

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TANGENT TECHNOLOGIES, LLC,

Plaintiff,

v.

Case No. 23-C-261

RECYCLED PLASTICS INDUSTRIES, LLC,

Defendant.

DECISION AND ORDER ON INDEFINITENESS AND CLAIM CONSTRUCTION

Plaintiff Tangent Technologies, LLC brought this action alleging patent infringement against Defendant Recycled Plastics Industries, LLC. Plaintiff accuses Defendant of infringing its plastic lumber patents, U.S. Patent Nos. 10,981,350 (the ‘350 Patent), D819,234 (the ‘234 Patent), and D819,235 (the ‘235 Patent). The case is before the court for claim construction and on Defendant’s arguments regarding indefiniteness.

LEGAL STANDARD

A patent consists of both a written description of the invention and claims that define it. The written description, which usually includes drawings of various embodiments and their components, is referred to as the “specification” of the patent. The specification ends with one or more numbered sentences that are the patent’s “claims.” The claims define the invention and set forth the metes and bounds of the patent.

Claim construction is an issue of law for the court. If a material issue in the case, such as infringement or validity, involves a dispute about the meaning of certain claim language, the court is required to construe that disputed claim language. *See Markman v. Westview Instruments, Inc.*,

52 F.3d 967, 970–71 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Only claim language that is disputed needs to be construed and only to the extent necessary to resolve the dispute. *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). Claims are construed the same way for both validity and infringement. *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1330 (Fed. Cir. 2003) (citations omitted).

The language of the claim defines the scope of the protected invention. Claim construction thus begins with and focuses on the words of the claim. *See Bell Commc'ns Research, Inc. v. Vitalink Commc'ns Corp.*, 55 F.3d 615, 619–20 (Fed. Cir. 1995). The words of a claim “are generally given their ordinary and customary meaning.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). How a person of ordinary skill in the art understands those claim terms provides an objective baseline for claim construction. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). In attempting to determine the meaning of disputed claim language, the court must look to “those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean.” *Id.* at 1314. “Those sources include the words of the claims themselves, the remainder of the specifications, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” *Id.* (internal quotation marks omitted). Extrinsic evidence is “less significant” and “less reliable” than the intrinsic record in determining the meaning of the claim language, and thus, to the extent that the court considers extrinsic evidence, it does so in the context of the intrinsic evidence and is cognizant of “the flaws inherent” in such evidence. *Id.* at 1317–19.

“The claims, not specification embodiments, define the scope of patent protection. The patentee is entitled to the full scope of his claims” and is not limited “to his preferred embodiment”

and the court will not “import a limitation from the specification into the claims.” *Kara Tech Inc. v. Stamps.com Inc.*, 582 F.3d 1341, 1348 (Fed. Cir. 2009); *Comaper Corp. v. Antec, Inc.*, 596 F.3d 1343, 1348 (Fed. Cir. 2010) (cautioning “against confining the claims to [preferred] embodiments”). Even where a patent describes only a single embodiment, the claims should not be construed as being limited to that embodiment absent a clear disavowal of claim scope. *Phillips*, 415 F.3d at 1323; *see also Linear Tech. Corp. v. ITC*, 566 F.3d 1049, 1057–58 (Fed. Cir. 2009) (explaining that it is improper to limit a claim to embodiments described in the specification where “there is no clear intention to limit the claim scope”).

The court may also consider the patent’s prosecution history, including reexamination proceedings. *Phillips*, 415 F.3d at 1317. The prosecution history, which is part of the “intrinsic evidence,” consists of the “complete record of the proceedings before the USPTO and includes the prior art cited during the examination of the patent.” *Id.* “[T]he prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of the prosecution, making the claim scope narrower than it would otherwise be.” *Id.* The prosecution history includes any arguments or amendments made by the applicant in securing patent rights and these arguments and amendments may be considered during the claim construction process. *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576 (Fed. Cir. 1995). A patentee may limit the “meaning of a claim term by making a clear and unmistakable disavowal of scope during prosecution.” *Purdue Pharma L.P. v. Endo Pharms., Inc.*, 438 F.3d 1123, 1136 (Fed. Cir. 2006).

