence of lexicography and disavowal in the Specification. The Court should therefore adopt Howard's construction.

Capsa cannot recapture the plain and ordinary meaning of "work surface" because the applicant disclaimed it during prosecution. "Claims that have been narrowed in order to obtain the issuance of a patent by distinguishing the prior art cannot be sustained to cover that which was previously by limitation eliminated from the patent." *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 33 (1966). "[W]hen the patentee unequivocally and unambiguously disavows a certain meaning to obtain a patent, the doctrine of prosecution history disclaimer narrows the meaning of the claim consistent with the scope of the claim surrendered." *Biogen Idec, Inc. v. GlaxoSmithKline LLC*, 713 F.3d 1090, 1095 (Fed. Cir. 2013). Such disavowal "can take the form of either amendment or argument." *Id.* Here, Capsa disclaimed certain types of work surfaces found in prior art medical carts with its claim amendments and its arguments to the patent office. *See* Dkt. 46 at 17-24. Capsa never reckons with the prosecution history in its opening brief, undercutting its argument for applying the plain and ordinary meaning before it starts.

Furthermore, Capsa cannot obtain the plain and ordinary meaning because the applicant defined the work surface to be curved and to be a certain size. The Specification defines the work surface's shape using express terms: "being arcuate in shape." Dkt. 46 Ex. A at 6:13-19, Figs. 3A-3C, 4A-4B. Forms of the verb "is"—like "being" used here—invoke the principle of lexicography. *Sinorgchem Co., Shandong v. Int'l Trade Comm'n*, 511 F.3d 1132, 1136 (Fed. Cir. 2007) ("[T]he word 'is,' again a term used here in the specification, may signify that a patentee is serving as its own lexicographer. *As such, the patentee must be bound by the express definition.*" (emphasis added) (internal citations and quotations omitted)). This intent to define the work surface as curved is reinforced by the applicant's incorporated provisional applications, which mandate that the work surface "**must** curve around the user." Dkt. 46 Ex. 2 at 12; Dkt. 46 at 21-22. Finally, the

Specification's disparagement of prior art clarifies the Applicant's intent to limit the work surface to a certain size. Dkt. 46 at 21-24.

Capsa's arguments do not refute this point. Capsa and its expert cite a purported "secondary work surface 379" in support of its arguments, Dkt. 45 at 42, Dkt 45-2 at ¶¶ 31-34, but the Specification contains no such phrase. The Specification instead describes a secondary work **area**:

> When the laptop platform **370** is pushed forward or rearward, it can expose a secondary work area **379** provided below the laptop platform **370**. The secondary work area **379** can be particularly sturdy. For example, it can be sturdy enough to enable a user to crush pills on the secondary work area **379**. In addition, the secondary work area **379** may be provided with a rim **378**. The rim **378** may reduce the likelihood of medication rolling off the medical cart **500** such as, for example, when a nurse tries to crush pills on the secondary work area **379**.

Dkt. 46 Ex. A at 5:40-49. That the Specification uses different terms to distinguish the "work surface 350" from the "work area 379" supports Howard's position that the applicant meant to specifically define the work *surface*. Furthermore, the claims refute Capsa's suggestion that secondary work area 379 is an exemplary "work surface." For example, claim 1 of the '650 patent requires the work surface is movable, but the Specification of both patents describes and depicts secondary work area 379 as stationary. Dkt. 46 Ex. A, 5:40-49, Figs. 2A, 2B; Dkt. 46 Ex. B, 5:42-51, 14:49-51, Figs. 2A, 2B.

Capsa's claim differentiation argument regarding claim 7 of the '650 patent does not compel a different result. "[T]hat the claims are presumed to differ in scope does not mean that every limitation must be distinguished from its counterpart in another claim, but only that at least one limitation must differ." *Kraft Foods, Inc. v. Int'l Trading Co.*, 203 F.3d 1362, 1368 (Fed. Cir. 2000). Here, claim 7 of the '650 patent introduces a limitation that "the work surface is configured to move in at least one of a leftward direction and a rightward direction," which is not found in the

work surface of claim 1 as construed by Howard. Dkt. 46 Ex. B at 15:4-6. Thus, the doctrine of claim differentiation does not compel a different meaning here. *See Poly-America, L.P. v. API Industries, Inc.*, 839 F.3d 1131, 1137 (Fed. Cir. 2016) (finding claim differentiation did not apply to prevent a claim from requiring a seal extending inwardly where dependent claim recited a more specific range of the inward extension of the seal). Furthermore, even in the face of Capsa's claim differentiation arguments, the applicant's statements in the Specification must prevail. *See Seachange Int'l, Inc. v. C-COR, Inc.*, 413 F.3d 1361, 1369 (Fed. Cir. 2005) (The doctrine of claim differentiation "will be overcome by a contrary construction dictated by the written description or prosecution history."); *see also Fenner Invs., Ltd. v. Cellco P'ship*, 778 F.3d 1320, 1327 (Fed. Cir. 2015) ("Although claim differentiation is a useful analytic tool, it cannot enlarge the meaning of a claim beyond that which is supported by the patent documents, or relieve any claim of limitations imposed by the prosecution history."). The Court should adopt Howard's construction.

4. "wherein the work surface is moveable"

Plaintiff's Proposal	Defendant's Proposal
Plain and ordinary meaning	Wherein the curved surface near the top of the cart large enough to dispense medication or hold work papers moves along a curved path toward the user. '650 patent cl. 1

Like with the term "work surface," the Court should adopt Howard's construction because the principles of lexicography and disavowal both apply. Dkt. 46 at 24-25. Capsa suggests that Howard proposes the same construction for this term as for "work surface," but that is facially incorrect. Dkt. 45 at 43. Howard's construction for this term includes how the work surface must move: along a curved path toward the user. Consistent with the claims, the Specification specifically defined the work surface to move in this way. *See* Dkt. 46 Ex. B at 5:52-58, 6:14-20

("When the bi-directional work surface 350 slides to the right or to the left, **it slides in an arcuate path** as a result of the channels 355, 357 and ribs 358, 369 (and the work surface 350) being arcuate in shape."), Figs. 3A, 3B, 3C, 4A, and 4B, Dkt. 46 at 24-26. Capsa's brief addresses none of this evidence. Furthermore, Capsa's argument that no construction is necessary because "a jury would have no problem understanding the scope of this term" is plainly wrong. *See Honeywell Int'l, Inc. v. Universal Avionics Sys. Corp.*, 493 F.3d 1358, 1361 (Fed. Cir. 2007). ("When a patentee defines a claim term, the patentee's definition governs, even if it is contrary to the conventional meaning of the term."). The Court should adopt Howard's construction.

