

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 2:20-cv-04556 AB (JC)

Date: February 25, 2021

Title: *Mosaic Brands, Inc. v. The Ridge Wallet LLC*

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian

N/A

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Appearing

None Appearing

**Proceedings: [IN CHAMBERS] CLAIM CONSTRUCTION ORDER
(DKTS. 89, 90, 91, 92, 95, 96)**

Plaintiff Mosaic Brands, Inc. ("Plaintiff") and Defendant and Counter-claimant The Ridge Wallet LLC ("Defendant") have filed claim construction briefs asking the Court to construe ten disputed terms found in U.S. Patent Nos. 7,334,616 ("the '616 Patent") and 10,791,808 ("the '808 Patent") (collectively, "the Patents-in-Suit").

The parties filed a Joint Claim Construction and Prehearing Statement on January 15, 2021. ("Joint Statement," Dkt. No. 83.) The parties filed Opening Claim Construction Briefs on January 29, 2021. ("Plaintiff's Opening Brief," Dkt. No. 90; "Defendant's Opening Brief," Dkt. No. 91.) The parties filed Responsive Claim Construction Briefs on February 5, 2021. ("Plaintiff's Responsive Brief," Dkt. No. 91; "Defendant's Responsive Brief," Dkt. No. 92.) The parties filed Reply Claim Construction Briefs on February 12, 2021. ("Plaintiff's Reply Brief," Dkt. No. 96; "Defendant's Reply Brief," Dkt. No. 95.) Finding this motion suitable for resolution without oral argument, the Court **VACATES** the hearing set for February 26, 2021. (Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.)

The disputed terms are **CONSTRUED** as set forth in this Order.

I. TECHNOLOGICAL SUMMARY

The '616 Patent, asserted by Plaintiff, is titled "Card-Holding and Money Clip Device," and issued on February 26, 2008. Claim 1 of the '616 Patent recites:

1. A holder for securely and simultaneously retaining flexible articles and rigid cards, said holder comprising:
 - a) a nominally rectangular and nominally flat planar first panel having interior and exterior surfaces, ***a lip extending nominally around three edges of said first panel*** along said interior surfaces, said lip being at right angles to the plane of said first panel;
 - b) a nominally rectangular and nominally flat planar second panel having interior and exterior surfaces, ***a lip extending nominally around three edges of said second panel*** along said interior surface and configured to form a mirror image of said first panel, ***said second panel being adapted to be attached to said first panel along said three edges to form an open-ended enclosure*** of sufficient size to store said rigid cards within said interior of said enclosure, ***said enclosure being nominally rectangular with two longitudinal sides, an open end, and a closed end***;
 - c) a resilient article retaining member having an attached end and a free end extending from one end of said enclosure and over the exterior of said first panel, said free end of said article retaining member being biased toward said exterior surface of said first panel;***wherein said first panel and said second panel each has lips of varying thickness.***

('616 Patent, Claim 1 (emphasis added).)

The '808 Patent, asserted by Defendant, is titled "Compact Wallet," and issued on October 6, 2020. Claim 1 of the '808 Patent recites:

1. A compact wallet, comprising:
 - at least two rigid plates interposed to sandwich card-like contents there between, each rigid plate having a longitudinal extent;
 - at least one ***encircling elastic band*** interposed with the at least two rigid plates along longitudinal extents thereof to bias them inwardly and securely hold the card-like contents while providing elastic volume there between for adding or removing contents;
 - a ***channeling means*** configured to minimize the profile of the wallet and hold position of the at least one encircling elastic band with respect to each rigid plate while allowing

freedom for the dynamic extension and contraction of the band over the entire running length thereof; and
 an ***auxiliary feature*** removably attached to at least one of the at least two rigid plates, the auxiliary feature having a tang insertable into a recess formed inside the at least two rigid plates, the tang having ***a hook***, the hook extending at an angle to the tang, the hook engaging ***an undercut*** of the recess to prevent inadvertent dislodgement of the auxiliary feature from the recess,
 whereby, card-like contents may be carried with minimal silhouette on or with a person while allowing expandable capacity and ready access to individual contents from between the at least two rigid plates.

(’808 Patent, Claim 1 (emphasis added).)

Further relevant disclosures from the Patents-in-Suit will be discussed in greater detail in relation to each of the parties’ specific claim construction disputes.

II. LEGAL STANDARD

A. Claim Construction Generally

As established in *Markman v. Westview Instruments*, 517 U.S. 370 (1996), claim construction is a matter wholly within the jurisdiction of the court. *Markman v. Westview Instruments*, 517 U.S. 370, 372 (1996) (“[T]he construction of a patent . . . is exclusively within the province of the court.”). The purpose of claim construction is to “determin[e] the meaning and scope” of a patented invention in order to define the patent owner’s rights. *Id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). Claim construction is a legal issue that may require subsidiary findings of fact. *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 332 (2015).