The Patent Act requires that a patent specification “conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.” 35 U.S.C. § 112(b). Indefiniteness is a matter of claim

construction, and the same principles that generally govern claim construction are applicable to determining whether allegedly indefinite claim language is subject to construction. *Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1306, 1319 (Fed. Cir. 2008). Indefiniteness, like claim construction, is a question of law. *Id.* A patent claim is indefinite if it is shown by clear and convincing evidence that the claim, read in the light of the specification and the prosecution history, fails to inform those skilled in the art about the scope of the invention “with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). This test “mandates clarity, while recognizing that absolute precision is unattainable.” *Id.* at 910.

ANALYSIS

The ‘350 Patent, titled “wood-grained polymer substrate,” describes a “wood-grained polymer substrate [that] includes a plurality of layers of different colors. The substrate is formed into elongated boards and used in the production of various end products similar to natural wood.” ‘350 Patent Abstract, Dkt. No. 6-1 at 2. The ‘234 and ‘235 Patents are design patents, both titled “wood-grained polymer board,” that “claim the ornamental design for a wood-grained polymer board.” ‘234 Patent, Dkt. No. 6-2 at 2; ‘235 Patent, Dkt. No. 6-3 at 2. The parties have disputes over certain terms contained in the ‘350, ‘234, and ‘235 Patents, which will be discussed below.

A. ‘350 Patent

1. Natural wood-grained and wood grain

Term	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction	Court’s Construction
Natural wood-grained (Claims 10 and 20)	Plain meaning consistent with the intrinsic evidence, which is: “Arrangement of multiple color lines to resemble wood growth rings”	Indefinite	No construction necessary

Wood grain (claim 5)	Plain meaning consistent with the intrinsic evidence, which is: “Arrangement of multiple color lines to resemble wood growth rings”	Indefinite	No construction necessary
Natural wood-grained (Preamble of claims 1, 10, 20, and 24)	No construction necessary	Indefinite	No construction necessary

RPI argues that the terms “natural wood-grained” and “wood grain” are indefinite. Indefiniteness is a question of law. It contends that neither the intrinsic evidence, including the claims, specification, or prosecution history, nor the extrinsic evidence inform those skilled in the art about the scope of the invention with reasonable certainty. It asserts that Dr. Michael Ellison, its expert, and Mr. Francisco Morales, a named inventor of the ‘350 Patent, have confirmed that whether a polymer board or substrate has a “natural wood-grained” appearance within the meaning of the ’350 patent is completely subjective. *See* Ellison Decl. ¶¶ 51–55, Dkt. No. 61-3; Morales Dep. 90–97, 102–03, Dkt. No. 61-4.

While extrinsic evidence, such as expert and inventor testimony, may “aid the court in coming to a correct conclusion as to the ‘true meaning of the language employed’ in the patent,” *Markman*, 52 F.3d at 980 (cleaned up), extrinsic evidence is generally viewed as “less reliable than the patent and its prosecution history in determining how to read claim terms.” *Phillips*, 415 F.3d at 1318. “The court does not look to extrinsic evidence when the intrinsic evidence is sufficient for determining how a person of ordinary skill in the art would interpret, at the time of invention, a claim term.” *CANVS Corp. v. United States*, 126 Fed. Cl. 106, 117 (Fed. Cl. 2016) (citing *V-Formation, Inc. v. Benetton Grp. SpA*, 401 F.3d 1307, 1310 (Fed. Cir. 2005)). Here, the intrinsic evidence of the ‘350 Patent provides objective boundaries for the claim terms.