5. "movable platform"

Plaintiff's Proposal	Defendant's Proposal
Plain and ordinary meaning Or in the alternative: A substantially flat raised area or structure that can move.	Movable surface at the top of the cart. '650 patent cl. 6

The Court should adopt Howard's construction because it correctly reflects the applicant's disavowal of claim scope made during prosecution of the patent. Dkt. 46 at 26-28. By omitting that the movable platform must be at the top of the cart, Capsa seeks to claw back claim scope that its predecessor surrendered during prosecution. *Id.* Capsa's construction is therefore improper. *See Graham*, 383 U.S. 1 at 34. ("Here, the patentee obtained his patent only by accepting the limitations imposed by the Examiner. The claims were carefully drafted to reflect these limitations and [the patentee] is not now free to assert a broader view of [the] invention.").

While Capsa suggests that Howard's proposed construction conflates "moveable platform" and "work surface" by locating them both at the top of the cart, a cursory inspection of Howard's proposed constructions makes clear that Howard respects the distinctions. It was Capsa's

predecessors that gained allowance of the prior art of record by disclaiming the "moveable platform" and "work surface" being at any location other than the top of the cart. *See* Dkt. 46 Ex. 5 at 2-10, 15, 17-23, 33; Dkt. 46 at 18-20, 26-28. Holding Capsa to the disavowal in claim scope by its predecessors does not conflate these terms.

Finally, Capsa's reference to the '527 patent—a patent unrelated to the '668 and 650 patents—bears no relevance here. The '527 patent includes a different, unrelated Specification filed on behalf of different inventors from a different company based on priority claims years apart. In any case, the definition for "platform" Capsa highlights from the '527 patent also fully supports Howard's proposed construction because it likewise uses "surface" as part of its definition for "platform." The Court should therefore adopt Howard's construction.

6. "compartment(s)"

Plaintiff's Proposal	Defendant's Proposal
An enclosed space for containing an item.	A small chamber, receptacle, or container. '668 patent cl. 3, 4; '650 patent cl. 1, 5

The Court should adopt Howard's construction because it aligns with the claims and remaining intrinsic evidence. While Capsa argues that it "is not redefining the term," Dkt. 45 at 44, Capsa's proposed construction improperly and redundantly narrows the scope of the term "compartment(s)" to "an enclosed space for containing an item," where the phrase "for containing items" already appears elsewhere in the claim. *See* Dkt. 46 Ex. A, 14:62-63, 15:29-30; Dkt. 46 Ex. B, 14:23-24. Howard's construction, on the other hand, aligns with the rest of the claim language without placing new limitations on the term "compartment" itself. Neither the claims nor the Specification requires that compartments be enclosed, and chambers, receptacles, and containers are all for "containing" items.

Indeed, Figure 7 does not disclaim the illustrated side bin from the term "compartment," as Capsa suggests. The Specification states "as shown in FIG. 7, four short **compartments 530A-D** can be removed." Dkt. 46 Ex. A at 7:52-53 (emphasis added). Thus, the Specification clarifies that Figure 7 depicts a work platform with certain compartments 530A-D removed, not a work platform with no compartments.

Howard's construction introduces no uncertainty by including the modifier "small." The claims require the compartments be included with the work platform. The description of the size of the compartment as "small" would be understood in this context of as merely smaller than the size of the work platform itself. Indeed, the '668 and '650 patent already use the term "small" in this context. Dkt. 46 Ex. A, 12:29-38 (describing how nesting medication modules in close proximity creates a "small footprint" for the resulting train of modules). Nevertheless, to the extent that the Court may find that the modifier "small" to be objectionable, it may be safely omitted. Capsa also argues that a compartment may not be a shelf, but Howard agrees and proposes nothing suggesting such an expansive construction. Dkt. 45 at 45.

Finally, Capsa's citation to claim constructions from unrelated patents regarding the term "battery compartment" should be given no weight. *SIPCO, LLC v. Emerson Elec. Co.*, 980 F.3d 865, 870 n.2 (Fed. Cir. 2020) ("Importantly, that case involved different patents, in entirely different patent families, with different specifications. We find it unsurprising that similarly worded claims may be construed differently when presented in such different contexts and different records."); *Emerson Elec.*, 826 F. App'x at 914 ("[T]he construction of a particular term in one patent will not necessarily bear on the interpretation of the same term in a subsequent patent

because the factual context is different. The term may be identical, but the intrinsic evidence is not.").[3]

7. "at least one compartment" / "disposed above the compartment(s)" / "disposed above a top of the at least one compartment"

Term	Plaintiff's Proposal	Defendant's Proposal
"at least one compartment"	Plain and ordinary meaning	One or more compartments. '650 patent cl. 1
"disposed above the compartment(s)" / "disposed above a top of the at least one compartment"	Plain and ordinary meaning (in view of other proposed definitions)	Disposed above all the one or more compartments. '668 patent cl. 3, 4; '650 patent cl. 1

The Court should construe "at least one compartment" as "one or more compartments" consistent with longstanding legal precedent. *See e.g., Z4 Techs., Inc. v. Microsoft Corp.*, 507 F.3d 1340, 1349 (Fed. Cir. 2007); *Rhine v. Casio, Inc.*, 183 F.3d 1342, 1345 (Fed. Cir. 1999); *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1322 (Fed. Cir. 2003); Dkt. 46 at 22-23. Capsa provides no legal authority to refute this position. Even the case Capsa cites as alleged support for its construction for "disposed above the compartment" agrees with this initial point. *Howmedica Osteonics Corp. v. Wright Med. Tech., Inc.*, 540 F.3d 1337, 1344 (Fed. Cir. 2008) ("The femoral component must include 'at least one condylar element,' which the district court correctly understood to mean 'one or more.'"). Capsa cannot reasonably dispute Howard's proposed construction that "at least one compartment" means "one or more compartments."

[3] Neither party proposes the WDNC's construction of "compartment", so this Court should hear and consider the new arguments proposed by both parties not considered by the WDNC when deciding the term.

