

**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

PLAINTIFF’S CLAIM CONSTRUCTION REPLY BRIEF

Plaintiff Multiquip Inc. (“Multiquip”) submits the following claim construction reply brief supporting its constructions of the disputed claim terms for US Patent No. 8,816,651 (the “’651 Patent”).

I. ARGUMENT AND AUTHORITIES

A. The term “particulate filter” should not be limited to a sub-class of filters that require “regeneration”.

Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
component used to reduce particles or particulate matter from the exhaust stream of an engine	A filter located in the exhaust system that captures soot from the engine exhaust, to be burned off via regeneration.

- i. The claim language clearly distinguishes “regeneration” scenarios from “neglect” scenarios.*

A particulate filter, in the context of the ‘651 Patent, is simply a structure that removes particulate matter from an exhaust stream. Filters other than DPFs accomplish this task and are recognized as filters.¹ ANA asks this Court to ignore well-recognized particulate filters in favor of a sub-class of particulate filters (DPFs) that require “regeneration.” In support, ANA misleadingly

¹ See Dkt. 33, Ex. E at 2 (recognizing DOCs as filters); Ex. G at 1 (recognizing that DOCs remove particulate matter).

uses an ellipsis to hide claim language clarifying that regeneration is *not* required. Dkt. 36 at 8.

ANA's response states, in relevant part:

The Claims: Claims 1 and 19 recite “said engine having an engine control module and a particulate filter.”

Claims 1 and 19 also specify that the “generator controller” can take a specified action “**in at least one of the following cases: . . . regeneration.**” The parties stipulated to the meaning of the claimed “regeneration” and its relationship to the particulate filter:

a process in which an engine doses a particulate filter with diesel fuel then ignites the diesel fuel to burn off accumulated soot.

The claims themselves establish that a particulate filter is a device which is periodically subjected to regeneration.

Id. (emphasis in original).

ANA is wrong. The claim language states that the “generator controller” can take a specified action “**in at least one of the following cases: neglect and regeneration.**” ‘651 Patent, 8:1-3. The claims are written in an alternative format, meaning that either one or both of the alternatives – neglect or regeneration – can occur, but not necessarily both. In other words, the claim language covers three cases where the generator controller takes action: (i) neglect only; (ii) regeneration only; and (iii) both neglect and regeneration. In case (i) the “regeneration” limitation is removed from the claim entirely and the “neglect” and “particulate filter” limitations remain. The claims do not require “neglect” during “regeneration” and do not require “regeneration” during “neglect.”

If regeneration is embedded into “neglect,” as ANA insists, then the claim’s plain language is ignored, and “regeneration” is nonsensically required for both “regeneration” and “neglect” scenarios. The patentee knew how to simultaneously claim both “neglect” and “regeneration” and did so in Claim 37, which requires both: “g. activating said load bank if said generator operates in

a *neglect* scenario as defined by said window and said duration” and “h. activating said load bank if said connected load is less than said minimum acceptable load and said engine-generator initiates regeneration.” ‘651 Patent, 10:32-38 (emphasis added).

- ii. *The specification’s discussion of the benefits of “regeneration” for DPFs does not apply to “neglect” scenarios.*

ANA relies on the specification’s discussion of regeneration to imply that regeneration is also required during neglect scenarios, such that only DPFs can satisfy any embodiment of the invention. Dkt. 36 at 9 (arguing that the “sole disclosure of the particulate filter in the ‘651 Patent is that of a particulate filter located in the exhaust system and subject to regeneration.”). But the specification language ANA block quotes in support of this argument explains how a specific subclass of filters (DPFs) benefit from regeneration. *See id.* It is nonsensical to rely on this language to suggest that “neglect” cases require a “particulate filter” that is subject to “regeneration” because “neglect” scenarios are a separate embodiment. As the Federal Circuit has recognized:

[A] specification’s focus on one particular embodiment or purpose cannot limit the described invention where that specification expressly contemplates other embodiments or purposes. This is especially true in cases such as this, where the originally filed claims are not limited to the embodiment or purpose that is the focus of the specification.

