

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HILTI AKTIENGESELLSCHAFT,

Plaintiff, Counterclaim
Defendant

v.

SPECIFIED TECHNOLOGIES INC.,

Defendant, Counterclaimant.

C.A. No. 1:22-cv-01248-CJB

**DEFENDANT AND COUNTERCLAIMANT SPECIFIED
TECHNOLOGIES INC.'S
OPENING CLAIM CONSTRUCTION BRIEF**

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I. INTRODUCTION

Defendant/Counterclaimant Specified Technologies Inc. (“STI”) maintains that no claim terms or phrases of STI’s asserted U.S. Patent Nos. 9,157,232 (“’232 patent”) and 10,143,868 (“’868 patent”) require construction, and the preambles of the asserted claims are not limiting. The ’232 patent is directed to a gasket for insulating a joint between a wall and a floor in a building. The ’868 patent is directed to a firestopping apparatus with openings for cables that can seal around the cables during a fire.

To the extent express constructions are needed, STI’s proposals are supported by the intrinsic record and the plain meanings of the terms. By contrast, Hilti’s proposed constructions improperly narrow the claims by merely repeating the claim language verbatim and adding additional words that appear nowhere in the claims. Hilti’s constructions do not clarify the claim language or simplify any matters for the Court or jury. Instead, Hilti improperly attempts to rewrite the claims and import limitations describing exemplary embodiments to avoid infringement.

II. '232 PATENT – DISPUTED TERMS

- A. **“an adjustable head-of-wall insulating construction for sealing a head-of-wall area between a ceiling thereabove and a wall configuration therebelow which is wider than standard and which includes a ceiling track” (preamble, claim 6)**

STI	Hilti
Not indefinite, not limiting, and no construction needed. Alternatively: “a gasket for sealing an area between a ceiling and a wall that can be used with a ceiling track that makes use of enlarged sized studs or has multiple stud construction such as double studded walls.” The word “adjustable” is not limiting and needs no construction. To the extent it is found limiting, it should be construed according to its plain meaning.	Indefinite because the preamble is limiting and includes the term “wider than standard.” If not indefinite, the preamble is limiting and this term should be construed according to its plain meaning, as informed by the intrinsic record, which is “a head-of-wall insulating construction configured for use in sealing the outermost track side section on each side of a head-of-wall area between a ceiling thereabove and a wall configuration therebelow, which is adjustably variable in lateral dimension to accommodate wider than standard ceiling tracks (i.e., wider in lateral dimensions than a typical commercially available ceiling track).”

1. The preamble is not limiting.

The claim body defines a structurally complete invention; none of the structure of the claimed “insulating construction” itself is presented in the preamble.

Thus, the preamble does not limit the claim. *See Catalina Mktg. Int'l, Inc. v.*

Coolsavings.com, Inc., 289 F.3d 801, 808 (Fed. Cir. 2002) (finding “preamble is not limiting where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention.”). *Catalina Marketing’s* guideposts support this analysis.

- a) *dependence on a disputed preamble phrase for antecedent basis, whether the preamble is essential to understand limitations in the claim body, and whether the preamble recites additional structure or steps underscored as important in the specification*

The preamble does not provide antecedent basis for any positively recited structure of the claimed gasket itself. Rather, to the extent language in the claim body first appears in the preamble, the preamble merely: (1) states an intended use for the invention and describes the environment in which the gasket is intended to be used, and (2) “give[s] a descriptive name to [the] components [of the gasket] as a whole.” *Sentient Sensors, LLC v. Cypress Semiconductor Corp.*, 2021 WL 289410, *5-*6 (D. Del. Jan. 28, 2021). Critically, it does not “provide essential structure to the claimed invention or any context essential to understanding [its] components.” *Id.* at *5-*6. For instance, certain items that are introduced in the preamble and later recited in the claim body—such as the wall and track sections—are not part of the claimed invention (a gasket). These terms merely describe the intended use of the invention and do not constitute any part of its structure (i.e., they do not provide antecedent basis for positive structural limitations of the claimed gasket itself). The

specification explains the wall is a separate and distinct structure from the inventive insulating gasket. *See, e.g., '232 Patent* (Ex. 1), 6:11-19; Expert Declaration of James William Jones Ph.D., P.E. Regarding Claim Construction (“Jones Decl.”) (Ex. 5) ¶4-8. Thus, the preamble is not limiting. *See Arctic Cat Inc. v. GEP Power Products, Inc.*, 919 F.3d 1320, 1329, (Fed. Cir. 2019) (holding “not every preamble reference to additional structure is limiting”); *Confluent Surgical, Inc. v. Hyperbranch Med. Tech., Inc.*, 2019 WL 1075539, *3-*6 (D. Del. May 21, 2019) (concluding preamble not limiting where claim bodies recited structurally complete invention and did not claim the nature of the components utilized by claimed assembly/system).

b) reliance on preamble during prosecution to distinguish claimed invention from prior art

The applicant did not rely on the preamble during prosecution to distinguish the claims. *See Jones Decl.* (Ex. 5) ¶9.

