

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STRYKER CORPORATION and STRYKER
SALES, LLC,

Plaintiffs/Counterclaim-Defendants,

v.

FERNO-WASHINGTON, INC. and FERNO
GROUP, INC.,

Defendants/Counterclaim-Plaintiffs.

CASE NO. 1:22-cv-00588

Judge Michael R. Barrett

Magistrate Judge Karen L. Litkovitz

**JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT
PURSUANT TO LOCAL PATENT RULE 105.2**

Plaintiffs/Counterclaim-Defendants Stryker Corporation and Stryker Sales, LLC (“Stryker”) and Defendants/Counterclaim-Plaintiffs Ferno-Washington, Inc. and Ferno Group, Inc. (“Ferno”) present the following Joint Claim Construction and Prehearing Statement pursuant to Local Patent Rule 105.2(d).

**I. THE CONSTRUCTION OF THOSE TERMS OR PHRASES ON WHICH THE
PARTIES AGREE**

Stryker and Ferno agree that the following terms and phrases shall be construed as follows:

Term/Phrase	Patent (Claim(s))	Stipulated Construction
<i>second speed</i>	7,398,571 (Claim 8–10)	“a speed that is different from the first speed”
<i>spring</i>	10,058,464 (Claim 7, 9–11, 18, and 19) 11,090,207 (Claim 1–4)	“a component having elastic properties”
<i>pair of opposed arms</i>	10,058,464 (Claim 14)	“set of levers”
<i>first restraint assembly</i>	10,058,464 (Claims 1, 2, 7, 14, 17, and 19)	“a first structure, formed from one or more components that restrict

Term/Phrase	Patent (Claim(s))	Stipulated Construction
	11,090,207 (Claim 1 and 3)	movement of another component.”
<i>second restraint assembly</i>	10,058,464 (Claims 1 – 3, 7, 11, and 14) 11,090,207 (Claim 1, 4, and 7)	“a second structure, formed from one or more components that restrict movement of another component.”
<i>first mount</i>	10,058,464 (Claim 2 and 7)	“a first support structure”
<i>second mount</i>	10,058,464 (Claim 2, 3, and 7)	“a second support structure”
<i>mount</i>	11,090,207 (Claim 7)	“a support structure”

II. THE CONSTRUCTION OF DISPUTED TERMS AND PHRASES

The disputed terms, and each party’s proposed construction thereof, are provided on the chart attached as Appendix A.

III. MOST SIGNIFICANT TERMS AND PHRASES

The parties have a disagreement about the number of disputed claim terms that should be considered “most significant” for the Court’s consideration. Local Patent Rule 105.2(c)(ii) provides that the parties are to jointly identify a maximum of ten (10) terms “likely to be most significant to resolving the parties’ dispute” Because this case involves eleven (11) patents and 78 asserted claims, Ferno believes that the number of terms to be considered “most significant” should be slightly expanded, to twelve (12) terms. In their February 28, 2023 Joint Rule 26(f) Report (Dkt. # 32), the parties noted that the court might need to construe more than ten terms. *Id.* at 7. Stryker believes that a maximum number of ten (10) “most significant” terms is satisfactory, but does not oppose Ferno’s request to expand the number of terms to twelve (12) terms.

The below chart identifies twelve (12) claim terms the parties consider likely to be the most significant under LPR 105.2(c)(ii): six jointly proposed; three proposed by Stryker and three proposed by Ferno. Should the Court limit the parties to ten terms, Stryker and Ferno have each

agreed to remove one of the three terms they respectively propose as indicated in the chart below using an asterisk. Should the Court not make that limitation, the below chart will remain as the parties' list of most significant terms.