Generally, a claim term is given its “ordinary and customary meaning.” *Phillips*, 415 F.3d at 1312 (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). In patent cases, “the ordinary and customary meaning . . . is the meaning that the term would have to a person of ordinary skill in the art in question at the time of invention.” *Phillips*, 415 F.3d at 1313. “In some cases, the ordinary meaning . . . may be readily apparent,” requiring only common sense application of a widely accepted meaning. *Id.* at 1314. However, when claim meaning is not so readily apparent, a court must determine what a skilled person in the appropriate field of art would understand a claim term to mean. *Id.*

Courts first consider the intrinsic evidence, which includes the patent claims, patent specification, and prosecution history. *Vitronics*, 90 F.3d at 1582. “Attending this principle, a claim construction analysis must begin and remain centered on the claim

language itself, for that is the language the patentee has chosen to ‘particularly point out and distinctly claim the [patented] subject matter.’” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004) (quoting *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001)). A term’s use in context may help to distinguish or clarify its meaning from other potential definitions. *See, e.g., Phillips*, 415 F.3d at 1314 (illustrating that “steel baffles” implies that “baffles” are not intrinsically made of steel). Claim terms are commonly used consistently throughout a patent, and thus “the usage of a term in one claim can often illuminate the meaning of the same term in other claims.” *Id.*

The claim terms must be read in light of the specification. *Id.* at 1315 (citing *Vitronics*, 90 F.3d at 1582 (“[T]he specification ‘is always highly relevant Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’”)). The specification may provide insight into an inventor’s understanding of her invention at the time of patenting, as it might contain an intentional disclaimer of claim scope that reveals limits on an inventor’s intended invention. *Phillips*, 415 F.3d at 1316. The Federal Circuit has also recognized that an inventor may invoke a particular definition of a term in her specification or otherwise use a term in the specification in a manner that differs from the term’s ordinary usage. *Id.* “In such cases, the inventor’s lexicography governs.” *Id.*

In addition to the patent itself, the Court “should also consider the patent’s prosecution history, if it is in evidence.” *Id.* at 1317. The prosecution history consists of “all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims.” *Vitronics*, 90 F.3d at 1582. However, because the prosecution history, also called the “file history” or “file wrapper,” is a product of negotiations between the inventor and the United States Patent and Trademark Office (“USPTO”), “it often lacks the clarity of the specification and thus is less useful for claim construction purposes.” *Phillips*, 415 F.3d at 1317. Nevertheless, like the specification, the prosecution history may still be useful in understanding the inventor’s understanding of her own invention. *Id.* (citing *Vitronics*, 90 F.3d at 1582-83). Moreover, during prosecution history, a patent applicant may disclaim claim scope by making a clear and unequivocal disavowal of the plain meaning of ordinary claim language. *Id.* at 1319 (citing *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1204 (Fed. Cir. 2002)).

After looking at the intrinsic evidence, courts may consider extrinsic evidence, including inventor and expert testimony, dictionaries, and treatises. *Phillips*, 415 F.3d at 1317. However, extrinsic evidence is “less significant than the intrinsic record” because it is generally “less reliable.” *Id.* at 1317-18. Additionally, extrinsic evidence cannot be used to change the meaning of a term as used in the specification. *Merck & Co. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005). Thus, the extrinsic evidence

should always be considered in context of the intrinsic evidence. *Phillips*, 415 F.3d at 1319.

Technical dictionaries are a particular type of extrinsic evidence that may provide information about the ways a term is used in a particular field of art. *Id.* at 1318. Expert testimony may also be useful in several ways, “such as to provide background on the technology at issue, to explain how an invention works, to ensure that the court’s understanding . . . is consistent with that of a person of skill in the art, or to establish that a particular term . . . has a particular meaning in the pertinent field.” *Id.* However, as with all extrinsic evidence, courts will “discount any expert testimony ‘that is clearly at odds with [the intrinsic evidence] of the patent,’” as well as expert testimony that is conclusory or unsupported. *Id.* (quoting *Key Pharm. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed. Cir. 1998)).

B. Means-Plus-Function Claims under 35 U.S.C. § 112(f)

Under 35 U.S.C. § 112(f), means-plus-function claiming occurs when an element in a claim is a “means or step for performing a specified function without the recital of structure, material, or acts in support thereof....” In that case, “such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.” *Id.* This provision allows “patentees to express a claim limitation by reciting a function to be performed rather than by reciting structure for performing that function....” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1347 (Fed. Cir. 2015) (en banc). At the same time, it constrains “how such a limitation is to be construed, namely, by restricting the scope of coverage to only the structure, materials, or acts described in the specification as corresponding to the claimed function and equivalents thereof.” *Id.*

Once a court concludes that a term is subject to § 112(f), it follows a two-step process. *Id.* at 1351. “First, the court must determine the claimed function. Second, the court must identify the corresponding structure in the written description of the patent that performs the function.” *Noah Sys., Inc. v. Intuit Inc.*, 675 F.3d 1302, 1311 (Fed. Cir. 2012) (internal citations omitted). A corresponding structure is one that the specification or prosecution history “clearly links ... to the function recited in the claim.” *Id.* The specification’s disclosure of a corresponding structure “must be of adequate corresponding structure to achieve the claimed function.” *Id.* (internal quotations omitted).