2. Even if limiting, the Preamble of the ‘232 patent is not indefinite.

Even if the Court finds the preamble limiting, the term “wider than standard” is not indefinite. A person of ordinary skill in the art (“POSITA”) would understand what a “wider than standard” wall configuration means in this context, especially when read in light of the specification (see below). *See Jones Decl.* (Ex. 5) ¶9-10. The gasket is not limited to specific dimensions; this phrase allows for adjustability

so it is capable of use with wider than standard walls. A POSITA would understand this plain meaning. *Id.* ¶10.

3. If the Court finds the preamble limiting and decides to construe this phrase, it should adopt STI's construction.

STI's construction is supported by the intrinsic evidence. The specification consistently refers to the "head-of-wall insulating construction" as a "gasket." A POSITA would understand that it is a gasket "for sealing an area between a ceiling and a wall...". *See, e.g.,* '232 Patent (Ex. 1), 6:11-23; 6:31-35; 10:29-34; Jones Decl. (Ex. 5) ¶10-11. Additionally, a "wider than standard" wall configuration refers to a wall having a ceiling track using, for example, enlarged size studs or a multiple stud construction such as double studded walls. The specification supports this interpretation. *See* '232 Patent (Ex. 1), 6:15-23; 6:36-40; 10:29-38; Jones Decl. (Ex. 5) ¶11-12.

4. Hilti's construction is improper and unsupported by intrinsic evidence.

Hilti attempts to rewrite the preamble by injecting additional limitations. First, Hilti adds "for use in sealing the outermost track side section on each side of a head-of-wall area." By adding the words "use in," Hilti underscores that the language that follows merely states the intended *use* of the claimed invention. Additionally,

nowhere does the specification use the phrase “outermost track side section.” Hilti’s attempt to add language that lacks intrinsic evidence support should be rejected.¹

Second, Hilti adds the phrase “which is adjustably variable in lateral dimension to accommodate wider than standard ceiling tracks (i.e., wider in lateral dimensions than a typical commercially available ceiling track)” as a proposed construction for the everyday word “adjustable.” In doing so, Hilti improperly imports “adjustably variable in lateral dimension” from the specification. This language, however, is merely stated as a goal of the design; it does not limit the claims. ’232 Patent (Ex. 1), 5:4-12; *Hill-Rom Services, Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371-74 (Fed. Cir. 2014) (“[W]e do not read limitations from the embodiments in the specification into the claims.”); *Resonate Inc. v. Alteon Websystems, Inc.*, 338 F.3d 1360, 1364–66 (Fed. Cir. 2003) (“[T]he written description is not a substitute for, nor can it be used to rewrite, the chosen claim language.”); Jones Decl. (Ex. 5) ¶13. The commonplace word “adjustable” does not need construction or further clarification and should be given its plain and ordinary meaning. Hilti's construction is not the plain meaning, is unhelpful to the jury, and

¹ See *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1383–84 (Fed. Cir. 2008) (“Courts cannot rewrite claim language.”); *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999) (“Courts do not rewrite claims; instead, we give effect to the terms chosen by the patentee.”); *Autogiro Co. of Am. v. United States*, 384 F.2d 391, 396 (Ct. Cl. 1967) (“Courts can neither broaden nor narrow the claims to give the patentee something different...”).

circularly defines “adjustable” using the word “adjustably” – confirming that “adjustable” itself needs no construction.

The phrase “a typical commercially available ceiling track” also does not appear in the specification and should not be added into the claim. *Supra* n.1. Additionally, “wider than standard” does not mean “wider in lateral dimensions than a typical commercially available ceiling track.” *Supra* sections II.A.2-II.A.3; Jones Decl. (Ex. 5) ¶14.

B. “at least one connecting strap positioned above the main track section of the ceiling track” (claim 6)

STI	Hilti
Plain meaning – no construction necessary.	“at least one connecting strap, <i>which is removably detachable from the L shaped gasket sections and selected from connecting straps of various different lengths</i> , positioned above the main track section of the ceiling track” (emphasis added by STI).

This phrase does not need construction; plain and ordinary meaning suffices. The words in this phrase are in common parlance, and their meanings are clear. There are no technical terms of art, or words that the inventors ascribed a special

meaning, in this phrase. Thus, no construction is necessary.² See Jones Decl. (Ex. 5) ¶15-16.

The Court should reject Hilti’s proposed construction. Hilti makes no effort to actually define any words in this phrase. Instead, Hilti’s construction merely repeats the claim language verbatim—thus supporting STI’s position that no construction is necessary—and then improperly injects an extraneous limitation into the phrase: “which is removably detachable from the L shaped gasket sections and selected from connecting straps of various different lengths.” Hilti’s attempt to rewrite the claim, adding new limitations for litigation-driven reasons—i.e., to unduly limit the scope of the claim to avoid infringement—is improper. *Supra* n.1.

Hilti’s added language modifies this element in two ways. First, Hilti’s construction requires a connecting strap “which is removably detachable.” The

² See, e.g., *Azurity Pharmaceuticals, Inc. v. Alkem Laboratories Ltd.*, 2023 WL 3254117, *14 (D. Del. May 4, 2023) (“When judges say that a term ‘require[s] no construction,’ they mean that further elaboration is unnecessary because the term is ‘common parlance’ and its meaning is ‘clear.’”), citing *Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015) and *Schumer v. Laboratory Computer Sys., Inc.*, 308 F.3d 1304, 1312 (Fed. Cir. 2002) (“These are not technical terms or art, and do not require elaborate interpretation.”); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1373-74 (Fed. Cir. 2004) (“These are ordinary, simple English words whose meaning is clear and unquestionable.”); *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (“ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.”).

specification does not use the phrase “removably detachable” or anything similar when describing the connecting strap. A POSITA would not read the claim to include a requirement that the connecting strap be “removably detachable.” Jones Decl. (Ex. 5) ¶15-16.

