

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

BX LED LLC,

Plaintiff,

v.

WALMART INC.,

Defendant.

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Case No. 6:22-cv-00445-ADA-DTG

JURY DEMANDED

PLAINTIFF’S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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Exhibit	Description
A	Expert Declaration Of John K. Roberts (“Roberts Delaration”)
B	U.S. Patent No. 6,869,812 (“the ’812 Patent”)
C	U.S. Patent No. 7,901,109 (“the ’109 Patent”)
D	U.S. Patent No. 7,973,465 (“the ’465 Patent”)
E	U.S. Patent No. 8,203,260 (“the ’260 Patent”)
F	U.S. Patent No. 8,567,988 (“the ’988 Patent”)
G	U.S. Patent No. 8,998,433 (“the ’433 Patent”)
H	U.S. Patent No. 10,966,300 (“the ’300 Patent”)
I	August 24, 2010 “Office Action Response”
J	May 28, 2013 “Office Action Response”
K	February 18, 2011 “Notice of Allowability”
L	Duty Cycle (“Wikipedia”)
M	Duty Cycle (“Academic Dictionaries and Encyclopedias”)
N	What is PWM: Pulse Width Modulation
O	Optical Filters (“Edmund Optics”)
P	“Why PCB Power Rails Need to be Low Impedance”
Q	Rail “PCMag Encyclopedia”
R	“Standard Cells in ASIC Design Standard Cells in VLSI”
S	Photoluminescence “Britannica”
T	Power Rail “Science Direct”
U	“What is Thermal Resistance – Thermal Resistivity – Definition,” Nick Connor (2019)

that the claims of the patent application “are directed to the embodiment illustrated in Fig. 4B where the solid state light is integrally formed with the heat sink apparatus.” Opening Brief, Dkt. 23 at 7. However, Walmart completely omits the following remarks, which state “[a]ccordingly, embodiments of the current application seek to increase heat dissipation *by affixing a separate or integrated heat sink to the solid state light*, thus accomplishing increased heat dissipation via another device, instead of altering the solid state light itself.” Ex. I, August 24, 2010 “Office Action Response” at 7 (emphasis added). Thus, the patentee did not disclaim any scope regarding “affixing” a separate or an integrated heat sink “*to the solid state light*.” In fact, the patentee did the opposite, and confirmed that the scope of the claims included an integrally affixed heat sink. See Ex. A, “Roberts Declaration” at ¶¶ 45-47.

For the reasons above, the Court should afford the well-understood term “a heat sink integrally affixed to the solid state light,” its plain and ordinary meaning. In the alternative, the Court should adopt BX LED’s proposed construction of “a heat sink that is securely fastened to the solid-state light, not merely brought into contact with.”

V. U.S. Patent No. 7,973,465

A. “a phosphor bearing film arranged with the light emitting device” (Claim 1)

Term	BX LED Construction	Walmart Construction
“a phosphor bearing film arranged with the light emitting device” (Claim. 1)	Plain and ordinary meaning.	Indefinite
Proposed by Walmart		

Walmart argues that a POSITA could not understand the meaning of this term because the phrase “arranged with” is “not found in the specification” and “does not exist outside the claims.” Opening Brief, Dkt. 23 at 9. Neither of these reasons renders the term indefinite under well-

understood claim construction principles.

“Claim terms are generally given their plain and ordinary meanings to one of skill in the art There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of the claim term either in the specification or during prosecution.” *Golden Bridge Tech., Inc. v. Apple Inc.*, 758 F.3d 1362, 1365 (Fed. Cir. 2014). Walmart does not allege either lexicography or disavowal, so this term must be construed according to its plain and ordinary meaning as understood by a POSITA. The fact that the exact phrase “phosphor bearing film arranged with the light emitting device” does not appear in the specification is irrelevant. The specification can describe a claim term without using identical words. *See Novartis Pharm. Corp. v. Accord Healthcare, Inc.*, 38 F.4th 1013, 1023 (Fed. Cir. 2022) (the specification “need not describe a limitation *in haec verba*”). Defendant’s expert, Dr. Eden, even acknowledges that “alternative terms” than those used in the claims are defined by the specification. *See* “Eden Declaration” ¶ 54 (noting that an “alternative term” “formed” is specifically defined in the specification). Dkt. 23 “Opening Brief” at 9-10.

The crux of Walmart’s indefiniteness argument is that a person of skill in the art would not understand what is meant by the word “arranged” and that the meaning of the term “arranged with the light emitting device” cannot be ascertained. The argument is curious in that even though most laypeople are able to understand the meaning of “arranged with” in everyday parlance. Walmart’s argument adopts the reasoning that a person having the additional education and experience of one skilled in the art of solid-state lighting design and having reviewed the ’465 Patent and the examples provided therein, could not form a reasonable understanding of the meaning of “arranged with” in the claims. The court should find that a POSITA would retain a common understanding of the phrase “arranged with”, which would be imbued with further bounds and meaning through

review of the '465 Patent and specification.