III. ANALYSIS

A. The '616 Patent

1. “Lip”/“a [first] lip”/“a [second] lip”

Term (Claim)	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“lip”/“a [first] lip”/“a [second] lip” (’616 Patent, Claim 1)	“Lip”: “connector defining outer dimension of enclosure”	A “[first] lip”: (a) is “a rigid portion of the first panel”; (b) “extend[s] from the interior surface of the first panel”; (c) “at right angles to the first panel”; (d) is “continuous along three sides of the first panel”; (e) “joins to a counterpart mirror image [second] lip [to] form an openended enclosure”; (f) is “of varying thickness”; and (g) “is independent of the [second] lip”. A “[second] lip”: (a) is “a rigid portion of the second panel”; (b) “extend[s] from the interior surface of the second panel”; (c) “at right angles to the second panel”; (d) “is continuous along three sides of the second panel”; (e) “joins to the counterpart mirror image [first] lip [to] form an openended enclosure”; (f) is “of varying thickness”;

		and (g) “is independent of the [first] lip”.
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The parties have several disputes pertaining to the each of the terms “lip,” “a [first] lip,” and “a [second] lip,” and the Court construes these terms together. Specifically, Defendant contends that the term “lip” is a “rigid portion” of the “panel,” “extends from the interior surface” of the “panel” at a “right angle,” “is continuous along three sides” of the panel, “joins to the counterpart mirror image” lip “to form an open-ended enclosure,” is “of varying thickness,” and “is independent of the” counterpart mirror image lip. The Court addresses each argument below, except that the Court addresses Defendant’s arguments for the limitation “said first and said second panel having lips,” which addresses whether the lips must be independent, and “of varying thickness” at Sections III.A.2 and III.A.4.

i. Prosecution History Estoppel Arguments

As a preliminary matter, although the parties dispute the applicability of prosecution history *estoppel* regarding several of their disputes, the Court addresses whether the doctrine of prosecution history *disclaimer* applies instead. In *Trading Technologies Intern., Inc. v. Open E Cry, LLC*, the Federal Circuit explained the difference between the two doctrines:

Prosecution history estoppel applies as part of an infringement analysis to prevent a patentee from using the doctrine of equivalents to recapture subject matter surrendered from the literal scope of a claim during prosecution. Prosecution disclaimer, on the other hand, affects claim construction and applies where an applicant’s actions during prosecution prospectively narrow the literal scope of an otherwise more expansive claim limitation. Though distinct, both doctrines serve to constrain the enforceable scope of patent claims commensurate with any subject matter surrendered during prosecution to obtain the patent, and a single action during prosecution can engender both a prosecution disclaimer and prosecution history estoppel.

728 F.3d 1309, 1322 (Fed. Cir. 2013) (internal citations omitted). Because an infringement analysis would be premature at this stage, the Court interprets the parties’ arguments to apply prosecution history disclaimer rather than estoppel for the purposes of claim construction.

ii. “a rigid portion of the [first/second] panel”

The parties dispute whether the term “lip” must be “a rigid portion” of the claimed panel. (Dkt. No. 92 at 5–6; Dkt. No. 96 at 2.)

The intrinsic evidence delimits the exact material the lip is made of. Use of the phrase “present invention” in the specification followed by a limitation is strong evidence the scope of the claims should also be limited. *See SciMed Life Sys., Inc. v. Advanced*

Cardiovascular Sys., Inc., 242 F.3d 1337, 1343 (Fed. Cir. 2001). The specification states that “the device of the present invention is constructed of **extrudable plastic materials** that can be joined to produce a smooth exterior surface while providing durable assembly,” and distinguishes the claimed invention from prior art devices that were “all in metal construction.” (616 Patent at 1:22–25 (emphasis added), 1:28–30; *see also id.* at 1:47–49 (“Further, it is desirable to provide a holder that may be constructed of an **injectable plastic material** that has desired rigidity and flexibility to perform its desired duties.”) (emphasis added); 3:17–22 (indicating that the parts should also be plastic).) Additionally, the specification emphasizes the utility of the plastic material, stating that “[t]he resilience required to bias money clip 24 toward the panel is derived from the rigidity and memory of the plastic material, using known plastic molding techniques. (*Id.* at 4:13–15.) Thus, the specification makes clear that all embodiments include this limitation, not just the preferred embodiment.

Introducing a term of degree such as “rigid” would only invite argument over whether the accused or prior art lip is sufficiently “rigid” enough and would encompass the disclaimed metal devices. The Court instead construes the term based on its material properties, *i.e.*, an extrudable or injectable plastic material, as disclosed in the specification. Furthermore, the specification suggests that the design of the device also provides rigidity rather than just the plastic material. (*Id.* at 2:34–36 (“The prior-art plastic holders are of designs that do not permit easy access to the interior of the holder while providing the needed rigidity to hold currency.”).)

For these reasons, the Court finds that the term “lip” as used in the ’616 Patent must be made of extrudable or injectable plastic material.

iii. “extend[s] from the interior surface of the [first/second] panel”

The parties appear to dispute whether the “lip” extends from the interior surface of the claimed panel or just needs to be adjacent to the interior surface of the panel. (Dkt. No. 92 at 7; Dkt. No. at 2.)

Defendant argues that the language “extend[s] ... along the interior surface” of the claimed panel in Claim 1 means “extend[s] **from** the interior surface,” arguing that the claim language “specifies each lip does not extend over each panel’s exterior but from the interior surface along three edges.” (Dkt. No. 92 at 7.) Defendant further asserts that this “aligns with a design that is rigid, to form the enclosure.” (*Id.*) Defendant does not provide any other evidence or explanation, however. Plaintiff responds that the lip only needs to be “adjacent to the surface” and argues that “[a]n object does not need to project from something in order to run along something.” (Dkt. 96 at 2.)

