

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

BX LED LLC,

Plaintiff,

v.

WALMART INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

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

JURY DEMANDED

**PLAINTIFF’S SUR-REPLY TO
DEFENDANT’S REPLY CLAIM CONSTRUCTION BRIEF**

TABLE OF CONTENTS

	Page
I. U.S. PATENT NO. 6,869,812	1
A. “greater than approximately,” (Claims 1-2) and “between approximately 1.5 to 1 and approximately 10 to 1” (Claim 3)	1
II. U.S. PATENT NO. 7,901,109	3
A. “a heat sink integrally affixed to the solid state light” (Claim 10)	3
III. U.S. Patent No. 7,973,465	6
A. “a phosphor bearing film arranged with the light emitting device” (Claim 1)	6
B. “the phosphor bearing film is 60%-80% phosphor” (Claim 2).....	8
IV. U.S. PATENT NO. 8,203,260	9
A. “a duty cycle of the drive currents used to control the color temperature” (Claim 4)	9
V. U.S. Patent No. 8,567,988	12
A. “efficient thermal path” (Claim 1)	12
B. “electrical path formed by connecting the LED chips in a chip to chip fashion” (Claim 1).....	14
VI. U.S. PATENT NO. 8,998,433	15
A. “configured to irradiate a wavelength conversion component with excitation energy” (Claim 1)	15
B. “color enhancement filter layer” (Claim 1).....	16
VII. U.S. Patent No. 10,966,300	17
A. The term “power rails” (Claim 1)	17
B. The term “segmented LED” (Claim 1)	18
X. Conclusion	19

TABLE OF AUTHORITIES

Cases

<i>3M Innovative Props. Co. v. Tredegar Corp.</i> , 725 F.3d 1315, 1326 (Fed. Cir. 2013).....	5
<i>Andersen Corp. v. Fiber Composites, LLC</i> , 474 F.3d 1361, 1369 (Fed. Cir. 2007).....	19
<i>BASF Corp. v. Johnson Matthey Inc.</i> , 875 F.3d 1360, 1367 (Fed. Cir. 2017).....	6, 7
<i>Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP</i> , 616 F.3d 1249, 1254 (Fed. Cir. 2010).....	19
<i>Cap. Sec. Sys., Inc. v. NCR Corp.</i> , 725 F. App'x 952, 957 (Fed. Cir. 2018)	6
<i>Glaukos Corp. v. Ivantis, Inc.</i> , No. 18-cv-620, 2019 WL 8955768, at *10-11 (C.D. Cal. Aug. 16, 2019)	2
<i>Interval Licensing LLC v. AOL, Inc.</i> , 766 F.3d 1364, 1371 (Fed. Cir. 2014).....	12
<i>Kyocera Senco Indus. Tools Inc. v. Int'l Trade Comm'n</i> , 22 F.4th 1369, 1378 (Fed. Cir. 2022)	11
<i>Nautilus, Inc. v. Biosig Inst., Inc.</i> , 572 U.S. 898, 901, 909 (2014).....	1, 2, 6
<i>Niazi Licensing Corp. v. St. Jude Med. S.C., Inc.</i> , 30 F.4th 1339, 1349 (Fed. Cir. 2022)	13
<i>Omega Eng'g, Inc. v. Raytek Corp.</i> , 334 F.3d 1314, 1325–26 (Fed. Cir. 2003).....	4
<i>Parker Compound Bows, Inc. v. Hunter's Mfg. Co., Inc.</i> , No. 5:14CV00004, 2016 WL 617464, at *23 (W.D. Va. Feb. 12, 2016).....	1
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303, 1314 (Fed. Cir. 2005).....	8, 19
<i>Sonix Tech. Co. v. Publ'ns Int'l, Ltd.</i> , 844 F.3d 1370, 1377, 1378 (Fed. Cir. 2017).....	2, 3

Techtronic Indus. Co. v. Int'l Trade Comm'n,
944 F.3d 901, 909 (Fed. Cir. 2019).....19

Thomas Swan & Co., Ltd. v. Finisar Corp.,
No. 2:13-cv-00178, 2014 WL 2885296, at *25 (E.D. Tex. June 25, 2014) 1

proposed by Plaintiff. *Id.* Dr. Eden, however, fails to explain *why* he believes that the definitions are “at odds” with Plaintiff’s proposed construction.

