

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRECISION PLANTING LLC,
Petitioner,

v.

MASCHIO GASPARDO S.p.A.,
Patent Owner.

IPR2024-00008
Patent 8,770,121 B2

Record of Oral Hearing
Held Virtually: December 12, 2024

Before BENJAMIN D. M. WOOD, LYNNE H. BROWNE, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matter came on for hearing on December 12, 2024,
commencing at 10:00 a.m., via video teleconference.

P R O C E E D I N G S

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JUDGE WOOD: All right. Good morning, everyone. We are here for, first of all, can everyone hear me okay?

MR. CASEY: Yes, Your Honor.

JUDGE WOOD: All right. Thank you. We are here for our oral argument in IPR2024-00008, Precision Planning LLC v. Maschio Gaspardo S.p.A. I'm Judge Wood. Also on the panel are Judges Lynne Brown and Richard Marschall. Can we get a roll call for Petitioner, please?

MR. BROWN: Good morning, Your Honor. This is Scott Brown appearing on behalf of Petitioner Precision Planting. I have with me in the room, but not on camera my partner, Matt Walters.

JUDGE WOOD: All right. Thank you, Mr. Brown. Will you be presenting oral argument for Petitioner this morning?

MR. BROWN: I will.

JUDGE WOOD: Thank you. And can we get a roll call from Patent Owner, please?

MR. CASEY: Yeah. This is Kevin Casey for the Patent Owner Maschio Gaspardo, and I'm joined by my partner, Ashley Shapiro, who is not with me in the room, but just on video.

JUDGE WOOD: Thank you, Mr. Casey. Will you be presenting oral argument for Patent Owner this morning?

MR. CASEY: I will.

JUDGE WOOD: Thank you. From the hearing order, Petitioner will have 30 minutes to present argument in this case, and Patent Owner will

1 also have 30 minutes to present arguments. Petitioner will open the hearing
2 by presenting its case, and Patent Owner will respond to Petitioner's
3 argument. Patent Owner may reserve time, I'm sorry, Petitioner may
4 reserve some time for rebuttal, and Patent Owner may reserve time for sur-
5 rebuttal. Are there any questions or concerns before we begin?

6 MR. BROWN: No, Your Honor.

7 MR. CASEY: No, Your Honor.

8 JUDGE WOOD: All right. Mr. Brown, You may begin when
9 ready. First, do you intend to reserve any rebuttal time?

10 MR. BROWN: Yes, Your Honor. I would like to reserve five
11 minutes for rebuttal.

12 JUDGE WOOD: Five minutes for rebuttal. Thank you. So, I will
13 be keeping time. We may ask questions during your presentation, and I'll
14 take that into account as we keep track of time, so we'll, you know, if
15 necessary, add additional time to your allotment to account for the questions
16 that we ask. Let's see.

17 MR. CASEY: Your Honor, one of the other things to take care of
18 it now while you're on it is we'll also reserve five minutes for our rebuttal
19 from the Patent Owner's perspective.

20 JUDGE WOOD: Okay. Thank you, Mr. Casey. Before we begin,
21 we are in receipt of Petitioner's motions to strike and to exclude, specifically
22 to exclude exhibits that were provided with Patent Owner's sur-reply. We
23 are taking those motions under advisement. For purposes of the oral
24 argument, however, and I'm specifically referring to the -- well, the
25 additional declarations submitted by Patent Owner's expert, Exhibit 2021.
26 For purposes of the oral argument, we'll permit the parties to discuss that

1 exhibit.

2 And with that, we're familiar with the record, so you can begin
3 when you're ready, Mr. Brown.

4 MR. BROWN: Thank you, Your Honor. I don't intend to address
5 the motions to exclude or strike specifically, especially in view of your
6 statement you just gave. I do intend to address first the construction of
7 thrust-bearing element, which is the claim construction issue that's really at
8 play here. And then I hope to address both Grounds 1 and 4 under either the
9 Board's preliminary construction or the alternative construction proposed by
10 Patent Owner to show that under either of those constructions, the claims are
11 invalid.

12 Turning first, we submitted a slide deck, and on slide 3, I set forth
13 the Board's preliminary interpretation of thrust-bearing element. The Board
14 found that a thrust-bearing element is an element that provides support
15 against an axial force. We do not believe that that preliminary construction
16 needs to be disturbed. Nothing on this record would require it, and that's
17 because within the context of the claims and the specification of the '121
18 patent, a thrust-bearing element connotes particular structures, and therefore
19 no further construction is required from the Board.

20 Conceptually, I believe it's easiest to approach that part of the
21 argument within the context of Patent Owner's suggestion that it's actually a
22 means-plus-function limitation. So I'm going to turn to that part of the
23 argument.

24 We start under the law of means-plus-function by noting that there
25 is a presumption that arises if the word means is not used in the claim
26 limitation, then there's a presumption against it being found to be a means-

1 plus-function limitation. And we cited the *Egenera v. Cisco* case from the
2 Federal Circuit, in which they pointed out directly on that point that that's
3 the law and that the Federal Circuit has so found *en banc*. So, Patent Owner
4 starts having to overcome the presumption against means-plus-function in
5 the context of this analysis.

6 Within the context of these claims, thrust-bearing element
7 connotes a particular class of structures. I know first in addressing this at the
8 District Court level in the companion case, Maschio Gaspardo argued under
9 the Phillips standard to the District Judge that thrust-bearing element was a
10 well-known structure. Now, they have done a complete 180 and they're
11 urging to this Board that thrust-bearing element is so devoid of structural
12 limitation that it should overcome the presumption against means-plus-
13 function limitations. They ought to be held to their admissions before the
14 District Court.

15 JUDGE WOOD: Mr. Brown, you know, my understanding from
16 reading the petition is that the Petitioner does not believe that the term
17 thrust-bearing with the hyphen connotes what is traditionally referred to as a
18 thrust bearing, but rather it's an adjective that modifies the term element.
19 So, why isn't that consistent with thrust-bearing element being a means-
20 plus-function claim term?

21 MR. BROWN: Well, Your Honor, what we have actually argued
22 both to the District Court and here is that thrust-bearing -- the thrust-bearing
23 element should not be limited to the classic thrust bearing, which was Patent
24 Owner's position to the District Court and in front of the EPO as well in the
25 opposition proceeding. And so, we aren't saying that thrust-bearing doesn't
26 connote structure. We think it does connote structure. It's just not limited to

1 the particular classic thrust bearing that was urged by Maschio Gaspardo to
2 the District Court. We do have the testimony from our expert in his reply
3 declaration that given the context of the specification of the claims, thrust
4 bearing elements still connotes a class of structures. And we cited the
5 *Personalized Media v. ITC* case from the Federal Circuit, which says that the
6 claim language doesn't have to evoke a particular structure, but may convey
7 a variety of structures known in the art and still take it outside of 112-6 or
8 112(f) application.

9 In paragraph 14 of Dr. Fleming's reply declaration, he explains
10 that a POSA would understand that to be a thrust-bearing element for a
11 spinning disk that is exerting thrust in a known direction, which are
12 requirements in the claim language, a structure having a conforming surface
13 area contacting the disk and additional structure for transferring thrust to the
14 fixture where it will ultimately be absorbed would be required. He says,
15 moreover, that the word bearing itself connotes resistance to force.

16 We also note, and we've put on slide 4, admissions by Patent
17 Owner's expert in his opening declaration where in paragraph 55, he says,
18 thus the embodiment of the thrust-bearing element, (hyphen), disclosed in
19 the '121 patent resembles the structure and function of a well-known thrust
20 bearing, no hyphen. So, he's indicating that it's a known structure,
21 resembles a known structure. And then in paragraph 56, he refers to the
22 '708 patent, which is a contemporaneous piece of art. And he notes that, "as
23 used in the '708 patent, the terms thrust-bearing apparatus and thrust-bearing
24 assembly connotes structures that achieve support against an axial load
25 while being supported in a way that reduces friction between stationary and
26 rotating machine parts." And so, Patent Owner's expert has admitted that

1 thrust-bearing element connotes structure. And under the 112(6) analysis,
2 that should be the end of the inquiry. If within --

3 JUDGE WOOD: Let me cut in real quick, Mr. Brown. I'm
4 looking at the reply declaration from your declarant, and there is a -- and this
5 is part of paragraph 14, there's a picture of a traditional thrust-bearing, what
6 your expert refers to as a traditional thrust-bearing. I don't see any of that
7 structure identified in the '121 patent as the thrust-bearing element. Or
8 maybe I can ask you, you know, where is that structure located in what the
9 '121 patent identifies as a thrust-bearing element?

10 MR. BROWN: Well, that was exactly our point, actually, Your
11 Honor, it's not. There is no traditional thrust bearing disclosed in the '121
12 patent, which has been our point that Patent Owner's initial position in the
13 District Court that it should be limited to a traditional thrust bearing was
14 wrong. And the point that was made to the District Court and here was that
15 given what is disclosed as the actual thrust-bearing by the patentee in the
16 specification, the claim limitation could not be limited to just the traditional
17 thrust bearing. But that doesn't mean it can't -- it doesn't still connote a
18 classification of structures, which is what Dr. Fleming is talking about. And
19 I just read from his declaration in that same paragraph that we discussed.
20 Even if the Court or the Board were to determine that those three terms,
21 thrust bearing element by themselves, don't connote sufficient structure to
22 take the claim limitation outside of means-plus-function, the remaining
23 language in the claim, we believe, does supply sufficient structure to take it
24 outside of the 112(f) analysis.

25 We note first that in Claim 1, the thrust-bearing element is
26 introduced as being of the sowing disc. The disk has structure and is

1 definitively located.

2 JUDGE WOOD: Mr. Brown, are you saying that the thrust-
3 bearing element is a part of the sowing disc?

4 MR. BROWN: No.

5 JUDGE WOOD: Are you saying of the sowing disc?

6 MR. BROWN: The language is of the sowing disc. I do not
7 believe it's part of the sowing disc. It's related to the sowing disk by the rest
8 of the language that follows that.