The intrinsic evidence suggests that the Plaintiff’s interpretation is correct. Defendant’s proposed language comes directly from Claim 17, which uses the phrase “lips extending **from** the interior surface of the [claimed] panel,” unlike Claim 1. (’616 Patent, Claim 17.) This suggests that Claim 1 is not as limited as Claim 17. Additionally, the specification states that “the device of the present invention is constructed of extrudeable plastic materials **that can be joined** to produce a smooth exterior surface while providing a durable assembly.” (*Id.* at 1:22–25 (emphasis added).) Thus, the

specification suggests that the lips may be joined to the panels rather than extending directly from them.

For these reasons, the Court finds that the term “lip” as used in Claim 1 of the ’616 Patent does not need to extend “from” the interior surface of the panel.

iv. “at right angles to the [first/second] panel”

The Court does not understand Defendant’s position regarding the phrase “at right angles to the [claimed] panel.” Claim 1 recites that the “lip” is “at right angles to the plane of the [claimed] panel.” (’616 Patent, Claim 1.) Accordingly, the Court declines to include this language in the construction of the term “lip” as it would be redundant and would confuse the jury.

v. “is continuous along three sides of the [first/second] panel”

Claim 1 recites “a lip extending nominally around three edges of [the claimed] panel along said interior surface” and “said second panel being adapted to be attached to said first panel along said three edges to form an open-ended enclosure to store said rigid cards within said interior of said enclosure.” (’616 Patent, Claim 1.) The parties dispute whether the claimed “lips” must extend continuously along three sides of the claimed panels. (Dkt. No. 92 at 8–9; Dkt. No. 96 at 2–3.)

Defendant contends that the lips must extend continuously around the three edges of the panels because “[e]nclosures are not formed when the edges creating that enclosure are not continuous. (Dkt. No. 92 at 8.) Defendant also emphasizes that the specification and drawings only disclose a continuous lip and not an “intermittent” one “or one that does not extend up one side, across the top and down the other side.” (*See id.* at 8.) Finally, Defendant argues that prosecution history disclaimer should limit the scope of the term as the applicant differentiated Claim 17 of the ’616 Patent from prior art by arguing that the claimed panels had lips on all three sides. (*See id.* at 8–9.) Plaintiff responds that Defendant’s language ignores the term “nominally” in the claim and misinterprets the statements in the prosecution history. (*See* Dkt. No. 96 at 2–3.)

Neither the specification nor the prosecution history clearly and unambiguously limit the claims to continuous lips. It is well-settled law that absent language of limitation or restriction in the specification or prosecution history that makes clear that a claim term is limited in scope, Courts should not import limitations from the specification into the claims. *See, e.g., Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1372–73 (Fed. Cir. 2014). The specification discloses that preferred embodiment includes a “[l]ip consists partially [sic] of three continuous and nominally straight sections.” (*See id.* at 3:30–34.) The specification also discloses that “lips 30 and 32” of the preferred embodiment define “the outer dimension of [holder assembly 10].” (*See id.* at 4:64–66.) Each of the figures discloses a lip with three continuous sides. (*See id.*, Figs. 1–6, 8–12.) But the specification does not include any language stating that the lips must be continuous. The term “nominally” is used throughout the specification to mean “approximately.” (*See* ’616 Patent at 3:29–30 (“nominally about 0.125 inch”).) Thus,

although most the of lip may be continuous, the lip may also include minor openings without compromising the structure of the claimed holder for instance.

The Court also agrees with Plaintiff that Defendant reads applicant's argument in the prosecution history too narrowly. First, Defendant relies on the applicant's remarks to overcome the examiner's rejection of Claim 17, not Claim 1. (*See generally* Dkt. No. 92-3.) Unlike Claim 1, which recites "a lip" for each panel, Claim 17 recites "lips extending from the interior surface of [each of the first and second panel] ... said lips having flat surfaces along three sides of said [first and second] panel." ('616 Patent, Claim 17.) Thus, Claim 17 discloses multiple lips on each panel rather than just a lip, and applicant's remarks would not necessarily limit the scope of the term "lip" in Claim 1. Second, as Plaintiff's highlight, the applicant distinguished the prior art on the ground that the lip on each of the panels of the prior art only extended around two of three sides of the panel, whereas Claim 17 required the lips to extend around three sides of the panels. (*See* Dkt. No. 96 at 2–3.) These remarks cannot be said to limit the scope of Claim 1.

For these reasons, the Court finds that the term "lip" in Claim 1 of the '616 Patent does not need to be continuous.

- vi. "joins to the counterpart mirror image [first/second] lip [to] form an openended enclosure"

The Court does not understand the Defendant's position regarding the phrase "joins to the counterpart mirror image [first/second] lip [to] form an openended enclosure." Claim 1 recites "a lip extending nominally around three edges of said second panel along said interior surface and configured to form a mirror image of said first panel" and "said second panel being adapted to be attached to said first panel along said three edges to form an open-ended enclosure." ('616 Patent, Claim 1.) Defendant's proposed language just swaps the term "attached" for "joins" without explanation. Accordingly, the Court declines to include this language in the construction of the term "lip" as it would be redundant and would confuse the jury.

