

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MASCHIO GASPARDO S.P.A.	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 22-1394 (RGA) (JLH)
	)	
PRECISION PLANTING, LLC	)	
	)	
Defendant.	)	

JOINT CLAIM-CONSTRUCTION BRIEF
REGARDING U.S. PATENT NO. 8,770,121

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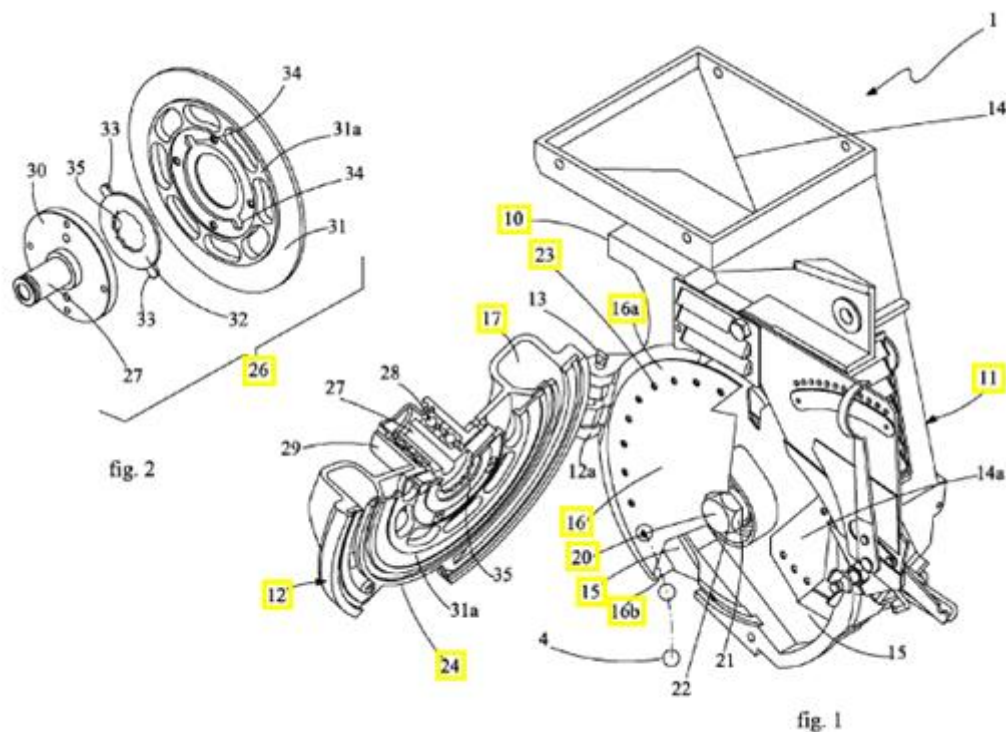
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I. Introduction¹

U.S. Patent No. 8,770,121 issued on July 8, 2014 based on a Patent Cooperation Treaty application filed on November 10, 2011 and entering U.S. national phase on October 8, 2012. (D.I. 42-2 at 4.) The '121 patent describes a seed distribution element for precision pneumatic seed drills (*id.* at 8–9, col. 4:13–col. 5:3) as well as a “kit” for retrofitting seed distribution elements of precision pneumatic seed drills (*id.* at 9, col. 5:4–col. 6:25).



(*Id.* at 5, annotated.)

¹ The Court's Scheduling Order (D.I. 17) provides the format for the Joint Claim Construction Brief. The Order does not include, nor does the Court ask for an "Introduction" section for Brief. Therefore, Maschio does not believe an introduction is appropriate and thus does not join in this "Introduction."

The seed distribution element has a sowing disc **16** rotated by a motor-driven transmission drive shaft **20** and a housing **10** with a fixed portion **11** and a movable portion **12** closable against the fixed portion. (*Id.* at 8, col. 4:13–19; *id.* at 9, col. 5:4–11; *id.* at 4, abstract.) The sowing disk is interposed between the fixed and movable portions, delimiting a seed collection chamber **15** defined in the fixed portion from a pneumatic suction chamber **17** defined in the movable portion. (*Id.* at 8, col. 4:20–26; *id.* at 9, col. 5:12–18; *id.* at 4, abstract.) The seed distribution element also includes a seal **24** arranged on the movable portion, in sliding contact with the facing surface **16a** of the disc when the fixed and movable portions are closed against one another. (*Id.* at 8, col. 4:29–32; *id.* at 9, col. 5:21–23; *id.* at 4, abstract.)

A pressure differential is provided between opposed surfaces **16a** and **16b** of the sowing disc in a region of a circumferential segment of a ring of holes **23** of the sowing disc. (*Id.* at 8, col. 4:27–28, 33–35, *id.* at 9, col. 5:19–20, 24–26; *id.* at 4, abstract.) The seed distribution element has a thrust-bearing element **26** supported rotatably in the movable portion in order to withstand at least some axial load produced by the sowing disc on the seal. (*Id.* at 8, col. 4:36–40; *id.* at 9, col. 6:2–6; *id.* at 4, abstract.)

The '121 patent purports to address the problem that undesired wear occurs to the pneumatic seal from the sowing disc rotatably sliding against it while also compressing the seal due to the suction effect in the pneumatic suction chamber. (*Id.* at 7, col. 1:38–55.) The thrust-bearing element purportedly relieves the heavy load on the seal. The '121 patent purports to solve a problem in the prior art by locating the thrust-bearing element and suction chamber in the movable portion of the housing rather than the fixed portion,

allowing for easier retrofitting and opening and closing of the movable portion. (*Id.*, col. 1:38–55, col. 4:1–9.)

The '121 patent states that it is “obligatory” to mount the transmission that drives the motor-driven shaft (which rotates the disc) on the fixed portion. (*Id.*, col. 1:63–65.) Furthermore, the '121 patent states that the presence of the transmission requires the motor-driven drive shaft to be mounted on the fixed portion of the housing. (*Id.*, col. 2:60–65.) The drive shaft is described as being driven in rotation at predetermined adjustable speeds by a transmission which is not shown. (*Id.*, col. 2:60–63.) The '121 patent claims only recite the sowing disc being “rotated by a motor-driven transmission drive shaft at controlled speed.” (*Id.* at 8, col. 4:15–16; *id.* at 9, col. 5:7–8.)

II. Representative Claims of the '121 patent

A. Claim 1

1. A seed distribution element for precision pneumatic seed drills, comprising:

a sowing disc which is rotated by a motor-driven **transmission drive shaft** at controlled speed,

a housing with a **fixed portion** and a **portion** which is **movable** relative to the **fixed portion** and can be closed against the **fixed portion**,

a seed collection chamber being defined in the **fixed portion**,

a pneumatic suction chamber being defined in the **movable portion**,

the sowing disc being interposed between the **fixed** and **movable portions** and having opposed surfaces delimiting the chambers,

the sowing disc having at least one ring of selector holes extending between the opposed surfaces, and

a seal which is arranged on the **movable portion** and is capable of sliding contact with the facing surface of the disc when the **fixed** and **movable portions** are closed against one another,

wherein a pressure differential is provided between the opposed surfaces in the region of a circumferential segment of the ring of holes,

wherein the seed distribution element further comprises a **thrust-bearing** element of the sowing disc, which **thrust-bearing** element is **supported rotatably in the movable portion in order to withstand at least some of the axial load produced by the disc on the seal.**

B. Claim 3

3. The seed distribution element according to claim 1,

wherein the **thrust-bearing** element comprises a **thrust-bearing** plate which can bear on that surface of the sowing disc which faces the seal, in a zone radially inside of the ring of holes.

C. Claim 10

10. A kit for the retrofitting of seed distribution elements of precision pneumatic seed drills wherein the distribution elements are of the type including:

a sowing disc which is rotated by a motor-driven **transmission drive shaft** at controlled speed,

a housing with a **fixed portion** and a **portion** which is **movable** relative to the **fixed portion** and can be closed against the **fixed portion**,

a seed collection chamber being defined in the **fixed portion**,

a pneumatic suction chamber being defined in the ***movable portion***,

the sowing disc being interposed between the ***fixed*** and ***movable portions*** and having opposed surfaces delimiting the chambers,

the sowing disc having at least one ring of selector holes extending between the opposed surfaces, and

a seal which is arranged on the ***movable portion*** and is capable of sliding contact with the facing surface of the disc when the portions are closed against one another,

wherein a pressure differential is provided between the opposed surfaces in the region of a circumferential segment of the ring of holes,

wherein the kit comprises:

the ***movable portion*** pre-assembled with: a ***thrust-bearing*** element of the sowing disc, which ***thrust-bearing*** element is ***supported rotatably in the movable portion in order to withstand at least some of the axial load produced by the disc on the seal.***

III. Agreed-upon Constructions

The parties agree that “movable portion” should be construed as “the portion of the housing that is movable relative to the portion that is fixed to the framework of the sowing elements,” as proposed by Precision. (See § IV.A.1.c, *infra*, at 15.)

The parties further agree that “plate” should be construed as “a generally flat surface,” as proposed by Maschio.

IV. Disputed Constructions

A. “fixed portion” [and “movable portion”]

1. Maschio’s Opening Position

a. The Court should not need to construe “fixed portion” and “movable portion.”

The parties agree that “fixed portion” and “movable portion” do not meet the threshold question of requiring construction which begs the question why Precision is seeking to have these terms construed. Precision did not initially propose these two terms but waited until after the deadline for exchanging terms requiring construction, to propose these terms. When asked why these terms were not provided by the deadline along with the other proposed terms, Precision’s counsel said that they believe the proposed constructions are the plain and ordinary meaning of the terms and they did not believe any construction was required. (See June 9, 2023, email from Scott Brown to Neil Benchell, attached hereto as Exhibit 1.) Even though Precision believed no construction was necessary, it persisted in seeking the Court’s attention to rule on a construction for these terms.

Precision’s counsel’s email continues, without elaboration, that “we now believe there may be a dispute between the parties as to what the ordinary meaning of those terms is. . .” (Ex. 1 at 1.) The parties had no communications between the deadline to exchange terms and Precision’s additional identification of these terms. When asked during the parties’ June 20, 2023, meet and confer about the supposed dispute, Precision’s counsel said that the dispute arose because Maschio believes that Precision is infringing the ’121

patent under the plain and ordinary meaning of these terms. In other words, Precision intends to seek construction of these claim terms because Maschio maintains that Precision is infringing its '121 patent. That is not a reason to take the Court's time to argue claim construction, especially where the parties substantially agree to the proposed "plain and ordinary meaning" of the terms.

Notwithstanding the disagreement as to whether these terms need construction, Maschio proposed counterproposals that are substantially the same as Precision's constructions, but Precision refused to adopt the counterproposals without explanation. As explained below, Maschio proposed adding the word "respective" to the construction of "fixed portion" and with that minor addition, agreed to Precision's construction of "movable portion."

Given the untimely disclosure of these terms, that the parties agree that no construction is necessary, and Maschio's counterproposals which are substantially the same as Precision's construction of the plain and ordinary meaning of these terms, it is, at best, confusing why Precision persists in its demand that the Court construe these terms. Precision's only explanation is that Maschio's assertion of infringement must mean that the parties disagree over the plain and ordinary meaning. But they do not. For these reasons, Maschio does not believe the Court should construe these terms. However, if the Court believes construction is necessary, Maschio proposes constructions which are substantially the same as those proposed by Precision.

b. “fixed portion”

Maschio’s Proposed Construction	Precision’s Proposed Construction
the portion of the housing that is fixed to the framework of the respective sowing element	the portion of the housing that is fixed to the framework of the sowing elements

Maschio agrees with Precision that the plain and ordinary meaning of “fixed portion” is appropriate for this term and that no construction is necessary. Moreover, Maschio agrees with Precision’s construction except to add that the fixed portion need be fixed to the framework for the *respective* sowing element.

As shown in Figure 1, the components of the sowing element are combined with the seed distribution element. Further in Figure 3 it can be seen that multiple seed distribution elements combined with components of the sowing element are attached to a frame on a precision pneumatic seed drill and used in combination. (See ’121 patent at Fig. 3, 2:32-43.) This can also be seen on Figure 2 showing the fixed portion **10** attached to a single seed distribution element. (See ’121 patent at Fig 2.) Explaining the sowing element, the patent states, “[t]he sowing element **1**² itself comprises a housing **10** with a fixed portion **11** fixed in a stable manner on the frame **6** and a movable portion **12** hinged in the region of a hinge **12a** on the fixed portion **11** by means of a removable hinge pin **13**.” (*Id.* at 2:44-47.)

² It is clear from the patent that this should be referenced as “2”. Reference 1 is the seed distribution element. The sowing element is referenced as 2. (See ’121 patent at 2:32–33.)