9 JUDGE WOOD: So, why does the structure of the sowing disk
10 matter to the structure of the thrust-bearing element?

11 MR. BROWN: Well, because I believe it sets up the structural
12 environment that's required by the claim that you can then analyze what the
13 further claim language regarding the thrust-bearing element adds. And so,
14 I'm really setting up the environment in which the thrust-bearing element is
15 existing according to the claim.

16 So, we know from the recitation about the disk that it's rotated by a
17 shaft, that it's interposed between the fixed and movable portions of the
18 housing as a ring of holes, and it has a facing surface capable of sliding
19 contact with the seal. Then the claim language requires that the thrust-
20 bearing element, which thrust-bearing element is supported rotatably in the
21 movable portion in order to withstand at least some of the axial load. So, the
22 language requires that the thrust-bearing element be rotatably mounted in
23 juxtaposition with the disk, and that it be in the movable portion. And Dr.
24 Fleming at paragraph 16 testifies that this clearly implies a spinning rigid
25 structure that contacts the seed disk but nevertheless transfers the load to the
26 housing. A finite number of structures are possible to accomplish this and

1 they will include a shaft connected to a rigid structure with a conforming
2 surface area in contact with the seed disk.

3 JUDGE WOOD: What paragraph are you reading from Mr.
4 Brown?

5 MR. BROWN: That is paragraph 16 of Dr. Fleming's reply
6 declaration.

7 JUDGE MARSCHALL: This is Judge Marschall. If I could step
8 in. I'm having trouble understanding how that description of structure is a
9 finite number of structures. It seemed like almost a limitless number of
10 structures could have those features and still meet the description of the
11 structure necessary to perform these functions according to this testimony.
12 So, and as I read *Personalized Media*, that was a digital detector, if I recall
13 correctly, and there was a finite number of structures that let's say an
14 electrical engineer would understand would meet a digital detector in that
15 context. And here it's hard to visually or otherwise identify what exactly
16 this claim would cover if it has a finite number of structures associated with
17 the thrust spring elements. So, if you could help me through that, what
18 could we look at that would be a finite number so that we could then apply it
19 to the prior art?

20 MR. BROWN: I think given the juxtaposition of where the disk is,
21 so the disk is in the middle between the two housing halves, and the load
22 that the vacuum is creating on the disk is going to urge the disk in one
23 direction. To support against that load, you're going to have to have a
24 conforming surface that will press or hold the disk from moving on the side
25 where the vacuum is being applied. And you're going to have to -- that just
26 can't float. So, you have to be able to transfer the load somehow. And Dr.

1 Fleming testifies that you're going to have to have a shaft of some kind to
2 transfer that load given the other geometric requirements in the claim
3 language. And so, that's the basis for his testimony saying that it's a finite
4 number of structures that could perform that function. And that's in
5 paragraph 16 of his declaration. So --

6 JUDGE WOOD: I'm going to have -- I will make an observation,
7 Mr. Brown. There's no support, there's no evidentiary support cited in
8 paragraph 16. So, that raises the question of how much weight we should
9 give to Dr. Fleming's testimony in that regard. You know, obviously, you
10 know, that is something that we will be looking at down the line. But the
11 fact that there's no evidentiary support cited, you know, is relevant to the
12 weight that we ultimately end up giving that testimony.

13 MR. BROWN: Understood, Your Honor. What I'd like to turn to
14 next then is even if the panel were to decide that there is insufficient
15 structure recited, and that the presumption against means-plus-function has
16 been overcome, I'd like to turn to what is the proper structure to identify as
17 the disclosed structure if it is a means-plus-function limitation.

18 At slide 5, we've reproduced figures that we put into our reply
19 brief, and the law is that the structure that is linked by the patentee to the
20 function is going to be the structure that is the disclosed structure for
21 performing the function. And here, the patentee could not have been clearer
22 than when he introduces the thrust-bearing element by saying a thrust-
23 bearing element indicated as a whole by 26. And we've set forth Figure 2
24 on the lefthand side of this slide, which shows everything that's included in
25 26. That includes the shaft 27, the flange 30, the drive element 32, the plate
26 31. Those are all structures that are identified as the thrust-bearing element

1 by the patentee as a whole.

2 On the righthand side of slide 5, we've reproduced Figure 1, and
3 critically, you can see that the seat 29 and the bearings 28 are in Figure 1.
4 They are not identified as being part of the thrust-bearing element by the
5 patentee in the specification. So, that's critical because Maschio tries to
6 argue that both the seat and the bearings have to be part of the structure as a
7 backdoor attempt to require that the thrust-bearing element has to be
8 mounted on the movable portion of the housing. And the claim language
9 won't support that. The spec doesn't support that because of the way the
10 patentee disclosed what the thrust-bearing element is.

11 Secondly, the claim language doesn't support it because seat 29 is
12 not rotatable. But the claim language requires that the thrust-bearing
13 element be rotatably mounted. So, seat 29 can't be part of the thrust-bearing
14 element. We cited the *Asyst Techs. v. Empak* case, which stands for the
15 proposition that even if structure is necessary to enable a function, that does
16 not mean it's part of the structure that's disclosed to perform the function.
17 And we believe that's the situation that we have here. In the *Asyst* case, I
18 believe that the limitation in question was a microcomputer means, and the
19 dispute was about whether a communication line that connected to the
20 microcomputer in the disclosed structure was part of the microcomputer
21 means. The argument was that the microcomputer didn't work without the
22 communication line, but the Federal Circuit found that just enabling
23 structure does not necessarily mean that it's part of the disclosed structure
24 for performing the particular function. And here with the patentee
25 identifying what is the disclosed structure by his indications in Figure 2 and
26 in the specification, it's clear that it does not include the seat and the

1 bearings.

2 So, we conclude by saying that if the Board finds that this is a
3 means-plus-function limitation, the proper construction of the disclosed
4 structure we set forth at page 16 of our reply brief, and it should be a
5 structure comprising a shaft with flanging fixed to a thrust-bearing plate in
6 which entire structure is connected to rotate with and can bear on that
7 surface of the sowing disk which faces the seal. That should be the
8 disclosed structure that the panel would find.

9 And I'd like to turn to Ground 1 unless there are other questions on
10 the claim construction issues.

11 JUDGE WOOD: One question. Are you aware -- is there any
12 evidence in the record that the term thrust-bearing element, thrust-bearing
13 having the hyphen, was used prior to the '121 patent?

14 MR. BROWN: Well, I mean, we do have one piece of evidence in
15 the specification, which is that the patentee admits that thrust hyphen
16 bearing elements were known in the prior art. But I'm not aware of any
17 evidence in the record outside of that that refers to a thrust hyphen bearing
18 element being used in the prior art.

19 JUDGE WOOD: So, we cannot say that the term thrust-bearing
20 element with the hyphen is a term that would -- a person of ordinary skill in
21 the art would have been familiar with before the '121 patent?

22 MR. BROWN: I think that the person of skill having read the spec
23 would have an understanding of it, but there are thrust bearings which
24 clearly are known in the art, but that's the argument that the thrust hyphen
25 bearing is used adjectivally and not limited to a classic thrust bearing.

26 JUDGE WOOD: All right, thank you.

1 MR. BROWN: Under Ground 1, we think that VenHuizen
2 would --

3 JUDGE MARSCHALL: If I could step in for a moment. Doesn't
4 that point kind of undermine your argument that everyone kind of knows
5 what the thrust bearing element is and it identifies a certain finite number of
6 structures that everyone would understand?

7 MR. BROWN: Well, I don't think, you know, I mean, I think you
8 always have to read the claim language in view of what's in the
9 specification. And so, the point of the argument here is that one who's read
10 the '121 specification is going to have this class of structures in their mind
11 given the constraints of the claim and what's disclosed.

12 JUDGE MARSCHALL: Okay. I understand your point.

13 MR. BROWN: Turning then to Ground 1, VenHuizen anticipates
14 whether the Board disturbs its construction or alters it to a means-plus-
15 function limitation. I don't intend to walk through how we apply each
16 element of the VenHuizen reference to the claim unless the Board has any
17 question about that, of course, I would entertain those questions. But I want
18 to focus on what we've put on slide 7 in our presentation, which are images
19 from VenHuizen. And in particular, we've reproduced on the righthand side
20 the figure that shows the VenHuizen housing when it's closed.

21 And we've identified that the handle 58 is part of the thrust-
22 bearing element, and it is in the movable portion of the housing. It is
23 rotatably mounted. When the handle -- when the disk is mounted, the handle
24 holds the disk to the hub and the handle, disk, hub, and shaft all spin
25 together. So, the handle is rotatably mounted and located in the movable
26 portion. And when vacuum is applied, the disk is going to be urged to the

1 righthand side in this figure, and that will produce load on the seal. So, the
2 handle will take up at least some of the load of the force that's produced on
3 the seal, meeting the claim language.

4 We note that under this construction, Patent Owner's expert
5 admitted that it would anticipate. We set forth on slide 6 his testimony in
6 that regard where I read to him the Board's preliminary construction and in
7 the underlined portion there I asked him, with that understanding do you
8 agree that if the Board maintains that interpretation then VenHuizen
9 anticipates, and he answered yes.

10 Maschio's original brief, the Patent Owner's response, only raised
11 the claim construction issue with regard to VenHuizen. And so, we think
12 that if the Board does not change its construction VenHuizen clearly
13 anticipates.

14 I note that in Patent Owner's sur-reply, they raise two new
15 arguments as to why VenHuizen wouldn't anticipate, and the Board should
16 not entertain those arguments because they were new in the sur-reply. The
17 first of those arguments was that the handle of VenHuizen is not rotatable
18 360 degrees with respect to the hub. In addition to being a new argument, I
19 don't think that the argument makes a lot of sense in the context of what's
20 required by the claim. There is no doubt that when a disk is mounted and
21 the handle is turned to lock the disk to the hub, that the whole structure
22 rotates 360 degrees handle, hub, and shaft as the machine operates. And so,
23 the handle is rotating 360 degrees.