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For all the reasons stated above, the Court finds that Plaintiff's construction of the term "lip" is the most accurate with the addition that the "lip" is made of extrudable or injectable plastic material. Accordingly, the Court construes the term "lip" to mean a "connector made of extrudable or injectable plastic material that defines the outer dimension of enclosure."

2. “Said first and said second panel having lips”

Term (Claim)	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“said first and said second panel each has lips” (’616 Patent, Claim 1)	Plain and ordinary meaning	Both the first and second panel must have separate, and independent lips.

The parties dispute whether the lips of the first panel and lips of the second panel must be separate and independent of each other. (Dkt. No. 92 at 4–5; Dkt. No. 96 at 4–5.) The Court agrees with Defendant that the first and second panel must have separate lips.

The language of Claim 1 clearly denotes two separate lips. It is well-settled law that “[e]ach element contained in a patent claim is deemed material to defining the scope of the patented invention[.]” *Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 29 (1997). The disputed limitation recites that the panels “*each*” have “lips,” which would be meaningless if the scope included panels that shared a lip. (’616 Patent, Claim 1.) Claim 1 also recites that “lip” of the second panel is “configured to form a mirror image” of the first panel, and the “second panel is “adapted to be attached to” the first panel along the edges where the lips are. (*Id.*) If the two panels shared the same lip, then this language would also be meaningless.

The specification supports this construction. The specification refers to the claimed invention as a “card holder” with “three elements that are easily assembled to produce the durable product.” (*See id.* at 1:18–27.) The preferred embodiment discloses two panels each with their own lip or set of lips that attach to form the combination card holder. (*See, e.g., id.* at 3:23–52, Figs. 1–6, 8–12.) Nothing in the ’616 Patent suggests that the two panels may share a lip.

Finally, nothing in the prosecution history warrants a different conclusion and neither party presents any extrinsic evidence.

For these reasons, the Court construes the term “said first and said second panel each has lips” to mean that both the first and second panel must have separate and independent lips.

3. “An open-ended enclosure ... being nominally rectangular with two longitudinal sides, an open end, and a closed end”

Term (Claim)	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“an open-ended enclosure ... being nominally rectangular with	Plain and ordinary meaning	The “open ended enclosure” has two long sides, and two shorter ends, with the two long sides closed, one of the

two longitudinal sides, an open end, and a closed end” (’616 Patent, Claim 1)		ends being open and the other end being closed.
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The parties dispute whether the “two longitudinal sides” may also be the “open end” and “closed end.” (Dkt. No. 92 at 9–10; Dkt. No. 96 at 3–5.) Defendant argues that the “open end” and “closed end” must be separate and shorter than the “two longitudinal sides” to accommodate the rectangular credit cards that go in the claimed holder. (See Dkt. No. 92 at 9–10.) Defendant emphasizes that Claim 1 distinguishes “ends” from “sides,” and thus the “open end” and “closed end” are separate from the “longitudinal sides.” (See *id.*) Plaintiff agrees that the claimed holder must be rectangular rather than square-shaped, but that the “open end” and “closed end” may also be the “two longitudinal sides.” (See Dkt. No. 96 at 3–5.)

The language of the claims suggests that the “open end” and “closed end” are separate from the “two longitudinal sides.” “Where a claim lists elements separately, the clear implication of the claim language is that those elements are distinct components of the patented invention.” *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010). Claim 1 recites that the “open-ended enclosure” is “nominally rectangular” and then lists the four sides of that rectangle: the “two longitudinal sides, and open end, and a closed end.” (’616 Patent, Claim 1.) A plain reading of the claim indicates that the sides are separate. Further, Claim 5, which depends on Claim 1, recites:

wherein said first panel and said second panel have cutouts to facilitate insertion and removal of said rigid cards, said cutout in said second panel being of **sufficient length and width** to allow viewing a substantial part of an outermost rigid card when retained within said enclosure and to allow removal of said outermost rigid card by sliding said card **along the length of said cutout toward said open end**.

(*Id.*, Claim 5 (emphasis added).) Claim 5 suggests that the longitudinal sides of Claim 1 are separate from the open end as the claim recites sliding the card along the length of the cutout toward the open end rather than along the width.

The specification also shows that the longitudinal sides are separate from the open and closed ends. The preferred embodiment in the specification discloses a nominally rectangular holder where the “open end” and “closed end” are separate from the “two longitudinal sides.” (See ’616 Patent at Figs. 1–6, 8–12.) The specification also distinguishes the two “longitudinal elements” from the two “lateral side[s],” “open end,” and “closed end” of the holder. (See *id.* at 2:46–49; 2:56–58.) An analysis of the figures in the specification show that the “longitudinal sides” correspond to the length of the holder and the “lateral sides” correspond with the width. Although the Court understands that it should not import limitations from the specification into the claims based solely on

the description of the preferred embodiments, *see Phillips*, 415 F.3d at 1313, the specification confirms the plain reading of Claim 1.

The Court is not persuaded that the longitudinal sides need to be “long,” and open and closed ends need to be “short,” however. The distinction between the words “sides” and “end” does not necessarily mean the “end[s]” are shorter. The preferred embodiments of the specification may show that the longitudinal sides are longer than the ends, but the Court declines to import these limitations into Claim 1 without language clearly disavowing the scope of the terms “sides” and “ends.” *See Phillips*, 415 F.3d at 1313. For instance, nothing in the intrinsic evidence disavows embodiments with “long” lateral sides that include the open and closed ends.