Maschio believes that the inclusion of “respective” to Precision’s proposed construction is necessary to convey that the fixed portion of the sowing element is part of the sowing element to which it is attached and not that of another sowing element on the frame. It would be nonsensical for the fixed portion to be fixed to the framework of another sowing element.

This addition does not adversely affect Precision’s proposed construction. The addition is only meant to confirm the location of the fixed portion on the sowing element.

c. “movable portion”

Maschio’s Proposed Construction	Precision’s Proposed Construction
the portion of the housing that is movable relative to the portion that is fixed to the framework of the sowing elements	the portion of the housing that is movable relative to the portion that is fixed to the framework of the sowing elements

As with “fixed portion,” Maschio agrees with Precision that the plain and ordinary meaning of this term does not require additional construction by the Court. Moreover, Maschio agrees with Precision’s proposed construction on this term. Thus, to the extent the Court believes construction is necessary for this term, it should adopt the construction agreed to by the parties.

2. Precision’s Answering Position

a. The Court should construe “fixed portion” because the parties dispute the term’s ordinary meaning.

Maschio’s argument against construing the claim term “fixed portion” is based on the unfounded premise that “[t]he parties agree” no construction is required. Although Maschio is correct that the parties’ proposed constructions of “fixed portion” are

substantially the same, the minor difference between the proposals nonetheless “raise[s] an actual dispute regarding the proper scope of the[] claims,” which is necessary to resolve. *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008) (citing *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*), *aff’d* 517 U.S. 370 (1996)).

Maschio also suggests that the Court should not construe “fixed portion” because Precision provided supplemental proposed constructions of “fixed portion” and “movable portion” six days after the parties initially identified their proposed claim terms for construction. (*See* Exhibit 1, June 2 and June 8 emails.) As explained to Maschio, Precision initially believed no construction of the terms was required. (*See id.*) Because Precision’s accused instrumentalities do not infringe the ’121 patent when the ordinary meanings of “fixed portion” and “movable portion” are applied, Precision expected Maschio to propose constructions that deviated from the ordinary meanings. When Maschio made no such proposal, it became apparent that the parties may disagree about the ordinary meanings of “fixed portion” and “movable portion,” so Precision identified the terms and proposed its constructions. (*See id.*) Because it would be inappropriate to require the jury to determine the ordinary meaning of “fixed portion,” this issue should be resolved now.

Four days after it received Precision’s supplemental proposed constructions, Maschio asked to extend all claim-construction deadlines by one week. (Exhibit 3 at 3, June 12 1:07 p.m. email.) Later the same day, Precision agreed to Maschio’s extension proposal, with minor revisions to the reply and sur-reply briefing dates to maintain the scheduled date of the *Markman* hearing. (*See id.* at 1–2; *see also* D.I. 41, June 14 Order

granting proposed extensions.) Because the parties received an extra week to meet and confer on their proposed claim constructions and file their opening and answering *Markman* briefs, Maschio can show no prejudice from Precision Planting's identification of two additional claim terms for construction less than one week after the deadline.

The parties' agreed construction of "movable portion" and Precision Planting's proposed construction of "fixed portion" should be adopted for the reasons set forth below.

b. Precision Planting's proposed construction of "fixed portion" adopts the inventor's express definition.

"When a patentee explicitly defines a claim term in the patent specification, the patentee's definition controls." *Martek Biosciences Corp. v. Nutrinova, Inc.*, 579 F.3d 1363, 1380 (Fed. Cir. 2009). Often, patentees use lexicography to give a term a definition that departs from its ordinary meaning. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*). But lexicography can also confirm a claim term's ordinary meaning, as it does here. See *Renishaw PLC v. Marposs Società per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998) ("The intrinsic evidence ... can shed light on the meaning of the terms recited in a claim, either by confirming the ordinary meaning of the claim terms or by providing special meaning for claim terms.").

The specification describes prior-art seed drills equipped with a thrust-bearing element that in all cases must be "mounted on the fixed portion of the housing, *that is to say, that portion which is fixed to the framework of the sowing elements.*" (D.I. 42-2 at 7, col. 1:53–59, emphasis added.) The patentee's use of the phrase "that is to say" in describing the "fixed portion" of the housing creates an express definition. See *Edwards*

Lifesciences LLC v. Cook Inc., 582 F.3d 1322, 1334 (Fed. Cir. 2009) (“[T]he specification’s use of ‘i.e.’ signals an intent to define the word to which it refers, ... and that definition [i]s not limited to the embodiment being discussed.”); *Intel Corp. v. Broadcom Corp.*, 172 F. Supp. 2d 478, 495 (D. Del. 2001) (“[I].e.” [is] “an abbreviation for the Latin term *id est*, which means ‘that is’ or ‘that is to say.’”) (quoting *Black’s Law Dictionary* (6th ed. 1990)). Thus, the specification’s lexicography confirms that the ordinary meaning of “fixed portion” is “the portion of the housing that is fixed to the framework of the sowing elements.”

Maschio largely agrees with Precision’s proposed construction but seeks to change the patentee’s chosen phrase “framework of the sowing *elements*” to “framework of the *respective* sowing *element*.” But this position is inconsistent with the parties’ agreed construction of “movable portion” as “the portion of the housing that is movable relative to the portion that is fixed to the framework of the sowing *elements*.” (See §§ III, IV.A.1.c, *supra*, at 10, 14, emphasis added.) The latter half of this agreed construction refers to the fixed portion of the housing. (See D.I. 42-2 at 8, col. 4:17–19; *id.* at 9, col. 5:9–11; *id.* at 4, abstract.) Maschio does not explain why it seeks to construe “fixed portion” one way as a standalone term and another way as part of the construction of “movable portion.” Indeed, construing the same term two ways in the same patent is inconsistent with basic claim-construction principles. See *Phillips*, 415 F.3d at 1314 (“Because claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims.”).

Moreover, had the patentee intended to define “fixed portion” as the portion of the housing fixed to the framework of a singular sowing *element*, the patentee could have used the singular, as he did elsewhere in the specification. In the paragraph following the patentee’s express definition, the specification refers to a seed hopper, “which must necessarily be fixed to the framework of the sowing element.” (D.I. 42-2 at 7, col. 2:7–8.) This is the only reference to a “framework” of one or more sowing elements in the patent other than the patentee’s express definition of “fixed portion.” If the patentee meant to refer to a singular “sowing element” in both instances, he would have.

Finally, as Maschio acknowledges, Figure 3 of the ’121 patent shows “that *multiple* seed distribution elements combined with components of the sowing element are *attached to a frame* on a precision pneumatic seed drill and used in combination.” (See § IV.A.1.b, *supra*, at 12–13, emphases added.) A seed distribution element is just one part of a sowing element. (See D.I. 42-2 at 7, col. 2:37–38 (“The sowing element 2, besides the distribution element 1, comprises”).) Thus, if multiple seed distribution elements can be attached to the same frame, the same is true of multiple sowing elements, and the specification does not support Maschio’s proposed departure from the patentee’s express definition of the “fixed portion” of those sowing elements. The Court should adopt Precision’s proposed construction of this term.

3. Maschio’s Reply Position

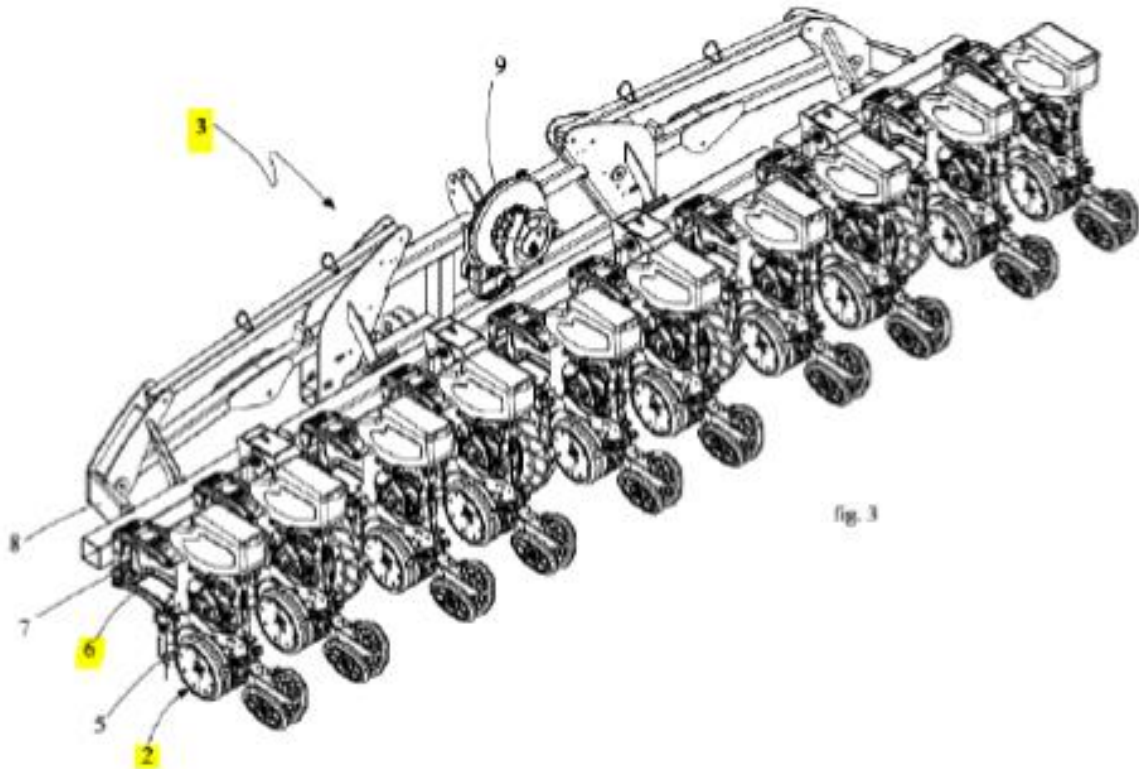
It should be noted that Precision seeks construction of this term. Maschio does not believe construction is necessary. And, indeed, as discussed in Maschio’s opening brief, neither does Precision. Having substantially accepted Precision’s construction, with the

only exception being the addition of the word “respective”, which is intuitive to the construction, it is disingenuous for Precision to now complain that Maschio’s construction is wrong—a construction that both parties agree is not needed.

As stated in its Opening Brief, Maschio believes that the inclusion of “respective” to Precision’s proposed construction is necessary to convey that the fixed portion of the sowing element is part of the sowing element to which it is attached and not that of another sowing element on the frame. Moreover, as Maschio stated, it would be nonsensical for the fixed portion to be fixed to the framework of another sowing element.

That this is the case is shown clearly by the specification’s teaching that “[t]he sowing element 2, besides the distribution element 1, **comprises a frame 6** and seed store or hopper 7 . . .” (’121 patent at 2:37-39) and that “[t]he sowing element 1 itself **comprises a housing 10 with fixed portion 11 fixed in a stable manner on the frame 6** and a movable portion 12 hinged in the region of a hinge 12a on the fixed portion 11 by means of a removable hinge pin 13” (*id.* at 2:44-47.)³ Moreover, Fig. 3 clearly shows the individual sowing element 2 connected to an individual frame 6:

³ Unless otherwise noted, all emphasis in Maschio’s portions of this Brief has been added.



(*Id.* at Fig. 3 (annotated).) If the Applicant had wished to connect the housing of the sowing element 2 to the framework of the seed drill 3, he could have done so, but did not. (See also claim 1 (“A seed distribution element for precision pneumatic seed drills, comprising . . . a housing with a fixed portion and a portion which is movable relative to the fixed portion . . .”).)

Contrary to Precision’s argument (Answering Br. at 5-6), Maschio’s agreement with Precision’s construction of “movable portion” *is* consistent with its view that the fixed portion of the housing is connected to the framework of the respective seeding elements. As the parties agree that it is the fixed portion of the housing that is connected to the framework, and as claim 1 recites, the movable portion is “movable relative to the fixed portion and can be closed against the fixed portion”, this requirement is sufficiently clear

based on Maschio's proposed construction of the "fixed portion," and is incorporated by reference into the "movable portion."

As stated in Maschio's Opening Brief, the addition of "respective" does not adversely affect Precision's proposed construction. (Maschio Opening Br. at 6.) Rather, the inclusion of "respective" is only meant to confirm the location of the fixed portion on the sowing element. In light of Precision's belated disclosure of this term for construction, and its failure to explain in its Answering Brief why the purported dispute over the scope of this term matters, not to mention Precision's agreement that this term requires no construction, it remains unclear to Maschio whether there is an actual dispute that requires the Court's resolution. *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008) ("Claim construction is not an obligatory exercise in redundancy.").

4. Precision's Sur-reply Position

If there were no "actual dispute" between the parties, Maschio would have agreed to Precision's proposed construction of "fixed portion." It did not. Yet Maschio claims that it "remains unclear" whether there is a dispute and "why [it] matters." (*See* § IV.A.3, *supra*, ¶ 5 at 20.)

