

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MULTIQUIP INC.,

Plaintiff,

v.

ANA, INC.,

Defendant.

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CIVIL ACTION NO. 3:22-cv-2599

JURY TRIAL DEMANDED

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to the Court’s Scheduling Order, Plaintiff Multiquip Inc. (“Plaintiff”) and Defendant Alliance North America dba ANA (“Defendant”) hereby respectfully submit this Joint Claim Construction Statement.

I. CONSTRUCTION OF CLAIM TERMS ON WHICH THE PARTIES AGREE

The parties have agreed on the following construction:

Claim Term	Agreed Construction
regeneration (1, 19)	a process in which an engine doses a particulate filter with diesel fuel then ignites the diesel fuel to burn off accumulated soot

II. PROPOSED CONSTRUCTION OF EACH DISPUTED CLAIM TERM AND INDEFINITENESS POSITION

The parties proposed constructions are attached as Exhibit A.

It is Defendant’s position that the claim term “neglect” listed in Exhibit A is indefinite and that the claims are therefore invalid under 35 U.S.C. §112(b) for failing to inform those skilled in the art about the scope of the invention with reasonable certainty. Defendant’s proposed construction for “neglect” listed in Exhibit A is thus provided in the alternative.

Today, Defendant is expected to provide a claim construction declaration from its proposed

expert. While it has not yet seen this declaration, Plaintiff objects to any testimony that was not sufficiently identified in Defendant's P.R. 4-2 disclosures. In particular, Defendant's P.R. 4-2 disclosures mention nothing concerning any claim term being indefinite and, also, do not reference any proposed testimony concerning indefiniteness. Defendant's P.R. 4-2 lack of identification of any claim term being indefinite coupled with a mere identification that Defendant may provide testimony concerning "[t]he understanding a Person of Ordinary Skill in the Art (POSA) would have regarding terminology and devices" failed to reasonably apprise Plaintiff of testimony concerning indefiniteness. Compounding this lack of disclosure, Defendant notified Plaintiff today that its expert may be unavailable during the claim discovery period in which Plaintiff may otherwise be able to depose its expert.

III. LENGTH OF TIME NECESSARY FOR CLAIM CONSTRUCTION HEARING AND LIVE TESTIMONY

The Parties anticipate the length of time necessary for the claim construction hearing to be approximately two hours. Plaintiff does not anticipate introducing live testimony and understands that Defendant is also not seeking live testimony. Defendant anticipates submission of the written declaration of its expert Robert D. Straub and deposition, if any.

IV. PROPOSED ORDER OF TERMS

The Parties propose arguing the terms in the order presented in this document.

V. OTHER ISSUES TO ADDRESS

Counsel for Defendant learned today that Defendant's expert Robert D. Straub is undergoing unscheduled surgery. The recuperation period is currently unknown. Defendant anticipates that Plaintiff will want to depose Mr. Straub. If that is the case, the current claim construction schedule may need to be adjusted to accommodate that deposition.

While Plaintiff has not yet seen the Declaration of Robert D. Straub, Plaintiff anticipates

filing a motion to strike the declaration because Plaintiff objects to any testimony that was not sufficiently identified in Defendant's P.R. 4-2 disclosures. Defendant would oppose any such motion.

Dated: June 19, 2023

Respectfully submitted,

/s/ James. L. Etheridge

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all counsel of record by ECF on June 19, 2023.

/s/Terence J. Linn

Terence J. Linn