ScriptPro LLC v. Innovation Assocs., Inc., 833 F.3d 1336, 1341 (Fed. Cir. 2016). Here, the “neglect” limitation is independent from “regeneration.” The specification’s explanation concerning how a subclass of particulate filters (DPFs) benefit from regeneration cannot be used to limit the described invention. This is particularly so because (1) the specification references EPA Tier IV regulations, which recognize many different particulate matter filters (not only DPF

filters)² and (2) the patentee chose not to limit the claim to a “diesel particulate filter,” instead limiting it only to a “particulate filter.” If the patentee intended to limit “particulate filter” to “diesel particulate filter,” the simple solution was to say so in the claims.

iii. The parties’ agreed definition of “regeneration” does not mean all particulate filters are subject to regeneration.

The parties stipulated to regeneration as “a process in which an engine doses a particulate filter with diesel fuel then ignites the diesel fuel to burn off accumulated soot.” Dkt. 33 at 4. This means that under certain embodiments *some* particulate filters are subjected to regeneration. It does *not* mean, as ANA mistakenly claims, that *all* particulate filters must be subjected to regeneration under all embodiments. ANA’s argument to the contrary is based on a basic logical fallacy. (The fact that “Tom eats apples” does not mean that “all apples must be eaten by Tom.”) As explained above, the claim language specifically contemplates “neglect” cases where the particulate filter would not be subjected to regeneration.

iv. Extrinsic evidence does not support the proposition that all particulate filters are subjected to regeneration or that only DPFs are particulate filters.

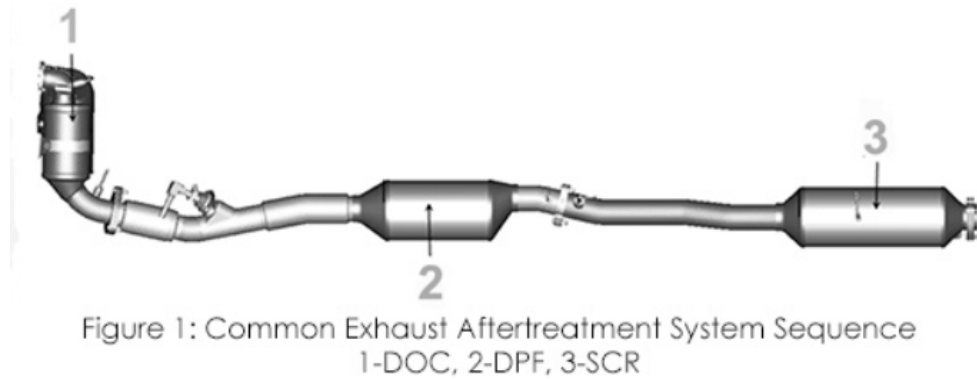
The extrinsic evidence does not support the proposition that all particulate filters are subjected to regeneration.³ As an example, diesel oxidation catalysts (DOCs) remove particulate matter by catching it on a honeycomb structure of the filter and immediately burning it off.⁴ Yet, under ANA’s construction, a DOC does not qualify because the particulate matter is burned off *too* soon – *immediately* as opposed to later in the case of DPF. There is no justification of a definition of “particulate filter” that hinges on such a minor difference in functionality. Nor does

² See Dkt. 33, Ex. J.

³ *Id.* (list including non DPF filters that remove particulate matter).

⁴ See Ex. M (Multiquip0004934), also archived at <https://web.archive.org/web/20170827144636/http://www.hartridge.com:80/blog/3-differences-between-doc-dpf-and-scr-filters>.

the extrinsic evidence support ANA's argument that only DPFs are recognized in the industry as particulate filters. The industry recognizes that "[b]oth the DOC and the DPF are honeycomb ceramic filters." *Id.*



Id. John Deere describes both DOCs and DPFs as “Exhaust filters.”⁵ Further, only a small number of technologies listed by the EPA use DPF to reduce particulate matter. *See* Dkt. 33, Ex. J.⁶ The EPA list includes DOCs that reduce particulate matter by nearly 30%. *Id.* (*see, e.g.*, Series 6100 Diesel Oxidation Catalyst (DOC) on page 3). ANA's own production recognizes that a DOC removes about 20% of particulate matter.⁷ And U.S. Patent No. 7,806,956, cited by ANA, describes a “filtration system” that “incorporates a DOC to heat the exhaust gases to burn the accumulated soot in the filters.”⁸ Yet, according to ANA, while a DOC indisputably filters particulate matter, it is not a “particulate filter” if it does not also undergo “regeneration.”