Additionally, Plaintiff’s use of the term “securely fastened” does not “read out” being “integral,” especially when coupled with the rest of the proposed construction specifying that the phrase does not include “merely br[inging] in contact with.” Indeed, this construction is consistent with Dr. Eden’s dictionary definition as well as the intrinsic record. Nonetheless, the Court should hold that the plain and ordinary meaning of the term is a sufficient construction, and that, if not waived, Walmart fails to meet its burden to show indefiniteness by clear and convincing evidence.

III. 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” Proposed by Walmart	Plain and ordinary meaning.	Indefinite

Walmart offers no evidence showing that “a phosphor bearing film arranged with a light emitting device” is boundless. Instead, Walmart argues that a term encompassing a variety of arrangements is indefinite. But a claim is not indefinite just because it is broad. *See, e.g., BASF Corp. v. Johnson Matthey Inc.*, 875 F.3d 1360, 1367 (Fed. Cir. 2017) (reiterating, after *Nautilus*, that “breadth is not indefiniteness”); *Cap. Sec. Sys., Inc. v. NCR Corp.*, 725 F. App’x 952, 957 (Fed. Cir. 2018) (determining, post-*Nautilus*, that broad claim language did not render the claim indefinite when read in light of the written description).

Instead, Walmart misrepresents Plaintiff’s arguments, offering a misleading list ostensibly meant to show that Plaintiff and its expert agree that the term includes “anything [] that may be dreamed up.” Reply, Dkt. 30 at 6. Clearly that is not the case. Mr. Roberts testifies that the

furthest bounds of the term are readily understood to be a configuration where the phosphor “was not held within the LED assembly proximal to the LED in a fashion so as to receive electromagnetic radiation from the LED, such as if located in a separate part of the assembly facing away from the LED” Roberts Decl., Dkt. 28-1 at 18. Walmart contorts this statement, and dismisses it without discussion or rebuttal, besides describing it as running “the gamut” of potential arrangements. Reply, Dkt. 30 at 7.

Although he submits a supplemental expert report, Dr. Eden fails to provide any conflicting opinion as to why Mr. Robert’s assessment would not be understood by a POSITA as a natural boundary for the phrase. Consequently, neither Walmart nor its expert disputes that phosphor coating outside of the electromagnetically effective range of the LED would certainly not be “arranged with” the LED, thus providing definite bounds to the term. Additionally, Walmart’s arguments relate to the broadness of the term rather than the ability of a POSITA to define bounds. Indeed, Walmart provides a definition in its briefing that “‘arranged with’ can mean anything from completely on to completely off, in any orientation, and in nearly any location (including inside the LED), so long as it can receive electromagnetic radiation from the LED.” This is fatal to Walmart’s argument as the case law is settled that broadness is not indefiniteness. *BASF Corp.*, at 1367.

Walmart also misrepresents Plaintiff’s argument with respect to Figure 3. Reply, Dkt. 30 at 7. Plaintiff does not suggest that Figure 3 should be imported into the claim limitation, but rather, that Figure 3 is one of several examples of the intended arrangements of the phosphor with respect to the LED that is described in the specification. More examples include dispensing the phosphor into the package or on the LED by sedimentation, placing the phosphor on the top and side wall surfaces of the LED die or package surfaces, or providing a thin layer on the LED die

and other surrounding surfaces. *See*, '465 Patent, Dkt. 28-4 at 4:13-20, 5:16-19. Each of the embodiments comports with the plain and ordinary meaning of “arranged with.” Therefore, Walmart has not met its burden of showing that the claim term is indefinite by clear and convincing evidence and that the Court should adopt the plain and ordinary meaning of the term.