Second, Hilti improperly imports other limitations from the specification and improperly limits the claim to one embodiment.³ Specifically, Hilti attempts to limit the connecting strap to being “selected from connecting straps of various different lengths.” While the specification describes “[i]ndividual connecting straps [that] can be of various predetermined lengths,” this is just one specific described embodiment; claim 6 is not limited to this embodiment. ’232 Patent (Ex. 1), 11:23-24; Jones Decl. (Ex. 5) ¶15-16.

Claim 6 requires at least one “connecting strap.” Hilti’s construction would further rewrite the claim to require *multiple* connecting straps because it requires

³ *Liebel–Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004) (“[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.”); *Resonate*, 338 F.3d at 1364–65 (“For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.”); *SciMed Life Systems, Inc. v. Advanced Cardiovascular Systems, Inc.*, 242 F.3d 1337, 1340 (Fed. Cir. 2001) (“[O]ne of the cardinal sins of patent law [is] reading a limitation from the written description into the claims.”).

“connecting straps of various different lengths.” The Court should reject Hilti’s invitation to rewrite claim 6 in this manner. *Supra* n.1.

C. “and attached to said first L-shaped gasket section and to said second L-shaped gasket section to limit spatial separation therebetween” (claim 6)

STI	Hilti
Plain meaning – no construction necessary.	This term should be construed according to its plain meaning, as informed by the intrinsic record, which is “and attached to said first L-shaped gasket section and to said second L-shaped gasket section to limit spatial separation therebetween <i>when the gasket is positioned on the track.</i> ” (emphasis added by STI).

This phrase does not need construction; plain and ordinary meaning suffices. *Supra* n.2 and corresponding first paragraph in Section II.B.

The Court should reject Hilti’s proposed construction. Hilti makes no effort to actually define any words in the claim. Hilti’s construction merely repeats claim language verbatim, further supporting STI’s position that no construction is necessary. Instead of defining the phrase to clarify the claim language, Hilti improperly adds an extraneous limitation: “when the gasket is positioned on the track.”

Hilti’s added language would modify the connecting strap by requiring it to be able to “limit spatial separation . . .” when the gasket is installed on the track. However, this is simply not an element of the claim; instead, Hilti improperly imports this limitation from the specification into the claims. *See* ’232 Patent (Ex. 1), 11:16-20; *supra* n.3; Jones Decl. (Ex. 5) ¶17.

D. “spatially disposed” (claim 8)

STI	Hilti
Not indefinite. Plain meaning – no construction necessary. Alternatively, “relative to a position.”	Indefinite. If not indefinite, this term should be construed according to its plain meaning, as informed by the intrinsic record, which is “spatially disposed from the entirety of the first and second side track sections.”

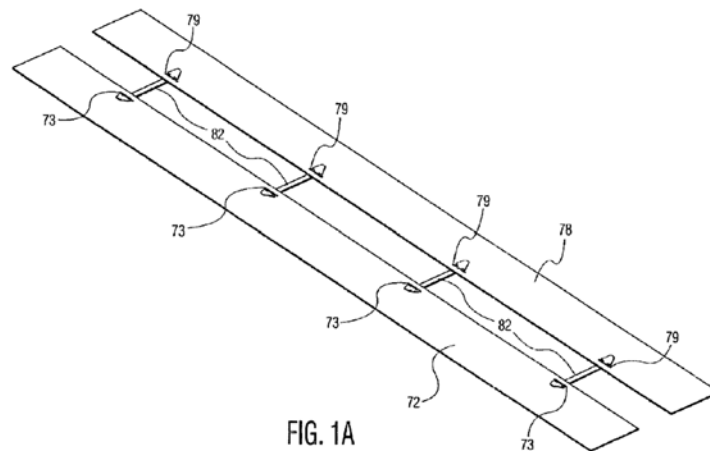
The term “spatially disposed” appears in claims 6 and 8 of the ’232 patent as follows (emphasis added): (1) claim 6 - “a second side track section extend downwardly therefrom at a position *spatially disposed* from the first track section”; (2) claim 6 - “a second gasket upper panel of insulating material positioned immediately above the main track section of the ceiling track and extending generally horizontally thereover at a position *spatially disposed* from said first gasket upper panel”; (3) claim 8 - “wherein said first gasket side panel is *spatially disposed* from the first track side section to be moveable with respect thereto

responsive to relative movement between the wall configuration and the upper building structure thereabove and wherein said second gasket side panel is *spatially disposed* from the second track side section.”

This term is not indefinite; a POSITA reviewing the claims would be able to assess their scope. Jones Decl. (Ex. 5) ¶18-20.

Further, “spatially disposed” does not need construction because a jury would readily understand it. Plain and ordinary meaning suffices, and the phrase does not need to be rewritten or replaced with synonyms. *See U.S. Surgical Corp. v. Ethicon*, 103 F.3d 1554, 1568 (Fed. Cir. 1997) (explaining that “Markman decisions do not hold that the trial judge must repeat or restate every claim term. . . . Claim construction is a matter of resolution of disputed meanings and technical scope, to clarify and when necessary to explain what the patentee covered by the claims. . . . It is not an obligatory exercise in redundancy.”). The words “spatially disposed” are clear and unambiguous. *See* Jones Decl. (Ex. 5) ¶18-20.