⁵ *See* Dkt. 33, Corrected Ex. F at Multiquip0000936 (Multiquip cited this exhibit in its opening brief, and both parties have produced it. However, Multiquip mistakenly attached the wrong document as Ex. F in its opening brief. The correct pages are attached hereto as Corrected Ex. F.) (also produced by ANA as ANA000966.)

⁶ Citing <https://www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel>.

⁷ Ex. N at ANA0005672; *see also* Dkt. 33, Ex. E at 2 (recognizing DOCs as filters); Ex. G at 1 (recognizing that DOCs remove particulate matter).

⁸ *See* Dkt. 36-26, 8: 1-3.

- v. *ANA does not propose a definition of “particulate filter” and instead merely repeats the word “filter”.*

Finally, ANA’s proposed definition of “particulate filter” should be rejected because it does not define “filter”. Instead, it simply repeats the word “filter” and argues that a component that removes particulate matter is not a “particulate filter” unless it also goes through “regeneration.” Dkt. 36 at 8-9.

B. ANA’s proposed definition of “neglect” should be rejected because it attempts to introduce ambiguity.

Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
an operating condition of a generator in which its load for a preset duration of time drops below a preset level at which wet stacking and soot buildup will occur	Invalid as indefinite – but in the alternative: The engine is intentionally allowed to operate in a sub optimal state for more than a short duration until wet stacking and soot build up in the exhaust system will occur.

ANA’s attempt to import “sub optimal” into the definition of “neglect” should be rejected as a transparent attempt to introduce ambiguity. No doubt, if ANA’s definition is adopted, ANA will later argue that a POSA would not understand what “sub optimal” means. ANA’s rejection of the “preset duration” and “preset levels” proposed by Multiquip (and clearly described in the patent) in favor of the less definite language “more than a short duration” should be rejected for the same reason.

Further, ANA’s suggestion that Multiquip’s proposed definition does not account for the specification’s discussion of “neglect” simply ignores Multiquip’s definition. The language “load for a preset duration of time drops below a preset level” proposed by Multiquip specifically accounts for the specification’s discussion of “neglect.” ‘651 Patent, 3:1-3 (“The pre-set load corresponds to a power demand on the generator that provides for optimal operation, which minimizes wet stacking and soot build up.”).

Multiquip’s definition is clear, and it completely captures the plain meaning given by the patent. ANA’s attempt to introduce ambiguity should be rejected.

C. ANA does not dispute that “electrical communication” should encompass indirect electrical connection.

Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
a direct or indirect electrical connection	Configured to allow electrical signals to be sent there between

ANA does not dispute that the patent describes indirect electrical communication between devices, insisting that its definition would include electrical communication between two points, A and B, regardless of whether the signal passes through a switch/controller or other device on its way. It is not clear that ANA’s proposed definition would include such scenarios. What is clear, however, is that ANA cannot dispute that the patent describes indirect electrical connections as being “in electrical communication” and that the definition of electrical communication should therefore include them. *See* Dkt. 33 at 7-8.

ANA argues that inclusion of “indirect” could lead to “mischief in arguments” by allowing a party to argue that electronic communication occurs even if the signal changes. ANA insists the following example would *not* be electrical communication because it includes a change in signal:

For example, if a first device generates a signal “A” that is sent to a middle device to instruct the middle device to generate a signal “B”, which signal “B” is then sent by the middle device to the final device, the signal “B” received by the final device is not the signal “A” communicated by the first device.

Dkt. 36 at 27. ANA’s understanding is at odds with the common understanding of communication. According to ANA, two devices used in a live phone call are not in electrical communication with one another because the analog “signal” (signal A) that was transformed into an IP signal (signal B) is in a different format. There is simply no support for ANA’s narrow interpretation to mean that the same signal must pass between both devices. Even if ANA’s understanding were correct, such an understanding is no more conveyed by ANA’s proposed definition than by Multiquip’s.

If, as ANA claims, its own definition allows for communication between A and B even if there is a step between them, then there is nothing in ANA's proposed definition that would prohibit a change in the signal, and there is no reason to reject Multiquip's definition out of a supposed fear of "mischief in arguments."