24 The second argument that they raise, which is new in the sur-reply,
25 is that the shaft can't be both the drive shaft and part of the thrust-bearing
26 element. But the cases that they cite for the proposition do not stand for the

1 proposition that if there are two separately recited elements, one structure
2 cannot satisfy both elements. That's not the law. The cases cited by Patent
3 Owner stand for the proposition that if something else in the claim requires
4 that they be two separate structures, then a single structure can't satisfy both.
5 But you're always looking at the claim language to see if there's some
6 reason that that would be required. And there's no requirement that I can
7 see in Claim 1 that would require that there be multiple structures or more
8 than one structure to satisfy both elements.

9 JUDGE WOOD: What case are you referring to, Mr. Brown?

10 MR. BROWN: I didn't write that one down, Your Honor. I
11 apologize.

12 JUDGE WOOD: That's okay.

13 MR. BROWN: If I find it, I will get that answer for you.

14 JUDGE WOOD: That's fine. Yeah.

15 MR. BROWN: The second argument that is new -- well, so I was
16 talking about whether the Claim 1 requires that, in the way it's written, that
17 there be more than one structure to satisfy both elements, and there is
18 nothing in Claim 1 that I can see that has that requirement. In the case that
19 was cited by Maschio, the situation related to a claimed needle that had a
20 cannula on it, and the cannula was moved by a claimed arm that had a hinge,
21 and it was also claimed to be attached to that arm, a spring. There the
22 Federal Circuit found that if there's a spring attached to an arm, you can't
23 have one structure that is attached to itself, essentially, that the way the
24 claim was written required that there would be two separate structures.
25 Here, nothing says that the motor driven transmission drive shaft can't also
26 participate in the function of bearing at least some of the axial load produced

1 by the disk on the seal. There's nothing in the way that language is written
2 that would make that requirement.

3 Turning then to if the claim is interpreted as 112(f), then
4 VenHuizen discloses structure that performs the identical function and is
5 equivalent to the properly identified structure of the '121 patent. In slide 9,
6 we've set forth an image from our reply brief where we show the structure
7 that VenHuizen discloses. You have the handle shown in red, which is
8 fixing the disk, shown in green, to the hub, shown in purple, and then you
9 have the shaft, which is yellow. Those structures will all spin together when
10 the machine is in operation. And so, it's a very similar structure to that
11 disclosed by the '121 patent, which includes a shaft with the flange and the
12 drive element and the plate.

13 JUDGE WOOD: Mr. Brown?

14 MR. BROWN: Yes.

15 JUDGE WOOD: It seems like we skipped over whether or not
16 VenHuizen teaches the corresponding structure outright, and we've moved
17 on to the teaching equivalent structure. Is it your view that VenHuizen does
18 not teach the corresponding structure, but it does teach equivalent structure?

19 MR. BROWN: I would say that it teaches some of the
20 corresponding structure identically. They both have a shaft that participates
21 in it. Both have a structure that has a flat surface that is in contact with the
22 disc. The particular arrangement is different, I would concede, because in in
23 VenHuizen the shaft is in tension, whereas in the '121 patent the shaft in
24 question is in compression. And so, it's not identical, but we would say if
25 it's not identical it's at least equivalent.

26 JUDGE WOOD: Well, there's no plate. There's no thrust-bearing

1 plate taught by VenHuizen, correct?

2 MR. BROWN: That's correct. There is the handle which has the
3 surface that's in contact with the disk to perform part of the bearing
4 function. And so, we say that the handle is equivalent to the plate.

5 JUDGE WOOD: Thank you.

6 MR. BROWN: We say it performs the identical function. It is
7 when vacuum is applied it will take up some of the load that's produced by
8 the disk on the seal as required by the claim language. Then we say the
9 structure forms in substantially the same way. There's a rigid rotatable
10 structure located in the movable portion of the housing that holds the disk
11 and takes up some of the axial load and transfers that load through the shaft
12 to the housing. So, it's performing in the same way, and the result is that the
13 shaft, hub, and handle take up some of the axial load thereby elongating the
14 life of the seal. So, you get the same function and way and result under that
15 tripartite test. And so, VenHuizen discloses at least discloses equivalent
16 structure and still anticipates.

17 I'd now like to turn to Ground 4 as I know my time is short, and
18 talk about --

19 JUDGE WOOD: And Mr. Brown, let me ask you a question, if I
20 may, regarding Ground 1. So, the structure in VenHuizen that bears thrust
21 includes not only handle 58 but also the hub 56 and the shaft. Is that
22 correct?

23 MR. BROWN: Yes, because the handle will bear the thrust from
24 the plate, the disk, the seed disk I mean, and then that's going to be
25 transferred through the hub and shaft. So, all of those will see some of that
26 thrust and bear it.

1 JUDGE WOOD: Most of the shaft and all of the hub are located in
2 the fixed portion. So, how does that structure, those three components
3 which appear to correspond to the claimed thrust-bearing element, how can
4 it be said that they are rotatably supported in the movable portion?

5 MR. BROWN: Well, they're clearly rotatably supported, and the
6 claim language does not say that it has to be entirely within the movable
7 portion. So, some portion of that thrust-bearing element, the handle, is
8 clearly in the movable portion. And so therefore, the claim language is met.

9 JUDGE WOOD: All right, thank you.

10 MR. BROWN: Turning then to Ground 4, it's undisputed that the
11 Amazone reference has every limitation except a thrust-bearing element.
12 So, the question is, would it have been obvious to modify the Amazone
13 reference with the Fiorido structures posed by Dr. Fleming to arrive at the
14 claimed invention? Why would that have happened? First off, we note that
15 the applicant admitted that seal wear was a known problem in the prior art.
16 And we know if we turn to slide 12 from the presentation, we've reproduced
17 part of the manual of Amazone. Amazone manual itself notes that damage
18 to the seal is something that the user should look for. That's in language to
19 the left of the image, checking of the following functional parts for damage,
20 exchanging if necessary, and it notes the PE foam seal. So, damage to the
21 seal, which would include wear on the seal, is something that was of concern
22 to the Amazone manual.

23 We have the admission by Dr. Dankowicz during his deposition
24 that a POSA prior to the '121 patent would have had a reason to address seal
25 wear in the Amazone product. That's in Exhibit 1023 at pages 136, lines 6
26 to 137, line 7. So, there's a reason to make the modification as admitted by

1 Patent Owner's expert. Dr. Dankowicz also admits that a POSA would
2 know that a rotatable thrust-bearing element was a solution prior to the '121
3 patent. And he had to do so because the applicant admitted that rotatable
4 thrust-bearing elements were known to address seal wear prior to the '121
5 patent. Dr. Fleming testifies that a POSA would know that they could adapt
6 the driving disk structure of Fiorido to Amazone to provide a rotating thrust-
7 bearing element. So, there's a reason to do that, and Dr. Fleming says that a
8 POSA would know that they could do so with Fiorido. We reproduced on
9 slide 11 images from the Fiorido reference.

10 On the left-hand side is Figure 2, and we note that in Figure 2,
11 Fiorido has shown that the drive disk, which we've identified by that blue
12 arrow and labeled as thrust-bearing element, is drawn to be in contact with
13 the seed disk in this figure. Furthermore, Fiorido says at column 5, lines 49
14 to 55, that the driving disk is connected to the seed disk, and therefore it
15 must be in contact with the seed disk. We have Dr. Dankowicz, who admits
16 that a POSA would know that if the driving disk of Fiorido was in contact
17 with the seed disk, it would receive an axial load. And so, the proposition
18 from our expert, we show on slide 13, is that you would -- one of ordinary
19 skill would modify the housing of Amazone to receive the driving disk and
20 shaft and dowel and pin of Fiorido to operate with the discs in Amazone.
21 So, in Amazone shown on the left you have the fixed side which is in silver.
22 You've got the disk which is green, and then you have the movable side of
23 the housing which is in orange. And you would modify the movable part of
24 the housing to receive the Fiorido structures as depicted.

25 Both experts testified that a POSA would have a reasonable
26 expectation of success in achieving those modifications. Dr. Fleming

1 testified in paragraph 33 of his reply declaration that a POSA would know
2 that they could use a rotatable shaft and disk as in Fiorido in contact with the
3 seed disk. That it was an art recognized basic structure for performing the
4 function of taking up axial load. And of course, a POSA would position it
5 on the movable side because that's where the vacuum side is in Amazone.
6 And Dr. Dankowicz --

7 JUDGE WOOD: Let me ask, did you provide a particular cite to
8 that testimony? Where can I find that testimony?

9 MR. BROWN: That's in paragraph 33 of Exhibit 1021.

10 JUDGE WOOD: All right. Thank you.

11 MR. BROWN: Then Dr. Dankowicz admitted that this
12 substitution would be very straightforward for a POSA to make. And that is
13 in Exhibit 1023 in his deposition transcript at page 145, line 1, through 147,
14 line 20. In fact, he thought it was so trivial that one of skill in the art
15 wouldn't need to go to Fiorido in order to find the substitutable structure.
16 So, the substitution would be obvious, and there would be a reason to make
17 the substitution, and one of ordinary skill would have a reasonable
18 expectation of success. With the substitution, the combination renders
19 obvious the claims of the patent under either construction. It's very
20 straightforward under the Board's preliminary construction. And it's very
21 straightforward even if the Board finds that this is a means-plus-function
22 limitation. You have nearly identical structure performing the identical
23 function. You've got a shaft with a plate and a means to connect the shaft
24 and plate to a seed disk, and that is rotating. It's all mounted in the movable
25 portion of the housing, and it receives at least some of the load produced by
26 the seed disk on the seal. And under those circumstances, it clearly meets

1 the function-way result test. It's either identical structure or equivalent
2 structure to that disclosed in the '121 patent.

3 Okay. Unless -- that's my -- I think I'm about out of time. So,
4 unless the Board has any other questions, that's my presentation.

5 JUDGE WOOD: One question, or a couple actually. Slide 12 and
6 13, which are reproductions of Figure 227 of the Amazone manual. There is
7 a label entitled thrust-bearing element, and it's pointing to the central region
8 of the movable portion of that seed meter. Are you saying that Amazone
9 teaches a thrust-bearing element?

10 MR. BROWN: No, Your Honor, we're not saying that Amazone
11 teaches a thrust-bearing element. The point of that labeling was to show
12 where the modification to create the thrust-bearing element would occur.
13 So, the structure that's shown on slide 13, on the righthand side from
14 Fiorido, is going to be mounted in the movable portion of the housing where
15 indicated by thrust-bearing element in the label figure.