Alternatively, if the Court decides to construe “spatially disposed,” it should adopt STI’s alternative construction of “relative to a position.” While the specification does not define this phrase, the way the term is used is instructive. For example, the specification describes FIG. 1A as showing the gasket upper panels “spatially disposed apart.” ’232 Patent (Ex. 1), 5:32-35, 7:31-34. FIG. 1A displays gasket upper panels (illustrated as flat rectangles) in relative positions to one another:



'232 Patent (Ex. 1), FIG. 1A. Thus, STI's construction is consistent with the specification. *See* Jones Decl. (Ex. 5) ¶18-19.

Furthermore, STI's construction is supported by dictionary definitions of "spatial" and "dispose(d)." "Spatial" means "relating to space"; "dispose" means "arrange in a particular position." Ex. 3 (Oxford English Dictionary, 7th Ed. 2012 ("OED")), at 205 and 698. Thus, when something is "spatially disposed," it is relating (or relative) to a position (in space). STI's construction is consistent with these dictionary definitions. *See* Jones Decl. (Ex. 5) ¶20.

In sum, STI's construction is supported by intrinsic and extrinsic evidence, is straightforward, and easily understood. *See id.* ¶18-20.

By contrast, Hilti's construction repeats the claim term verbatim and adds additional words. Hilti makes no effort to actually define "spatially disposed" and instead circularly uses the term in its construction, and adds "from the entirety of the first and second side track sections." This clear attempt to rewrite the claim by

adding new limitations for litigation-driven reasons is an improper tactic and has been rejected for over a century. *See McCarty v. Lehigh Val. R. Co.*, 160 U.S. 110, 116 (1895) (“we know of no principle of law which would authorize us to read into a claim an element which is not present, for the purpose of making out a case of novelty or infringement”).

Additionally, although “spatially disposed” appears in claims 6 and 8, Hilti only proposes construing it in the context of claim 8. Notably, Hilti’s construction is inconsistent with the way “spatially disposed” is used in claim 6 and would render claim 6 nonsensical. *See Wright Med. Tech., Inc. v. Osteonics Corp.*, 122 F.3d 1440, 1445, (Fed. Cir. 1997) (“we must not interpret an independent claim in a way that is inconsistent with a claim which depends from it”). Specifically, inserting Hilti’s construction in place of the words “spatially disposed” would result in the preamble reciting: “second side track section extend[s] downwardly therefrom at a position [spatially disposed from the entirety of the first and second side track sections] from the first track section . . .”. *See* ’232 patent (Ex. 1), claim 6, preamble. Further, part B.1 of claim 6 would recite “a second gasket upper panel . . . extending generally horizontally thereover at a position [spatially disposed from the entirety of the first and second side track sections] from said first gasket upper panel.” This is an improper and nonsensical result because this portion of claim 6 does not relate to side track sections. Instead, it relates to the relative positions of the first and second

gasket upper panels. *See* '232 Patent (Ex. 1), claim 6; *AIA Eng'g Ltd. v. Magotteaux Int'l*, 657 F.3d 1264, 1276 (Fed. Cir. 2011) (“We strive . . . to avoid nonsensical results in construing claim[s] . . .”); Jones Decl. (Ex. 5) ¶21.

E. “insulating material which includes an acoustical insulating component therewithin” (claim 11)

STI	Hilti
Plain meaning – no construction necessary. Alternatively, “material with insulating properties that includes the ability to reduce the transmission of sound.”	This term should be construed according to its plain meaning, as informed by the intrinsic record, which is “a material that is specifically adapted to provide acoustical insulating properties.”

This phrase does not need construction; plain and ordinary meaning suffices. *Supra* n.2 and corresponding first paragraph in Section II.B.

Alternatively, if the Court decides to construe this phrase, it should adopt STI’s alternative construction. STI’s construction is consistent with the specification, which explains that insulating materials can include materials capable of reducing or stopping the transmission of sounds. '232 Patent (Ex. 1), 6:11-15; 4:56-59; 6:55-60; Jones Decl. (Ex. 5) ¶22-24.

Dictionary definitions also support STI’s construction. For example, “acoustic” means “relating to sound or hearing” and “insulate” means “place material between one thing and another to prevent loss of heat or intrusion of sound.”

Ex. 3 (OED at 6, 377). Thus, when a material is “acoustical insulating,” it is capable of reducing intrusion (i.e., transmission) of sound. *See* Jones Decl. (Ex. 5) ¶23.

By contrast, Hilti’s construction improperly adds a new limitation. The claim is not limited to a “material that is **specifically adapted** to provide acoustical insulating properties” as Hilti proposes (emphasis added by STI). It should include material that naturally has, without specific adaptation, this characteristic. This improper attempt to rewrite claim language should be rejected. *Supra* n.3; Jones Decl. (Ex. 5) ¶22-25.