Starting with the claims themselves, the ‘350 Patent places objective boundaries on the term “natural wood-grained.” In particular, the claims require that the polymer layers alternate within the board, extend in a curvilinear path across the board in order to simulate the curves of natural wood grains, be “substantially uninterrupted” to simulate the natural wood grains, and include a “first colorant” and a “second colorant different than the first” to produce a wood-grain appearance. *See* ‘350 Patent col. 8 l. 27–48, col. 9 l. 6–31, col. 10 l. 7–32, col. 10 l. 41–64. The specification also describes that multiple-colored layers simulate the natural wood-grained effect. *See id.* col. 3 l. 30–33, col. 3 l. 52–66. In addition, the figures provide visual examples of the varying patterns of simulated wood grain. *See id.* figs. 6, 9–13. RPI has not shown by clear and convincing evidence that the claims are indefinite.

RPI also argues that the term “natural wood-grained” in the preambles of the independent claims are limiting. The preamble in claim 1 describes the claim as a “simulated natural wood-grained polymer board,” ‘350 Patent col. 8 l. 27; the preamble in claim 10 describes a “simulated natural wood-grained substrate,” *id.* col. 9 l. 6; the preamble in claim 20 describes a “simulated natural wood-grained polymer substrate,” *id.* col. 10 l. 7; and the preamble in claim 24 describes a “simulated natural wood-grained polymer board,” *id.* col. 10 l. 41. “Whether to treat a preamble term as a claim limitation is ‘determined on the facts of each case in light of the claim as a whole and the invention described in the patent.’” *Am. Med. Sys., Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1358 (Fed. Cir. 2010) (quoting *Storage Tech. Corp. v. Cisco Sys., Inc.*, 329 F.3d 823, 831 (Fed. Cir. 2003)). “If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is necessary to give life, meaning, and vitality to the claim, then the claim preamble should be construed as if in the balance of the claim.” *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999) (cleaned up).

Preambles are not limiting “when the claim body describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 809 (Fed. Cir. 2002). In this case, the preambles are not limiting because the independent claims of the ‘350 Patent completely describe the invention’s structure without reference to the preamble. In addition, the body of claims 10 and 20 recite “a natural wood-grain appearance” as a separate element of the claim. This separate element is not found in claims 1 or 24. “There is presumed to be a difference in meaning and scope when different words or phrases are used in separate claims.” *Tandon Corp. v. United States Int’l Trade Comm’n*, 831 F.2d 1017, 1023 (Fed. Cir. 1987). The term “natural wood-grain appearance” in claims 10 and 20 would be superfluous if the preamble already required a “natural wood-grained” board or substrate. *See Becton, Dickinson & Co. v. Tyco Healthcare Grp.*, 616 F.3d 1249, 1257 (Fed. Cir. 2010) (“Claims must be interpreted with an eye toward giving effect to all terms in the claim.”). Therefore, the preambles to the ‘350 Patent’s independent claims do not limit their scope. The court concludes that no construction of the terms “natural wood-grained” or “wood grain” is needed, as the meaning is clear from the claims and specification, and nothing suggests that the preamble limited the meaning in any way.

2. Substantially uninterrupted curvilinear path

Term	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction	Court’s Construction
Substantially uninterrupted curvilinear path originating proximate the first side of the board and terminating proximate the second side of the board (Claim 1)	Plain meaning consistent with the intrinsic evidence, which is: “Path with minimal gaps and curves originating near the first side of the board and terminating near the second side of the board”	Indefinite	No construction necessary

Substantially uninterrupted curvilinear path in the second direction originating proximate the first side and terminating proximate the second side (Claim 10)	Plain meaning consistent with the intrinsic evidence, which is: “Path with minimal gaps and curves in the second direction originating near the first side and terminating near the second side”	Indefinite	No construction necessary
Substantially uninterrupted curvilinear path in the second direction originating proximate an outer surface of a first portion of the substrate and terminating proximate an outer surface of a second portion of the substrate (Claim 20)	Plain meaning consistent with the intrinsic evidence, which is: “Path with minimal gaps and curves in the second direction originating near an outer surface of a first portion of the substrate and terminating near an outer surface of a second portion of the substrate”	Indefinite	No construction necessary
Substantially uninterrupted curvilinear path originating from proximate the first side of the core and terminating proximate the second side of the core (Claim 24)	Plain meaning consistent with the intrinsic evidence, which is: “Path with minimal gaps and curves originating near the first side of the core and terminating near the second side of the core”	Indefinite	No construction necessary