For these reasons, the Court construes the term “an open-ended enclosure ... being nominally rectangular with two longitudinal sides, an open end, and a closed end” to have its plain and ordinary meaning consistent with the above analysis.

4. “Of varying thickness”

Term (Claim)	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“of varying thickness” (’616 Patent, Claim 1)	Plain and ordinary meaning, <i>i.e.</i> , “the lips would have at least two places where the smallest dimensions are different”	“having a thickness, defining the outer dimensions of the wallet, that causes the wallet to be thicker in some parts and thinner in others”

The Court does not understand the parties’ dispute regarding the limitation “of varying thickness.” The parties’ proposed constructions of “at least two places where the smallest dimensions are different” or “a thickness ... that causes the wallet to be thicker in some parts and thinner in others” appear to be same thing. The only difference is that Defendant contends that the thickness “defin[es] the outer dimension of the wallet.” The Court addresses this issue.

The Court finds that Defendant’s construction better follows the intrinsic evidence. Courts often consider the stated purpose of the claimed invention during claim construction. *See, e.g., World Class Tech. Corp. v. Ormco Corp.*, 769 F.3d 1120, 1124 (Fed. Cir. 2014) (rejecting construction that did not account for the “sole purpose” of limitation as described in the specification). The ’616 Patent states that the lips have “varying thickness defining the outer dimension of” the card holder assembly. (’616 Patent at 4:64–66.) Claim 3, which depends on Claim 1, further recites that “the outer surface of said holder formed by said panels having rounded edges and smooth exterior surfaces.” (*Id.*, Claim 3.) The specification further discloses that the exterior surface of these lips “are rounded to provide a smooth exterior surface,” which “provide[s] an esthetic appearance and a comfortable feel[.]” (*Id.* at 4:66–5:4.) Claim 15, which depends on independent Claim 12, recites that these rounded edges also “avoid[] snagging and

tearing of surrounding materials.” (*Id.*, Claim 15.) Thus, the claim language and specification consistently refer to thickness and shape of the lips with regard to the exterior dimensions of the holder.

The prosecution history also supports Defendant’s construction. The applicant of the ’616 Patent, the original patentee, added the limitation “varying thickness” to Claim 1 to overcome a rejection based on 35 U.S.C. § 103. (*See* Dkt. No. 92-6.) To overcome a 35 U.S.C. § 112, ¶ 2 rejection regarding the term “varying thickness,” the applicant argued that the outer dimension of the card-holder varied in thickness and was thicker in the center than on the ends:

An inspection of Figs. 3 and 4 [of the ’616 Patent], clearly show that the lips (30 and 32) do not have uniform thickness ... “[t]he perspective figures show lips 30 and 32 have varying thickness defining the outer dimension of the enclosure.” The patent describes the “lip structures” as forming the outside of the structure and that the lip structures are not “uniform” in thickness as they are thicker in the center than on the ends.... Figs. 3 and 4 show this clearly.

(Dkt. No. 92-6 at MOSAIC00253.) Because the applicant stressed that the thickness varied in the outer dimensions of the enclosure, the prosecution history further supports Defendant’s construction.

Although the Court accepts Defendant’s construction, the Court notes that Claim 1 does not use the term “wallet,” but instead uses the term “holder.” For these reasons, the Court construes the term “of varying thickness” to mean “having a thickness, defining the outer dimensions of the holder, that causes the outer dimensions of the holder to be thicker in some parts and thinner in others.”

5. “Adapted to be attached to said first panel along three edges”

Term (Claim)	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“adapted to be attached to said first panel along three edges” (’616 Patent, Claim 1)	Plain and ordinary meaning	“the [second] lip has a mating surface designed to be physically joined to a counterpart mirror image mating surface of the lip of the first panel, for example, by glue, welding or alignment holes and tabs”

The Court does not understand the parties’ dispute. Defendant argues a construction is necessary and that the lips must have a “mating surface” to attach. (*See* Dkt. No. 92 at 12–13.) Plaintiff does not necessarily dispute Defendant’s construction,

but argues that it incorporates limitations already found in the claim and that any further construction is unnecessary. (*See* Dkt. No. 96 at 6.) In light of the Court’s construction of the term “lip,” the Court agrees with Plaintiff that no further construction of the limitation “adapted to be attached to said first panel along three edges” is necessary. For these reasons, the Court construes the term “adapted to be attached to said first panel along three edges” to have its plain and ordinary meaning.

B. The ’808 Patent

i. “Auxiliary feature”

Term (Claim)	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“auxiliary feature” (’808 Patent, Claims 1, 14)	Plain and ordinary meaning, <i>i.e.</i> , “prominent, additional characteristic”	“a removeable external feature, such as a money clip or windowed envelope, attached to a rigid plate by a tang”

The Court does not understand the parties’ dispute as to the term “auxiliary feature.”