III. ’868 PATENT – DISPUTED TERMS

A. “Moveable relative to one another” (claims 1, 9)

STI	Hilti
Plain meaning – no construction necessary.	This term should be construed according to its plain meaning, as informed by the intrinsic record, which is “moveable in a defined relationship to one another”

This phrase does not need construction; plain and ordinary meaning suffices. *Supra* n.2 and corresponding first paragraph in Section II.B.

The Court should reject Hilti’s proposed construction, which equates “relative” to “in a defined relationship.” This is inconsistent with the intrinsic evidence and overcomplicates the meaning of this term for the jury. The specification does not define relative in this manner, nor does it even use the phrase

“defined relationship.” Similarly, the prosecution history does not support Hilti’s construction. This is another attempt by Hilti to rewrite the claim to better align with its litigation positions, and it should be rejected. *Supra* n.1; Jones Decl. (Ex. 5) ¶26-27.

Even worse, Hilti’s rewriting of this claim term makes it confusing for the jury rather than helping to clarify its meaning. This defies the purpose of claim construction. *See Big D Indus., Inc. v. Fresh Products, Inc.*, 2022 WL 1017908, *2 (W.D. Okla. Apr. 5, 2022) (explaining the purpose of claim construction is discerning a POSITA’s meaning and conveying “that meaning understandably to a lay jury.”); *Recticel Automobilesysteme GmbH v. Automotive Components Holdings, LLC*, 2012 WL 1276003, *2 (E.D. Mich. Apr. 16, 2012) (explaining that one goal of claim construction is “to provide a construction that will be understood by the jury who might otherwise misunderstand a claim term”); Jones Decl. (Ex. 5) ¶26-27.

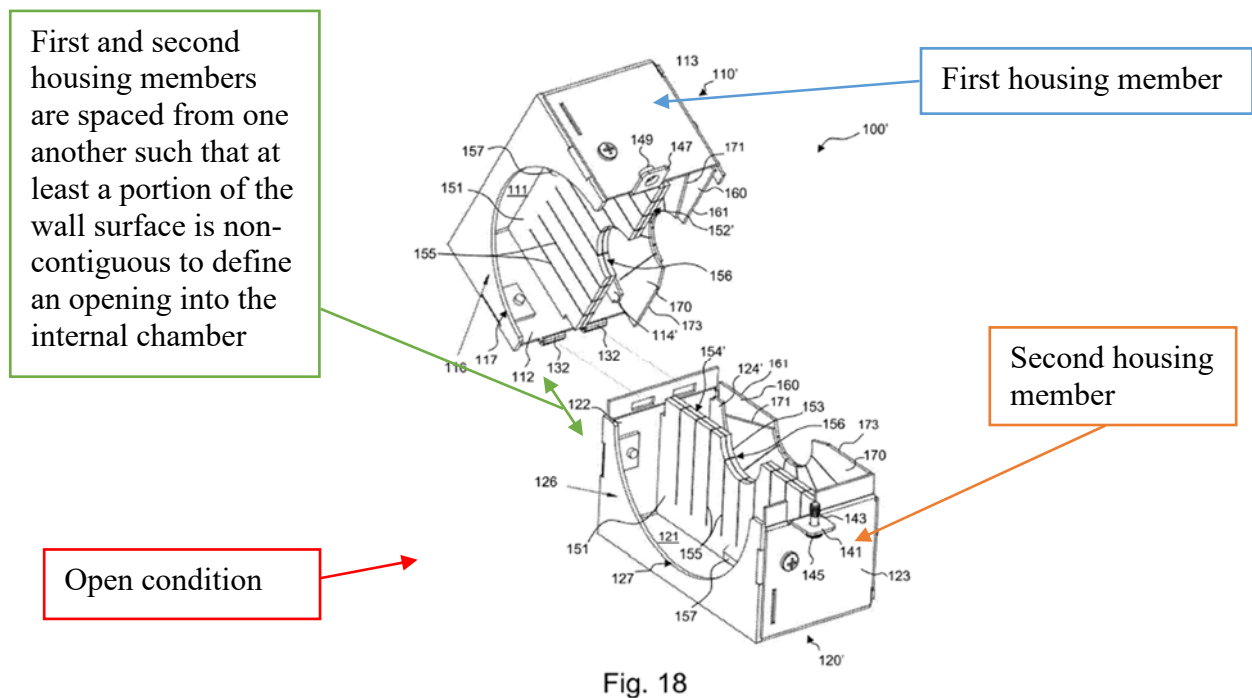
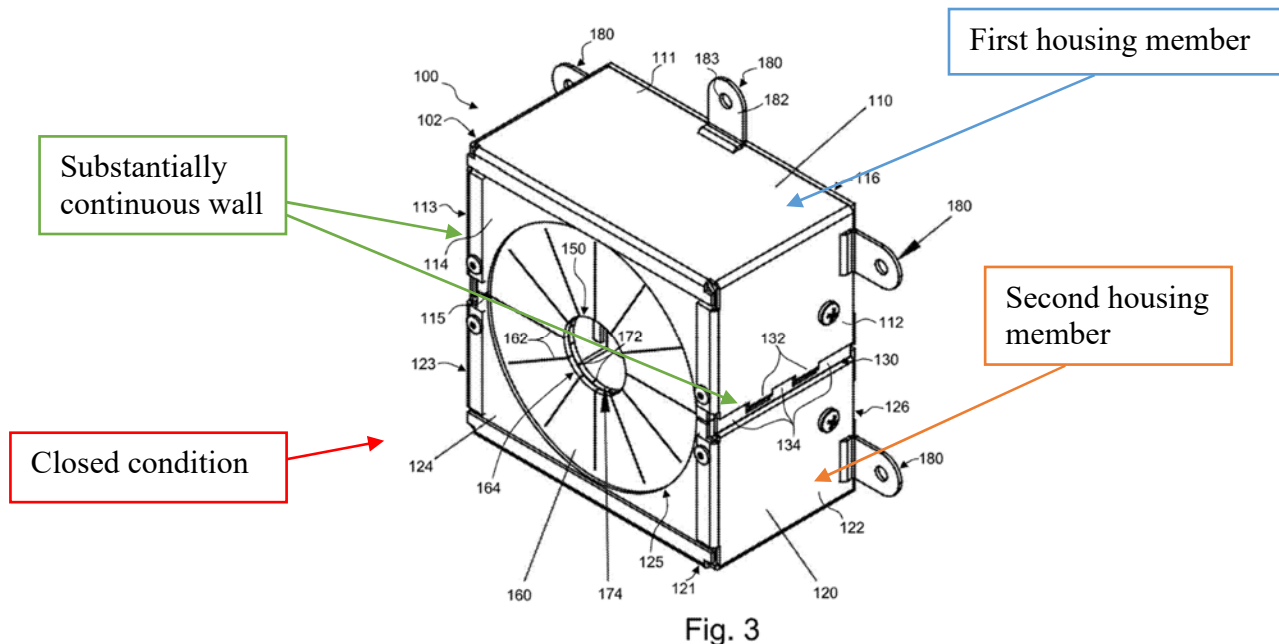
- B. “the housing including first and second housing members which are completely detachable from one another and moveable relative to one another between an assembled condition wherein the first and second housing members are interconnected and the wall surface is substantially continuous about the internal chamber, and an open condition wherein at least a portion of the first and second housing members are spaced from one another such that at least a portion of the wall surface is non-contiguous to define an opening into the internal chamber” (claim 1)**