RPI argues the terms “substantially uninterrupted” and “proximate” are subjective and therefore indefinite. It asserts that the ‘350 Patent provides no “objective criteria for determining how many interruptions the claimed curvilinear paths may have along their length to be considered ‘substantially interrupted,’ nor where the paths may originate and terminate to be ‘proximate’ to various claimed parts of a board or substrate, for paths to be within (or outside of) the claim scope.” Dkt. No. 63 at 11. “[M]athematical precision” is not required in claim language. *BASF Corp. v. Johnson Matthey Inc.*, 875 F.3d 1360, 1365 (Fed. Cir. 2017). Indeed, “[w]ords of approximation, such as ‘generally’ and ‘substantially,’ are descriptive terms ‘commonly used in patent claims’ to

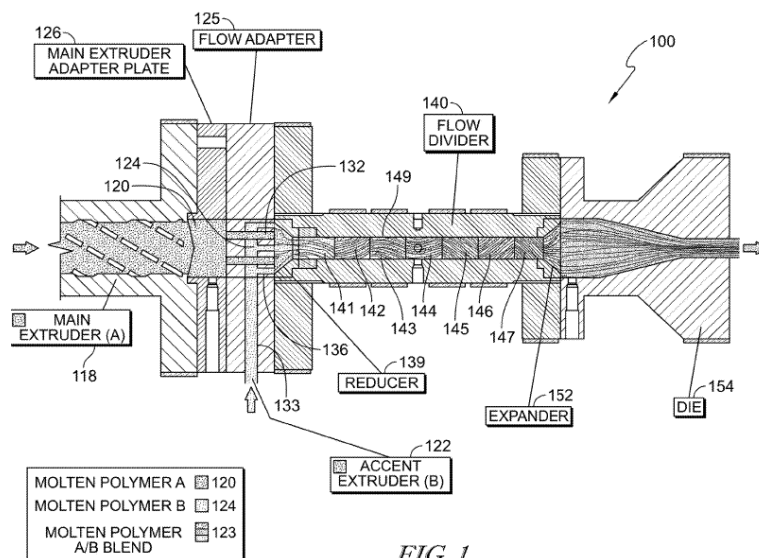
avoid a strict numerical boundary to the specified parameter.” *Playtex Prods., Inc. v. Procter & Gamble Co.*, 400 F.3d 901, 907 (Fed. Cir. 2005); *Liquid Dynamics Corp. v. Vaughan Co.*, 355 F.3d 1361, 1368 (Fed. Cir. 2004) (“The term ‘substantial’ is a meaningful modifier implying ‘approximate,’ rather than ‘perfect.’”). The specification indicates that the polymer layers “extend substantially uninterrupted across the board, with minimal or no gaps in the visible grain.” ‘350 Patent col. 7 l. 45–48. The figures also depict the polymer layer paths that are substantially uninterrupted within the board. *Id.* figs. 6, 10. The phrase “substantially uninterrupted” envisions some amount of deviation from completely uninterrupted. A person of ordinary skill in the art would be informed of the scope of the invention when reading the term “substantially uninterrupted” in light of the specification. Similarly, with respect to “proximate,” the figures of the ‘350 patent show that the polymer layers originate and terminate near the side of the board. *Id.* A person of ordinary skill in the art would be able to study the disclosed product, in light of the patent, without knowing an exact distance from the edge of the board. In sum, the terms “substantially uninterrupted” and “proximate,” when viewed in light of the specification and figures, would be understood by a person of ordinary skill in the art with reasonable certainty. These claim terms are therefore not indefinite and do not require construction.