The phrase "disposed above the compartment(s)" / "disposed above a top of the at least one compartment" logically follows by applying the antecedent basis to the term as it is used in the claims. Dkt. 46 at 25. Capsa does not address antecedent basis in its briefing, which is fatal to its argument. *Howmedica* does not compel a different result.[4] At issue in *Howmedica* was whether multiple condlyar elements must meet specified geometric limitations described in the claim. *Howmedica*, 540 F.3d at 1344. That does not apply here because the claims in this case do not require multiple compartments to have any additional features that must be satisfied by the claims. Instead, the issue here is the relationship of the actuator and the work surface to the previously recited "one or more compartments." Furthermore, as discussed above, the Applicant disclaimed work surfaces and actuators located below even one compartment during prosecution. Dkt 46 at 32-33.

The claim language supports Howard's position, and Capsa's arguments mischaracterize Howard's construction. Howard is not arguing that the phrase "one or more compartments" requires more than one compartment to meet that limitation.[5] Howard's construction allows for both options, consistent with black letter law: one compartment or more than one compartment. Capsa's arguments that the '650 patent may require only one compartment are thus irrelevant. Furthermore, Capsa's suggestion that reading Howard's construction into claim 14 results in a nonsensical claim is, itself, illogical. Claim 14 narrows the scope of the independent claim by

[4] Indeed, the WDNC construction order expressly rejected Rubbermaid's argument that *Howmedica* controls and adopted Howard's construction for this term. Dkt. 45-1 at 15.

[5] Claim 3 of the '668 patent recites "compartments" (plural), and that term does require multiple compartments to meet the limitation.

redefining the "at least one compartment" to be "a plurality of"—i.e., two or more—compartments *instead of* "one or more." Dkt. 46 Ex. B at 15:59-60.

Howard's arguments give meaning to all language used in the claims, while Capsa would read out critical terms. The '650 patent refers back to "the at least one compartment" when describing the location of the work platform. Dkt 46-2 at 14:24-25. If the applicant had intended to position the work surface above one but not all compartments, it would have claimed that the work surface was "above at least one of the compartments." Capsa would have the Court read out the limitation inherent in the reference back to "**the** at least one compartment," while Howard's construction preserves this term. Howard's construction does not read out the language "a top of the at least one compartment," as Capsa alleges, given multiple compartments collectively have "a top" (e.g., "the top of the compartments."). Howard's construction remains consistent with the claim language and the applicant's actions during prosecution. The Court should adopt Howard's construction.

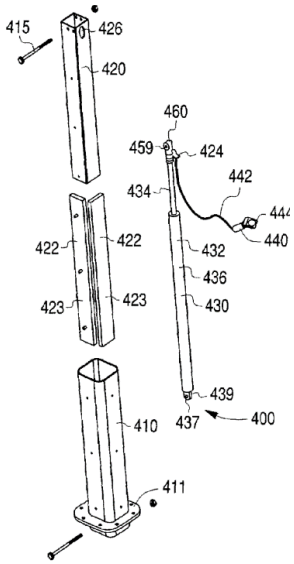
8. "driver"

Plaintiff's Proposal	Defendant's Proposal
A mechanical component for imparting motion to another component.	Gas driven piston. '668 patent cl. 3, 4; '650 patent cl. 1, 2, 8

The Court should adopt Howard's construction of "driver" because it remains true to the patents' intrinsic evidence, including the claims, Specification, and figures. "Claims must be read in view of the specification, of which they are a part." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995), aff'd, 517 U.S. 370 (1996). Capsa, however, construes the term "driver" in the abstract using extrinsic evidence. Furthermore, its definition conflicts with the claims and Specification.

For example, the '668 patent claims require the driver "to releasably lock the telescoping casing relative to the stationary casing." Dkt. 46 Ex. A at 15:21-22, 42-43. The '650 patent requires a similar limitation. Dkt. 46 Ex. B at 14:33-34, 14:56-57 ("driver configured to releasably position"). Capsa's construction, however, imparts motion to another component—the exact opposite of what the claims require. The claims are reinforced by the Specification, which explains that the *user* imparts motion to the work platform by lifting and pushing and the gas driven piston prevents motion. Dkt. 46 at 34-35; Dkt. 46 Ex. A at 9:4-7, 9:23-31 ("To lower the work platform 340, the button 444 is pushed as **a user pushes down** on work platform 340 thereby causing the gas driven piston 432 to expel air… [b]y way of contrast, to raise the work platform 340, **a user** merely needs to push button 444 **and lift upward** on the work platform 340."). Because Capsa's construction conflicts with the intrinsic evidence, it cannot be correct.

The Specification's reference to number 430 for the driver and number 432 for the gas driven piston does not convey that the gas driven piston is merely an exemplary driver. In fact, figure 9A shows the applicant used three reference numbers when pointing to the same component: driver 430, gas driven piston 432, and body portion 436.



Dkt. 46 Ex. A, Fig. 9A.

The Specification clarifies that "[t]he driver 430 includes a gas driven piston 432 which, in turn, includes a body portion 436 . . . ." Dkt. 46 Ex. A, 8:52-53. Under Capsa's logic, a gas driven piston would lack a body portion, which cannot be correct.

Capsa's claim differentiation arguments fail because Howard's construction does not reduce the independent claim under to have the same scope as the dependent claims. Furthermore, claim differentiation cannot be used to contradict the meaning of a claim. Capsa cites to *Curtiss-Wright Flow Control Corp. v. Velan, Inc.* for its proposition, but it does not stand for their proposition. Rather, the Federal Circuit in that case found the district court misapplied the doctrine of claim differentiation and overturned its construction. *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380 (Fed. Cir. 2006) ("The district court's misapplication of that claim construction tool is understandable given the variability of explanations of claim differentiation.").