STI	Hilti
Plain meaning – no construction necessary.	“the housing including first and second housing members which are completely detachable from one another and moveable relative to one another while not completely detached between an assembled condition wherein the first and second housing members are interconnected and the wall surface is substantially continuous about the internal chamber, and an open condition wherein at least a portion of the first and second housing members are spaced from one another such that at least a portion of the wall surface is non-contiguous to define an opening into the internal chamber such that the firestopping apparatus device can be positioned the opening in the housing can be positioned about a sleeve, cables, or conduits and returned to the assembled condition.” (emphasis added by STI).

Hilti proposes construing the above lengthy claim phrase (the “Claim 1 Housing Members Element”), which comprises over 60% of claim 1 of the ’868 patent.

Construing such a long phrase is unhelpful to the jury. This phrase does not need construction; plain and ordinary meaning suffices. *Supra* n.2 and corresponding first paragraph in Section II.B; Jones Decl. (Ex. 5) ¶¶28-30.

Notably, the specification never defines the Claim 1 Housing Members Element beyond its plain and ordinary meaning, and the intrinsic record indicates no intent to change that meaning. *See Hill-Rom Servs., Inc.*, 755 F.3d at 1371. Indeed, the specification further supports that this phrase describes the housing of the claimed firestopping device in an “assembled” condition and an “open” condition. Jones Decl. (Ex. 5) ¶¶28-30. For example, Figures 3 (below), 12, and 13 illustrate the “assembled condition.” Jones Decl. (Ex. 5) ¶28. Figures 10, 11, and 18 (below) illustrate “open conditions.” Jones Decl. (Ex. 5) ¶29. These conditions are readily understandable and clearly illustrated. Thus, no need exists for further elaboration. *See* Jones Decl. (Ex. 5) ¶¶28-30.



The Court should reject Hilti’s proposal. Hilti makes no effort to actually define any of the words in the claim. Hilti’s construction merely repeats the words verbatim (further supporting STI’s position that no construction is necessary) and improperly injects two additional extraneous limitations: (1) “while not completely detached” (“Phrase 1”) and (2) “such that the firestopping apparatus device can be positioned the opening in the housing can be positioned about a sleeve, cables, or conduits and returned to the assembled condition” (“Phrase 2”).

Phrase 1 appears nowhere in the claims or specification, and thus finds no support in the intrinsic evidence. *See AIA Eng’g Ltd.*, 657 F.3d at 1272 (“the specification is the single best guide to the meaning of a claim term.”); Jones Decl. (Ex. 5) ¶31.

Phrase 2 is grammatically incorrect, nonsensical, and confusing. Hilti’s construction thus frustrates the purpose of claim construction and should be rejected. *See AIA Eng’g*, 657 F.3d at 1276 (“We strive . . . to avoid nonsensical results in construing claim language.”); *Immersion Corp. v. HTC Corp.*, 2015 WL 581572, *8 (D. Del. Feb. 11, 2015) (finding no construction needed where “a jury would be more likely to be confused by [the proposal] than by the term itself.”). In addition, Hilti’s added language improperly imports limitations from the specification and should be rejected for this additional reason. *Supra* n.3; Jones Decl. (Ex. 5) ¶31-33.