It matters because every claim of the '121 patent recites a "fixed portion" and a "movable portion" of the sowing element, and Precision's accused products cannot infringe if they do not practice both of these fundamental limitations. Further, the construction of "fixed portion" matters because the claims define the movable portion *in relation to* the fixed portion and require other claimed elements to be located "in" or "on" the movable

portion. Thus, it will be essential for the jury to be able to identify a sowing element’s fixed and movable portions—or lack thereof—in its infringement analysis. *See O2 Micro*, 521 F.3d at 1362 (claim construction clarifies and explains “what the patentee covered by the claims, for use in the determination of infringement”) (quoting *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997)).

Maschio cannot dispute its patentee’s controlling lexicography, so it is forced to argue that its proposed departure from that lexicography is “intuitive to the construction.” (See § IV.A.3, *supra*, ¶ 1 at 18.) But where “the patentee has used no words or expressions that manifestly exclude coverage” of the full scope of his definition, it is “improper to override” that definition “to limit the scope of the claims.” *Martek*, 579 F.3d at 1381 (Fed. Cir. 2009).

Maschio identifies no words or expressions of manifest exclusion in its reply. Instead, Maschio turns to the only embodiment disclosed in the specification. Pointing to Figure 3’s “frame 6,” Maschio argues that a “fixed portion” must be “connected to an individual frame” rather than to “the framework of the sowing elements” set forth in the patentee’s definition. (See § IV.A.3, *supra*, ¶ 3 at 18–19.) But an expressly defined claim term cannot be limited to a preferred embodiment absent a clear intention to restrict the invention accordingly. *See, e.g., Martek*, 579 F.3d at 1380–81 (Fed. Cir. 2009) (finding that district court erroneously limited claim term “animal” to non-human animals where patentee expressly defined “animal” as “any organism belonging to the kingdom Animalia” and specification identified only non-humans as “preferred animals”).

Further, when the fixed portion is mounted to frame **6** in the preferred embodiment, it is also by definition mounted to the bearing structure **8** “on which a plurality of sowing elements **2** are mounted.” (D.I. 42-2 at 7, col. 2:41–42). Thus, the preferred embodiment comports with the patentee’s lexicography; it does not alter or disclaim it in any way. In any event, dependent claim 8 is the only claim of the ’121 patent that recites “a frame.” (See D.I. 42-2 at 8, col. 4:65–67.) If the “fixed portion” recited in every other claim of the ’121 patent can satisfy the patentee’s express definition of that term, the “framework of the sowing elements” to which it is fixed must include structures other than frame **6**. See *Phillips*, 415 F.3d at 1315 (presence of dependent claim adding particular limitation gives rise to presumption that limitation in question is not present in independent claim).

The Court should adopt Precision’s proposed construction of “fixed portion,” which the parties have incorporated into their agreed construction of “movable portion” to refer to the fixed portion of the housing.

B. “transmission drive shaft”

Maschio’s Proposed Construction	Precision’s Proposed Construction
a shaft which is driven by a motor	a drive shaft mounted on the fixed portion of the housing and centered relative to the sowing disc

1. Maschio’s Opening Position

Maschio believes this term can be understood by those of skill in the art by its plain and ordinary meaning, which is “a shaft which is driven by a motor.” No additional construction is necessary for this term.

As explained in the patent, it was known in the art to use a motor driven shaft (*i.e.* a shaft which is driven by a motor) to rotate the sowing disc. (*See* ’121 patent at 1:63-65.) The patent continues that the drive shaft rotates the sowing disc “at predetermined adjustable speeds by a transmission which is not shown.” (*Id.* at 2:62-63.) The transmission controls the rotation speed of the sowing disc, thus, the drive shaft is considered a “transmission” drive shaft.

This is consistent with claim 1 which, in relevant part states, “a sowing disc which is rotated by a motor-driven transmission drive shaft at controlled speed.” (’121 patent at claim 1.) In other words, the sowing disc is rotated by the shaft which is driven by a motor. The transmission is not part of the patent as it was clearly known to those in the art before the patent. (*See, e.g.*, ’121 patent at 2:63-64 (explaining that the transmission is not shown in the figures).) However, the claim makes clear that the drive shaft’s speed is controlled

by a transmission. Thus, the plain and ordinary meaning of the term “transmission drive shaft” is “a shaft which is driven by a motor.”

2. Precision’s Answering Position

The phrase “transmission drive shaft” appears in each of the ’121 patent’s independent claims, both of which recite “a sowing disc which is rotated by a motor-driven transmission drive shaft at a controlled speed” (D.I. 42-2 at 8, col. 4:15–16; *id.* at 9, col. 5:7–8). Maschio’s proposed construction, “a shaft which is driven by a motor,” is disfavored, because it would render the descriptive language that precedes the term redundant and superfluous—“a motor-driven *shaft which is driven by a motor.*” See *Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1288 (Fed. Cir. 2017) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.”); *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1237 (Fed. Cir. 2016) (“Ideally, claim constructions give meaning to all of a claim’s terms. Construing a claim term to include features of that term already recited in the claims would make those expressly recited features redundant.”).

The specification never refers to a “transmission drive shaft.” Instead, it uses various combinations of words that appear in the claims:

- the *transmission* which drives in rotation the *motor-driven shaft* which rotates the disc (D.I. 42-2 at 7, col. 1:64–65, emphases added);
- The sowing disc **16** is removably mounted on a *motor-driven drive shaft 20*, supported in the fixed portion **11** and driven in rotation at predetermined adjustable speeds by a *transmission* which is not shown (*id.*, col. 2:60–63, emphases added);

- The presence of the *transmission* requires the *shaft 20* to be mounted on the fixed portion of the housing (*id.*, col. 2:64–65, emphases added);
- The keying between the *shaft 20* and disc **16** is obtained by means of a polygonal profile **21** at the free end of the *shaft 20* (*id.*, col. 2:65–67, emphases added);
- *drive* element **32** which comprises a coupling device constrained for rotation with the thrust-bearing plate but with radial and/or circumferential clearance in such a way as to be self-centered in the rotational coupling with the *drive shaft* of the disc **16** (*id.* at 8, col. 3:38–42, emphases added);
- The *drive* element **32** is coupled by means of an internal polygonal profile **35** (similar to that adopted for box-end wrenches) to the polygonal profile **21** of the free end of the *shaft 20*” (*id.*, col. 3:48–50, emphases added);
- The *drive* element **32** is thus self-centering relative to the *drive shaft 20* by which it is *driven* (*id.*, col. 3:53–54, emphases added);
- Provision is also made for the thrust-bearing element **26** to be made idle and not be driven in rotation by the shaft **20** (*id.*, col. 3:58–59, emphases added).

(See also Exhibit 4, Declaration of Mark Fleming, at 11–12 ¶ 26.)

Because the specification uses the terms “transmission,” “motor-driven,” “drive shaft,” and “shaft” inconsistently, it is unclear whether the claim language “motor-driven transmission drive shaft” is referring to element **20** or to a larger assembly. The abstract appears to refer to element **20** as a “transmission shaft” (*id.* at 4), but elsewhere, the specification indicates the transmission is not shown (*id.* at 7, col. 2:62–63). And the specification makes no disclosure of a motor, notwithstanding the use of the phrase “motor-driven” in both the specification and the claims. (Exhibit 4 at 12 ¶ 27.)

But although the specification does not show or provide details about the transmission or its power source, it does provide an important detail about the location of the narrower claim term “transmission drive shaft.” The description states that “[t]he presence of the transmission *requires* the shaft **20** to be *mounted on the fixed portion* of the housing.” (*Id.*, col. 2:64–65, emphases added.) Elsewhere, the description states that “it is *obligatory to mount on the fixed portion* the transmission which drives in rotation the motor-driven shaft that rotates the disc.” (*Id.*, col. 1:63–65, emphases added; *see also* Exhibit 4 at 12–13 ¶ 27.)

Generally, limitations to the claims may not be added when such limitations are found only in the specification. *Varco, L.P. v. Pason Sys. USA Corp.*, 436 F.3d 1368, 1373 (Fed. Cir. 2006). “On the other hand, where the specification makes clear at various points that the claimed invention is narrower than the claim language might imply, it is entirely permissible and proper to limit the claims.” *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1370 (Fed. Cir. 2003). Indeed, “[o]ne purpose for examining the specification is to determine if the patentee has limited the scope of the claims.” *Watts v. XL Sys., Inc.*, 232 F.3d 877, 882 (Fed. Cir. 2000).

“[W]hen a patentee uses mandatory language such as ‘must’ or ‘necessary’ in describing a preferred embodiment, such language can limit or preclude other embodiments.” *Noah Sys., Inc. v. Intuit, Inc.*, No. 06-cv-933, 2010 WL 9096712, at *2 (W.D. Pa. May 7, 2010) (citing *TiVo, Inc. v. EchoStar Commc’ns Group, Inc.*, 262 F.3d 1258, 1271 (Fed. Cir. 2001)); *cf. also Nexeon Ltd. v. EaglePicher Techs. LLC*, No. 15-CV-955-RGA, 2018 WL 1942199, at *7 (D. Del. Apr. 25, 2018) (declining to import

limitations into claims where specification “employ[ed] permissive, rather than mandatory language” to describe fabrication process). Because the patentee states in the description of the preferred embodiment that the transmission drive shaft is “require[d]” to be mounted on the fixed portion of the housing and confirms elsewhere in the specification that this configuration is “obligatory” (D.I. 42-2 at 7, col. 1:63–65, col. 2:64–54), the scope of the term should be limited accordingly.

The Court should further limit the scope of “transmission drive shaft” based on Maschio’s arguments in an opposition proceeding involving the European counterpart of the ’121 patent. *See Starhome GmbH v. AT&T Mobility LLC*, 743 F.3d 849, 858 (Fed. Cir. 2014) (“We have previously held that statements made before foreign patent offices are sometimes relevant to interpreting the claims.”); *Gillette Co. v. Energizer Holdings, Inc.*, 405 F.3d 1367, 1374 (Fed. Cir. 2005) (relying on defendant’s admission to European Patent Office regarding “virtually identical claim” in European counterpart patent to construe claim term in U.S. patent). Maschio attorneys argued that a prior-art planter’s instruction manual “does not discloses [sic] a motor-driven transmission shaft rotated at a controlled speed a [sic] sowing disc” because “[i]t can be clearly seen from *e.g.* Fig. 39 in [sic] page 53 that the sowing disc is toothed and it is driven by a gear provided in the fixed portion.” (D.I. 43-1 at 754; D.I. 44-1 at 156–57.)

The referenced figure from the instruction manual is reproduced below. It depicts the open housing of a seed distribution element:

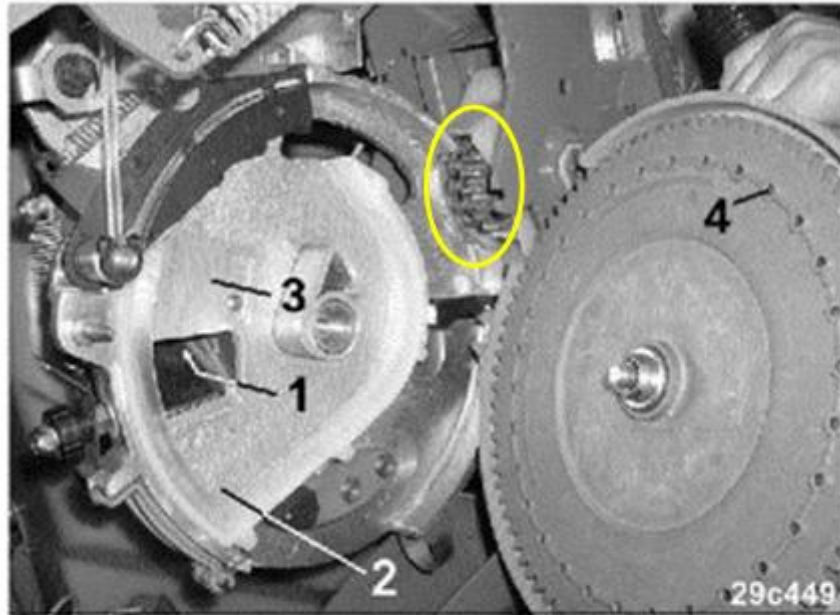
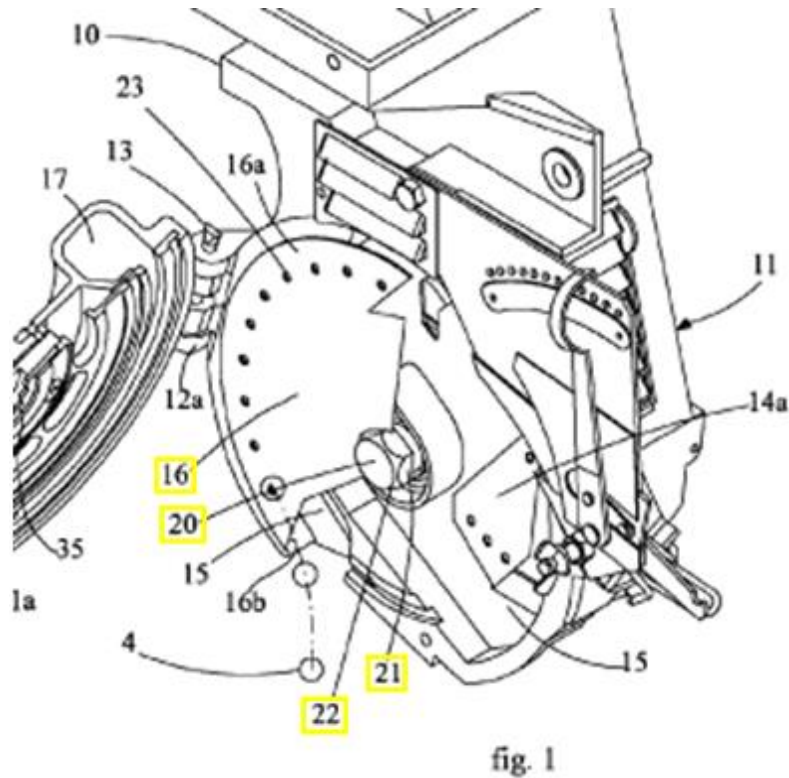


Fig. 39

(D.I. 44-1 at 613, annotated.) The toothed sowing disc **4** is shown on the right side in the opened movable portion. The **gear** that drives the sowing disc is mounted along the periphery of the fixed portion.