Indeed, the Federal Circuit disregarded claim differentiation in that case for reasons that apply here. First, reading in the correct construction into the independent claim did not render the dependent claim superfluous because the dependent claims include other limitations not found in the independent claim. *See Curtis-Wright*, 438 F.3d at 1381 ("Moreover, in-use adjustability does not necessarily mean the same thing as the presence of an adjustment mechanism. After all, an adjustment mechanism might be present but not useable during de-heading."); *see also Poly-America*, 839 F.3d at 1137 (claim differentiation did not apply to prevent a claim from requiring a seal extending inwardly where dependent claim recited a more specific range of the inward extension of the seal). The same is true here. Claim 8 of the '650 patent does not merely recite "the driver is a gas driven piston." It recites functionality of the gas driven piston, including permitting gas to flow into and out of the piston. Dkt. 46 Ex. B at 15:8-13. None of this narrowing language

is included in Howard's construction, so claim 8 and claim 1 remain different in scope under Howard's construction.[6] Second, *Curtis-Wright* rejected claim differentiation arguments because "relying on the claim differentiation presumption in this case contradicts the correct meaning of claim 14." *Curtis-Wright*, 428 F.3d at 1381. The same is also true here, where Capsa's construction ignores the purpose of the driver as a locking mechanism and contradicts the Specification's description of the gas driven piston as being unsealed. Ex. 14, ¶¶ 4-6.

The Specification demonstrates the applicant did not use the term "driver" broadly. The Specification states "[t]he driver 430 *includes* a gas driven piston 432." Dkt. 46 Ex. A at 8:52. Use of the word "includes" demonstrates that the driver requires a gas driven piston. *See Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1344–45 (Fed. Cir. 2003) ("Comprising is a term of art used in claim language which means that the named elements are essential… [t]he word 'include' means the same thing."); *see also id.* ("If, then, as the specification states, 'the primary structural conformation (amino acid sequence) of mature human EPO as including 166 specified amino acid residues,' it is simply illogical for Amgen to argue that that means anything other than, at minimum, the 166 amino acids shown in Figure 6."); *Allergan, Inc. v. Apotex Inc.*, 754 F.3d 952, 957-58 (Fed. Cir. 2014) (Affirming district court's construction that "the use of the word 'includes' in the definition of "treating hair loss" plainly means that the patentee intended to define treating hair loss…."); *ASM Am., Inc. v. Genus, Inc.*, 401 F.3d 1340, 1342 (Fed. Cir. 2005) (finding

[6] Capsa's expert states that "that gas driven pistons can be sealed/closed systems or unsealed/open systems." Dkt. 45-2 at ¶ 25. Claim 8 of the '650 patent is also different in scope from claim 1 because it relates the gas flowing in and out of the piston with the movement of the platform.

the term "'reaction space' is expressly defined in the specification" when "the specification provides that the term 'reaction space' *includes* [definition]."

And, again, Capsa's citation to other district court cases construing unrelated terms in the context of unrelated specifications carries no weight here. *See Emerson Elec.*, 826 F. App'x at 914; *SIPCO*, 980 F.3d at 870 n.2. Furthermore, those cases are easily distinguished. *DoseLogix* concerned a dosing dispenser, which is unrelated art. *DoseLogix, LLC v. Reflex Med. Corp.*, No. 21-CV-1275 (ECT/DJF), 2022 WL 16849070, at *7 (D. Minn. Nov. 10, 2022). Unlike the '668 and '650 patents, the claims in *DoseLogix* require the driver "to movably position [a] traveler relative to the driver." *Id.* They do not recite a locking function. *Arthrex. Inc. v. Smith & Nephew, Inc*. deals with unrelated systems for installing sutures, and that patent consistently describes its driver as "driving an interference screw." No. 2:15-CV-1047-RSP, 2016 WL 4211504, at *44 (E.D. Tex. Aug. 10, 2016). *Bonutti Rsch., Inc. v. Lantz Med., Inc.*, considered a completely different term ("drive assembly") in a completely different context (the application of § 112(6)). No. 1:14-cv-00609-SEB-MJD, 2016 WL 247752, at *20 (S.D. Ind. Jan. 21, 2016). Neither the term "drive assembly" nor the application of § 112(6) is at issue here.

Although Capsa's cites heavily to dictionaries and its expert, extrinsic evidence is "less significant than the intrinsic record in determining the legally operative meaning of claim language." *Phillips*, 415 F.3d at 1317 (internal citations and quotations omitted). Here, Capsa's expert, Dr. Pinhas Ben-Tzvi, contradicts the Specification. Dr. Ben-Tzvi describes the gas driven piston as "a sealed/closed gas driven piston." Dkt. 45-2 at ¶ 25. But the Specification describes a gas driven piston that intakes and expels air. Dkt. 46 Ex. B at 9:1-38 ("To lower the work platform 340, the button 444 is pushed as a user pushes down on work platform 340 thereby causing the gas driven piston 432 to expel air…in the [raising] process, the gas driven piston 432 will intake

air…."). "[A] court should discount any expert testimony 'that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the patent.'" *Phillips*, 415 F.3d at 1318 (quoting *Key Pharms. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed. Cir. 1998)).

9. "actuator"/ "actuator for controlling the driver"

Plaintiff's Proposal	Defendant's Proposal
A mechanism to activate or control equipment, e.g., by use of pneumatic, hydraulic, or electronic signals	Subject to pre-AIA 35 U.S.C. § 112(6) **Function**: "controlling the driver" **Structure**: *Indefinite* '668, cl. 3, 4; '650, cl. 1, 5, 8

The Court should find the phrase "actuator for controlling the driver" invokes 35 U.S.C. § 112(6) because the term "actuator" as used in the Specification conveys no inherent structure. Furthermore, the Specification contains no corresponding structure to perform the function of "controlling the driver," rendering the claim indefinite. Capsa never contests that the function for the actuator is "controlling the driver." *See* Dkt. 45 at 27-32. Instead, Capsa attempts to fabricate structure by construing the term "actuator" in the abstract, untethered to the Specification, using extrinsic evidence. Capsa may not inject structure where none exists, and the Court should adopt Howard's construction.

Although limitations lacking the word "means" are generally presumed not to invoke § 112(6), this is not a strong presumption. *Williamson*, 792 at 1349 ([We] "expressly overrule the characterization of that presumption as 'strong.' …. The standard is whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure."). Capsa's analogy to a "detent mechanism" proves Howard's point. The term "mechanism" standing alone conveys no structure, but the modifier "detent" provided it.

Greenberg v. Ethicon Endo-Surgery, Inc., 91 F.3d 1580, 1584 (Fed. Cir. 1996). Here, "actuator" is unmodified by any adjective providing structure. Nor does the term actuator as used in the Specification convey inherent structure on its own because the actuator is merely a black box with a button that does invoke any components for controlling the driver with any type of signals, much less pneumatic, hydraulic, or electronic signals. *See* Dkt. 46 at 36-38; Dkt. 46 Ex. A, 8:52-55, Figs. 9A-10B; Ex. 14, ¶ 8. And while Capsa again cites *Flo Healthcare* in arguing that § 112(6) does not apply, Dkt. 45 at 28, *Williamson* overruled *Flo Healthcare* for using the wrong standard. *Williamson*, 792 F.3d at 1349.