16 JUDGE WOOD: Thank you. The structure from Fiorido, which
17 includes the shaft and the flange and the dowel and the pin, that's -- Fiorido
18 teaches that that is for driving the seed disk. Is that correct?

19 MR. BROWN: That is correct, yes, Your Honor.

20 JUDGE WOOD: There's no teaching in Fiorido that that has any
21 sort of thrust-bearing purpose?

22 MR. BROWN: There is no *ipsissimis verbis* discussion of thrust-
23 bearing in Fiorido. We have the testimony from both Dr. Dankowicz and
24 Dr. Fleming that one of ordinary skill reading Fiorido would understand that
25 if the driving disk is touching the seed disk it's going to be receiving some
26 of the axial load. So, one of ordinary skill would understand that but the

1 reference does not expressly discuss it.

2 JUDGE WOOD: Thank you. Mr. Brown, you are over time but
3 we did ask some questions and we wanted to give you the opportunity if you
4 would like to address the secondary considerations argument. If you would
5 like to take a couple of minutes to do that.

6 MR. BROWN: Very well, Your Honor. I will. Thank you. So,
7 first I'll turn to the issue of copying. There is no cognizable evidence of
8 copying that's been introduced to the Board here. There -- we put in slide
9 14 a timeline that shows when certain events happened. The Italian priority
10 document was filed in November of 2010. Precision Planting's provisional
11 Filing, which describes its v-set product, was filed in March of 2011 before
12 Maschio Gaspardo's reference ever published. And the final PCT was also
13 filed before Maschio Gaspardo's reference ever published. So, there's no
14 way that what is disclosed in the Precision Planting documents could have
15 been copied from Maschio Gaspardo. Furthermore, Maschio Gaspardo
16 never commercialized this product. And so, there was no place for Precision
17 Planting to have found it in the wild, so to speak, to copy from it. So, there
18 is no access for there to have been copying any of Maschio's developments.
19 So, we don't believe that there's any cognizable evidence of copying. The
20 fact that later Precision sought to copy claims, it could have been for a
21 priority battle, it could have been for other reasons, but it's not evidence that
22 that Precision was copying the developments of Maschio Gaspardo, which
23 was what we understand would be the type of copying that could be
24 evidence of secondary consideration.

25 Secondly, there's no long-felt need that's identified by -- or there's
26 no evidence of long-felt need, I'll put it that way in the record. We have

1 evidence in the record that the first time Precision Planting ever developed a
2 vacuum seed meter, it took it a matter of months to come up with the design,
3 which is the subject of the infringement case in the District Court and is the
4 subject of the provisional and PCT that were filed that are referenced on this
5 timeline. So, it certainly took Precision very little time to make its
6 developments.

7 We also note that because Maschio never even commercialized
8 this product, it's very hard to credibly say that this invention was solving
9 some long-felt need if it didn't satisfy a need that was enough for them to
10 commercialize. There has to be -- in secondary considerations, there has to
11 be some real-world evidence that this has some impact, and there's nothing
12 that creates a nexus between the purported advances of the '121 patent in
13 any true secondary considerations.

14 Finally, on the long-felt need, I'd note that the things that Maschio
15 ascribes to being a long-felt need are both solved by putting the vacuum on
16 the movable side of the housing. And the Amazone reference clearly had
17 the vacuum on the movable side of the housing before Maschio filed its
18 patent application.

19 Unless there are other questions on secondary considerations, I
20 don't have anything further on that.

21 JUDGE WOOD: Isn't the vacuum on the movable side of the
22 housing with the John Deere 7200 --

23 MR. BROWN: It is.

24 JUDGE WOOD: -- (CROSSTALK) as well?

25 MR. BROWN: It is, yes.

26 JUDGE WOOD: All right, thank you. I don't have any further

1 questions at this time. Judge Browne or Judge Marschall, do you have any
2 questions? All right, Mr. Brown, thank you for your presentation. You have
3 five minutes for your rebuttal.

4 MR. BROWN: Thank you.

5 JUDGE WOOD: Mr. Casey, are you ready to proceed?

6 MR. CASEY: I am, Your Honor. Thank you. So, actually, if we
7 would, we'll start with slide 2. Let me just quickly get off script and deal
8 with a couple of things up front. The of sowing disk question, we would
9 interpret that to mean that the thrust-bearing element interacts with the disk,
10 which I think is pretty clear from the record. The representations of Mr.
11 Brown about Dr. Dankowicz's admissions, I will try to address some of
12 those if time allows. But I would encourage the Board to read the
13 declarations that are referred to where he supposedly has admitted
14 something because we don't think that's the case.

15 That said, I'll start with saying that we're here in a very important
16 saga of a long-running battle between competitors in the marketplace for
17 seed distribution elements. Millions of dollars are at stake in the parallel
18 District Court litigation, so this case matters. And as our overview slide
19 indicates, I've broken our argument into five substantive slides. One is
20 directed to claim construction, one is directed to the anticipation issue with
21 VenHuizen, and three are directed to the obviousness issue.

22 The case focuses on one claim limitation, a thrust-bearing element,
23 rotatably mounted in the movable housing portion of the seed distribution
24 element to withstand axial load produced by the disk on the seal. But it
25 really involves two claim limitations. The second is the drive mechanism
26 that rotates the sowing disc. So, on our slide, Figure 1 of the '121 patent

1 illustrates the two separate claim limitations. The colored components 27,
2 28, and 29, the shaft bearings and seat, locate the thrust-bearing element in
3 the movable housing portion 12. While the free end of the transmission
4 shaft 20 pins the sowing disk 16 against the rest of the transmission shaft,
5 the transmission and the motor that are not illustrated but are located behind
6 the disk in the fixed housing portion 11.

7 Focus for a second on the transmission shaft 20 that helps pin and
8 rotate the disc. It's very similar to the handle 58 of VenHuizen. In fact, all
9 four of the documents involved in this case, the '121 patent, the VenHuizen,
10 Fiorido, and Amazone references, all of them disclose a mechanism that
11 rotates the sowing disc. Precision's position is that the prior art drive
12 mechanisms are a thrust-bearing element, but none of the three references
13 teach their drive mechanisms to be thrust-bearing elements, and most
14 important, I repeat most important, none but the '121 patent teaches thrust-
15 bearing element separate from the drive mechanism. And per the Federal
16 Circuit case of *Bettcher Industries*, which is cited on page 1 of Paper 24, that
17 should end the analysis.

18 So, let's talk a little bit about claim construction. Maschio strongly
19 believes that the limitation should be construed as a means-plus-function.
20 The word element is clearly a nonce word triggering no structure. And as
21 response to questions that came up, there is no known structure of thrust
22 hyphen bearing element. In fact, in his declaration, Dr. Dankowicz provides
23 a couple of examples of what a thrust-bearing element structure might be
24 that aren't disclosed in the '121 patent. All agree that the function of the
25 thrust-bearing element is to bear thrust or load produced by the disk on the
26 seal. And the key is that the '121 specification expressly defines the

1 structure of the thrust-bearing element at column 3, lines 25 to 32 as follows.

2 Quote, the thrust-bearing element 26 comprises a shaft 27, rotatably
3 mounted by means of bearings 28 in a seat 29 of the movable portion 12.

4 That was well known.

5 JUDGE BROWNE: Mr. Casey?

6 MR. CASEY: Yes.

7 JUDGE BROWNE: This is Judge Browne, and I have a question
8 about that because one of the things that I'm struggling with for this patent is
9 the fact that the disclosure that you just read from column 3 does not appear
10 to correspond to what is shown in the drawing. When it's Figure 2 I believe
11 that shows a bracketed portion labeled 26, and that bracketed portion
12 includes elements not described in column three, at lines 25 to I guess it's
13 28. It does not include the bearings. So, my concern is that if you're going
14 to rely on means-plus-function, then you need to clearly identify the
15 structure that corresponds that. And I'm not so sure that this patent does
16 that. Can you clarify this issue for me?

17 MR. CASEY: Yeah, I'll try. So first, if you look at Figure 1 of
18 our slide, the colored elements, those clearly are what we interpret the
19 structure of the thrust-bearing element to be. They're clearly all together.
20 They're all right there. And they're in the movable portion. Well, so what
21 26 refers to, and it refers a few times in the specification to the thrust-
22 bearing element as a whole, right? The other thing it tells us is that Figure 2
23 is, quote, a detail of the thrust-bearing element -- a, not the, a detail. And it
24 also says that this is a preferred exemplary embodiment. That is Figure 2,
25 26.

26 So, how we interpret it is the required structure, and keep in mind

1 the cases that both parties agree with the *Williamson* case and the *Micro*
2 *Chemical* case say that what you need to do is find what is sufficient
3 structure to perform the function, not extra stuff. And also, you're supposed
4 to have the structure that corresponds as necessary to perform the claim
5 function, not extra stuff, right? So, the way we look at it is what's in 26
6 other than 27. And you pointed out correctly, 28 and 29 aren't even in
7 Figure 2, right? They're in Figure 1, right? So, what 26 is saying is if you
8 want extra structure for the thrust-bearing, that's where it is. And it could
9 help. It's useful. It's an embodiment, but it's not the required necessary
10 structure to achieve the function, which are simply the three elements.
11 You've got to have the shaft, which is going to contact the sowing disc. And
12 then you've got to have, as the claim says, you've got to have the thrust-
13 bearing element supported rotatably in the movable portion. Well, that's
14 where the bearing and the seed come in, because that's what supports it
15 rotatably in that movable portion. Did that help?

16 JUDGE BROWNE: Yes, thank you.

17 MR. CASEY: Okay.

18 JUDGE WOOD: Mr. Casey?

19 MR. CASEY: Yeah.

20 JUDGE WOOD: This is Judge Wood. The only structure that the
21 '121 patent specifically identifies as bearing thrust are the thrust-bearing
22 plate 31 and the flanging 30 part of the shaft 27. So, in my view that means
23 that at least the thrust-bearing plate and the flange 30 are required or a
24 corresponding structure.