In contrast, the '121 patent, which shares priority to the European patent involved in the opposition and has the same specification and figures, discloses only a *centrally located* drive shaft **20**, which protrudes through the sowing disc **16** and is keyed to the disc by a polygonal profile **21** at its free end, with its chamfers **22** serving “to facilitate the centring [*sic*] of the two profiles and the respective engagement.”



(D.I. 42-2 at 5, annotated; *id.* at 8, col. 3:48–52.)

Thus, Maschio argued in the European opposition that the peripherally driven shaft in the prior-art instruction manual is not a “transmission drive shaft” as understood in the claims and disclosed in the specification of the ’121 patent. (See Exhibit 4 at 13–14 ¶¶ 28–29.) Based upon this argument and the ’121 patent’s disclosure, the term “transmission drive shaft” should be limited to a shaft that is centered relative to the sowing disc.

“The construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.” *Phillips*, 415 F.3d at 1316 (citation and internal quotation omitted). As shown above, the patentee has limited the scope of “transmission drive shaft” in two important ways, and the

term should be construed to mean “a drive shaft mounted on the fixed portion of the housing and centered relative to the sowing disc.”

3. Maschio’s Reply Position

By focusing on statements made by Maschio with respect to a different patent granted in Europe, which is not subject to U.S. Patent law, Precision ignores the far more relevant information contained in the prosecution history of the ’121 patent, which expressly disclaims a “transmission drive shaft” that is limited to being “mounted on the fixed portion of the housing.” Moreover, neither intrinsic nor extrinsic evidence supports that the “transmission drive shaft” must be “centered relative to the sowing disc.”

a. **The Applicant did not limit a “transmission drive shaft” to one that is “mounted on the fixed portion of the housing.”**

The “transmission drive shaft” of the claims of the ’121 patent cannot be “mounted on the fixed portion of the housing” for the simple reason that the Applicant clearly and unequivocally disclaimed a definition of the term “transmission drive shaft” that was so limited during the prosecution of the ’121 patent. Specifically, claim 1 was amended to remove any recitation of the transmission drive shaft supported in the fixed portion:

1. (Currently amended) A seed distribution element for precision pneumatic seed drills, comprising:

- a sowing disc which is rotated by a motor-driven transmission drive shaft at controlled speed,
- a housing with a fixed portion ~~in which the shaft is supported~~ and a portion which is movable relative to the fixed portion and can be closed against the fixed portion,
- a seed collection chamber being defined in the fixed portion,

....

(D.I. 42-2 at 22.) The same amendment was made to independent claim 10. (*Id.* at 24.)

By submitting these amendments to the Examiner, the Applicant noted that during a telephone interview, “Applicant’s representative and the Examiner discussed the above-proposed amendments to independent claims 1 and 10 **to remove an unnecessary extraneous recitation from the claims.**” (*Id.* at 26.) Moreover, “[a]s discussed during the interview, **the claim recitation removed herein is not critical to the claimed invention**” (*id.* at 26) and “[t]he Examiner confirmed that **patentability of the claims does not rest on this recitation and the removal of the above-recitation would not affect the patentability of the claims**” (*id.* at 26).⁴

The Applicant’s statements during prosecution confirm that a “transmission drive shaft” is not limited to being “mounted on the fixed portion of the housing.” Therefore, Precision’s proposed construction, based on **exemplary** portions of the specification, should be rejected. (See ’121 patent at 2:20-23 (“The features and advantages of the invention will become clearer from the following detailed description of **a preferred exemplary embodiment** thereof, illustrated **by way of non-limiting example** with reference to the appended drawings”)) As Precision well knows, that is not a proper basis for a

⁴ As argued *infra* at pp. 35–37, Maschio’s statements made during a proceeding related to a separate European patent, which Precision has brought to the Court’s attention, are entirely consistent with the claim amendments and statements made during the prosecution of the ’121 patent. Thus, to the extent that the Court considers those statements relevant to whether “transmission drive shaft” must be mounted on the fixed portion of the housing, they do not support Precision’s proposed construction.

construction of this term. *See Ruckus Wireless, Inc. v. InnovativeWireless Sols., LLC*, 824 F.3d 999, 1009 (Fed. Cir. 2016) (“But this court does not usually limit claim scope to preferred embodiments, lest it commit the ‘cardinal sin’ of importing limitations from the specification into the claims.”)

b. There is no support for a construction of “transmission drive shaft” that is “centered relative to the sowing disc.”

The evidence provided by Precision in support of its argument that the “transmission drive shaft” should be “centered relative to the sowing disc” is even thinner. Contrary to Precision’s argument (Answering Br. at 12), the specification’s teachings that the “**drive element 32** which comprises a coupling device constrained for rotation with the thrust-bearing plate but with radial and/or circumferential clearance in such a way as to be self-centered in the rotational coupling with the drive shaft of the disc 16” (’121 patent at 3:38-42) and that “the **drive element 32** is thus self-centering relative to the drive shaft **20** by which it is driven” (id. at 3:53-54) **do not** require that the **transmission drive shaft** must be centered relative to the disc, because those teachings apply to the **drive element**, which is distinct from the drive shaft.

This is confirmed not only by the specification, but by the claims. Precision’s specious argument that the “transmission drive shaft” and “drive element” “appear[]” to be one and the same (Answering Br. at 8) is contradicted by claim 5, which recites “[t]he seed distribution element according to claim 4, wherein the **drive element is self-centering relative to the drive shaft,**” and by claim 6 which recites “[t]he seed distribution element according to claim 4, wherein **the drive element** comprises a coupling member which

rotates jointly with the thrust-bearing plate but has radial and/or circumferential clearance ***so as to be self-centered during rotational coupling with the drive shaft of the disc.***” By attributing a feature—centering—to one element when that feature is clearly and unequivocally assigned to a different element by the claims, Precision’s proposed construction violates the “‘bedrock principle’ of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude.” *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005).

Recognizing that the intrinsic record of the ’121 patent does not support its proposed construction, Precision falls back on extrinsic evidence related to a foreign patent that derives from the same PCT application as the ’121 patent, EP 2 637 492 (“EP ’492”).⁵ Specifically, Precision cites the Statement of Appeal submitted by Maschio in an Opposition proceeding before the European Patent Office brought by Precision against EP ’492. There, Maschio argued that claim 1 of EP ’492 should be distinguished from the Amazone instruction manual because the manual showed a device with a toothed disc driven by a gear in the fixed portion of the housing. (Answering Br. at 10 (quoting D.I. 43-1 at 754; D.I. 44-1 at 156-57.).

First, it does not follow that any statements made by Maschio during the Opposition to EP ’492 should automatically apply to the claims of the ’121 patent. While the Federal Circuit has recognized that the statements made by a patentee during prosecution of foreign

⁵ Precision’s Answering Brief does not identify the European Patent at issue. The Declaration of Mark Fleming (“Fleming Decl.”), attached by Precision as Exhibit 4, refers to EP 2 637 492.

related patents may be relevant to the construction of claim terms of a U.S. patent, it has also limited the use of such evidence where the statements were “related to unique aspects of foreign patent law.” *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1312 (Fed. Cir. 2014). Precision has made no showing that the issues involved in the prosecution of the EP ’492 and the ’121 patent actually overlap, and therefore its representations concerning the significance of Maschio’s statements regarding one of its foreign patents should not be taken at face value.

Moreover, even if the EP ’492 Opposition is relevant to the construction of the claims of the ’121 patent, it still does not support Precision’s proposed construction. Maschio merely pointed out that the “transmission drive shaft” of EP ’492 is not mounted on the fixed portion, unlike the one depicted in the Amazone instruction manual, which **is** mounted in the fixed portion and drives the seeding disc via a toothed gear. That is consistent with the amendments made to claims 1 and 10 of the ’121 patent during prosecution and provides no support for Precision’s proposed construction.

Precision’s contention that “Maschio argued in the European opposition that the peripherally driven shaft in the prior-art instruction manual is not a “transmission drive shaft” as understood in the claims and disclosed in the specification of the ’121 patent” is thus an entirely inaccurate summary of Maschio’s Statement of Appeal during the EP ’492 Opposition. Precision cannot point to any place where Maschio **actually argues** that the drive shaft must be “centrally located” and instead relies on its own comparison of Fig. 1 of EP ’492 and the prior art manual to infer that it has. (Answering Br. at 11.) But Precision’s *post facto* comparison is neither intrinsic nor extrinsic evidence of the meaning

of “transmission drive shaft.”⁶ The Court should ignore this misleading attempt to create an estoppel argument where no basis for one exists.

c. Precision has admitted that the “transmission drive shaft” need not be centered or mounted on the fixed portion of the housing.

Precision’s proposed construction should also be rejected because Precision has admitted that the “transmission drive shaft” is not limited to a shaft that is centered relative to the sowing disc and mounted on the fixed portion of the housing. In a series of U.S. Patent Applications, including U.S. Patent Application Publication No. 2020/0296881 (the “’881 application”, attached as Exhibit 5), for reasons that it has never explained, Precision copied *verbatim* claims 1 through 16 of the ’121 patent.⁷ By way of comparison, below is a chart with claim 1 of the ’121 patent and claim 1 of the ’881 application:

'121 Patent	'881 Application
1. A seed distribution element for precision pneumatic seed drills, comprising: a sowing disc which is rotated by a motor-driven transmission drive shaft at	1. A seed distribution element for precision pneumatic seed drills, comprising: a sowing disc which is rotated by a motor-driven transmission drive shaft at

⁶ Precision attempts to bolster this comparison through the testimony of Dr. Fleming. (Ex. 4, Fleming Decl. at ¶¶ 28-29.) However, Dr. Fleming has no personal knowledge of the EP ’492 Opposition proceeding and he is not capable of adding to Maschio’s statements during that proceeding through his testimony. Moreover, as Maschio’s Statement of Appeal is a legal document, it is beyond his competency to opine on its contents. (*See id.* at ¶ 15 (“I am not an attorney and offer no legal opinions.”).)