Capsa's cited intrinsic evidence also demonstrate that it conflates the *function*—controlling the driver—with the nondisclosed *structure* for the actuator. For example, Capsa citation to claim 8 merely recites narrower limitations on the *driver* and explains additional *functionality* for controlling the driver. Dkt. 46 Ex. B at 15:8-13 ("wherein the *driver* includes a piston that, in response to the user's actuation of the actuator, permits gas to flow out of the piston…."). Claim 8 discloses no structure for an actuator, only that it "actuates." This is circular and discloses nothing.

The Specification similarly identifies no structure for the actuator, and no structure for how the actuator controls the driver. Capsa notes button 444 of the actuator, but the Specification provides no explanation for how the button 444 or its nondescript connector 442 and unlabeled part 424 control the driver. *See* Dkt. 46 Ex. A at 8:52-55, Fig. 9A. Tellingly, Capsa invents structure out of whole cloth to buttress its arguments. Capsa alleges that undisclosed "valves of the gas piston (driver) [] open to expel [air] from the piston chamber (or inhale air)," Dkt. 45 at 29 (citing Dr. Ben-Tzvi's declaration), but the Specification never discloses valves in any form. *See* Dkt. 46 Ex. A at 9:1-38 ("To lower the work platform 340, the button 444 is pushed as a user

pushes down on work platform 340 thereby causing the gas driven piston 432 to expel air… when the platform 340 is raised gas will be sucked into the piston 340 and will not be readily expellable until the button 444 is depressed."). Indeed the term "valve" does not appear in the Specification, Drawings, or claims of the asserted patents or the related provisional applications.

That Capsa invents structure controlled by the button 444 proves Howard's point that no structure is disclosed, rendering the term indefinite. Furthermore, in supporting its construction of "driver," Capsa's expert testifies that the gas driven piston is sealed and "do[es] not accept an external source of gas as input energy" (*see* Dkt 45-2 at ¶ 25)—notwithstanding the explicit statement in the Specification that "the gas driven piston 432 will intake air," Dkt. 46 Ex. B, 9:26-31. Capsa cannot credibly argue that the gas driven piston is sealed for the term "driver," while simultaneously arguing that the piston has valves allowing it to intake and expel air when construing the term "actuator." To the extent that Capsa' alleges one skilled in the art could modify the Specification to determine how to control the driver, this does not save the claims from being indefinite. *Amtel Corp. v. Info. Storage Devices, Inc.*, 198 F.3d 1374, 1380 (Fed. Cir. 1999) ("[C]onsideration of the understanding of one skilled in the art in no way relieves the patentee of adequately disclosing sufficient structure in the specification.") A proper indefiniteness analysis "asks first whether structure *is* described in the specification, and, if so, whether one skilled in the art would identify the structure from the description." *Id.* at 1381 (emphasis original). No valves are disclosed and the Specification identifies no way for a non-descript actuator to control the operation of the driver. Thus, the court should find the claims indefinite.

Capsa's case law does not compel a different result. Capsa cites *Comcast Cable Commc'ns, LLC v. Spring Commc'ns Co.*, but the specification in that case described various types of actuators, including "a touch interface, a touch interface with handwriting recognition, a touch

interface with virtual character-entry, or a voice recognition system." 38 F. Supp. 3d 589, 604 (E.D. Pa. 2014). The parties disputed whether actuators included touchscreens or not in the face of the Specification's express recital of those touch interfaces. *Id.* Here, the '650 and '668 patent Specifications disclose nothing like any of those touch interface devices. *IGT v. All. Gaming Corp.* considered whether a "bonus payout actuator" was indefinite under 35 U.S.C. § 112(2), not whether it invoked § 112(6), so questions of inherent structure for the term "actuator" were not considered. No. 2:04-CV-1676-RCJ-RJJ, 2007 WL 6334816, at *8-9 (D. Nev. May 9, 2007). Furthermore, that claims in that case included the descriptive modifier "bonus payout" to "actuator," whereas the claims in this case contain no such modifier. *Id.* Capsa's other cases include similar modifiers, like "manual actuator" or "shift actuator." Dkt. 45 at 30. These modifiers may connote structure in the same way that "detent mechanism" was found to convey structure to the well-known nonce word "mechanism" standing alone. *See Greenberg*, 91 F.3d at 1583. Capsa's citation to other extrinsic evidence like dictionaries and unrelated patents is similarly unavailing. *See Phillips*, 415 F.3d at 1317 (Extrinsic evidence is "less significant than the intrinsic record in determining the legally operative meaning of claim language."); *Acumed*, 483 F.3d at 809 (Finding prior art patent "is purely extrinsic evidence and therefore merits little consideration.")

In any event, Capsa's proposed construction for the term "actuator" separate from its larger phrase greatly exceeds the scope the subject matter disclosed in the Specification. As discussed above, Capsa's proposed construction is untethered to anything within the written description or

prosecution history.[7] Thus, the Court should not adopt Capsa's proposed construction. *See Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1320 (Fed. Cir. 2016) ("A party is, therefore, 'not entitled to a claim construction divorced from the context of the written description and prosecution history.'" (quoting *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1144–45 (Fed. Cir. 2005))). Here, the Specification does not disclose that the actuator 440 controls the driver with any type of signals, much less pneumatic, hydraulic, or electronic signals. Indeed, nothing would indicate to a POSITA that a gas driven piston or any other component for locking the telescopic casing would involve electronic signals. The Court should reject Capsa's construction because it is untethered to how a POSITA would understand the term after reading the Specification.[8]

10. "drawer slides"

Plaintiff's Proposal	Defendant's Proposal
Plain and ordinary meaning	Plain and ordinary meaning (i.e., elongate stationary drawer rails and corresponding elongate rail runners configured to support a drawer for sliding movement between a closed position and an open position). '668 patent cl. 3

[7] Indeed, Capsa's proposed construction substitutes "actuator" with "mechanism," which is a well-known nonce word invoking means plus function limitations. *Welker Bearing Co. v. PHD, Inc.*, 550 F.3d 1090, 1096 (Fed. Cir. 2008) ("Thus, the unadorned term 'mechanism' is simply a nonce word or a verbal construct that is not recognized as the name of structure and is simply a substitute for the term 'means for.'" (internal quotations omitted).