Term No. (Appx. A)	Term/ Phrase	Patent (Claim(s))	Proposing Party
2	<i>control mechanism on said cot configured to ... / control mechanism is configured such that ... / control mechanism is additionally configured such that ...</i>	7,398,571 (Claims 5 and 8)	Joint
6	<i>the handle being connected to a pin configured for rotation about the axis of rotation defined by or parallel to the axis of the cross rail</i>	7,725,968 (Claim 1)	Joint
9	<i>first device / second device</i>	8,056,950 (Claims 1, 2, 10)	Joint
15	<i>spaced-apart and aligned coaxially / spaced-apart and aligned coaxially with respect to each other in the loading direction along the longitudinal length in a fixed relationship between the first and second ends</i>	10,568,787 (Claim 1)	Joint
20	<i>open side rails / a pair of open side rails</i>	11,458,050 (Claims 1, 7, and 15)	Joint
21	<i>configured to align therewith, accommodate therein and guide together the first fixture of the cot / a channel centrally located between the open side rails, said open side rails configured to align therewith, accommodate therein and guide together the first fixture of the cot along the longitudinal length of the cot fastener track towards the first end as the cot is rolled by the wheels within the vehicle</i>	11,458,050 (Claims 1 and 15)	Joint
7	<i>blocking pin / link pin</i>	7,725,968 (Claims 17, 21, & 22)	Stryker
13*	<i>pair of spring biased arms / said arms are biased toward each other by springs</i>	10,058,464; (Claims 12 and 15) 11,090,207 (Claims 5 and 6)	Stryker
14	<i>spring for biasing the cot in a direction</i>	11,090,207	Stryker

Term No. (Appx. A)	Term/ Phrase	Patent (Claim(s))	Proposing Party
	<i>opposed from said loading direction of said frame to thereby apply a pre-load</i>	(Claim 1)	
1	<i>a rapid movement / rapidly drawn</i>	7,398,571 (Claim 2)	Ferno
3	<i>detection device</i>	7,398,571 (Claim 2)	Ferno
5*	<i>a pair of latch disablers / a latch disabler configured to prevent the operation of the latch mechanism by the at least one handle</i>	7,725,968 (Claims 15, 19, & 22)	Ferno

IV. THE ANTICIPATED LENGTH OF TIME NECESSARY FOR THE CLAIM CONSTRUCTION HEARING

The parties believe that no more than 8 hours will be necessary for the Claim Construction Hearing. The parties propose that the presentation should proceed term by term with Stryker presenting first, followed by Ferno. When the Court is satisfied that all issues and questions with respect to a particular term have been adequately addressed, the presentation will then proceed to the next disputed term.

V. WITNESSES AT CLAIM CONSTRUCTION HEARING

At the present time, neither party intends to call any witnesses to provide live testimony during the Claim Construction Hearing, though the parties may submit one or more declarations in support of their proposed constructions.

VI. JOINT CLAIM CONSTRUCTION INTRINSIC AND EXTRINSIC EVIDENCE

Attached Appendices B-N contain the intrinsic evidence cited by Stryker and Ferno in support of their constructions of the disputed terms and phrases. Attached as Appendices B, C, and D, are copies of the 571 Patent, its Prosecution History, and its Re-Exam Prosecution History, respectively. Attached as Appendix E is a copy of U.S. Patent No. 7,725,968. Attached as Appendices F and G are copies of U.S. Patent No. 8,056,950 and its Prosecution History, respectively. Attached as Appendices H and I are copies of the 464 Patent and the 207 Patent,

respectively. Attached as Appendices J and K are copies of U.S. Patent No. 10,568,787 and its Prosecution History, respectively. Attached as Appendix L is a copy of U.S. Patent Publication No. PCT/US2015/045832. Attached as Appendix M is a copy of U.S. Patent Application No. 16/746,085. Attached as Appendix N is a copy of U.S. Patent No. 11,458,050.

Attached Appendix O contains the extrinsic evidence cited by Stryker as Exhibits B through I in its constructions of the disputed terms and phrases. Attached Appendix P contains the extrinsic evidence cited by Ferno in its constructions of the disputed terms and phrases.

Both Parties reserve the right to cite to or rely on the other Party's cited intrinsic or extrinsic evidence.

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