⁷ In addition to the ’881 application, claims 1-16 of U.S. Patent Application Publication Nos. 2015/0305229 (Exhibit 6) and 2017/0311535 (Exhibit 7) are identical to claims 1-16 of the ’121 patent, except for minor modifications. The commas in claims 1 and 10 of all three applications were replaced with semicolons and colons were removed from claim 10.

controlled speed, a housing with a fixed portion and a portion which is movable relative to the fixed portion and can be closed against the fixed portion, a seed collection chamber being defined in the fixed portion, a pneumatic suction chamber being defined in the movable portion, the sowing disc being interposed between the fixed and movable portions and having opposed surfaces delimiting the chambers, the sowing disc having at least one ring of selector holes extending between the opposed surfaces, and a seal which is arranged on the movable portion and is capable of sliding contact with the facing surface of the disc when the fixed and movable portions are closed against one another, wherein a pressure differential is provided between the opposed surfaces in the region of a circumferential segment of the ring of holes, wherein the seed distribution element further comprises a thrust-bearing element of the sowing disc, which thrust-bearing element is supported rotatably in the movable portion in order to withstand at least some of the axial load produced by the disc on the seal.	controlled speed; a housing with a fixed portion and a portion which is movable relative to the fixed portion and can be closed against the fixed portion; a seed collection chamber being defined in the fixed portion; a pneumatic suction chamber being defined in the movable portion; the sowing disc being interposed between the fixed and movable portions and having opposed surfaces delimiting the chambers; the sowing disc having at least one ring of selector holes extending between the opposed surfaces; and a seal which is arranged on the movable portion and is capable of sliding contact with the facing surface of the disc when the fixed and movable portions are closed against one another; wherein a pressure differential is provided between the opposed surfaces in the region of a circumferential segment of the ring of holes; wherein the seed distribution element further comprises a thrust-bearing element of the sowing disc, which thrust-bearing element is supported rotatably in the movable portion in order to withstand at least some of the axial load produced by the disc on the seal.
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While claims 1 through 16 of the '121 patent and the '881 application are identical, their respective specifications differ significantly. Yet, by filing the '881 application, Precision represented to the U.S. Patent and Trademark Office ("USPTO") that its claims were supported by the specification, and the specification attributes certain meanings to the claim terms. Since those claim terms are identical to those of the previously-filed '121 patent, the '881 application is an admission by Precision as to what it believes the scope of each of those claim terms should be. And the way that Precision describes the "transmission drive shaft" in the '881 patent is completely at odds with Precision's position regarding the same claim term in this proceeding.

For example, the specification of Precision's '881 application teaches that "[i]n operation, the seed disc **120** may be rotated by a driven gear (not shown) coupled to drive teeth **121** (as described further herein) *or* by a driven shaft (not shown) coupled to an adapter **185** (FIG. 2) mounted to the shaft **183**." ('881 application at [0043].) In other words, the "transmission drive shaft" encompasses *both* a centrally located drive shaft that drives a seed disc *and* a motorized gear shaft that drives a seed disc by pushing drive teeth located on the edge of the disc, an arrangement similar to that disclosed by the Amazone instruction manual discussed in Maschio's Statement of Appeal and cited by Precision. Accordingly, Precision has admitted that the "transmission drive shaft" cannot be limited to a "drive shaft . . . centered relative to the sowing disc." (D.I. 42-1 at 3.)

The '881 application also teaches that the "transmission drive shaft" is *not* "mounted on the fixed portion of the housing." Specifically, the '881 application discloses that "a shaft **183** is rotatably coupled to bearings **184**" and that "bearings **184** are held in

place by the vacuum cover **110**.” (*Id.* at [0043].) However, in Precision’s application, the vacuum cover corresponds to the movable portion, not the fixed portion of the housing. It is where the vacuum seal is located (*id.* at [0052]), and as claim 1 makes clear, the vacuum seal is located on the movable portion of the housing. Those teachings also contradict Precision’s proposed construction.

Precision cannot argue one way in its filings to the USPTO and another in its claim construction arguments before this Court. While the ’881 application’s specification is not intrinsic evidence of the claims of the ’121 patent, Precision cannot reasonably maintain that claim language should be given a broader meaning for its claims and a narrower one when the identical claims of Maschio’s ’121 patent are at issue. Precision’s statements regarding the “transmission drive shaft” element in its own patent application is ulterior proof, if any was needed, that its construction should be rejected here.

4. Precision’s Sur-reply Position

Maschio has no answer for the specification’s mandatory language requiring the transmission drive shaft to be “mounted on the fixed portion of the housing.” (*See* § IV.B.2, *supra*, ¶¶ 4–5 at 26.) Instead, Maschio turns to the prosecution history, during which the applicant removed the phrase “in which the shaft is supported” from the recitation of the “fixed portion” of the sowing element in claims 1 and 10. (*See* § IV.B.3.a, *supra*, at 30–32.) But because the applicant did not remove the specification’s mandatory language from the description of the sole preferred embodiment, it remains “entirely permissible and proper” to limit the claims in light of that language. *See Alloc*, 342 F.3d at 1370; *Noah*, 2010 WL 9096712, at *2.

Moreover, Maschio’s argument that it “disclaimed” a transmission drive shaft mounted to the fixed portion of the housing as mandated by the specification stands the doctrine of prosecution disclaimer on its head. “A prosecution disclaimer occurs when a patentee, either through argument or amendment, *surrenders* claim scope during the course of prosecution.” *Sanofi v. Watson Labs. Inc.*, 875 F.3d 636, 650 (Fed. Cir. 2017) (emphasis added, citation and internal quotation omitted). Unsurprisingly, Maschio cites no support for its novel argument that a patentee may use prosecution disclaimer to *broaden* claim scope beyond the limits compelled by the specification.

In its reply to Precision’s additional proposed construction that the transmission drive shaft be “centered relative to the sowing disc,” Maschio accuses Precision of making a “specious” argument that Precision never made. (See § IV.B.3.b, *supra*, ¶ 2 at 32–33.) Precision’s answering argument expressly recognizes the distinction between the “transmission drive shaft” recited in the claims and the “drive element” recited in both the claims and specification. (See § IV.B.2, *supra*, ¶¶ 2–3 at 24–25.) And Precision does not argue that the centering of the transmission drive *shaft* is mandated by any disclosure regarding the ’121 patent’s drive *element*. (See *id.* ¶¶ 4–11 at 26–30.) Rather, Precision’s proposal stems from the specification’s express disclosure of a centrally located drive shaft **20**, coupled with Maschio’s statements to the EPO disclaiming a peripherally located drive shaft. (See *id.* ¶¶ 7–10 at 27–29.)

As previously noted by Precision, the ’121 patent and its European counterpart share the same specification and figures. (See *id.* ¶ 9 at 28.) The claim language, including the pertinent “transmission drive shaft” limitations, is also substantively identical. (*Compare*

D.I. 42-2 at 8–9, col. 4:15–16 & col. 5:7–8 with Doc. 45-1 at 44–45, col. 4:51–53 & col. 6:12–14.) Thus, Maschio is incorrect when it asserts that “Precision has made no showing that the issues involved” in the prosecution of the ’121 patent and its European counterpart “actually overlap.” (See § IV.B.3.b, *supra*, ¶ 4 at 33–34.) And Maschio has made no showing that its arguments before the EPO should be disregarded because they “related to unique aspects of foreign patent law.” See *Apple Inc. v. Motorola, Inc.*, 57 F.3d 1286, 1312 (Fed. Cir. 2014), *overruled in part on other grounds by Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015). Maschio cannot escape the distinction it made between the prior-art planter’s toothed, peripheral gear—which it expressly argued was “not ... a motor-driven transmission drive shaft”—and the centrally located shaft disclosed in the specification shared by the ’121 patent and its European counterpart.

Finally, Maschio argues that *Precision* made “an admission” about the scope of the ’121 patent’s claims when it prosecuted a patent with identical claims but an entirely different specification. (See § IV.B.3.c, *supra*, at 35–38.) Again, Maschio cites no support for a novel legal argument—*i.e.*, that the ’121 patent’s claims should be read in light of another patent’s specification, which Maschio admits “differ[s] significantly” from the ’121 patent’s specification. (See *id.* ¶ 2 at 37.) Indeed, one could reasonably expect the teachings of one patent’s specification to “contradict” a proposed construction of another patent’s claim language based on that patent’s “significantly” different specification. (See *id.* ¶¶ 2–4 at 37–38.)

Even to the extent Precision’s arguments to the Patent Office about another patent are relevant extrinsic evidence, Precision’s arguments during prosecution were subject to

the broadest-reasonable-interpretation standard rather than the more exacting *Phillips* standard that applies in this claim-construction proceeding. *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). Thus, it was perfectly reasonable for Precision to seek “a broader meaning for its claims” than the construction it now proposes for the ’121 patent’s claims based on different intrinsic evidence. (See § IV.B.3.c, *supra*, ¶ 5 at 38.)

The Court should adopt Precision’s proposed construction of “transmission drive shaft” and reject Maschio’s redundant, unhelpful proposal.

C. “thrust-bearing”

Maschio’s Proposed Construction	Precision’s Proposed Construction
plain and ordinary meaning which is, “a rolling bearing that supports against axial load”	supporting against axial load

1. Maschio’s Opening Position

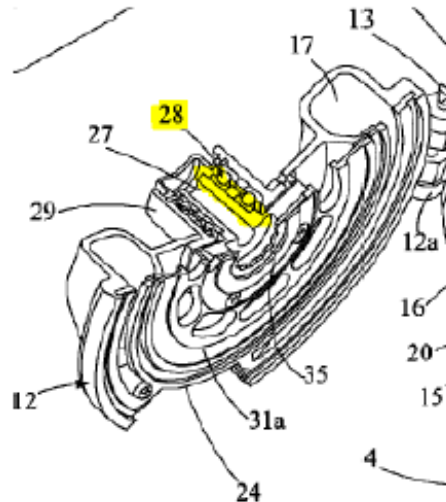
The term “thrust-bearing” does not require construction. Nothing in the claim language suggests that term would have a specialized meaning in the art, or that the Applicant defined this term or disclaimed any features of a thrust-bearing during prosecution. Moreover, Maschio does not believe that the term “thrust-bearing” is appropriate for construction because it is an incomplete term that applies to disparate claim terms. Specifically, “thrust-bearing” is used in the phrase “trust-bearing element” in claims 1-4, and 10-16, whereas “thrust-bearing plate” is found in claims 3 and 6. Indeed, both terms are used in claim 3 to identify different elements. Therefore, Maschio’s plain and

ordinary meaning is directed only to “thrust-bearing” without reference to either element or plate.

Maschio believes that if the term “thrust-bearing” is to be construed, it should carry its plain and ordinary meaning to a person of ordinary skill in the art. The plain and ordinary meaning can be determined from the patent itself. However, since it is a well-known term in the art, a relevant dictionary provides a definition which supports Maschio’s plain and ordinary meaning.

First, there can be no dispute that the definition of “thrust-bearing” must include a **bearing**. Removing that from the construction would improperly read an express limitation out of the claim. *See Texas Instruments Inc. v. U.S. Int’l Trade Comm’n*, 988 F.2d 1165, 1171 (Fed. Cir. 1993) (rejecting a proposed construction that “would read an express limitation out of the claims.”)

Moreover, the patent makes clear that “thrust-bearing” must include a bearing. For example, the specification teaches that “[t]he thrust-bearing element **26** comprises a shaft **27** rotatably mounted **by means of bearings 28** in a seat **29** of the movable portion **12**.”³ (’121 patent at 3:25-27.) The patent’s drawings also depict the bearings **28** within the seed distribution element:



(*Id.* at Fig 1 (annotated detail).)

Extrinsic evidence further confirms that this is the case. “[T]hrust bearing” is explicitly defined in R.L. Timings & P. Twigg, The Pocket Illustrated Dictionary of Engineering Terms 295 (2001) (Exhibit 2) as “[a] bearing designed to resist an axial load . . .” Thus, one of ordinary skill in the art would readily know and use the term consistent with the plain and ordinary meaning proposed by Maschio.

To the extent Precision contends that “thrust-bearing” is an **adjective** rather than a noun, its interpretation of the claim language is without any explicit support in the ’121 patent. Accordingly, the plain and ordinary meaning includes “a bearing,” as taught by the ’121 patent and as understood by a person of ordinary skill in the art.

Maschio and Precision agree that “thrust-bearing” encompasses “support[] against axial load,” which is consistent with both the ’121 patent and the definition of thrust bearing. (See ’121 patent at claim 1; *id.* at 3:25-32; Ex. 2 at 295.) However, Maschio believes that Precision’s construction provides a definition of what a thrust-bearing does,

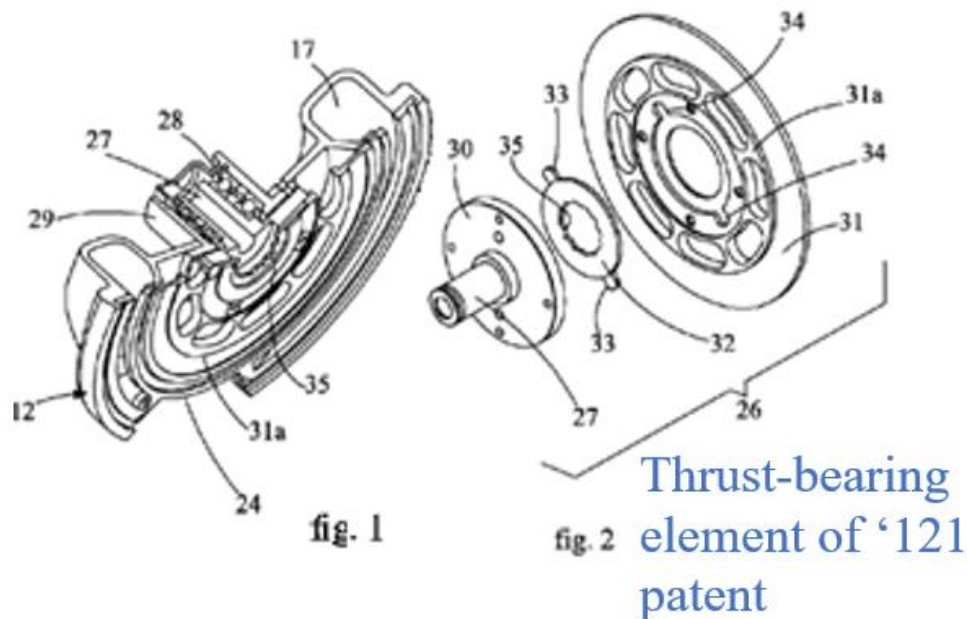
not a definition of a “thrust-bearing.” Without including reference to the bearing itself, the term is not properly construed.