3. Length direction, first direction, and length

Term	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction	Court’s Construction
Length (Claims 9, 15, and 20)	(No construction necessary) <i>Alternatively:</i> a dimension different than a width dimension and a height dimension	Direction of extrusion	No construction necessary
Length direction (Claims 1, 3, 17, and 24)	(No construction necessary) <i>Alternatively:</i> a dimension different than	Direction of extrusion	No construction necessary

	a width dimension and a height dimension		
First direction (Claims 10, 19, and 20)	(No construction necessary) <i>Alternatively:</i> a direction different than a second direction and a third direction	Direction of extrusion	No construction necessary

Tangent argues that no construction is necessary for these phrases, or alternatively, that “length” and “length dimension” should be defined as “a dimension different than a width dimension and a height dimension” and that “first direction” should be defined as “a direction different than a second direction and a third direction.” RPI’s proposed construction limits “length,” “length direction,” and “first direction” to the direction of extrusion of the polymer created through the extrusion process in producing the boards. RPI explains that, during the extrusion process, an extruder pushes a polymer melt through a die and produces a consistent extrudate that flows out of the die. It contends that the extruder melts and causes the polymers to flow in the direction of the axis of the main extruder, as shown in Figure 1 of the ‘350 Patent.



‘350 Patent fig. 1. RPI asserts that the polymeric layers flow from left to right through the flow divider or static mixer, through the expander, and eventually out of the die to create the boards. It

contends that a person of ordinary skill in the art would understand the “length direction” or “first direction” to mean the direction of extrusion, with length corresponding to that dimension.

But RPI’s construction unnecessarily narrows the claims by inserting the extrusion process, a specific type of manufacturing process, into the claims. The claims do not require that a specific process be used to create the product. “[U]nless compelled otherwise, a court will give a claim term the full range of its ordinary meaning as understood by persons skilled in the relevant art.” *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (Fed. Cir. 2002) (citations omitted). RPI has not cited evidence, from either the specification or the prosecution history, establishing that the inventors intended to limit the terms. The court therefore rejects RPI’s proposed construction and concludes that no construction is needed.

With respect to “length” and “length direction,” claim 1 recites a “simulated natural wood-grained polymer board having a first side and a second side spaced apart from the first side, the spacing between the first and second sides defining one of a width or a height of the board, the first and second sides extending along a length direction between a first end and a second end, the first and second ends defining a length of the board.” ‘350 Patent, col. 8 l. 27–33. The specification also explains that length, width, and height are simply different directions of the board. *Id.* col. 7 l. 21–47. A person of ordinary skill in the art would understand that a three-dimensional object, like the board/substrate at issue here, has a length, width, and height.

As to “first direction,” claim 10 recites a “simulated natural wood-grained polymer substrate extending along a first direction, the substrate having a first side and a second side spaced apart from the first side along a second direction different than the first direction, the first and second sides defining a width of the substrate, the first and second sides extending along the first direction, a core of the substrate extending between the first and second sides and along the first

direction.” *Id.* col. 9 l. 6–13. A person of ordinary skill in the art would understand the term “first direction” to simply mean a direction different than a subsequent direction. In short, the terms “length,” “length direction,” and “first direction” are understandable under their plain and ordinary meanings and require no further construction.