Much of Defendant’s proposed construction includes language describing the “auxiliary feature” that is similar to the language already in Claims 1 and 14, such as “removably attached to at least one of the at least two rigid plates.” (’808 Patent, Claims 1, 14.) The claims also describe that the “auxiliary feature” includes a “tang” with a “hook” that “engag[es]” with the “recess” or “undercut of the recess” “formed inside the at least two rigid plates” “to prevent inadvertent dislodgement of the auxiliary feature from the recess.” (*Id.*) The only limitation that Defendant’s adds is the requirement that the “auxiliary feature” be “external,” which Plaintiff does not directly dispute. But Defendant does not provide any explanation or evidence for why the construction should include this additional limitation. Thus, the Court declines to adopt Defendant’s construction.

Plaintiff requests that the term “auxiliary feature” be given its plain and ordinary meaning, which it contends is a “prominent, additional characteristic.” (*See* Dkt. No. 91 at 3–4.) Plaintiff’s proposed language derives from dictionary definitions rather than the intrinsic evidence, although Plaintiff asserts that the intrinsic evidence supports its construction. (*See id.*) Defendant responds that “[Plaintiff’s] proposal would leave ‘auxiliary feature’ open to virtually anything being attached to the wallet.” (*See* Dkt. No. 95 at 2–3.)

The Court agrees that the term “auxiliary feature” should be given its plain and ordinary meaning but declines to adopt Plaintiff’s proposed language. Although Courts may consider extrinsic evidence such as dictionaries to determine the plain and ordinary meaning of a term, *see generally Phillips*, 415 F.3d at 1314, Plaintiff does not include

either dictionary definition as an exhibit for the Court to verify. Additionally, the language proposed by Plaintiff does not meaningfully clarify the term “auxiliary feature” and may cause jury confusion. For instance, Plaintiff provides no explanation for what it would mean for the “characteristic” to be “prominent.” The Court also finds Defendant’s arguments against the plain and ordinary meaning to be unpersuasive, as the term “auxiliary feature” is confined by the other limitations in the claims mentioned above.

For these reasons, the Court construes the term “auxiliary feature” to have its plain and ordinary meaning.

ii. “Encircling elastic band”

Term (Claim)	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“encircling elastic band” (’808 Patent, Claims 1, 14)	Plain and ordinary meaning.	“a replaceable elastic strapping that fully encircles the wallet within a channeling means in at least one direction”

Defendant’s construction adds limitations and language not found in any of the evidence Defendant produces and without explanation. For instance, Defendant introduces the limitations “replaceable” and “fully encircles” without any support. Accordingly, the Court rejects these unsupported additions and construes the term “encircling elastic band” to have its plain and ordinary meaning.

iii. “Channeling means”

Term (Claim)	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“channeling means” (’808 Patent, Claim 1)	Subject to §112, ¶ 6 Function: “receives one part of the at least one encircling elastic band while allowing for freedom for the dynamic extension and contraction of the band over the entire running length of the band” Structure: “a groove spanning the extent of	Plain and ordinary meaning.

	one or more of the rigid plates”	
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The parties dispute whether the term “channeling means” is a means-plus-function term governed by § 112(f). (Dkt. No. 89 at 8; Dkt. No. 91 at 6.)¹ Defendant argues that the term is governed by § 112(f) because it uses the term “means,” which is presumed to be governed by § 112(f). (See Dkt. No. 95 at 6 (citing *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1113 (Fed. Cir. 2002).) Plaintiff argues that the term is not governed by § 112(f) because “the term ‘means’ is modified by sufficient structure for performing the claimed function, in this case ‘channeling.’” (See Dkt. No. 91 at 6.)

“A claim element that contains the word ‘means’ and recites a function is presumed” to be governed by § 112(f). *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1366 (Fed. Cir. 2008). That presumption may be rebutted “if the claim itself recites sufficient structure to perform the claimed function.” *Id.*

The intrinsic evidence shows that the term is functional. Claim 1 recites: “a channeling means configured to minimize the profile of the wallet and hold position of the at least one encircling elastic band with respect to each rigid plate while allowing freedom for the dynamic extension and contraction of the band over the entire running length thereof.” (’808 Patent, Claim 1.) The language after the term “channeling means” is purely functional, as evidenced by the use of the phrase “configured to.” See *MTD Products Inc. v. Iancu*, 933 F.3d 1336, 1343-45 (Fed. Cir. 2019) (finding that term “mechanical control assembly ... configured to” was a means-plus-function limitation, stating that “the claim language reciting what the mechanical control assembly is ‘configured to’ do is functional”). The specification further describes the “channeling means” functionally. (’808 Patent at 2:50–60 (“With such means and in such manner, card-like contents may be carried with minimal silhouette on or with a person while allowing expandable capacity and ready access to individual contents from between the at least two rigid plates.”); see also *id.* at 4:2–3 (“A channeling means 20 prevents the encircling elastic band 4 from adding more than negligible breadth to profile 14.”).) Thus, both the language of Claim 1 and the specification describe the term functionally.