[8] Howard proposed a different construction for "actuator for controlling the driver" than the WDNC construction, but the WDNC never considered whether the term "actuator for controlling the driver" invokes 35 U.S.C. § 112(6) or whether it is indefinite.

The Court should adopt Howard's construction because it properly explains the plain and ordinary meaning of "drawer slides" as used in the Specification. Capsa opposes Howard's construction because it wishes to sidestep a proper doctrine of equivalents analysis. Howard's articulation of the plain and order meaning, by contrast, is based wholly on the disclosure in the Specification. Dkt. 46 Ex. A, 8:39-41 (describing drawer slides as "formed of stationary drawer rails 423 and corresponding rail runners 425.") There is no confusion in identifying these parts, and examples are detailed in the figures. *See* Dkt. 46 Ex. A at Fig. 9A. Furthermore, Capsa's argument that Howard's construction reads out the preferred embodiment including "bearings" is wrong. A person of ordinary skill would understand that, when opening a drawer, the drawer rail remains fixed (for example, inside of a cabinet), while the rail runner slides along the rail, with or without bearings. This is exactly how the Specification describes the component: "drawer slides 422 (e.g., *the rail runners 425*) may be fixed to outer sides of the inner casing 420 and the corresponding side of the drawer slides 422 (e.g., *the stationary drawer rails* 423) may be fixed to inner sides the outer casing 420. Further, the stationary drawer rails 423 may be provided with ball bearings to facilitate movement of the rail runner 425." Dkt. 46 Ex. A at 8:41-49.

Howard's construction does not read out the drawer slides as used in the height adjustment mechanism. Howard is not arguing that the drawer slides must actually support a drawer. Howard is explaining that the claimed drawer slides must have a structure that is capable of supporting a drawer for sliding movement between a closed position and an open position. While the drawer slides are not used in the claim for that purpose, the parenthetical explains what a POSITA would understand: that the Specification meant drawer rails and rail runners of the type used for supporting a drawer for sliding movement. Accordingly, the Court should adopt Howard's construction.

11. "wherein the height adjustment mechanism is configured to releasably lock the work platform at a plurality of heights" / "wherein the height adjustment mechanism is configured to releasably position the work platform at a plurality of heights"

Plaintiff's Proposal	Defendant's Proposal
"releasably lock" means to releasably fix or hold in place. The other terms, not otherwise construed herein, should be afforded their plain and ordinary meaning.	Wherein the height adjustment mechanism secures the work platform at a plurality of heights via a biased pin, latch, or other mechanical impediment to movement. '668 patent cl. 3, 4; '650 patent cl. 1

The Court should construe the term as Howard proposes because it takes its definition from the intrinsic evidence and because it accounts for the term "releasably" within the construction. Capsa acknowledges the parties' dispute surrounds the term "releasably," but its construction merely recycles the term into the definition, providing no construction at all. By refusing to construe "releasably," Capsa's proposed construction for "releasably lock" fails to aid the trier of fact on the question at the very center of the parties' dispute. Capsa's construction is thus also improper because it submits a question of law to the finder of fact. *See O2 Micro*, 521 F.3d at 1361 (finding the parties arguments on "the meaning and legal significance of the 'only if' limitation were improperly submitted to the jury") ("In this case, the 'ordinary' meaning of a term does not resolve the parties' dispute, and claim construction requires the court to determine what claim scope is appropriate in the context of the patents-in-suit.").

To resolve the dispute, the Court should construe the term to distinguish exemplary types of locks that are "releasable" over the types that are not. For example, a deadbolt may be a lock that is unlockable, but unlocking a deadbolt does not "release" internal force holding the deadbolt in position. Rather, deadbolts require a key and force generated by the user to cause the bolt to move in or out. On this point, Howard's construction comes from the intrinsic record and the way the incorporated provisional application describes a releasable locking mechanisms using biased

pins. Dkt. 46 at 42-45. Capsa's reliance on extrinsic evidence using dictionaries and testimony cannot overcome the intrinsic evidence. *See Phillips*, 415 F.3d at 1317. Accordingly, the Court should adopt Howard's construction.

B. U.S. Patent No. 8,109,527 ("the '527 patent")

1. "track"

Plaintiff's Proposal	Defendant's Proposal
A mechanical component that another component slides or rolls along	An elongate guide, supported along its length, for guiding a runner. '527 patent cl. 1, 2, 5

The claims recite "a first track *supported by the support structure*… [and] a first arm supported on said first track for *linear movement in a first direction*." Dkt. 46 Ex. C, cl. 1; (emphasis added). Howard's construction, "an elongate guide, supported along its length, for guiding a runner" is easily understandable and consistent with the claims and remaining intrinsic record. For example, as shown in Fig. 2 below, track 30 is long in relation to its width:

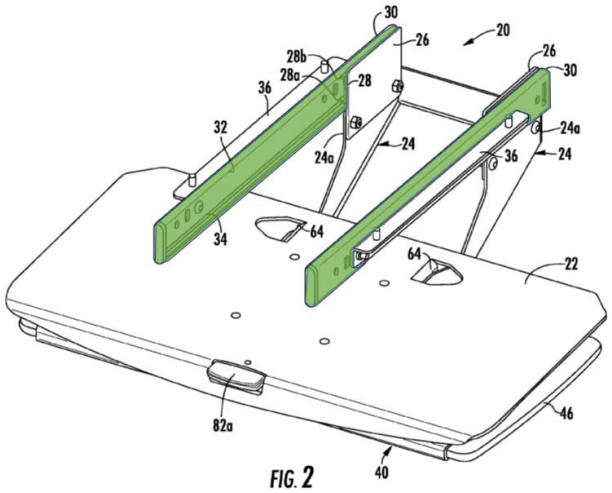


FIG. 2

Dkt. 46 Ex. C, Fig. 2. The intrinsic record also reaffirms that the track is supported along its length. *See e.g.*, Dkt. 46 Ex. C, 2:38-39 ("[e]ach track 30 includes vertically spaced channels 32 and 34 *that extend for substantially the length of the tracks 30*" (emphasis added)); *id.*, 2:46-48 ("[t]he