- C. **“the housing including first and second housing members which are moveable relative to one another between an assembled condition wherein the first and second housing members are interconnected and the wall surface is substantially continuous about the internal chamber, and an open condition wherein at least a portion of the first and second housing members are spaced from one another such that at least a portion of the wall surface is non-contiguous to define an opening into the internal chamber” (claim 9)**

STI	Hilti
Plain meaning – no construction necessary.	“the housing including first and second housing members which are moveable relative to one another between an assembled condition wherein the first and second housing members are interconnected and the wall surface is substantially continuous about the internal chamber, and an open condition wherein at least a portion of the first and second housing members are spaced from one another such that at least a portion of the wall surface is non-contiguous to define an opening into the internal chamber such that the opening in the housing can be positioned about a sleeve, cables, or conduits and returned to the assembled condition.” (emphasis added by STI).

This lengthy phrase is very similar to the phrase discussed in Section III.B above. It does not need construction, and plain meaning suffices, for the same reasons discussed in Section III.B.

As with the phrase discussed in Section III.B, Hilti’s construction of this phrase merely repeats the words in the claim verbatim, which further supports STI’s position that this phrase need not be construed. The phrase Hilti adds to this claim—“such that the opening in the housing can be positioned about a sleeve, cables, or conduits and returned to the assembled condition”—improperly imports limitations from the specification. Although the specification describes positioning the housing around “a sleeve, cables, or conduits,” claim 9 is not so limited. *See* ’868 Patent (Ex. 2), 4:1-7. Hilti’s attempt to import this language into claim 9 from the specification should be rejected. *See* discussion and annotated figures *supra* section III.B; *see also* Jones Decl. (Ex. 5) ¶¶34-37.

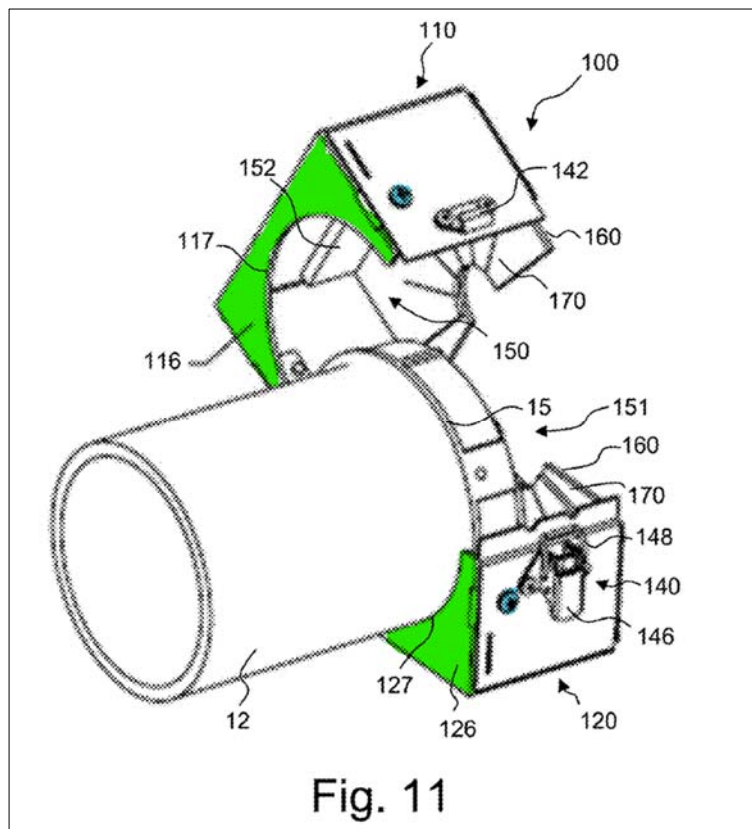
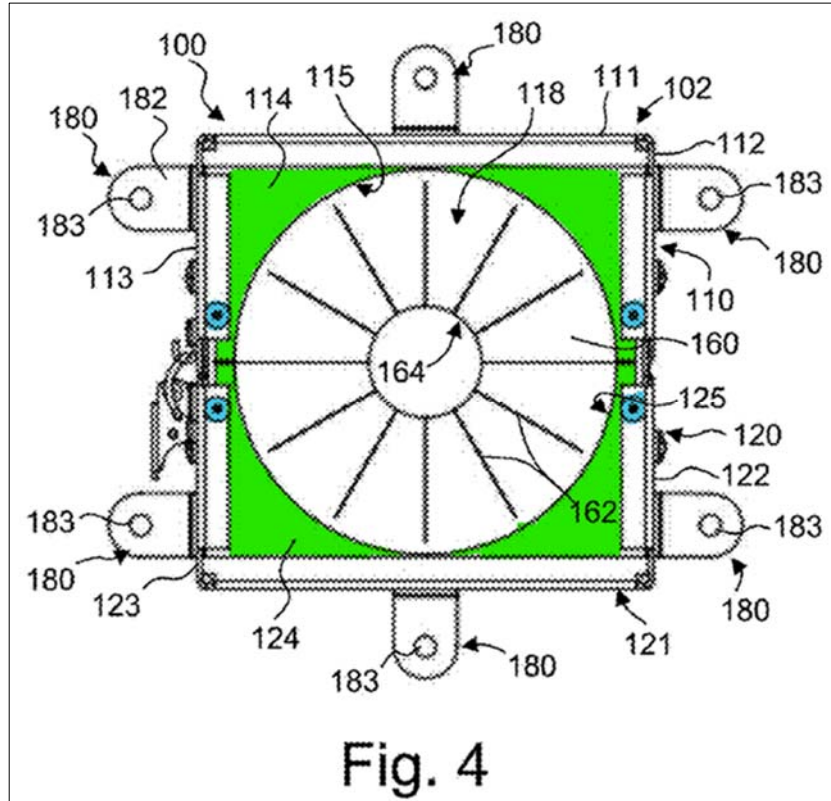
D. “Front and rear panels” (claim 1)