D. ANA does not dispute that the invention requires a "load step resistor" that can add or subtract load.

Plaintiff's Proposed Construction	Defendant's Proposed Construction
one of a group of electrical resistors in a load bank that can add or subtract load in an electric circuit	A component that adds a step of resistance in a circuit.

As explained in Multiquip's opening brief, the inclusion of "add or subtract load" in Plaintiff's proposed definition is supported by the specification, which states that in some embodiments the load bank controller "then increases or decreases the total resistance of the load bank by connecting or disconnecting load step resistors as necessary to maintain the load within window." '651 Patent, 2:61-63. In its response brief, ANA quotes similar language, stating that the "load bank is configured to add or remove load resistors in steps." Dkt. 36 at 28.

ANA completely ignores this point. ANA does not dispute that the invention requires a load bank that can add or subtract a load in an electrical circuit and makes no effort to justify defining a load step resistor as a component that only "adds" resistance.

ANA focuses solely on whether the definition includes "step." As ANA acknowledges, one of ordinary skill in the art already has an understanding of the meaning of "step." Accordingly, it's not clear what value is obtained by adding the same word ("step") to ANA's proposed definition.

Finally, ANA's insistence that Multiquip should be bound by preliminary constructions is a red herring. Just like ANA is not bound by its prior construction, "a device in a load bank that resists the flow of electrical current," Multiquip is not limited to any preliminary construction.

E. The Court should reject ANA's attempt to re-write claim language via its supposed definitions of "a generator controller comprising a load dump output and a load enable output" and "a load bank controller comprising a load enable input, a load dump input, a load sensor".

i. "a generator controller comprising a load dump output and a load enable output"

ANA's purported construction of "a generator controller comprising a load dump output and a load enable output" is a blatant attempt to rewrite claim language and import the specification into the claim. This is made evident by the fact that ANA literally took the claim language and redlined it to import ANA's interpretation of the specification. ANA offers no construction of "controller," "load dump output," or "load enable output" and instead simply repeats these terms in its supposed definition, proposing to rewrite the claim as follows:

[an electronic] generator controller [of the generator] ————— that includes two separate output connections, one] a load dump output [through which a signal is sent to the load bank controller to cause the load bank to disconnect from the generator,] and [the other] a load enable output, ————— [through which a signal is sent to the load bank controller to connect the load bank to the generator, either entirely or in stages:]

ANA then strikes "said generator controller in electrical communication with said engine control module" and replaces it with "through which a signal is sent to the load bank controller to connect the load bank to the generator, either entirely or in stages." In doing so, ANA attempts to import its understanding of "electrical communication," which ANA insists (contrary to the common meaning of electrical communication) must mean transmission of the same signal between points A and B.

ANA's attempt to read limitations from the specification into claims is improper. *Thorner v. Sony Computer Entertainment America LLC*, 669 F.3d 1362, 1366, 101 U.S.P.Q.2d 1457 (Fed. Cir. 2012) ("We do not read limitations from the specification into claims; we do not redefine words. Only the patentee can do that. To constitute disclaimer, there must be a clear and unmistakable disclaimer."). ANA insists that the specification supports its rewrite of the claim, but ANA does not claim there has been some clear and unmistakable disclaimer.

ANA ironically claims its definition is intended to avoid jury confusion. It is evident from the face of ANA's proposed construction that it would more likely *cause* jury confusion than avoid it. This is particularly true because far from offering definitions of actual claim terms, ANA instead introduces new undefined terms such as "signal."

- ii. *"a load bank controller comprising a load enable input, a load dump input, a load sensor"*

ANA's purported definition of "a load bank controller comprising a load enable input, a load dump input, a load sensor" should be rejected for the same reasons. It is a blatant attempt to rewrite claim language and import ANA's interpretation of the specification into the claims, not an effort to define terms:

~~a load bank~~ **An electronic controller of the load bank ————— that has a load**
~~————— a load sensor ————— and~~
two separate input connections for receiving signals from the separate generator controller, one connection receives a signal that at least part of the load bank is to be connected to the generator and the other connection receives a signal that the entire load bank is to be disconnected from the generator all at once.

ANA's proposed definition is far more likely to cause confusion than avoid it.

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Respectfully submitted,

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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
August 31, 2023.

/s/ James L. Etheridge

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