tracks 30 are supported in a substantially horizontal orientation by brackets 36 that connect the tracks 30 to a housing 38" (emphasis added)); *id.* ("[t]he plate 40 is formed with two parallel tracks 42 *that extend the length of plate 40* and are arranged substantially perpendicular to the direction of tracks 30." (emphasis added)). Lastly, the intrinsic record is also clear that the tracks guide a runner. *See e.g.*, Dkt. 46 Ex. C, 2:34-38 ("Each plate is connected to a runner 28 that is supported in a horizontally extending track 30 such that *the runner 28 can slide in the track 30* to move the tray horizontally from a retracted position (FIG. 4) to an extended position (FIG. 5)"); *id.*, 2:40-44 ("Each runner 28 includes a first flange 28*a* that extends into the upper channel 32 and a second flange 28*b* that extends into the lower channel 34. The flanges 28*a* and 28*b* slide in the channels 32 and 34 to *allow the runners to move horizontally in the tracks 30*.").

Ignoring the intrinsic record, Capsa directs the court only to extrinsic evidence in support of its proposed construction.[9] The Court should reject Capsa's invitation. *See Phillips*, 415 F.3d at 1313-17 (confirming that the intrinsic evidence, including the claim language, written description, and prosecution history, is the most significant when determining the meaning of a disputed claim limitation). Additionally, Capsa again cites a district court case from another jurisdiction, construing another term ("guide track") in an unrelated patent. Dkt. 45 at 54. As discussed above, Capsa ignores the claim language, while the entire intrinsic record supports Howard's proposed construction. Thus, the Court should adopt Howard's construction.

2. "platform"

Plaintiff's Proposal	Defendant's Proposal
A substantially flat raised area or structure.	Plain and ordinary meaning

[9] Capsa refers to "features of one example track described in the '650 Patent;" Howard has assumed that Capsa meant to refer to the '527 Patent.

	'527 patent cl. 1, 3, 4, 5, 6.

The claims of the '527 patent explain what "platform" is and what it does. For example, claim 1 recites a "first platform…pivotable between a first position and a second position" and "second platform mounted for linear movement in a second direction disposed substantially perpendicular to [a] first direction wherein said first platform is mounted." Dkt. 46 Ex. C, cl. 1. Claim 6 goes on to require that "the first platform is pivotably mounted to said first arm such that the first platform is pivotable between a raised position and a lowered position." Dkt. 46 Ex. C, cl. 6. Notably, Capsa ostensibly agrees that plain and ordinary meaning applies while urging the Court to adopt specific verbiage expanding upon the term.

Under the guise of providing clarity to a jury, Capsa suggests further construction is necessary because the '668 and '650 patents use the term "work platform." An inspection of Capsa's proposed constructions, however, reveals Capsa seeks to redefine well-understood words used in their ordinary way by the claims in an attempt to buttress its invalidity defenses against known prior art. In the case of both "work platform" in the '668 and '650 patents, and "platform" in the '527 patent, a person of ordinary skill would find the terms easily understandable given the claims' clear explanation of what each term is and what it does in the claims. *See, e.g.*, Dkt. 46 Ex. C, cl. 1.

Meanwhile, Capsa makes no reference to the claims in support of its assertion that its proposed definition should supplant the plain and ordinary meaning. *See Interactive Gift Exp., Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001) ("In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves."). Nothing in the intrinsic record of the '527 patent suggests "platform" should deviate from its plain and ordinary meaning. Indeed, Capsa's construction redefines a commonly understood noun, adding confusion

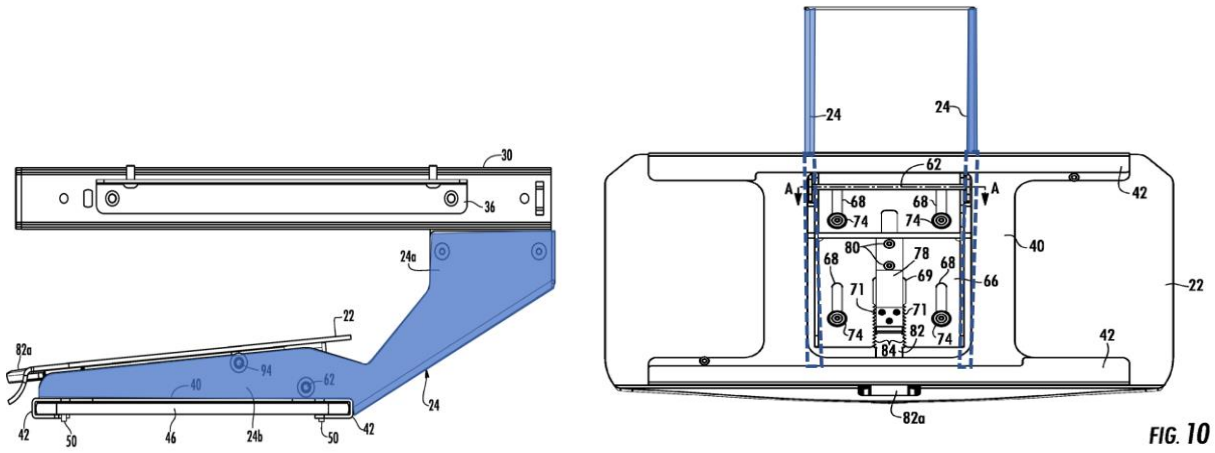
where none existed. For example, Capsa is forced in its opening brief to construe its own construction, explaining that "'[r]aised' refers to being raised off the floor." *See* Dkt. 45 at 54 n.17. Indeed, everything above the wheels is "raised" off the floor. This is a problem with their construction, not the term "platform." Indeed, the extrinsic evidence Capsa provides further supports Howard's position that "raised" is not a requirement of "platform." Dkt. 45 at 46 (citing Ex. L, at pg. 89, Cambridge (online) Dictionary; "Platform": "A *usually* raised structure….").

Lastly, Capsa again points to a case from a district court in a different jurisdiction construing a different patent. Dkt. 45 at 46-47. Indeed, as Capsa acknowledges, "the term "platform" is used consistently throughout the '527 Patent according to its plain and ordinary meaning." Dkt. 45 at 46. Thus, there is no need for further construction. The court should reject Capsa's self-serving attempt to redefine a commonly understood word and adopt the plain and ordinary meaning.