In support, Walmart's expert takes its argument to the ultimate extreme. He argues that a person having ordinary skill in the art would be so perplexed by the term "arranged with" in this context that they might conclude that the phosphor bearing film recited in the claims was completely "removed from the light emitting device." *Id.* at 10; Eden Decl., ¶ 54 (stating that the term is "so vague as to imply that the phosphor bearing film is not in contact with the light emitting device" and "would not understand whether contact was required in some form."). This is preposterous on its face in view of the surrounding claim language and the specification. Any person with skill in the art would understand that the invention requires at least that the phosphor bearing film is within the LED component or module described. Ex. A, "Roberts Declaration" at ¶¶ 50, 54. Moreover, the plain meaning of the word "with" denotes that the components are not "arranged apart" from each other. Ex. A, "Roberts Declaration" at ¶¶ 50. "Arranged with" is clearly meant to encompass the number of potential arrangements of the two components (phosphor film and LED) that would each accomplish the teachings of invention. Ex. A, "Roberts Declaration" at ¶ 52.

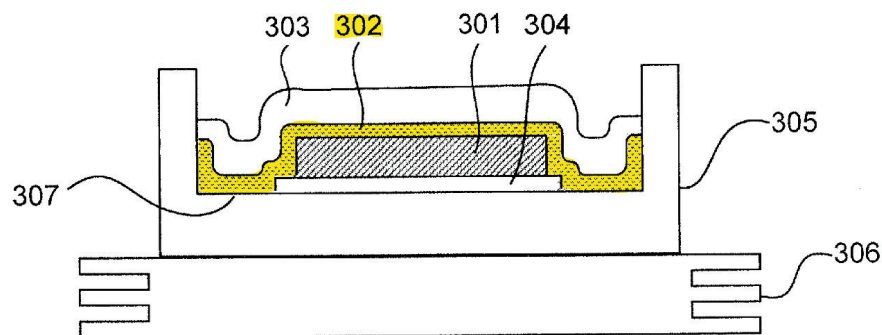
There is no such requirement, as assumed by Walmart, for claim terms to be described verbatim in the specification. When examining the written description for support for the claimed invention, the Federal Circuit has held that the exact terms appearing in the claim do not need to be used in particular where (i) the totality of the patent's disclosure including the figures, the specification, and the claim language provided support; and (ii) the terms in the specification were intended to refer to the same concept as the term used in the claim. *See Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1345 (Fed. Cir. 2016) (reversing the PTAB's finding a claim term indefinite for placing undue emphasis on the claim term's absence from the specification). Here,

as their foundational argument, Walmart and its expert rely exclusively on the term’s absence of verbatim support in the specification:

[D]espite the patentee’s representation, the term ‘arranged with’ still does not exist outside the claims. *See generally* ’465 Patent. Further, the term ‘arranged with’ does not have a meaning in the art, and Dr. Eden is aware of no dictionaries that have a bearing on the term . . .

Opening Brief, Dkt. 23 at 9. Notwithstanding Dr. Eden’s awareness of appropriate dictionaries, Walmart and its expert blindly ignore the plain and ordinary meaning of the words “arranged with.” Ex. A, “Roberts Declaration” at ¶¶ 52-53 (explaining that the specification explicitly rejects the notion that the configurations in the drawings should limit the invention to particular orientations of components).

The concept of how the phosphor bearing film is “arranged with the light emitting device” is adequately described in the intrinsic evidence and the ’465 Claims and specification provide reasonable certainty regarding its scope. Ex. A, “Roberts Declaration” ¶ 54). For example, as the specification shows in Figure 3 and its corresponding description, the phosphor bearing film 302 “coats” the LED and thus supports a POSITA’s reasonable understanding of the term and how the film is “arranged” with respect to the LED.



Ex. D, ’465 at Fig. 3; ’465 at 6:13-18 (“A light emitting diode 301 is **coated with a film including a phosphor bearing layer 302** and a rigid layer 303.”) (emphasis added). Moreover, the

specification states that specifically with respect to the phosphor bearing film that “[v]arious modification to, and alternative configurations of, the multilayer bearing films presented throughout this disclosure will be readily apparent to those skilled in the art.” ‘465 Patent at 6:50-54. Indeed, there are a number of possible arrangements that would have been known to a POSITA. Ex. A, “Roberts Declaration” at ¶¶ 52, 54.

Furthermore, there is no suggestion or description of any kind in the specification of the ‘465 Patent that would lead a person having ordinary skill in the art to believe that the claimed invention could possibly operate with the phosphor bearing film ‘removed from the light emitting device.’ See *Id.* at ¶¶ 52, 54. Similarly, a person having ordinary skill in the art would know any such interpretation of the claim term “would not be a credible interpretation.” *Id.* at ¶ 50. “A person having ordinary skill in the art need not ignore common sense when reading the specification and claims.