25 MR. CASEY: Yeah, so let's look at the flange 30, which is in
26 Figure 2, right? So, that's just a geometric portion of the shaft 27. So, if I

1 didn't have that shaft 30 there and 27 would still contact the sowing disk,
2 and you could imagine a number of different geometric shapes for 27 absent
3 the flange 30 that would still work. It could flare out, for example. It could
4 be a bigger shaft, where it increased in diameter, wider, right? And that's
5 the points that our declarant, Dr. Dankowicz, makes. That 30 is just extra
6 structure. It could be used in the preferred embodiment. It's illustrated, but
7 it's not necessary structure to achieve the function. All you have to have is
8 the shaft contact that disc. And then all that means is that -- excuse me?

9 JUDGE WOOD: What that means is that one can imagine other
10 structures that can perform that function, but what is relevant is what this
11 spec identifies as the structure that performs the function.

12 MR. CASEY: Right. And that's the shaft.

13 JUDGE WOOD: And there is the thrust bearing plate, at least, and
14 the flange 30 of shaft 27.

15 MR. CASEY: Yeah, but that's contrary to our view, Your Honor.
16 I see where you're coming from, and that's --

17 JUDGE WOOD: I understand that.

18 MR. CASEY: -- the view of Precision. But our point is, if you
19 took that 30 away, took that flange away, it would still work.

20 JUDGE MARSCHALL: But that's not what the specification
21 actually discloses as corresponding structure. I think you're taking an
22 unduly narrow view of what necessary means in the case law by saying,
23 well, hypothetically, we could exclude some things the specification
24 identifies as bearing thrust, so therefore it's not necessary. I don't think any
25 cases support that kind of a narrow view of what is necessary to perform the
26 claim structure, where you're basically altering what's in the specification to

1 strip it down to only the hypothetically most necessary elements of the
2 structure.

3 MR. CASEY: Yeah, I don't think, Judge Marschall, that it's a
4 disagreement over the law. I think we agree with the law. As I think you
5 stated it correctly necessary and sufficient. Right? I think what we're
6 arguing about is that from an engineering technical perspective, what are the
7 structures that are necessary and sufficient to absorb that thrust? And we
8 have the declaration of our expert that says those are the three structures.
9 We have the definitional section here that says those are the three structures
10 in the specification. We have the Figure 1 which shows the three structures.

11 JUDGE MARSCHALL: Okay.

12 MR. CASEY: And by the way, the structure, Figure 1 does not
13 show 30 in there, right?

14 JUDGE MARSCHALL: Right. And the figures don't have to be
15 perfectly, you know, exhaustive in every instance. So, I don't view the
16 difference in the figures as, or even the language in the specification is
17 necessarily determinative, although it does undermine a little bit the clearly
18 identifying the structure, as Judge Brown pointed out, which is a separate
19 issue. But getting at the separate issue of supported in the removal housing,
20 isn't that the context of the TBE and where it's located more than what is the
21 corresponding structure for the TBE?

22 MR. CASEY: We view it as a structural limitation on it. It's
23 characteristic. As the claim says, basically, it's a thrust-bearing element and
24 it has a comma, and then it gives you two characteristics. The structural one,
25 where it says it's supported rotatably, and then the functional one, which is
26 in order to withstand.

1 JUDGE MARSCHALL: Right, but in the claim, the claim
2 function, you're not saying that the claim function is it must be supported
3 rotatably in the moveable portion. It's more of the thrust-bearing aspect
4 that's a claim function. So, we don't need to bring in the location to figure
5 out that there's thrust, do we?

6 MR. CASEY: I don't think you need to bring it to the location, but
7 it does. The related point to that is the dialogue that you had earlier about
8 whether thrust-type bearing had a meaning or a thrust-bearing element was a
9 particular something. Right? And I think the way to look at that ties into
10 what you're talking about here, Judge Marschall, and that thrust-type
11 bearing foreshadows, if you will, the later part of that claim. The thrust
12 would be a load in the function part of it, right? And the bearing would
13 actually go to both things. Bearing could be a gerund or verb, saying what
14 the element does is bears thrust, right? And it could also foreshadow the
15 bearing structure that we're talking about that we view as required in there.

16 JUDGE MARSCHALL: I understand your position. I think once
17 you acknowledge that it's not a traditional thrust-bearing requiring a bearing
18 and it's just something that bears thrust, it doesn't necessarily require the
19 bearing 28. So, I think it kind of undermines that argument. And I think
20 both sides have arguments that are somewhat in tension with one another.
21 So, it's an interesting case in that respect. But I guess getting at whether the
22 bearing must be corresponding structure, I think that when you're just
23 talking about something that absorbs some thrust, I don't think you
24 necessarily need that bearing. Getting at your argument that it's not
25 necessary, I would think if you want to construe necessarily narrowly as you
26 do in some contexts, then the bearing 28 would not be necessary to absorb

1 thrust.

2 MR. CASEY: Although it is necessary because the structure has to
3 be supported rotatably in the movable portion. That's what the bearing does.
4 And I think you're reading that limitation out of the claim if you say we
5 don't need a bearing.

6 JUDGE MARSCHALL: I don't think it's reading it out of the
7 claim. I think it's an argument, or it's an issue we have to resolve as to
8 whether that language about supported rotatably in the movable portion is
9 part of the TBE and must be part of the corresponding structure. Or whether
10 it's a distinct limitation we give weight separately from the TBE. And I
11 think that's the issue we have to resolve here, or one of them.

12 JUDGE WOOD: Another question, Mr. Casey. The bearings do
13 not actually bear axial thrust, is that correct?

14 MR. CASEY: Yeah, the way we've looked at it, and our Dr.
15 Dankowicz testified is it's a load-bearing path, right? So, the shaft contacts
16 the disk and is pushed upon, right? And it transmits that push, that load,
17 through the bearings to the seat so that the movable portion of the housing
18 can absorb that load.

19 JUDGE WOOD: Well, the shaft does not transfer the axial thrust
20 to the bearings, because the bearings aren't axially aligned with the shaft.
21 They're radial bearings. They're around the circumference of the shaft.

22 MR. CASEY: They are, but I think they're called axial bearings in
23 there. But anyway, that's the path of how the shaft is stationary, right? So,
24 it's got this load, it's not moving horizontally or longitudinally in or out. So,
25 the load that it's absorbing has to get transferred through those bearings to
26 the seat.

1 JUDGE WOOD: Yeah, but it's not through the bearings. The
2 transfer isn't through the bearings because the bearings aren't axially aligned
3 with the shaft.

4 MR. CASEY: I think they are actually aligned. At least in Figure
5 1, it certainly looks like they are. They're aligned right there.

6 JUDGE WOOD: Well, I'm looking at your shaft. I'm looking at
7 your slide 3, which has the shaft in green and the bearings in yellow.

8 MR. CASEY: Yep.

9 JUDGE WOOD: And the bearings are -- and the axis would be the
10 longitudinal axis of the shaft. And the yellow bearings are not on that axis.

11 MR. CASEY: They are aligned with it though, and around the
12 shaft, right? I think what you're saying, if I'm correct, is that you'd have to
13 have bearings sort of behind 27 to absorb the axial load.

14 JUDGE WOOD: Well, what I'm saying is that the bearings 28 are
15 not positioned to absorb any axial load.

16 MR. CASEY: Yeah. Interesting, because that hasn't come up
17 with anybody in the record, but I think we've all pretty much accepted that
18 that's what happens. And that's the testimony of Dr. Dankowicz for certain,
19 that there's this axial path that I just described.

20 JUDGE WOOD: Okay, thank you.

21 MR. CASEY: The only -- the last point I'd make on claim
22 construction before I leave this slide is that the means-plus-function
23 construction is consistent with the EPOs construction in the corresponding
24 opposition, which is summarized in the Locas Declaration, Exhibit 2013 at
25 paragraphs 39 to 46, 61, and 65 to 67 with Precision's own construction of
26 the same term, thrust-bearing-element, in prosecuting its own patent

1 applications. So, see Exhibit 2013 at 78, and with Precision's reply in
2 Section 1A2, where they said, hey, what connotes structure is the seat, the
3 bearings, the shaft. Any questions on claim construction? Okay, then let's
4 go to the next slide on validity.

5 So similarly, on the practical side of things, the properly construed
6 claims distinguish the applied prior art. Practically, the PCT International
7 Search Authority, in Exhibit 1002 at pages 113 to 17, the PTO itself in
8 granting the '121 patent, the EPO in the corresponding opposition, and
9 Precision itself in filing copied claims with the PTO, and in amending the
10 term thrust-bearing element and other claims to recite a limitation similar to
11 the means-plus-function interpretation proposed by Maschio, see Exhibit
12 2013 at 78. All of those findings were over the same references we're
13 talking about here.

14 So, let's go to slide 4 and VenHuizen. The handle 58 of
15 VenHuizen is just a nut that retains the disk 60 on the retaining hub 56. And
16 whatever the handle is, it doesn't bear thrust all by itself, and the handle
17 alone does not transfer a load to the movable portion. It must interact with
18 other components to carry a load from the disk to the housing. Precision's
19 reply, Paper 20 at 6 itself, correctly states the thrust-bearing element
20 structure must transfer a load, quote, to the housing, end quote. Precision's
21 slide 8 refers to the Paper 2 at 47 to 48, and those pages correctly teach that
22 the handle is at the end of the retaining hub and the hub is threaded on the
23 drive shaft. The hub and shaft are, as Judge Wood said, in the fixed housing.

24 On slide 6, Precision contends that Maschio's expert agreed
25 VenHuizen anticipates if the Board maintains its broad preliminary claim
26 construction, this is one example of where we disagree if you read the text.

1 The ellipse in this slide omits Dr. Dankowicz's full answer to Mr. Brown's
2 question during deposition, Exhibit 1023 at 89, which shows that Dr.
3 Dankowicz agreed only that VenHuizen discloses an element, handle 58,
4 that helps carry a load from the sowing disc. Dr. Dankowicz also testified
5 that the handle of VenHuizen carries a load from the disk, both before and
6 after vacuum is applied, page 94. That the drive shaft and bearings of
7 VenHuizen, which rotate the disk and handle, are located in the fixed
8 housing portion, page 96. And that the handle is, quote, a nut that pushes the
9 sowing disk against the hub, page 98. That's exactly what the end of the
10 transmission drive shaft in the '121 patent does.