3. "arm"

Plaintiff's Proposal	Defendant's Proposal
A component that projects from a device for supporting or holding another component.	A slender part that projects from a supported end. '527 patent cl. 1, 2, 6.

Howard's construction clarifies the technical meaning of "arm" while remaining consistent with the claims of the '527 patent. Dkt. 46 Ex. C, cl. 1 ("first arm [is] supported on [a] first track." Dkt. 46 Ex. C, cl. 1. Further, Howard's definition is consistent with the arm described throughout the Specification. As shown below, arm 24's width is narrow in proportion to its length, regardless of "perspective":



Dkt. 46 Ex. C, Figs. 4, 10; *see also* Figs. 2, 5-9.

Notably, again, Capsa does not support its proposed construction with reference to the claims. Rather, Capsa ignores the language of the claim to summarily allege Howard's construction "reads on any slender component that projects from something (e.g., flag poles, radio or TV antennas, etc."). Dkt. 45 at 57. Capsa ignores that the claims provide ample context for a person of ordinary skill to understand the claimed "arm" does not include a supported end from "flag poles, radio or TV antennas, etc." For example, claim 1 specifies the "first arm" is "supported on said first track for linear movement in a first direction." Dkt. 46 Ex. C, cl. 1. Lastly, the dictionary definitions advanced by Capsa equally support Howard's construction. Because Howard's construction is consistent with both the intrinsic and extrinsic evidence, the Court should adopt Howard's constriction.

4. "substantially coextensive"

Plaintiff's Proposal	Defendant's Proposal
Plain and ordinary meaning or in the alternative Occupying approximately the same space or period of time.	Dimensioned such that it effectively doubles the work area available to the user when extended. '527 patent cl. 4.

Howard's construction comes directly from the intrinsic record. Despite this, Capsa criticizes Howard for defining a term "as a result of what happens when a user extends the mouse tray ('second platform') out from under the keyboard tray ('first platform')." Dkt. 45 at 58. But this is exactly how the inventors define it in the Specification, stating "[t]he secondary work platform 46 is dimensioned to be substantially coextensive with the primary work platform 22 such that when it is extended it effectively doubles the work area available to the user." Dkt. 46 Ex. C, 3:12-16. Indeed, while Capsa proposes it would make sense to define the secondary platform when it is hidden and unusable, the applicant disagreed and described the secondary platform as a person of ordinary skill would understand its utility.

Furthermore, Capsa's proposal further demonstrates its failure to consider the intrinsic record, as "occupying approximately the same… period of time" completely disregards both the claims and entire field of the invention. *See Lexion Med., LLC v. Northgate Techs., Inc.*, 641 F.3d 1352, 1356 (Fed. Cir. 2011) ("The customary meaning of a claim term is not determined in a vacuum and should be harmonized, to the extent possible, with the intrinsic record, as understood within the technological field of the invention."). Thus, the court should adopt Howard's construction.

C. U.S. Patent No. 9,039,016 ("the '016 patent")

1. "means for automatically adjusting a height of the platform"

Plaintiff's Proposal	Defendant's Proposal
This is a 112(6) means-plus-function limitation. Plaintiff's proposed embodiments omitted from the table to conserve space. *See* proposed construction at Joint Claim Construction Statement, Dkt. 42-1, Exhibit A, Joint Claim Construction Chart.	Subject to pre-AIA 35 U.S.C. § 112(6) **Function:** Automatically adjusting a height of the platform. **Structure:** A processor programmed to instruct a motorized lift mechanism to lift or lower the platform by non-manual force to a

	predetermined ergonomic position selected by the processor based on a given user's physical height input at a control panel or detected by a sensor and received by the processor, which communicates with a database containing a list of potential user heights and predetermined ergonomic positions associated with each of the potential user heights, the predetermined ergonomic position being based on the average distance between the eyes and elbows of a person having the given user's physical height. '016 patent, cl. 20.

Howard's construction captures all structure found in the Specification of the '016 patent performing the function of "automatically adjusting a height of the platform." Capsa's "embodiment 3" structure, however, directly contradicts the patent's reason for automatic adjustments to platform height. Indeed, the Specification clearly explains that the goal of the invention is to reduce "repetitive strain injuries" caused by "poor ergonomic position[s]," including those self-inflicted by users making manual adjustments. Dkt. 46 Ex. D., 1:37-38. Specifically, the Specification states that:

> Further, many healthcare professionals do not receive the proper training regarding optimal ergonomic positioning of the work surface, keyboard, and monitor of a mobile accessory cart. Therefore, in rare situations in which users do make adjustments to a mobile accessory cart, they are often not ergonomically correct for the particular user. By not making the proper ergonomic adjustments, continuous work in a poor ergonomic position leads to repetitive strain injuries, which are increasingly being reported by healthcare professionals.

Id., 1:31-39. To solve this problem, the '016 patent explains that its automatic adjustments "ensure[] that poor ergonomic positioning is ***not*** the default for the cart." Dkt. 46 Ex. D, 11:38-39 (emphasis added). Howard's proposed construction falls directly in line with this expressed purpose of the '016 patent, where the height of the platform is moved to a "predetermined

ergonomic position" based on "a given user's physical height." This construction avoids a user picking a position that "is not ergonomically correct for the particular user." Dkt. 46 Ex. D, 1:31-39.

Capsa's Embodiment 3 structure, on the other hand, would nullify the expressed purpose of the '016 patent. Indeed, Capsa's Embodiment 3 structure would expand the claimed "automatically adjusting a height of the platform" to include a user's manual departures from the predetermined "optimal ergonomic positioning of the work surface, keyboard, and monitor of a mobile accessory cart" for that user. Dkt. 46 Ex. D, 1:31-34. In referring to the Specification, Capsa fails to acknowledge that while a user can store "adjustments to the predetermined platform height," the height of the cart is not "automatically adjusted" to this height. Rather, they are stored "for future [manual] selection by that user." Dkt. 46 Ex. D, 11:39-46. As discussed, the '016 patent explains, automatic adjustments return to "the neutral position the next time the cart 100 is adjusted" because "[t]his ensures that poor ergonomic positioning is ***not*** the default for the cart 100." Dkt. 46 Ex. D, 11:32-35 (emphasis added).

IV. CONCLUSION

For the above reasons, the Court should adopt Defendant's constructions.

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