2. Precision’s Answering Position

The parties agree that a proper construction of “thrust-bearing” should include the concept of “support[] against axial load.” (D.I. 42-1 at 3.) But Maschio’s proposed construction of “thrust-bearing” as “a rolling bearing that supports against axial load” is based on a fundamental misunderstanding of the term’s usage in the ’121 patent. Though Maschio is correct that a “thrust bearing” is an engineering term of art with a well-known definition and structure, the ’121 patent hyphenates the term “thrust-bearing” and pairs it with other words in the claims and specification. These changes indicate that “thrust-bearing” has a meaning distinct from a “thrust bearing.” Figures 1 and 2 of the ’121 patent confirm that the claimed “thrust-bearing element” is a different structure than a traditional thrust bearing:



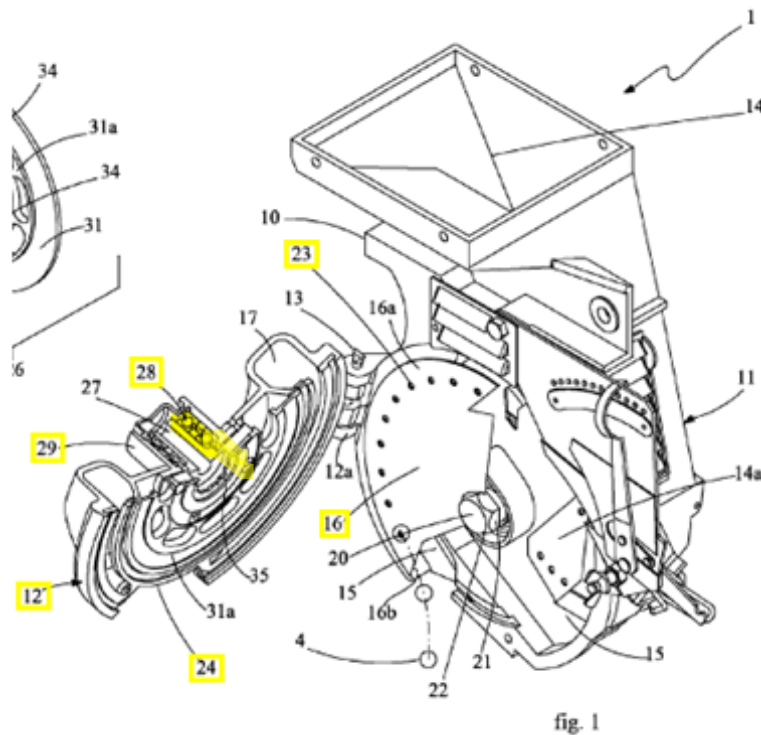
Traditional thrust bearing



(Exhibit 4 at 15 ¶ 31.)

Precision's proposed construction of "thrust-bearing" is "supporting against axial load"—*i.e.*, an adjectival phrase that means, essentially, "bearing thrust." Maschio argues that there is no "explicit support" in the '121 patent for construing "thrust-bearing" as an adjective instead of a noun, but Maschio's own argument confirms that the term is used adjectivally. As Maschio acknowledges, "thrust-bearing" is part of two different phrases that appear in the claims: "thrust-bearing element" (D.I. 42-2 at 8, col. 4:37–38, 42, 46, 51; *id.* at 9, col. 6:2–4, 8, 11, 14, 17, 20, 24) and "thrust-bearing plate" (*id.* at 8, col. 4:46–47, 60). Maschio argues that this shows "thrust-bearing" is an "incomplete term" not "appropriate for construction." But what it actually shows is that "thrust-bearing" is used consistently as an adjective—*i.e.*, both the claimed "element" and the claimed "plate" bear thrust and are described accordingly.

Maschio further argues that the '121 patent's "drawings also depict the bearing 28 within the seed distribution element:"



(*Id.* at 5, annotated.) But bearing **28** is *not* the “thrust-bearing element” recited in the claims. The specification consistently refers to “thrust-bearing element **26**.” (*Id.* at 4, abstract; *id.* at 8, col. 3:25, 36, 58, 60–61.) In one instance, the specification even clarifies that “a thrust-bearing element *indicated as a whole by 26* is mounted on the movable portion.” (*Id.*, col. 3:22–24, emphasis added.) Figure 2 shows the element and its component parts:

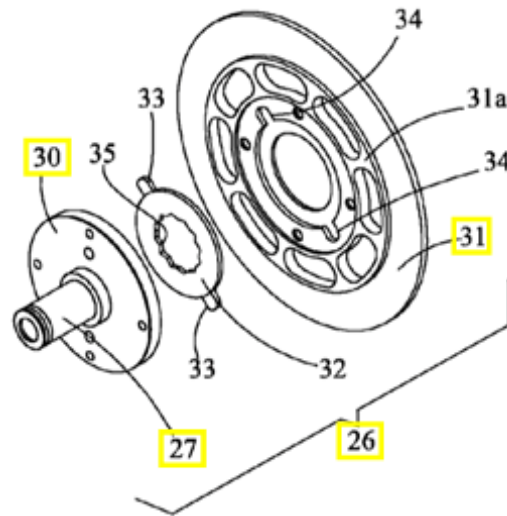


fig. 2

(*Id.* at 5, annotated.)

As the '121 patent makes clear, it is this “thrust-bearing element” that “relieves the heavy load on the seal.” (*Id.* at 7, col. 1:54–55). The specification further states that the “thrust-bearing element 26 comprises a shaft 27 rotatably mounted by means of bearings 28 in a seat 29 of the movable portion 12. The shaft 27 has flanging 30 by means of which it is fixed to a thrust-bearing plate 31 which can bear on that surface of the disc which faces the seal 24 in a zone radially inside the ring of holes 23 in order to withstand at least some of the axial load produced by the disc 16 on the seal 24.” (*Id.* at 8, col. 3:25–32.)

The “thrust-bearing plate” itself does not ride on bearings but is connected to the shaft. The shaft is supported by roller bearings that are not in-line with the axial force. Thus, the specification indicates that the term “thrust-bearing element” does not refer to a traditional “thrust bearing,” but more generally refers to an element that provides support against an axial force. (Exhibit 4 at 15–17 ¶¶ 32–33.) Accordingly, if Maschio’s

construction were adopted, it would exclude the only structure that the specification discloses as a “thrust-bearing element.” This result would violate a fundamental tenet of claim construction. *Kaufman v. Microsoft Corp.*, 34 F.4th 1360, 1372 (Fed. Cir. 2022) (“A claim construction that excludes a preferred embodiment is rarely, if ever correct and would require highly persuasive evidentiary support.”) (citation omitted).

The European Patent Office previously rejected Maschio’s arguments and adopted Precision’s reasoning in a hearing regarding the ’121 patent’s European counterpart, which contains the same disclosure and recites the same “thrust-bearing element” limitation:

[B]y drawing on the description and drawings to gain a better understanding of the subject-matter of the claims, the skilled person realizes that the term “thrust-bearing” is used not to define a thrust bearing in the usual sense. Rather, they will conclude that it is used in the contested patent in a general sense to define the function of bearing or providing support against an axial force. Thus, contrary to the submissions of the appellant proprietor [*i.e.*, Maschio], the claimed feature “thrust-bearing element”, in the context of the patent, should not be given the restricted interpretation of the appellant proprietor of rotary bearings in the form of ball bearings or similar, but the wider interpretation of an element having a function to provide support against an axial load.

(D.I. 43-1 at 503–04; *see also* Exhibit 4 at 17–19 ¶ 34.)

Maschio’s attempt to redefine “thrust-bearing” as a “thrust bearing” should be rejected here as it was in Europe. The Court should adopt Precision’s proposed construction of “thrust-bearing” as an adjective meaning “supporting against axial load.”

3. Maschio's Reply Position

After initially proposing the term “thrust-bearing,” Precision now reveals that the term it actually seeks to construe is “thrust-bearing element.” (See Answering Br. at 15 (“But bearing 28 is not the “thrust-bearing element” recited in the claims.”); *see also* Fleming Decl. at ¶ 31 (“Thus, these changes indicate that the “thrust-bearing element” of the ‘121 patent is unique from the traditional “thrust bearing” term of art.”).) It is problematic that this change came after Maschio already provided construction for the originally proposed term, “thrust-bearing” and with no warning to Maschio. However, Precision is still incorrect in its construction for this term. Indeed if anything, it appears that the parties are much closer to agreement on this term, rather than further away.

Precision's view that “thrust-bearing” must be an adjective modifying “element” boils down to a purely semantic argument based on the presence of a single hyphen between “thrust” and “bearing.” There is nothing in the intrinsic record of the patent, whether the specification, claims, or prosecution history, that supports such a reading. The fact that the patent discloses both a “thrust-bearing element” and “a thrust-bearing plate,” (Answering Br. at 14) in no way supports Precision's argument that “thrust-bearing” is an adjective; it only confirms that both elements are supported by the thrust bearing. (*See also* '121 patent at claim 3 (“wherein the thrust-bearing element comprises a thrust-bearing plate.”).) Precision's insistence on this point leads to a construction that excludes a preferred embodiment in violation of the canons of claim construction as Precision's construction would remove any reference to the bearings 28. (Answering Br. at 16-17)

Dr. Fleming’s attempt to distinguish the bearings 28 of the ’121 patent from a “traditional thrust bearing” based on purported “differences in the geometry between the two” (Fleming Decl. at ¶ 31) makes little sense given that both sides agree that both the “thrust bearing element” and a “traditional thrust bearing” share the characteristic of “supporting against axial load.” (See Opening Brief at 8; Answering Br. at 13.) Indeed, while Dr. Fleming states that the “thrust bearing element” of the ’121 patent contains a “shaft [that] is supported by roller bearings *that are not in-line with the axial force*” (Fleming Decl. at ¶ 33), he does not state that such bearings are incapable of supporting against axial load, which suggests that this is a distinction without a difference. If the bearings 28 of the ’121 patent can support against axial force, then they are functionally the same as the “traditional thrust bearing” according to the dictionary definitions provided by both Maschio and Precision. (*Compare* Opening Br. at 8 *with* Fleming Decl. at ¶ 31.)

Finally, Precision again relies on the EP ’492 Opposition. However, rather than relying on Maschio’s statements, Precision in this case seeks to apply the reasoning of the European Patent Office (“EPO”) itself, as set forth in the Decision of Technical Board of Appeal 3.2.04 of July 23, 2020 (“EPO Board Decision”). In other words, Maschio did not make these admissions, but rather they are the EPO’s own words. Precision cites no authority in support of adopting the claim construction determined by a foreign tribunal for claims of a foreign patent. To the contrary, as the Federal Circuit warns, “our precedent cautions against indiscriminate reliance on the prosecution of corresponding foreign applications in the claim construction analysis.” *AIA Eng’g Ltd. v. Magotteaux Int’l S/A*, 657 F.3d 1264, 1279 (Fed. Cir. 2011).

Unlike Maschio's Statement of Appeal, the EPO's decision cannot be understood as an admission by Maschio regarding the meaning of any claim terms, let alone of claim terms of the '121 patent, because it is not. In any event, Maschio's position during the EP '492 Opposition is consistent with its position in this proceeding: that "thrust-bearing" "does not relate to the feature of an 'element bearing some thrust of the load produced by the disc' but to the presence of a thrust bearing element which is a device having a clear and precise meaning in the art." (D.I. 43-1 at 753.)