11 VenHuizen fails to anticipate even under the Board's broad
12 preliminary construction for at least two reasons. First, in addition to
13 requiring a thrust-bearing element, the claims separately require that the
14 thrust-bearing element be located, quote, and supported in the movable
15 portion and that certain structures of the thrust-bearing element be rotatable
16 relative to other structures in the movable portion in order to withstand the
17 load. These are the limitations VenHuizen doesn't meet. And second, and
18 this is an important point that Your Honors are going to read the cases about,
19 the claims recite separately from the thrust-bearing element, a motor driven
20 transmission drive shaft that rotates the sowing disc. Now I know Mr.
21 Brown says that's not the law, but we cited cases. Paper 17 response at 33,
22 Paper 24 at 15, the *Becton Dickinson* case, the Board's *Hopkins* case, there's
23 another case, *In re Robertson*, 169, F.3d, 743, Fed Cir. The cases are pretty
24 consistent as we read them, that the same structure cannot be used to
25 disclose separate claim elements. And that's what they are in Claim 1 and
26 Claim 10, separate. Any questions further about VenHuizen?

1 JUDGE WOOD: Mr. Casey, you mentioned that referring, I
2 believe, to the '121 patent Figure 1, the motor driven shaft 20 as a nut that
3 retains the sowing disc. Is that correct?

4 MR. CASEY: Well, no, I'm talking about that being the handle 58
5 in VenHuizen is the nut that retains the sowing disc. What my point was
6 that the end of the driveshaft 20 in the '121 patent essentially does the same
7 thing.

8 JUDGE WOOD: So, the end of the driveshaft retains the sowing
9 disc?

10 MR. CASEY: Yeah, if you look at Figure 1, right, of our slide --
11 keep going. There you go. So, in the bottom right, you see highlighted 16 is
12 the disk and 20 is the end of the drive shaft, and that drive shaft goes in to
13 the right up and to the right into the fixed housing portion. You can see the
14 sowing disk is retained. It's fixed by that end of the transmission drive.
15 And what's beyond that, which is not illustrated, the spec specifically says
16 we don't need to illustrate because everybody knows it. It's the rest of the
17 transmission shaft and the transmission itself and the motor, all of which
18 drive the disc.

19 JUDGE WOOD: Thank you. It's not clear from Figure 1, to me at
20 least, that the -- that hexagonal portion of the drive shaft at the end retains by
21 itself the sowing disc. Is there anything else in the record that supports that
22 reading or that interpretation of this figure?

23 MR. CASEY: I'd have to go back and read the patent. I think
24 that's conventional. I welcome Mr. Brown's commentary in his rebuttal if
25 he thinks it doesn't, but that's certainly what we've accepted. These
26 transmission drive shafts for the seed disk are all well-known. That's why

1 all four of the documents at issue before you have them, right? You got to
2 drive the disk and something holds the disk against what's driving the motor
3 eventually to have the disk drive. And that's what's key to us is that's all the
4 same. Nobody else but us has this separate component, which is a thrust-
5 bearing element that contacts the other side, right, of the disk and rotates
6 with it to relieve the stress.

7 JUDGE WOOD: Okay, thank you. Oh, one more thing. In the
8 Dankowicz Declaration, Exhibit 2021, paragraph 34.

9 MR. CASEY: Yeah, that's exactly what I was referring to earlier
10 when you raised the question about radial versus thrust-bearings. So, he's
11 making the point there that the bearings, which are marked X in Figure 6 of
12 VenHuizen. So, if we got VenHuizen up, Ashley, if you can go, I think it's
13 side -- so, you see the bearings have a big X on them on the left side in
14 Figure 6?

15 JUDGE WOOD: Yes.

16 MR. CASEY: Okay. So, what Dr. Dankowicz is telling us there is
17 a POSA, a person of skill in the art, would reason to understand those
18 bearings in VenHuizen to be radial bearings, not thrust-bearings, as opposed
19 to the ones that are in the '121, which are thrust-bearings.

20 JUDGE WOOD: Well, it's confusing to me because the '121
21 patent bearings appear to be positioned exactly the same as the VenHuizen
22 bearings, which would make them radial bearings.

23 MR. CASEY: Yeah, my only answer to that is that I don't think
24 the positioning is what makes them a bearing of one kind versus another. I
25 think it's how they interact with the other components.

26 JUDGE WOOD: I understand that, but we have to -- we're limited

1 to record evidence. And, you know, just on the face of these diagrams, they
2 look like they are positioned the same way and would function the same
3 way.

4 MR. CASEY: Yeah. I would counsel that my input would be that
5 there you would need to rely on the expert declarations, whatever Dr.
6 Fleming says from their side and Dr. Dankowicz says from our side. I can't
7 really say. I don't think it's clearly stated in any of the documents on which
8 type of bearing they are. So, you're relying on the figures and your
9 knowledge of what that would be.

10 JUDGE WOOD: Right. And ultimately, it comes down to what
11 the specification of the '121 patent says. And here, the '121 patent does not
12 ascribe thrust-bearing function to bearings 28.

13 MR. CASEY: Except for that -- we would say it does because it
14 says thrust type bearing element, and that's what triggers a thrust-bearing.

15 JUDGE WOOD: All right, thank you.

16 MR. CASEY: Okay. And we're on to slide 5 and the contention
17 that the combination of Fiorido and Amazone would have rendered the
18 challenged claims obvious.

19 JUDGE MARSCHALL: Before you get to that, and I realize we
20 might -- our questions might tip you over your limit and that's fine. Just so I
21 understand your transmission driveshaft arguments. And as I see it, you're
22 saying that Petitioner is relying on the driveshaft of VenHuizen, and that has
23 two problems. First, they shouldn't be able to rely on that as corresponding
24 structure for the TBE because it's separately claimed. And second of all,
25 even if they can, it undermines the way and result analysis because it shows
26 that it's a (INDISCERNIBLE - TECHNICAL DIFFICULTY) --

1 MR. CASEY: That is correct.

2 JUDGE MARSCHALL: Okay. Those are the two parts of the
3 argument. Correct?

4 MR. CASEY: That's right.

5 JUDGE MARSCHALL: Okay.

6 MR. CASEY: Yeah, I guess maybe I'd add a third, which is I'm
7 not sure that it satisfies that limitation that you and I have discussed earlier
8 about the rotatably supported in the movable portion part. To my view is
9 that means something has to be in the movable portion to support it. And I
10 realize you're thinking about that, but that's not a distinction, right?
11 Because the other components that rotatably support are not in the movable
12 portion and they're fixed.

13 JUDGE MARSCHALL: Yeah, and I understand there's two parts
14 that are supported in, in my mind. One is, can we read that in as part of the
15 corresponding structure, if you will, for the TBE? And even if I'm not
16 buying that argument you're making, it's clearly a limitation. And what
17 does it mean for the TBE to be supported in? Must it be entirely within the
18 movable portion? And just a portion of it, such as the handle and
19 (INDISCERNIBLE - TECHNICAL DIFFICULTY) would be in the
20 movable portion? And I don't think our decision on institution reached that
21 issue. We talked about what it means to be in, but I don't think we
22 addressed whether the entire TBE must be in the movable portion or just a
23 portion. And I like to hear from Petitioner on that issue too, because I think
24 that could be a definitive issue right there, which doesn't even get into the
25 112(6) issue as much. If some of the corresponding structure Petitioner
26 relies on is in the fixed portion, which seems to be the case in VenHuizen, is

1 that the end of the story because all of it must be in the movable portion.
2 And I take it from Patent Owner's point of view, the "entirely within"
3 argument is supported by the spec of the '121 patent because in that case it is
4 the movable portion, correct?

5 MR. CASEY: Yeah. I'll give you a couple of citations to help
6 what you're thinking on that. And I would also hasten to add, that is our
7 position absolutely, but I don't think it's necessary for us to win. Right, so
8 the cites I'll give you is you look at the spec column 3, lines 60 to 61 of
9 '121, it says, quote, the whole of the movable portion 12, complete with
10 thrust-bearing element. And then if you look at Claim 10, the end of Claim
11 10 after the comprising language says, the movable portion is preassembled
12 with a thrust-bearing element. I would read both of those to say, the thrust-
13 bearing element is part of the movable portion. That's especially important
14 in the claim because that's what the claim language says.

15 JUDGE MARSCHALL: I understand your position. Thank you.

16 MR. CASEY: Thank you.

17 JUDGE WOOD: Are you saying that Claim 10 is narrower than
18 Claim 1?

19 MR. CASEY: I believe it is. Well, I'm not sure it's narrower, it's
20 different. Different in scope. It's clearly a kit claim, right? And all of the
21 structure that's recited in the preamble before the comprising language is
22 part of the normal embodiment, right? And then you get to comprising and
23 they add on where in the movable portion has its thrust-bearing element. So,
24 it's just, it's a different claim.

25 JUDGE WOOD: Wouldn't Claim 10 encompass a fully assembled
26 kit in operation?

1 MR. CASEY: Well, if it's fully assembled, you would have a kit
2 that is fully assembled, yeah.

3 JUDGE WOOD: In operation with the fixed portion and movable
4 portion together, which would -- is essentially what Claim 1 covers?

5 MR. CASEY: Yeah, except that my point is that depending on
6 how much you read preambles to be limitations, you know, all of the
7 structure up until the last limitation of preambles.

8 JUDGE WOOD: Right. I'm just saying that there's --

9 MR. CASEY: That's the only one I'm -- yeah, sorry.

10 JUDGE WOOD: To the extent that Claim 1 covers subject matter,
11 Claim 10 would cover the same subject matter. I mean, it's at least as broad
12 as -- Claim 10 is at least as broad as Claim 1?

13 MR. CASEY: Yeah, I would permit too different in scope. I'm
14 not sure I have thought through whether it's narrower or broader. I think it's
15 probably safe to say it's narrow in some senses and maybe broader in others.
16 Narrow, certainly, because, you know, unless you interpret the in to be
17 with -- if in and with are different, right? The key words, the movable
18 portion preassembled with the thrust-bearing element, whereas Claim 1
19 refers to it as, you know, in the movable portion. So, I think my point is
20 Claim 10 is much clearer. I think they both may be interpreted that way, but
21 Claim 10 is clear that the thrust-bearing element is part of the movable
22 portion. Claim 1 says it's in -- at least part of it is in.