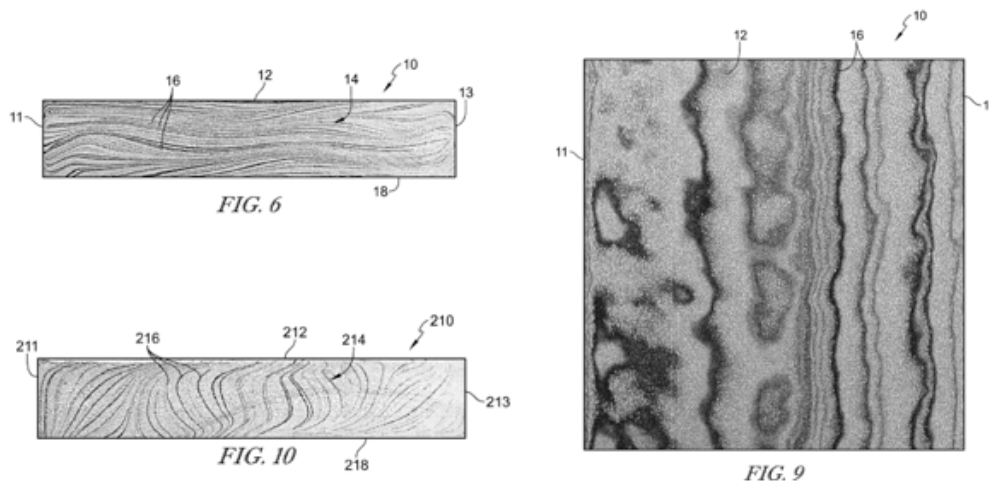
4. Alternate within

Term	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction	Court’s Construction
Alternate within the board (Claim 1)	(No construction necessary) <i>Alternatively:</i> are interspersed within the board	Follow and succeed each other in turns in a stacked pattern within the board	No construction necessary
Alternate within the core of the substrate (Claims 10 and 19)	(No construction necessary) <i>Alternatively:</i> are interspersed within the core of the substrate	Follow and succeed each other in turns in a stacked pattern within the core of the substrate	No construction necessary
Alternate within the core of the board (Claim 17)	(No construction necessary) <i>Alternatively:</i> are interspersed within the core of the board	Follow and succeed each other in turns in a stacked pattern within the core of the board	No construction necessary
Alternate within the substrate (Claim 20)	(No construction necessary) <i>Alternatively:</i> are interspersed within the substrate	Follow and succeed each other in turns in a stacked pattern within the substrate	No construction necessary
Alternate within the core (Claim 24)	(No construction necessary) <i>Alternatively:</i> are interspersed within the core	Follow and succeed each other in turns in a stacked pattern within the core	No construction necessary

RPI asserts that the term “alternate within” found in various claims in the ‘350 Patent requires construction. Tangent argues that this term should be given its plain and ordinary meaning and that no additional construction is warranted.

Claims 1 teaches that the board is comprised of a “plurality of individual layers of the first and second sets of polymer layers [that] alternate within the board.” ‘350 Patent col. 8 l. 43–44. Claims 10 and 20 also recite a board where polymer layers alternate within the core of the substrate to form a natural wood-grained appearance throughout the core of the substrate. *See id.* col. 9 l. 23–26; col. 10 l. 22–25.

RPI contends that “alternate within” should be construed to mean “follow and succeed each other in turns in a stacked pattern within.” It points to language in the specification for embodiments that describe the layers as stacked. Dkt. No. 61 at 30 (citing ‘350 Patent col. 7 l. 21–35 (“[I]n FIG. 6 . . . [t]he layers of first and second polymers 120, 124 are stacked from the bottom surface 18 of substrate 10 toward the top surface 12 [I]n FIG. 10 . . . [t]he layers of first and second polymers 120, 124 are stacked from a lateral surface 211 toward a lateral surface 213 of substrate 210.” (alterations in original))). But the claims, specification, and prosecution history do not support such rigid arrangement of the polymer layers. *See Linear Tech. Corp.*, 566 F.3d at 1057–58 (noting that it is improper to limit a claim term to embodiments described in the specification where “there is no clear intention to limit the claim scope”). Indeed, the specification shows variability in the layers such that they can be curved around each other:



See ‘350 Patent figs. 6, 9–10. In this case, the term “alternate within” is perfectly understandable to a person of ordinary skill in the art when its components are given their plain and ordinary meanings—i.e., alternate (“occurring or succeeding by turns”) and within (“in or into the interior”). See MERRIAM-WEBSTER DICTIONARY, available at <https://www.merriam-webster.com/dictionary> (last visited June 12, 2024). Therefore, no construction is needed.