STI	Hilti
Plain meaning – no construction necessary. Alternatively, “front layer and rear layer that are physically distinct from other components of the housing.”	“front and rear panels configured to be installed on the same side of a wall”

This phrase does not need construction; plain and ordinary meaning suffices. *Supra* n.2 and corresponding first paragraph in Section II.B.

Alternatively, if the Court decides to construe this phrase, the Court should adopt STI’s alternative construction: “front layer and rear layer that are physically

distinct from other components of the housing.” STI’s construction is consistent with the specification. Jones Decl. (Ex. 5) ¶38-42. The specification consistently uses reference numerals 114, 124 for the front panel and reference numerals 116, 126 for the rear panel. In each case, the front and rear panels are physically distinct from other components of the housing. For example, the figures show both the front panel 114, 124 and rear panel 116, 126 as being separate components from and fastened to the side panels of the housing. *See, e.g.*, ’868 Patent (Ex. 2), Fig 4 (annotated with front panels in green, fasteners in blue); Fig. 11 (annotated with rear panels in green, fasteners in blue); *id.*, 3:34-39; 4:59-61; 5:1-12; 5:51-58. The specification does not disclose any other embodiments of a front and rear panel. *See* Jones Decl. (Ex. 5) ¶38-42.



Dictionary definitions also support STI’s construction. For example, “panel” means “a section of something (as a wall or door) . . .” The Merriam-Webster Dictionary (2016) (Ex. 4) at 520. The same dictionary defines “section” as “a distinct part.” *Id.* at 651. Thus, front and rear panels are front and rear parts (or layers) that are physically distinct from other components of the housing, as STI’s construction proposes. Jones Decl. (Ex. 5) ¶42.

Hilti’s construction is overly narrow and attempts to limit the claims to one disclosed embodiment. For example, there is no discussion in the specification that limits the installation of the claimed firestopping apparatus such that it cannot be installed with the front and rear panels on different sides of a wall. Jones Decl. (Ex. 5) ¶43. Accordingly, Hilti’s construction should be rejected. *Supra* n.3.

E. “Panel(s)” (claims 1, 9)

STI	Hilti
No construction necessary. To the extent the term is construed, it should be construed as its plain meaning or alternatively, “layer that is physically distinct from other components of the housing.”	This term should be construed according to its plain and ordinary meaning, which includes both a panel that is physically distinct from and/or integrally connected to the housing. If this term is not construed according to its plain and ordinary meaning, it should be construed as Hilti proposes based on the intrinsic record.

This term does not need construction. The claims do not recite the term “panel” in isolation. Instead, the claims refer to either front or rear panels. Accordingly, the term “panel,” as used in the claims, only refers to one of the front or rear panels, and to the extent any construction is needed, “front panel” and “rear panel” are the terms that should be construed. Thus, there is no need to construe “panel” on its own. *Supra* section III.D. Accordingly, to the extent “panel” is construed, that construction must be consistent with the construction of “front and rear panels.” *Supra* section III.D.

Alternatively, if the Court decides to construe “panels,” it should adopt STI’s construction: “layer that is physically distinct from other components of the housing.” STI’s construction is consistent with the specification. *Supra* section III.D; Jones Decl. (Ex. 5) ¶44-45.

By contrast, Hilti attempts to broaden the claim by conflating terms and construing them outside of the greater context of the claim. As explained above, the term “panel” cannot be properly construed when divorced from the rest of the claim. The specification additionally describes “side panels” that are separate and distinct from the front and rear panels. Hilti’s construction of panel that “includes both a panel that is physically distinct from and/or ***integrally connected to the housing***” improperly imports the specification’s disclosure related to side panels. The specification does not describe a “front panel” or “rear panel” that is “integrally

connected to the housing,” nor is “integrally connected to the housing” recited in the claim. *See* Jones Decl. (Ex. 5) ¶46. Hilti’s construction should be rejected. *Supra* n.1.

Dated: October 27, 2023

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CERTIFICATION BY COUNSEL

I hereby certify that DEFENDANT AND COUNTERCLAIMANT SPECIFIED TECHNOLOGIES INC.'S OPENING CLAIM CONSTRUCTION BRIEF complies with the type and number limitations set forth in the Court's November 10, 2022 Standing Order. The total number of words, including introductions and footnotes, but excluding the cover page, table of contents, table of authorities, and signature page, is 5,500, according to the word processing system used to compile the brief. The text of the brief is 14-point, Times New Roman.

/s/ Austen C. Endersby
Austen C. Endersby (# 5161)

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2023, a copy of the foregoing
DEFENDANT AND COUNTERCLAIMANT SPECIFIED TECHNOLOGIES INC.'S
OPENING CLAIM CONSTRUCTION BRIEF was served via electronic mail on
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