23 JUDGE WOOD: Yeah. Supported rotatably in the Claim 10's
24 thrust-bearing element limitation is identical to Claim 1's thrust-bearing
25 element limitation in that the thrust-bearing element is supported rotatably in
26 the movable portion in both claims.

1 MR. CASEY: That isn't identical, you're right. But Claim 1
2 doesn't have that beginning part with the with, right? So, therefore they
3 could be interpreted a little bit differently.

4 JUDGE WOOD: But Claim 1 covers the preassembly?

5 MR. CASEY: Claim 1 covers the entire device, yes. Because
6 after comprises it has all the other elements, you know, the sowing disk and
7 the motor different transmission shaft, et cetera, et cetera. Those are clearly
8 part of the claim and would cover the whole assembled device.

9 JUDGE WOOD: Okay, thank you.

10 MR. CASEY: Yep.

11 JUDGE MARSCHALL: And just to clarify, I think Claim 10 is
12 narrower in the sense that it has this language about "preassembled with"
13 that does not appear in Claim 1. So, it is narrower in that sense, correct?

14 MR. CASEY: Agreed, yep.

15 JUDGE MARSCHALL: But there's this limitation "supported in"
16 which is the same in both. So, in effect Claim 1 may already require a
17 similar restriction in that the entire TB must be in the movable portion under
18 your construction. Correct?

19 MR. CASEY: That's how we've always wanted it to be construed.
20 Correct. Okay, so that gets us on to Amazone and the obviousness in
21 Fiorido. So, the first point I would make here is neither reference discloses
22 the claim thrust-bearing element. I think even Precision would admit that.
23 So, in our view, that ends the story and we would recite the *Civitello* case,
24 which is in Paper 24 at 22, which is neither reference discloses the element
25 we're talking about, the thrust-bearing element, you can't possibly disclose
26 on combination. They both do disclose a motor driven transmission shaft,

1 which is recited separately, as you know, in the claims. Their drive
2 mechanism in Amazone is a gear that drives the teeth of the sowing disc.

3 And then Fiorido's drive mechanism, which is shown on slide 5,
4 has the drive shaft 29. It's a related component, including the hub 27, the
5 bearings 28, the cogwheel 30, the drive disk 31, the centering dowel 32,
6 which importantly engages the center hole in the disk to center the shaft on
7 the disk, and the driving pin 33, which engages the small offset hole in the
8 disk to apply torque and drive the disc. And all of those components
9 combine to rotatably drive the disk 13. So, why a person of skill in the art
10 would want to include any of the drive mechanism in Fiorido in Amazone,
11 when Amazone already has its own drive mechanism, and called into
12 question and undermines any motivation to combine.

13 More important, if the modification were made, Amazone would
14 simply have the drive of Fiorido rather than its own drive. And not two
15 separate drives, and certainly not a drive and a thrust-bearing element. In its
16 slide 13, Precision states that Maschio's expert admitted the combination of
17 Amazone and Fiorido would be straightforward, citing his deposition,
18 Exhibit 1023, pages 145 to 147. So, this is another instance where we
19 disagree with that characterization. A full reading of those pages shows that
20 Dr. Dankowicz used the adjective contorted in reference to the combination,
21 questioned why a person of skill in the art would make the combination
22 because it is, quote, unnecessary, and stated, quote, the modifications would
23 be significant, so significant, and in his words, dramatic, that it would be
24 unfair to call them modifications at all.

25 On slide 11, Precision argues that the drive disk 31 of Fiorido's
26 drive mechanism is a thrust-bearing element. I think they've now backed off

1 a little bit of that and include some of the other structure. But in point, the
2 drive disk 31 doesn't bear thrust, at least not necessarily. In fact, if you look
3 at Figure 2 of Fiorido, which is on our slide 6, it shows the drive disk 31
4 doesn't necessarily even contact the sowing disk 13. Fiorido teaches that
5 there's a ceiling ring 39, a gasket that's located between the casing 12 and
6 the disk 13, and the spec teaches us in Fiorido that that's to position the two
7 elements. So, positioned correctly, the drive disk doesn't even have to
8 contact the sowing disc. And in fact, it shouldn't because friction between
9 them would then be avoided. And that's what Dr. Dankowicz testified in
10 Exhibit 2012 at pages 83 to 90. Only the centering dowel 32 in that center
11 hole and the drive pin 33, which has to contact that offset hole, are
12 necessarily in contact with the sowing disc. So, there's no contact, and since
13 there's no contact, there's no transmission of any kind of a thrust in the
14 Fiorido device.

15 And like we've gone to slide 7, like Fiorido, Amazone doesn't
16 disclose a thrust-bearing element. Precision's own expert, Dr. Fleming, said
17 so during his deposition at Exhibit 2014, pages 99 to 101. An Amazone
18 representative Bernd Scheufler confirmed this in Exhibit 2018 at 36.
19 Nevertheless, on slide 12, Precision argues that the metal hub 6 of Amazone
20 is at least part of or is the thrust-bearing element. I think Mr. Brown said
21 that it's not anymore. But just to be clear, that element 6 on the righthand
22 side of Figure 40 is a gasket retaining plate. It's stationary. It doesn't even
23 rotate with the disc. Furthermore, and more important, it's recessed with
24 respect to the sowing disk, so that it doesn't contact the disc. And that's
25 what Dr. Fleming testified in Exhibit 2014 at 99 to 101. And Dr. Dankowicz
26 confirmed in Exhibit 2012 at 83 to 90. Because there's no contact, there can

1 be no load-bearing action. If the hub were to contact the disk, the friction
2 again would be increased, and that would be contrary to what you want to
3 do.

4 Before I conclude, are there questions about our position with
5 respect to the obviousness? Okay. Obviously, our position is Precision has
6 failed to establish by a preponderance of the evidence that the challenged
7 claims are unpatentable. And accordingly, they should be confirmed under
8 35 U.S.C. Section 316.

9 I'd like to make two quick sentences on the motions to strike and
10 exclude. The first is, Exhibit 3002 is the Board's ruling on the briefing, the
11 reply and sur-reply. And it says, quote, Petitioner's request for an additional
12 1,400 words to address the construction of thrust-bearing element in its reply
13 to Patent Owner's response is granted. Patent Owner may also have an
14 additional 1,400 words in its sur-reply to respond to Petitioner's construction
15 of thrust-bearing element. That's exactly what we did. In addition,
16 Precision opened the door for any new arguments because it made new
17 arguments in its reply.

18 And finally, they never even addressed what we view as the
19 dispositive case on this, which is the *Chamberlain Group* case from the
20 Federal Circuit, which allowed arguments that the Federal Circuit said were
21 clarifying on claim construction, even as late as oral argument.

22 So, unless Your Honors have any further questions, we'll conclude
23 opening and wait rebuttal. Thank you.

24 JUDGE WOOD: All right. Mr. Casey, you reserved five minutes
25 for rebuttal?

26 MR. CASEY: I did, Your Honor.

1 JUDGE WOOD: All right. Thank you. All right. Mr. Brown,
2 you have five minutes for rebuttal. You may be on mute.

3 MR. BROWN: I apologize. I was on mute. Yes. Thank you,
4 Your Honor. I will turn first to our slide 5, which shows what the disclosed
5 structure is if the Board determines that thrust-bearing element is a means-
6 plus-function limitation. And the patentee, when introducing the thrust-
7 bearing element, and really throughout the specification, clearly identifies
8 links, the structure 26 as the thrust-bearing element. He says, in order to
9 limit wear on the seal 24, resulting from sliding against the surface of the
10 disk 16, a thrust-bearing element indicated as a whole by 26, is mounted on
11 the movable portion. That's the way this is introduced, and Figure 2 shows
12 what he is identifying as disclosed structure for the thrust-bearing element.
13 It does not include the bearings 28. I will, as an aside note, I agree with
14 Your Honor when you noted that those are radial bearings, they're not
15 shown as axial bearings, they're not directly bearing the thrust of the axial
16 load. And also, that the seat 29 cannot be part of the thrust-bearing element,
17 because the claim requires that the thrust-bearing element be rotatable. The
18 seat does not rotate. So, it cannot be part of the thrust-bearing element.
19 Given what --

20 JUDGE MARSCHALL: If I could interject, let's assume we agree
21 with you on all of your corresponding structure. I still have two issues, and
22 you can address other issues, of course, as you go. The first is on the
23 transmission shaft issue. Let's assume also that we agree with you that it
24 can be part of the TBE corresponding structure, even though it's separately
25 claimed. Wouldn't it support a substantially different way in which the
26 structure and in the '121 patent works compared to VenHuizen, because one

1 relies on the transmission shaft and one does not?

2 MR. BROWN: We would say no, Your Honor, because both are
3 relying on a shaft. I mean, in both, you are relying on the mechanical
4 structure, which is a rotating shaft to transfer the load to the housing. We
5 think that is really on the weigh analysis, very similar, and should meet that
6 limitation.

7 JUDGE MARSCHALL: Well, one requires two shafts and one
8 requires one shaft. So, it is a little different in that sense, at least, that one
9 has less structure. It's arguably, VenHuizen is more efficient in that it only
10 requires one shaft I suppose. But it does support a different way, whether
11 it's substantially different, you know, is an open issue. The other issue I had
12 is "supported in," which you heard me ask questions earlier on that. It's
13 Patent Owner's position that, you know, assuming we agree with you that
14 it's not part of the TBE corresponding structure, there's still a separate
15 limitation that the TBE must be supported in the movable portion. And our
16 decision on institution left open, whether that's entirely within or partly
17 within, and we didn't need to address that issue, but now we do. So, I'm
18 curious what your response is to Patent Owner's argument that the TBE
19 corresponding structure must be entirely within the movable portion,
20 because in VenHuizen it appears that it is not.