B. ‘234 and ‘235 Patents

Term	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction	Court’s Construction
The ornamental design for a wood-grained polymer board, as shown and described	A wood-grained polymer board as shown in Figures 1 and 2	Indefinite	A wood-grained polymer board as shown in Figures 1 and 2

The court has a “duty to conduct claim construction in design patent cases.” *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008). The Federal Circuit has “instructed [district] courts that design patents ‘typically are claimed as shown in drawings,’ but that it can be helpful to ‘distinguish between those features of the claimed design that are ornamental and those that are purely functional.’” *Lanard Toys Ltd. v. Dolgencorp LLC*, 958 F.3d 1337, 1342 (Fed. Cir. 2020) (quoting *Egyptian Goddess*, 543 F.3d at 679–80) (alterations omitted). “Where a design contains both functional and non-functional elements, the scope of the claim must be construed in order to identify the non-functional aspects of the design as shown in the patent.” *Sport Dimension, Inc. v. Coleman Co.*, 820 F.3d 1316, 1320 (Fed. Cir. 2016) (citation omitted).

“Given the recognized difficulties entailed in trying to describe a design in words, the preferable course ordinarily will be for [the court] not to attempt to ‘construe’ a design patent claim by providing a detailed verbal description of the claimed design.” *Egyptian Goddess*, 543

F.3d at 679. Indeed, a design patent’s claim is often better represented by drawings, rather than a written claim construction. *Sport Dimension*, 820 F.3d at 1320 (citation omitted).

As an initial matter, RPI argues that the claims are indefinite. Even in design patents, “[c]laims are considered indefinite when they are not amenable to construction or are insolubly ambiguous Indefiniteness requires a determination whether those skilled in the art would understand what is claimed.” *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1346 (Fed. Cir. 2007). RPI asserts that a skilled artisan would lack reasonable certainty as to the scope of the design patents as demonstrated by Tangent’s inconsistent infringement and validity contentions, which provide “no rhyme or reason as to when another product’s design is substantially different from the claimed designs.” Dkt. No. 61 at 32. RPI points to Tangent’s allegations that the designs of various RPI products infringe the claimed “wood-grained” pattern of the ‘234 and ‘235 Patents, even though the products have widely different designs and are different colors. RPI contends that Tangent’s infringement contentions stand in stark contrast to Tangent’s responses to RPI’s invalidity contentions, where Tangent argues that similar designs appearing in the prior art are substantially different from the claimed “wood-grained” designs. But the fact that Tangent has asserted its design patents against multiple RPI products does not demonstrate indefiniteness. “[B]readth is not indefiniteness.” *See BASF Corp.*, 875 F.3d at 1367 (internal quotation marks and citation omitted). In addition, because the ‘234 and ‘235 Patents do not claim a specific color, the different colors of RPI’s products are irrelevant. In short, RPI has not established that the design patents are indefinite.

Alternatively, RPI asserts that the following, detailed construction should be used for the ‘234 Patent:

The ornamental design for a wood-grained polymer board, exactly as shown and described, consisting of:

- Lighter and darker layers following and succeeding each other in turns in a stacked pattern, along the height direction (as viewed in Figure 2);
- Darker layers being in contact with or nearly in contact with the left side of the board along substantially the entire height direction, and in contact with or nearly in contact with the right side of the board along substantially the entire height direction (as viewed in Figure 2);
- The darker layers extending in a continuous curved path having essentially no breaks, gaps, or intersections with themselves or with the path of other darker layers, in a direction defined by the left side and the right side of the board (as viewed in Figure 2);
- A substantial number of the darker layers starting and/or terminating at the top or bottom of the board (as viewed in Figure 2);
- The right half of the board appearing darker than the left half (as viewed in Figure 2);
- The curves of the darker layers having a smooth (rather than jagged) appearance;
- The darker layers being distinct from one another;
- The darker layers being thinner than the lighter layers;
- The darker layers having the specific curvatures shown;
- The lighter layers having the specific curvatures shown;
- The darker layers being in the specific distribution and orientation to one another, and to the lighter layers, shown;
- The lighter layers being in the specific distribution and orientation to one another, and to the darker layers, shown;
- The darker layers having the specific thicknesses shown;
- The lighter layers having the specific thicknesses shown;
- The specific variations and differences in the colors of the layers shown;
- The specific quantity of darker layers shown; and
- The specific quantity of lighter layers shown