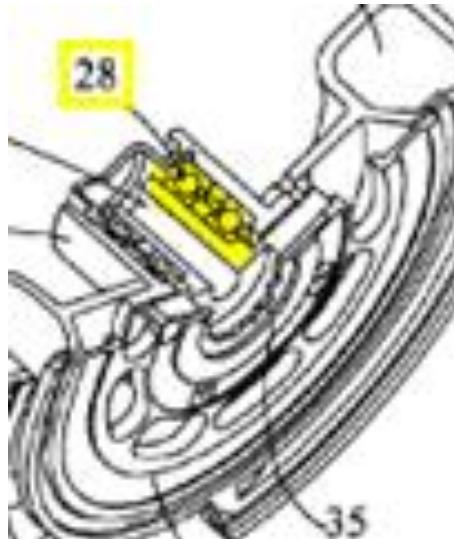
4. Precision's Sur-reply Position

Precision does not "actually seek[] to construe ... 'thrust bearing element.'" (See § IV.C.3, *supra*, ¶ 1 at 49.) Precision's proposed construction, "supporting against axial load," is a definition of "thrust-bearing." The '121 patent's claims use this hyphenated, adjectival phrase to modify the term "element," which needs no construction, and the term "plate," which the parties agree is "a generally flat surface." Thus, if the Court adopts Precision's proposed construction, "thrust-bearing element" will mean "an element supporting against axial load," and "thrust-bearing plate" will mean "a generally flat surface supporting against axial load."

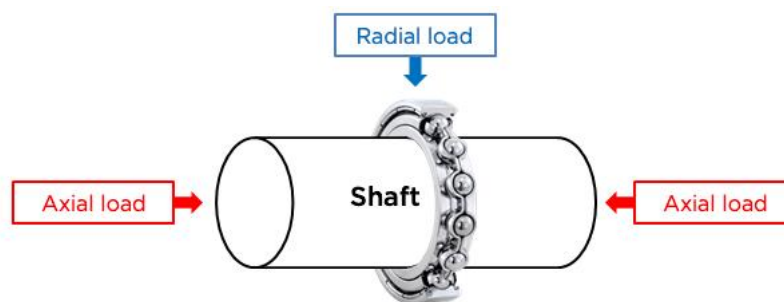
If the Court were to adopt Maschio's proposed construction, "thrust-bearing element" would mean "a rolling bearing that supports against axial load element," and "thrust-bearing plate" would mean "a rolling bearing that supports against axial load generally flat surface." While the former definition would be awkward and redundant but potentially workable (though still incorrect based on the '121 patent's disclosure), the latter would be indecipherable. Is a "thrust-bearing plate" a "generally flat surface" (as agreed

by the parties)? Is it a “rolling bearing”? Is it both (and is that even possible)? At best, Maschio’s proposed construction of “thrust-bearing” fails to meet the primary aim of claim construction: clarifying and explaining to the jury what claim terms mean. *See O2 Micro*, 521 F.3d at 1362.

Maschio argues that the patent’s use of “thrust-bearing” to modify “element” and “plate” “only confirms that both elements are supported by the thrust bearing [sic].” (See § IV.C.3, *supra*, ¶ 2 at 49.) But the ’121 patent does not disclose a thrust bearing. The bearings **28** identified in Figure 1 are *radial* bearings:



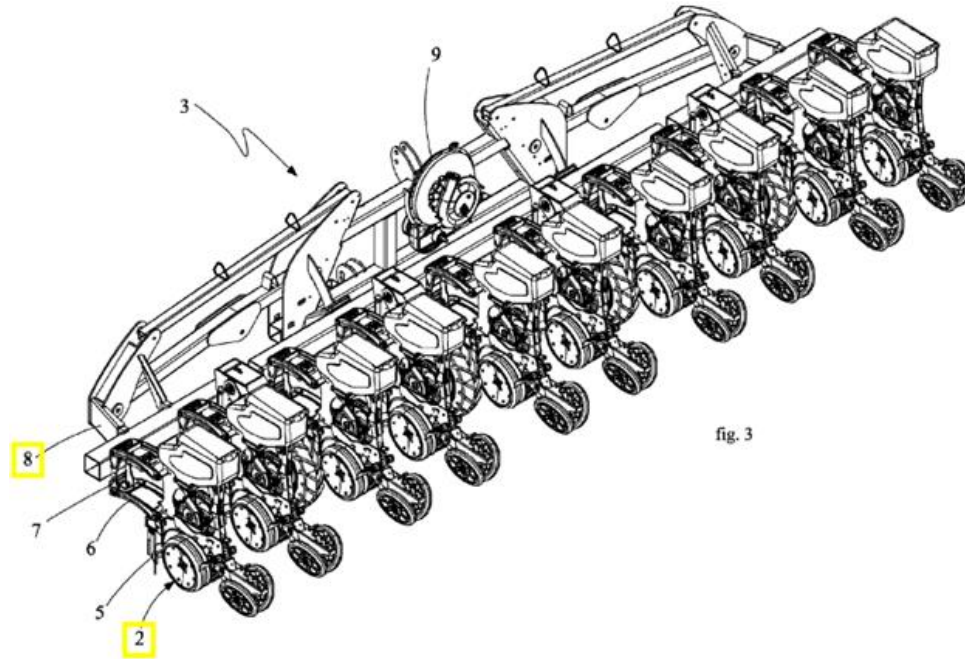
(D.I. 42-2 at 5, annotated.) Radial bearings surround a rotating shaft and support primarily against *radial* load—*i.e.*, force that is applied perpendicularly to the shaft:



(JKEKT, “What are the Differences Between Bearings?” <https://koyo.jtekt.co.jp/en/2019/09/column01-04.html>.)

As Maschio concedes in its proposed construction, thrust bearings support against *axial* load—*i.e.*, force that is applied in the same direction as the shaft. (*See id.*) “Thrust bearings *should not be subjected to a radial load*. They are designed for thrust/axial loads *only*.” (SMB Bearings, “Can Thrust Bearings Take a Radial Load?” <https://www.smbbearings.com/can-thrust-bearings-take-radial-load>, emphases added.) Thus, Maschio’s suggestion that bearings **28** are a “thrust bearing” because they are not “incapable of supporting against axial load” is incorrect. (*See* § IV.C.3, *supra*, ¶ 3 at 50.) Bearings **28** are radial bearings, not thrust bearings, and “removing any reference” to them in the construction of the modifier “thrust-bearing” would not exclude a preferred embodiment. (*See id.*, ¶ 2 at 49.)

Maschio also ignores that “bearing” is used as a modifier elsewhere in the specification without reference to any type of roller bearing. The entire seed drill is described as “a bearing structure **8**” on which a “suction device **18**” and “a plurality of sowing elements **2** are mounted” (D.I. 42-2 at 7, col. 2:41–42, 56).



(*Id.* at 6, annotated.) Just as there is nothing improper about referring to the entire “bearing structure”—*i.e.*, framework—of the seed drill without reference to bearings **28**, there is also nothing improper about construing “thrust-bearing” as a modifier of “element” and “plate” without reference to bearings **28**.

Finally, Maschio urges the Court to ignore the EPO’s determination that the construction of “thrust-bearing” need not reference a thrust bearing. (*See* § IV.C.3, *supra*, ¶¶ 4–5 at 50–51.) Although the EPO decision is not an admission by Maschio, it is nonetheless admissible extrinsic evidence that the Court may weigh in its claim-construction analysis. *Ateliers de la Haute-Garonne v. Broetje Automation-USA Inc.*, No. 09-598-LPS, 2011 WL 722937, at *5 (D. Del. Feb. 23, 2011). The EPO’s construction of “thrust-bearing” is fully consistent with Precision’s other intrinsic and extrinsic evidence in support of its proposed construction. If the Court has any lingering doubts after considering that evidence, Precision respectfully submits that the EPO’s construction of

the identical claim language in a substantively identical foreign patent should be highly persuasive.

D. “supported rotatably in the movable portion in order to withstand at least some of the axial load produced by the disc on the seal”

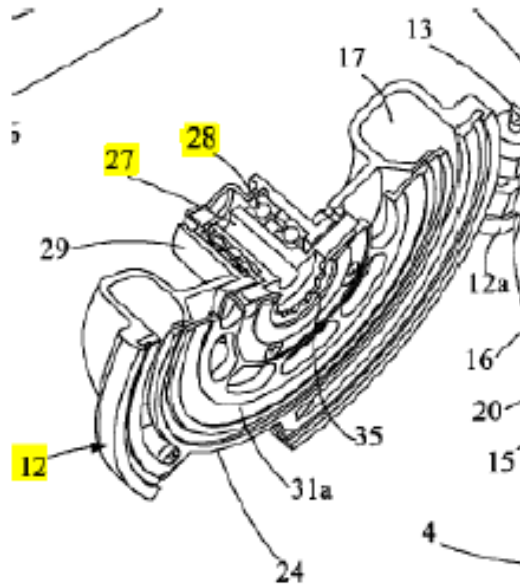
Maschio’s Proposed Construction	Precision’s Proposed Construction
plain and ordinary meaning which is, “supported rotatably on the movable portion in a manner that allows the thrust bearing element to bear at least some of the axial load”	“in the movable portion” – located within the space defined by the movable portion, however supported “at least some of the axial load” – any non-zero amount of axial load

1. Maschio’s Opening Position

The phrase “supported rotatably in the movable portion in order to withstand at least some of the axial load produced by the disc on the seal” does not require construction since a person of ordinary skill in the art would understand that meaning of this phrase without additional construction. There is nothing in the patent or file history to indicate that this phrase is imbued with any special meaning, much less that two separate constructions of its constituent phrases are necessary, as Precision would have it.

As an initial matter, Precision proposed this phrase as requiring construction but proffers two separate constructions for this single phrase. If Precision believed separate constructions were necessary, it should have proposed separate phrases to be construed. But it did not. Maschio believes that to the extent construction is necessary, only a single construction is needed for this phrase.

The specification teaches that “the shaft 27 has flanging 30 by means of which *it is fixed to a thrust-bearing plate 31 . . .*” (*Id.* at 3:27-28.) Finally, Fig. 1 shows the shaft 27 on the movable portion 12, to which it is connected by the bearings 28:



(*Id.* at Fig 1 (annotated detail).) In light of these disclosures, there can be no dispute that the thrust-bearing element is supported rotatably **on** the movable portion.

Precision also contends that the claim language “at least some of the axial load” should be read to mean “any non-zero amount of axial load.” Notably, this construction lacks any support in the specification, which reproduces the same “at least some axial load” language present in the claims. (’121 patent at 3:30-31.) In addition, the proposed construction does nothing to clarify the meaning of the claim language. The word “non-zero” does not clarify “some of” in a way that would allow a factfinder to ascertain the scope of the claimed invention. To the extent that Precision is merely seeking to substitute its own choice of words for those used in the patent, that is not a proper basis for claim construction. *See Endoheart AG v. Edwards Lifesciences Corp.*, C.A. No. 14-1473-LPS,

2016 U.S. Dist. LEXIS 43247, at *10 (D. Del. Mar. 31, 2016) (declining to construe the term “configured to conform to the direction of blood flow” where “[the parties’] dispute seems to be about the best choice of words for describing their shared understanding of claim scope.”)

2. Precision’s Answering Position

Claims 1 and 10 each recite that the thrust-bearing element of the sowing disc is “supported rotatably in the movable portion [of the housing] in order to withstand at least some of the axial load produced by the disc on the seal.” (D.I. 42-2 at 8, col. 4:36–40; *id.* at 9, col. 6:2–6.) Maschio argues that the phrase “in the movable portion” should be construed to mean “on the movable portion,” seeking to import a limitation from a preferred embodiment. But courts “do[] not usually limit claim scope to preferred embodiments, lest [they] commit the ‘cardinal sin’ of importing limitations from the specification into the claims.” *Ruckus Wireless, Inc. v. Innovative Wireless Sols., LLC*, 824 F.3d 999, 1009 (Fed. Cir. 2016).

As discussed above (*see* § IV.B.2, *supra*, ¶¶ 4–6 at 26–27), the specification may limit claim scope when it repeatedly makes clear that the claimed invention is narrower than the claim language might imply. *Alloc, Inc.*, 342 F.3d at 1370. But Maschio bases its argument solely on the specification’s description of a single drawing of the preferred embodiment. Nowhere else in the specification does the ’121 patent suggest its claim scope is so limited.

Furthermore, other claim language shows that the patentee was capable of claiming “on” when “on” was intended. For example, both claim 1 and claim 6 recite “a seal which

is arranged *on* the movable portion and is capable of sliding contact with the facing surface of the disc when the fixed and movable portions are closed against one another.” (D.I. 42-2 at 8, col. 4:29–32; *id.* at 9, col. 5:21–23, emphasis added.) If the patentee intended to require the thrust-bearing element to be supported “on” or “by” the movable portion, he would have used one of those words.