The term “channeling” does not connote structure either. In describing the invention, the specification uses the term as a verb rather than a structure: “[a]nother novel feature achieves minimal sizing of the plates by **channeling the strap with interior means** rather than by means of profile extensions.” (’808 Patent at 2:17–19 (emphasis added); see also *id.* at 3:42–44 (“a groove for **channeling** an encircling elastic band”).) Plaintiff’s own definition of “channeling,” *i.e.*, “to form a channel in,” shows that the term is a verb rather than a noun. (Dkt. No. 91 at 6.) Nor has Plaintiff shown that the term “channel” is sufficient to perform the claimed function as required. Other than the term “channeling,” Plaintiff does not cite any language in the claims to support its

¹ The parties also cite 35 U.S.C. § 112 ¶ 6, the pre-AIA statute governing means-plus-function claims. Because the ’808 Patent has a filing date of February 1, 2017, the Court understands that the claims are governed by AIA 35 U.S.C. § 112(f) and refers to § 112(f) throughout this Order. The language of both provisions is identical, however, and the Court’s construction would be the same under either provision.

construction. Thus, Plaintiff has not sufficiently rebutted the presumption that § 112(f) applies.

The Court declines to adopt Defendant's proposed function, however. Claim 1 recites a function for the "channeling means": "to minimize the profile of the wallet and hold position of the at least one encircling elastic band with respect to each rigid plate while allowing freedom for the dynamic extension and contraction of the band over the entire running length thereof." ('808 Patent, Claim 1.) Defendant does not provide any support for its proposed function. The Court therefore adopts the language from Claim 1 recited above as the claimed function.

The Court also finds that Defendant's proposed structure is too narrow. The Court agrees with Defendant that the structure includes "a groove spanning the extent of one or more of the rigid plates," (*id.* at 2:61–64, 4:9–15), but the specification also discloses that the "channel means" may be a "longitudinal bore through each rigid plate 10" (*id.* at 6:32–34). Accordingly, the Court finds that the appropriate structure is either a groove spanning the extent of one or more of the rigid plates or a longitudinal bore through each rigid plate.

For these reasons, the Court construes "channeling means" is a means-plus-function term governed by § 112(f). The function of the term is "to minimize the profile of the wallet and hold position of the at least one encircling elastic band with respect to each rigid plate while allowing freedom for the dynamic extension and contraction of the band over the entire running length thereof," and the structure necessary for performing the function is a "a groove spanning the extent of one or more of the rigid plates or a longitudinal bore through each rigid plate."

iv. "Undercut"

Term (Claim)	Plaintiff's Proposed Construction	Defendant's Proposed Construction
"undercut" ('808 Patent, Claims 1, 14)	Plain and ordinary meaning.	"a portion of a recess in the material making up one of the rigid plates that engages with a part of an auxiliary feature to prevent inadvertent dislodgement of the auxiliary feature from the recess"

Much of Defendant's proposed construction includes language describing the "undercut" that is similar to the language already in Claims 1 and 14, such as "engages with a part of an auxiliary feature to prevent inadvertent dislodgement of the auxiliary feature from the recess." ('808 Patent, Claims 1, 14.) Including this language in the

construction for the term “undercut” would be redundant and would only confuse the jury. Additionally, Defendant proposes the language “a recess in the material making up one of the rigid plates” as opposed to just “a recess formed inside the at least two rigid plates,” but provides no support for this change. The Court declines to accept this language. Defendant also argues that Plaintiff’s construction does not describe the undercut’s relation to the recess, but the claims already recite this limitation.

Accordingly, the Court construes the term “undercut” to have its plain and ordinary meaning.

v. “Hook”

Term (Claim)	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“hook” (’808 Patent, Claims 1, 14)	Plain and ordinary meaning.	“a portion of the tang of the auxiliary feature that extends at an angle from the tang and engages an undercut to prevent dislodgement of the auxiliary feature from the recess”

All of Defendant’s proposed construction includes language that is recited in Claims 1 and 14. (’808 Patent, Claims 1, 14.) Including this language in the construction for the term “hook” would therefore be redundant and would only confuse the jury.

Accordingly, the Court construes the term “hook” to have its plain and ordinary meaning.

IV. CONCLUSION

Term	Court’s Construction
“lip”/“a [first] lip”/“a [second] lip” (’616 Patent, Claim 1)	“connector made of extrudable or injectable plastic material that defines the outer dimension of enclosure”
“said first and said second panel each has lips” (’616 Patent, Claim 1)	Both the first and second panel must have separate, and independent lips.
“an open-ended enclosure ... being nominally rectangular with two longitudinal sides, an open end, and a closed end” (’616 Patent, Claim 1)	Plain and ordinary meaning.

“of varying thickness” (’616 Patent, Claim 1)	“having a thickness, defining the outer dimensions of the holder, that causes the outer dimensions of the holder to be thicker in some parts and thinner in others”
“adapted to be attached to said first panel along three edges” (’616 Patent, Claim 1)	Plain and ordinary meaning.
“auxiliary feature” (’808 Patent, Claims 1, 14)	Plain and ordinary meaning.
“encircling elastic band” (’808 Patent, Claims 1, 14)	Plain and ordinary meaning.
“channeling means” (’808 Patent, Claim 1)	Subject to §112, ¶ 6 Function: “to minimize the profile of the wallet and hold position of the at least one encircling elastic band with respect to each rigid plate while allowing freedom for the dynamic extension and contraction of the band over the entire running length thereof” Structure: “a groove spanning the extent of one or more of the rigid plates or a longitudinal bore through each rigid plate”
“undercut” (’808 Patent, Claims 1, 14)	Plain and ordinary meaning.
“hook” (’808 Patent, Claims 1, 14)	Plain and ordinary meaning.

IT IS SO ORDERED.