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” Proposed by Walmart	Plain and ordinary meaning Alternatively, “the phosphor bearing film is 60%-80% phosphor <i>by weight</i> ”	Indefinite

It is ironic that Walmart accuses Plaintiff of violating the *Phillips* “cardinal sins of patent law” by allegedly reading a written description into the claims. While Walmart consistently imports embodiments into its proposed constructions, Plaintiff has not done so here.

Walmart argues that the term is indefinite because its expert can conceive of more than one possible way to measure the concentration of phosphor in a solution. Walmart cites no authority for this proposition, and the position necessarily ignores all of the intrinsic evidence. *See* Eden Decl., Dkt. 23-1 at ¶ 56 (discounting entire portion of the specification showing measurement by weight as an “exemplary embodiment”). Walmart’s expert does not testify that it would be normal or customary for a POSITA to measure a phosphor/silicone concentration by volume rather than weight in the context of the patented invention, but rather in the abstract.

Contrary to Walmart’s expert, Mr. Roberts explains that, although there may be more than one theoretical method of determining a phosphor concentration, only a measurement “by weight” would make sense to a POSITA in the context of the '465 Patent because the phosphor has a variable volume. Roberts Decl., Dkt. 28-1, ¶¶ 55-57 (explaining the impracticability of the other methods). Dr. Eden actually demonstrates the impracticability of measurement by volume when

he must assume the “specific gravity” of a certain brand of silicone in order to demonstrably calculate a measurement by volume. Eden Decl., Dkt. 23-1 at ¶ 57.

Contrary to Walmart’s foundational argument, this dispute is not about an “embodiment”, but its manufactured confusion over a unit of measure. The only method suggested by the intrinsic evidence (i.e., the units used in the specification) is by weight, which alone should resolve the alleged confusion. Notwithstanding, even if Walmart and Dr. Eden suggest, wrongly, that the ’465 Patent also encompasses an embodiment where the unit of measure is “by volume,” then the term *is still not indefinite* because, as Dr. Eden indisputably testifies, the concentration 60-80% could be by either weight or volume, thus encompassing both “embodiments” with definite boundaries. Consequently, Walmart has not met its clear and convincing burden to prove indefiniteness.

IV. U.S. PATENT NO. 8,203,260

A. “a duty cycle of the drive currents used to control the color temperature” (Claim 4)

Term	BX LED Construction	Walmart Construction
“a duty cycle of the drive currents used to control the color temperature”	“a duty cycle of the drive currents is used to control the color temperature”	“the correlated color temperature (CCT) of the light is determined by the percentage of time in which the drive current load is ‘on’ compared to the time when the drive current load is ‘off’”
Proposed by both parties	correcting omission of the word “is” in the claim	

Walmart’s proposed construction fails for three reasons. First, Walmart wrongly adds a limitation that color temperature “is determined by” a duty cycle. This construction reads out the operative language “is used to control” and is not supported by the intrinsic or extrinsic evidence. Second, Walmart’s construction is inconsistent with the ’260 Patent’s use of the term “duty cycle” and Walmart’s own proffered extrinsic definitions because neither define it as a ratio of an “on” time to an “off” time, but rather as an “on” time to the whole time period (i.e., the sum total of “on” time with “off” time). Third, Walmart’s proposed limitation “drive current load” is

Dated: March 24, 2023

Respectfully submitted,

/s/ Matthew C. Acosta

Matthew C. Acosta

Texas Bar No. 24062577

macosta@pcrfirm.com

Andrew Lin

Texas Bar. No. 24092702

alin@pcrfirm.com

Nicholas C. Kliewer

Texas Bar No. 24083315

nkliwer@pcrfirm.com

PLATT CHEEMA RICHMOND PLLC

1201 N. Riverfront Blvd., Suite 150

Dallas, Texas 75207

214.559.2700 Main

Fax: 214-559-4390

COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff hereby certifies that a copy of the foregoing document was served on counsel of record on March 24, 2023 by the Court's ECF system.

/s/ Matthew C. Acosta

Matthew C. Acosta