Walmart also makes a circular argument that because Claim 3 is narrower in scope than Claim 1 under the doctrine of claim differentiation that Claim 1 must be so broad that “claim 1 could include anything from “entirely on” to “entirely off” the “light emitting device . . . such that a light shown through a film across a room could conceivably fall within the claims.” Opening Brief, Dkt. 23 at 9-10. As discussed above, a POSITA would not find that this as a reasonable reading of the claim language. Claim 3, provides “[t]he apparatus of claim 1, wherein the phosphor bearing film *is at least partially on* the light emitting device” Indeed, Walmart’s claim differentiation argument supports BX LED’s position. That is, Claim 1 supports an arrangement where a film is dispensed onto any surface of the light emitting device: “[T]he stabilized [phosphor bearing] mixture *is dispensed onto a surface. The surface may be portions of a packaged and wire-bonded light emitting device, including a top and side surfaces of an LED*, and an inner

surface of the package itself.” *See* Ex. D, ’465 Patent at 5:7-10 (emphasis added). Claim 3, reciting the film being “partially on,” is thus narrower in scope than “arranged with” described in Claim 1 wherein the “film may be of a uniform thickness on the top and side wall surfaces of the LED die, as well as other surfaces of the package.” *See Id.* at 5:7-19.

Accordingly, the Court should find that the claim term is not indefinite and that the plain and ordinary meaning of the claim term is the correct construction.

B. “the phosphor bearing film is 60%-80% phosphor” (Claim 2)

Term	BX LED Construction	Walmart Construction
“the phosphor bearing film is 60%-80% phosphor” (Claim 2) Proposed by Walmart	Plain and ordinary meaning Alternatively, “the phosphor bearing film is 60%-80% phosphor <i>by weight</i> ”	Indefinite

Here, Walmart’s indefiniteness argument is based on a non-standard interpretation of how a POSITA would understand a percentage (i.e., concentration) of phosphor in the phosphor bearing film that is only supported by attorney argument and the unsupported opinion of its expert and not supported by any intrinsic evidence. Walmart and its expert do not argue that a POSITA would be unable to ascertain how a 60-80% concentration of phosphor could be determined in light of the specification. That is because the ’465 Patent provides a “detailed example” of combining the film’s components referencing the weight of each component. Ex. D, the ’465 Patent at 5:50-68. This is also consistent with how a POSITA would describe concentrations of phosphor in relation to the field of solid-state lighting. Ex. A, “Roberts Declaration” at ¶¶ 55-56.

Disingenuously, Walmart argues that “[a] person of skill in the art would understand that that there are at least three ways to determine the concentration . . .” Opening Brief, Dkt. 23 at 11. However, Walmart’s expert explains in his declaration that one of those measurements (volume

per volume) “would be **inapplicable to the ’465 Patent.**” Eden Decl. at ¶ 56 & n.1 (emphasis added). Dr. Eden then purports to offer an alternate “by volume” computation of phosphor concentration. However, outside of explaining that his final calculation “assumes that the specific gravity for ‘Dow Corning® OS-30’ uncured silicone, is 0.85,” Dr. Eden does not provide how he determines his “by volume” concentration results. The purpose, basis, and need for this calculation is concocted and unfounded.

Additionally, neither Walmart nor its expert offer any reasoning why this method would be used by a POSITA in the field of solid-state lighting design. Neither Walmart nor its expert provide any examples in the art showing any use, much less typical use of Dr. Eden’s alternate method of computing phosphor concentration. Significantly, Walmart’s argument that “a POSITA would also understand that they **could** evaluate concentration in a weight by volume method” suggests that the **mere possibility** or availability of an alternate method of computation renders a term indefinite. Opening Brief, Dkt. 23 at 11 (emphasis added).

Tellingly, Walmart offers no authority to support this position. On the contrary, the Federal Circuit has held that “[i]f the intrinsic record supports several definitions of a term, the term may be construed to encompass all such consistent meanings.” *Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1281 (Fed. Cir. 2017) (citing *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1343 (Fed. Cir. 2001)). Even so, there is a clear—and only one—reference to a unit of measure in the specification, and that is by weight in grams. *See* Ex. A, “Roberts Declaration” at ¶ 57. Regardless, Walmart has not met its clear and convincing burden to prove indefiniteness. *See Portus Singapore PTE Ltd. v. Ecobee, Inc.*, No. 6:20-cv-00694-ADA, Dkt. No. 36, at 13 (W.D. Tex. July 23, 2021).

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CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff hereby certifies that a copy of the foregoing document was served on counsel of record on February 17, 2023 by the Court's ECF system.

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