21 MR. BROWN: Well, first, the claim language doesn't so require.
22 The claim language just says that it's rotatably supported in. It does not say
23 entirely in. And so, what does Patent Owner do? The classic example, they
24 go to the spec to try and read limitations from the spec into the claim. The
25 preferred embodiment shows a TBE that is mounted on the rotatable -- or is
26 rotatably mounted on the movable portion. But that aspect is not claimed

1 and therefore they're trying to import that particular embodiment into the
2 claim language which is inappropriate. The only way they could
3 appropriately do that is if it was part of the disclosed structure and of course
4 we've stated our reasons why the seat is not part of the disclosed structure
5 for the TBE. So, we think that the claim language just doesn't support it.
6 Some of in VenHuizen and in the Ground 4 proposed combination, some in
7 VenHuizen is in the rotatable portion, is in the movable portion. It's clearly
8 rotatably supported. And in Ground 4 the entirety of the TBE would be in
9 the movable portion, and so there'd be no argument about it with regard to
10 that. I wanted to point out --

11 JUDGE MARSCHALL: I'm just saying wouldn't you agree that
12 all of the corresponding structure for the TBE that you identify is in the
13 movable portion in the '121 patent specification?

14 MR. BROWN: I would in the preferred embodiment, yes. The
15 embodiment of the TBE is entirely within the movable portion as disclosed
16 in the '121. We just don't think we can read that into the claim.

17 JUDGE MARSCHALL: Right. Would you agree that Claim 10 is
18 narrower than Claim 1 in this respect because it requires that the movable
19 portion is pre-assembled with the thrust-bearing elements which is rotatably
20 in the movable portion?

21 MR. BROWN: Well, it's narrower in the sense of "pre-assembled
22 with" is a limitation that doesn't appear in Claim 1, but whether that has any
23 impact on this argument at all we don't agree. There's nothing in Claim 10
24 that doesn't say you can't sell as a kit an entire seed meter. It's a comprising
25 claim. The kit comprises pre-assembled with the thrust-bearing element
26 does not mean that if someone were selling a kit or disclosed a kit that had

1 the entire meter preassembled, that it wouldn't meet that claim limitation.
2 So, there's a difference in the language, but I don't think it gets Patent
3 Owner to where it wants to go that the thing has to be assembled entirely in
4 the movable portion.

5 JUDGE MARSCHALL: Yeah, it almost imposes a timing
6 requirement, which is unusual, but that it must be preassembled with this
7 structure first. But if we read it that way, it would seem that that would be
8 narrower than Claim 1, arguably. And that you would have to have all of
9 this structure within the movable portion based on that preassembled with
10 language. You're disagreeing with that, I take it.

11 MR. BROWN: I do disagree that if it's preassembled with it has to
12 still be entirely within the movable portion. So, take VenHuizen, if
13 VenHuizen is assembled and sold as a kit, the portion of the TBE that we
14 identified that is in the movable portion will be in the movable portion and
15 will satisfy that claim language. Nothing in Claim 10 says that the entirety
16 of the TBE needs to be within the movable portion.

17 JUDGE MARSCHALL: I understand your position. Thank you.

18 MR. BROWN: I wanted to turn to Fiorido, the combination of
19 Fiorido with Amazone because Mr. Casey suggests that we would admit that
20 Fiorido doesn't disclose a thrust-bearing element. And we don't agree with
21 that. And we think the record is contrary to that. What we have shown is
22 that as drawn in Fiorido, the driving disk is shown contacting the seed disk.
23 And we have introduced the testimony from their expert, Dr. Dankowicz,
24 who says one of ordinary skill in the art looking at Fiorido would understand
25 that if the driving disk is in contact with the seed disk, it would take up axial
26 load. So, whether Fiorido expressly calls something a thrust-bearing

1 element, it still is teaching enough for one of ordinary skill in the art to
2 understand that the drive disk could act as a thrust-bearing element, i.e.,
3 relieving some of the axial load produced by the disk on the seal.

4 The second point I want to make on the combination is that most
5 of the argument by Patent Owner relates to an attempt to wholesale move all
6 of the structure --

7 JUDGE WOOD: Mr. Brown?

8 MR. BROWN: Yes.

9 JUDGE WOOD: Mr. Brown, Mr. Casey didn't discuss secondary
10 considerations in his opening remarks, so I don't think it's appropriate to
11 rebut -- or to have as part of your rebuttal discussion of secondary
12 considerations.

13 MR. BROWN: I wasn't trying to address secondary
14 considerations there, Your Honor. I'm on Ground 4.

15 JUDGE WOOD: Okay, I'm sorry.

16 MR. BROWN: And what Patent Owner argues, seems to argue, is
17 that the combination between Amazone and Fiorido would not be made
18 because one of ordinary skill wouldn't import the entirety of the structure
19 from Fiorido into Amazon and they would have two drives is essentially the
20 argument and why would they do that. And that is not the proposed
21 combination. A reference is good for what it teaches and you don't have to
22 fit like puzzle pieces together the two references and so find the entirety of
23 one structure would fit within the other.

24 The argument is that one of ordinary skill would understand that
25 they could take the driving disk and shaft and seat it in the movable portion
26 of the Amazone housing without taking the cogwheel, which I think was the

1 argument by Patent Owner. You wouldn't need to in Amazone because
2 Amazone has a peripheral drive already. Dr. Dankowicz admitted that one
3 of ordinary skill would know that seal wear in Amazone would be a problem
4 to be addressed. So, there's a motivation. And then we have the testimony
5 from Dr. Fleming and Dr. Dankowicz, frankly, that the modification would
6 be straightforward to make. So, taking less than all of the drive structure
7 would suggest itself to one of ordinary skill because they would understand
8 that the shaft rotating disk and way to connect the disk to the seed disk
9 would all help to create the thrust-bearing element in the movable portion of
10 the Amazone housing. And we think that one of ordinary skill would
11 understand that from reading both the admitted prior art in the specification
12 of the '121 and the Amazone disclosure as testified to by Dr. Fleming.

13 JUDGE WOOD: You're pretty much out of time, Mr. Brown.
14 And if you want to wrap up quickly, go ahead. Otherwise, we'll pass it on to
15 Mr. Casey.

16 MR. BROWN: All right. I have nothing further then, Your
17 Honor.

18 JUDGE WOOD: All right, thank you, Mr. Brown. Mr. Casey,
19 you have five minutes.

20 MR. CASEY: Thank you, Your Honor. So, quickly in response.
21 So, Judge Marschall was asking about the separately claimed transmission
22 versus the thrust-bearing element. I would say that are not only separately
23 claimed, but they're separately shown in the drawing, as we pointed out with
24 the transmission shaft 20 and the thrust-bearing element with 17, 18, 19.
25 But they're separately described in the spec. They're separately shown in
26 the drawing and the functions of the two different shafts are entirely

1 different. The function of the transmission shaft, of Fiorido, for example,
2 shaft 29, is to drive the sowing disk, right? The function of the shaft 27 and
3 the thrust-bearing element, it doesn't drive anything. It helps withstand the
4 axial load produced by the disk on the seal. So, they're completely separate
5 components.

6 The rotatably supported in is a key limitation. Our view is that's
7 what triggers the need for resort to the specification and pulls the entire
8 thrust-bearing element in, right? So, it's not just importing something from
9 the spec into the claims. The claim is there. It says it's supported rotatably.
10 And that's what requires you to look at the spec and the drawings and figure
11 out what that means. The with word that we've talked about in Claim 10 is
12 certainly not reading anything into the claim. That's in there.

13 With respect to Fiorido and the thrust-bearing element, the key
14 word that Mr. Brown uses is there's contact. Well, Fiorido doesn't say
15 there's contact. The drawing shows they may abut, but we've pointed out
16 where in the spec a person of skill in the art through testimony of Dr.
17 Dankowicz would say there shouldn't be any kind of contact that would
18 transmit thrust because that would create friction, and that's not what is
19 going on there.

20 With respect to Amazone, it's not that it's the entirety of structure
21 that we're saying you shouldn't transition and there's no motivation to do
22 into Fiorido, it's that both of them are simply showing you drive
23 mechanisms. And there would be no reason for a person of skill in the art to
24 take a component, the whole thing entirely, or part of the drive mechanism
25 of Amazone or Fiorido and incorporate into the other. They both have a
26 drive mechanism, and certainly even if you did that, even if it was just a

1 component, you wouldn't get what we've got in our claims. So, cherry
2 picking from one drive mechanism to another drive mechanism to create a
3 thrust-bearing element doesn't make any sense to us.

4 Regardless, neither the handle of VenHuizen or the hub of
5 Amazone acts alone. For them to function, as we've explained, there needs
6 to be other components, shafts, hubs, these kinds of things. And in each
7 case, all of those other components are in the fixed portion of the housing.
8 Remember, the whole part of this invention, the key to this invention is
9 taking the thrust-bearing element and putting it on the movable portion of
10 the housing. That's its advantage. That's the invention. And I would hasten
11 to add, too, that part of the recognition of the problems that arose in the prior
12 art with having a thrust-bearing element on the fixed portion are what's
13 solved by moving it onto the movable portion.

14 I don't need to. I can rely on the record, but do you want me to say
15 a couple sentences on secondary considerations or objective considerations?
16 Otherwise, I'm happy to rest.

17 JUDGE WOOD: It's totally up to you, Mr. Casey.

18 MR. CASEY: I'll give you a couple of just real quick ones. So --

19 JUDGE WOOD: Well, to be honest, since this is rebuttal, and Mr.
20 Brown didn't bring it up in his rebuttal, it would probably not be appropriate
21 for you to.

22 MR. CASEY: That's fine, Your Honor. We'll rely on our record.

23 JUDGE WOOD: All right. Thank you. All right. Any further
24 questions, Judge Browne, Judge Marschall? I don't have any questions as
25 well. So, thank you both, Mr. Brown, Mr. Casey, for your presentations.
26 We will take this case under advisement and a final decision will issue in

1 due course.

2 MR. CASEY: Thank you very much for your time, and happy
3 holidays to all.

4 JUDGE WOOD: You too.

5 MR. CASEY: Thank you.

6 (Whereupon the above-entitled matter went off the record at 11:44
7 a.m.)

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Patent 8,770,121 B2

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