Finally, the European Patent Office previously rejected the same argument Maschio now makes, rejecting Maschio’s attempt to construe “in” as “on” in identical claim language from the ’121 patent’s European counterpart. After the European patent was revoked, Maschio appealed the decision. D.I. 43-1 at 541–42. In advance of oral argument, the Board of Appeal preliminary observed that

the expression “is supported rotatably **in** the movable portion” in claims 1 and 10 only requires that the thrust bearing [sic] element is supported somehow ***within*** the movable portion, though not necessarily by it. This is a credible technical reading of this feature. Indeed, according to the claim, the movable portion of the housing defines a suction chamber. Therefore, a thrust-bearing element located in the suction chamber and thus at the suction side of the rotating disk, is properly located to bear forces caused by that suction, however the element may be supported. For example, the element could be supported on the shaft while located within the movable housing portion. The board does not see any reason to disregard this claim interpretation and restrict the scope of the claim to a thrust-bearing element supported **on** the movable portion. This limitation is not claimed.

(*Id.* at 543–44, underlining in original, bold and italics added.)

Following oral argument, the Board finalized its preliminary observation:

The meaning of the expression “is supported rotatably in the movable portion” in claims 1 and 10 is also in dispute. In the board’s understanding the expression only requires that the thrust-bearing element is located ***within*** the movable portion, though not necessarily supported by it, as also held by the opposition division. The skilled person has no reason to disregard this interpretation since it is a logical and credible reading of this feature that also makes technical sense and is not in contradiction to the rest of the patent. Indeed, according to the claim, the movable portion of the housing defines a suction chamber. Therefore, a thrust-bearing element located in the suction chamber and thus at the suction side of the rotating disk, is properly located to bear forces caused by that suction, ***however the element may be supported.***

(*Id.* at 504, underlining in original, bold and italics added.)

Precision’s proposed construction, “located within the space defined by the movable portion, however supported,” is consistent not only with the claim language “in the movable portion” but also with the interpretation of identical claim language in the European patent.

Maschio also objects to Precision’s proposed construction of “at least some of the axial load” as “any non-zero amount of axial load.” Maschio argues that the proposal does not clarify the claim term and is merely Precision’s attempt to “substitute its own choice of words for those used in the patent.” But “some” is an inherently imprecise word, and

Precision's proposed construction merely guards against the argument or conclusion that there is some minimum threshold of axial load that the thrust-bearing element must withstand.

For the reasons set forth above, Maschio's proposed construction of "in the movable portion" should be rejected, and Precision's proposed constructions of "in the movable portion" and "at least some of the axial load" should be adopted.

3. Maschio's Reply Position

While failing to present any intrinsic evidence in support of its proposed construction, Precision ignores multiple disclosures from the '121 patent that support the plain and ordinary meaning of "supported rotatably in the movable portion in order to withstand at least some of the axial load produced by the disc on the seal."

The dispute apparently relates in part to whether the claim language can be construed such that the thrust-bearing element may be "supported rotatably in the movable portion" even when it is not actually mounted on or even touching the movable portion of the housing. (See Answering Br. at 19-20.) That makes no sense, and contradicts the teachings of the '121 patent.

First, the specification teaches that "[i]n order to limit the wear on the seal 24 resulting from sliding against the surface of the disc 16, a thrust-bearing element indicated as a whole by 26 **is mounted on the movable portion.**" ('402 patent at 3:20-24.)⁸

⁸ Precision points to this very same phrase in a different section of its brief. (Answering Br. at 15 (quoting '402 patent at 3:20-24).)

The specification further teaches that “the thrust-bearing element **27** comprises a shaft **27** *rotatably mounted by means of bearings 28 in a seat 29 of the movable portion 12*” (’402 patent at 3:25-27), which makes it evident that for the thrust-bearing element to be “rotatably mounted” it must be connected to the movable portion by means of bearings. Finally, the specification discloses that:

The shaft **27** has flanging **30** by means of which *it is fixed to a thrust-bearing plate 31* which can bear on the surface of the disc which faces the seal **24** in a zone radially inside the ring of holes **23** *in order to withstand at least some of the axial load produced by the disc 16 on the seal 24.*

(*id.* at 3:27-28.) This is not an issue of “importing limitations from the specification,” as Precision would have it (Answering Br. at 18), since the cited portions of the specification clarify the meaning of the claim language in question. Nor are these teachings confined to “a single drawing of the preferred embodiment.” (*Id.* at 18.) The specification confirms repeatedly that the plain and ordinary meaning applies.

Precision’s **only** evidence for its proposed construction comes from the EPO Board Decision relating to EP ’492. (Answering Br. at 19.) However, the Board’s decision on this issue is intertwined with issues specific to foreign law, and therefore is not germane to claim construction in this proceeding.

In the EPO proceeding, Maschio argued that the thrust-bearing element should be located **on** the movable portion both in opposition to Precision’s assertion that claim 1 was anticipated (D.I. 43-1 at 750-52) and in support of its request to amend the claim language to read “wherein the thrust-bearing element is mounted **on** the movable portion” (*id.* at 755-56). In response, the EPO found that “the expression only requires that the thrust-

bearing element is located *within* the movable portion, though not necessarily supported by it,” (*id.* at 504) and rejected Maschio’s proposed amendment as an “unallowable intermediate generalisation.” (*Id.* at 509.)

However, intermediate generalisation is a concept specific to European patent law. (See Ex. 8, EPO Guidelines for Examination, Chapter V, Section 3.2.1 Intermediate generalisations.) There is no such concept in U.S. patent law. As such, the EPO’s statements with respect to this claim language should not be considered when construing claim terms of the ’121 patent. See *Apple v. Motorola*, 757 F.3d at 1312 (holding that statements made during prosecution of foreign patents may be considered in claim construction “if relevant and not related to unique aspects of foreign patent law.”).

Moreover, Precision neglects to mention that the EPO allowed a separate counterpart of the ’121 patent, EP 2 848 109 (“EP ’109”, Exhibit 9) that includes the exact claim language that Precision contends would be impermissible: “wherein the thrust-bearing element (26) is mounted **on** the movable portion.” (Ex. 6 at 5:28-30, 6:58-7:2.) Thus, it is misleading to to claim, as Precision has, that the EPO’s reading of the disclosure supports its proposed claim construction, when in fact the opposite determination had been made with respect to another European patent in the family.

Finally, Precision adds no further clarity to its proposed construction of “at least some axial load” as “non-zero amount of axial load” by arguing that this formulation “merely guards against the argument or conclusion that there is some minimum threshold of axial load that the thrust-bearing element must withstand.” (Answering Br. at 20.) The

court should reject this extraneous limitation, which finds no support *anywhere*, including the '121 patent and does not clarify the claim language.

4. Precision's Sur-reply Position

Maschio does not and cannot dispute that its patentee knew how to claim that one part of his purported invention was “mounted on” or “supported by” another part when that is what he meant. (See § IV.D.2, *supra*, ¶ 3 at 57–58.) Indeed, Maschio admits, perhaps unwittingly, that the patentee did exactly that in a separate European counterpart patent, the claims of which recite “wherein the thrust-bearing element (26) is mounted on the movable portion.” (See § IV.D.3, *supra*, ¶ 8 at 62.) Contrary to Maschio's argument, Precision does not contend that such “*claim language ... would be impermissible*” in the '121 patent. (See *id.*) Had the patentee used that claim language, it would be supported by the disclosed embodiment.

Precision contends only that the patentee used different language with a different meaning—“supported rotatably in” rather than “mounted on”—and that the former should not be limited to the latter when such a limitation appears only in the specification. Maschio argues that the thrust-bearing element “must be connected to the movable portion by means of bearings” in order to be “rotatably mounted” to the movable portion. (See *id.* ¶ 4 at 61.) This is merely importing details of the disclosed embodiment into claim language that does not require it. Other undisclosed configurations do not require a thrust-bearing element to be mounted on the movable portion to be rotatable in the moveable portion. Indeed, the '121 patent's original claims as filed form part of the disclosure, *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1370 (Fed. Cir. 2010), and they disclose the “thrust-bearing

element is supported rotatably in the movable portion,” *not* “mounted on” it. (D.I. 42-2 at 182:25–183:1.) And nowhere in the specification does the patentee use mandatory language that would justify limiting the claim language to the sole disclosed embodiment. *See Nexeon*, 2018 WL 1942199, at *7); *cf. also Alloc*, 342 F.3d at 1370; *Noah*, 2010 WL 9096712, at *2.

Maschio also urges the Court to ignore the EPO’s finding that “in” means “in.” (See § IV.D.3, *supra*, ¶¶ 5–7 at 61–62.) Maschio argues that the EPO’s construction of “supported rotatably in the movable portion” was based on its rejection of a proposed amendment under the European concept of “unallowable intermediate generalization.” (See *id.* ¶ 6–7 at 61–62.) But the EPO’s ruling about the meaning of “supported rotatably in” is in an entirely different section of its decision and relates to a different auxiliary request by Maschio than the amendment rejection based on intermediate generalization. (Compare D.I. 43-1 at 501–06, “3. Auxiliary request 4 – Novelty,” with *id.* at 508–09, “5. Auxiliary requests 6, 7 – Added subject matter.”) Maschio makes no showing that the EPO’s decision that “in” means “in” was based on anything unique about European patent law. *See Apple*, 57 F.3d at 1312. “In” should also mean “in” here, and the Court should adopt Precision’s proposed construction.

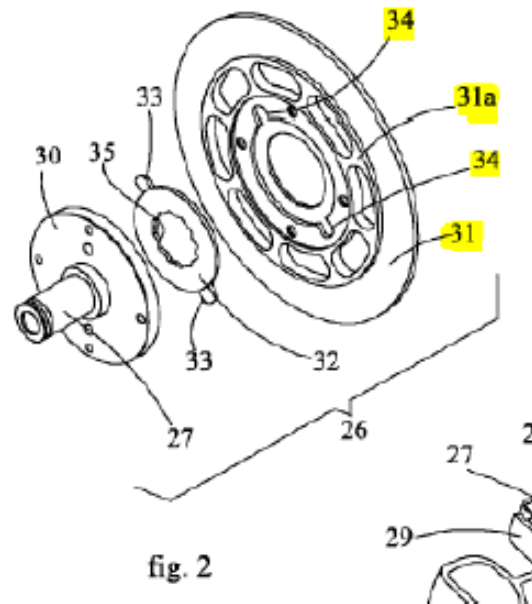
E. “plate”

Maschio’s Proposed Construction	Precision’s Proposed Construction
plain and ordinary meaning which is, “a generally flat surface”	plain and ordinary meaning which is, “a generally flat surface”

1. Maschio's Opening Position

No construction of this term is necessary. The term “plate” has no specialized meaning within the art, nor was it defined by the inventor in the specification or during prosecution. Nothing in the intrinsic record suggests that the inventor intended to disclaim any meanings of the word “plate.”

If construed, the term should carry its plain and ordinary meaning, which is “a generally flat surface.” The only plate disclosed in the '121 patent is the “thrust-bearing plate **31**.” ('121 patent at 3:28, 3:33-35, 3:40, 3:55.) As shown in Figure 2, the thrust-bearing plate **31**, while *generally* flat, includes a relief on the surface of the plate:



(*Id.* at Fig 2 (annotated).)

The specification confirms that “[t]he bearing between the thrust-bearing plate **31** and the disc **16** takes place in *the region of a ring 31a in relief on the surface of the plate* which faces the disc **16**.” (*Id.* at 3:33-35.) Additionally, the specification discloses that the plate includes seats **34** into which the drive element **32** is fitted. (*Id.* at 3:42-47.) As shown

above in Fig. 2, the plate is indented where the seats appear, further confirming that the plate is generally, but not completely flat.

Precision's construction would eliminate multiple features of a preferred exemplary embodiment including the region of a ring **31a** and the seats **34** where the drive element **32** is fitted. This is improper and should be rejected. *See, e.g., Eko Brands, LLC v. Adrian Rivera Maynez Enters.*, 946 F.3d 1367, 1373 (Fed. Cir. 2020) quoting *Adams Respiratory Therapeutics, Inc. v. Perrigo Co.*, 616 F.3d 1283, 1290 (Fed. Cir. 2010) ("A claim construction that 'excludes the preferred embodiment is rarely, if ever, correct and would require highly persuasive evidentiary support.'")

Thus, the proper construction for "plate" should be its plain and ordinary meaning, "a generally flat surface."

2. Precision's Answering Position

Precision agrees with Maschio's proposed construction.

3. Maschio's Reply Position

Here again, Precision has decided, with no notice to Maschio, that it will not argue one of the terms it sought to have construed. As with "movable portion", Precision did not respond to Maschio's argument even though it originally refused to agree with Maschio's counterproposal. If Precision now believes that the term either does not require construction or should carry its plain and ordinary meaning, it has not given Maschio, or this Court, any notice of its changed position. Thus, Maschio stands on its opening argument, but reserves the right to respond in the event Precision provides a sur-reply on this term.

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