Dkt. No. 61-2 at 4–5. It also asserts that the following construction should be used for the ‘235

Patent:

The ornamental design for a wood-grained polymer board, exactly as shown and described, consisting of:

- Lighter and darker layers following and succeeding each other in turns in a stacked pattern, along the width direction of the surface of the board (as viewed in Figure 2);
- Darker layers being in contact with or nearly in contact with the end of the board along substantially the entire width direction of the surface of the board, and in contact with or nearly in contact with the opposite end of the board along substantially the entire width direction of the surface of the board (as viewed in Figure 2);

- The darker layers extending in a continuous path having essentially no breaks, gaps, or intersections with themselves or with the path of other darker layers, in the length direction of the surface of the board (as viewed in Figure 2);
- The darker layers on the right half of the board being thinner and greater in number than the darker layers on the left half of the board (as viewed in Figure 2);
- The darker layers on the right half of the board being less curved than the darker layers on the left half of the board, with the darker layers on the left half being more blurred and jagged (as viewed in Figure 2);
- The darker layers on the right half of the board being more closely arranged to one another than the darker layers on the left half of the board, which are more dispersed from one another;
- The darker layers being distinct from one another;
- The darker layers having the specific curvatures shown;
- The lighter layers having the specific curvatures shown;
- The darker layers being in the specific distribution and orientation to one another, and to the lighter layers, shown;
- The lighter layers being in the specific distribution and orientation to one another, and to the lighter layers, shown;
- The darker layers having the specific thicknesses shown;
- The lighter layers having the specific thicknesses shown;
- The specific variations and differences in the colors of the layers shown;
- The specific quantity of darker layers shown; and
- The specific quantity of lighter layers shown.

Id. at 6–7. Conversely, Tangent asserts that the court should construe the ‘234 and ‘235 Patents’ sole claim—“the ornamental design for a wood-grained polymer board, as shown and described”—to mean: “A wood-grained polymer board as shown in Figures 1 and 2.”

RPI argues that construction is necessary to separate the functional and ornamental elements. It contends that the term “polymer board” in Tangent’s proposed construction is a functional feature of the claimed design. However, including “polymer board” in the construction properly limits the design’s scope to the particular article of manufacture. *See* 35 U.S.C. § 171(a) (“Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.”).

RPI's proposed construction consists of seventeen bulleted descriptors for the '234 Patent and sixteen bulleted descriptors for the '235 Patent. Such construction risks "placing undue emphasis on particular features of the design." *Egyptian Goddess*, 543 F.3d at 679. Rather than construe the design patent claims via a detailed description as RPI suggests, it is better to let the patent's drawings set the scope of the claim. *See id.* Having reviewed the patent, the court adopts Tangent's construction, which includes the two figures of the Patents. The '234 Patent's specification describes its figures as follows:

Fig. 1 is a perspective view of a wood-grained polymer board in accordance with our new design; and

Fig. 2 is an end elevation view of the wood-grained polymer board of Fig. 1.

'234 Patent at 2, Dkt. No. 6-2. The '235 Patent's specification describes its figures as follows:

Fig. 1 is a perspective view of a wood-grained polymer board in accordance with our new design; and

Fig. 2 is a top plan view of the wood-grained polymer board of Fig. 1.

'235 Patent at 2, Dkt. No. 6-3. The court concludes that the design patents are limited to what is depicted in the patents' respective figures one and two.

CONCLUSION

The disputed claim language is construed as noted in the far right-hand column of each chart for the reasons set forth above.

SO ORDERED at Green Bay, Wisconsin this 24th day of July, 2024.

s/ William C. Griesbach
William C. Griesbach
United States District Judge