

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SHARKNINJA OPERATING LLC and
SHARKNINJA SALES COMPANY,

*Plaintiffs and
Counterclaim-Defendants*

v.

DYSON, INC. AND DYSON TECHNOLOGY
LIMITED,

*Defendants and
Counterclaim-Plaintiffs.*

C.A. No. 1:23-cv-11277-ADB

JURY TRIAL DEMANDED

SHARKNINJA’S OPENING CLAIM CONSTRUCTION BRIEF

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Exhibit	Document
A	U.S. Patent No. 11,044,979
B	Statement of Appeal, <i>Dyson Tech. Ltd. v. SharkNinja Europe Ltd.</i> (Munich Higher Regional Court, Aug. 31, 2023)
C	Non-Final Rejection filed Feb. 14, 2017 in U.S. Appl. No. 14/656,357
D	Final Rejection filed Aug. 9, 2017 in U.S. Appl. No. 14/656,357
E	Non-Final Rejection filed Jan. 10, 2018 in U.S. Appl. No. 14/656,357
F	Claims filed May 10, 2018 in U.S. Appl. No. 14/656,357
G	Final Rejection filed June 27, 2018 in U.S. Appl. No. 14/656,357
H	Claims filed Oct. 29, 2018 in U.S. Appl. No. 14/656,357
I	Non-Final Rejection filed Dec. 14, 2018 in U.S. Appl. No. 14/656,357
J	Claims filed Feb. 18, 2020 in U.S. Appl. No. 14/656,357
K	Appeal Brief filed Dec. 22, 2020 in U.S. Appl. No. 14/656,357
L	Notice of Allowability filed May 10, 2021 in U.S. Appl. No. 14/656,357
M	U.S. Patent No. 2,052,869
N	U.S. Patent No. 3,261,162
O	EP3119234 B1
P	<i>Cylinder</i> <i>English Meaning</i> , Cambridge English Dictionary, https://dictionary.cambridge.org/dictionary/english/cylinder (last visited Oct. 17, 2023)
Q	<i>Cylinder Definition in American English</i> , Collins English Dictionary, https://www.collinsdictionary.com/us/dictionary/english/cylinder (last visited Oct. 17, 2023)

I. INTRODUCTION

Dyson obtained the '979 Patent only after *seven* rejections and *eight* separate claim amendments. The claims emerged from prosecution by the narrowest of margins, and only after detailed structural language had been added to distinguish the claims from the crowded field of prior art. SharkNinja seeks to construe the terms to mean what they say; that is, the claims are limited to the narrow structure that Dyson had to claim to overcome prior art during prosecution.

On the other hand, now that it obtained a patent by making narrow structural amendments, Dyson seeks to ignore and rewrite the claims to try to capture a device—SharkNinja's air curler attachment for its hair dryer—that curls hair with an entirely different structure. Dyson's approach violates claim construction law. Claims must be construed in light of their plain language and the specification and file history from which they were obtained. They cannot be construed to effectively eliminate undesirable language, as Dyson's proposed constructions seek to do.

For example, Dyson seeks to construe "cylindrical portion" to encompass shapes *similar* to cylinders, even though they are not cylinders; it argues the "distal end" includes also areas *near* the end; it seeks to expand the term "outlet" to mean not just the airflow opening but also "*nearby* external surface(s)"; and it seeks to ignore the corresponding structure for the means-plus-function "flow directing element." Dyson's litigation-inspired rewrite of its claims should be rejected.

The claims also recite two functional limitations—both related to how air from the claimed attachment flows when the attachment is *in use*—that render the claims indefinite. The claims are *apparatus* claims, which cannot by law include functional limitations. Apparatus claims cover defined structures, not the functions they perform. Here, the disputed limitations recite what the hair is "encourage[d]" to do or how emitted air is "attracted" to the attachment when in use. As a result, the claims are either indefinite because they improperly include functional limitations, or

those functional limitations should be non-limiting. Indeed, the patent examiner repeatedly found that those functional limitations were entitled to no patentable weight during prosecution.

Finally, the claims recite one term, “proximal first portion,” that is ambiguous and thus indefinite. The specification has no guidance about how close a portion needs to be to the handle to be part of a “proximal portion.” That question is critical, as the claims require that “at least one slot extending continuously from the proximal first portion to a distal end of the attachment.” A company wishing to avoid the patent would not know where it can begin slots to be outside the “proximal first portion.” With no guidance in the patent, the claims are thus indefinite.

II. LEGAL STANDARDS

Claim construction is a question of law. *Teva Pharma. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 325 (2015). Courts must construe each disputed claim term based on its ordinary and customary meaning to a person of ordinary skill in the art in light of the intrinsic evidence—the claims, the specification, and the prosecution history. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). Claim construction “typically begins and ends with the intrinsic evidence.” *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1218 (Fed. Cir. 2014).

The claim language itself provides substantial guidance as to the meaning of the terms, but claims must be read in light of the specification. *See Phillips*, 415 F.3d at 1315 (“[T]he specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’” (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996))). The specification must be considered because it is part of the “fully integrated written instrument” that defines claim scope. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 978 (Fed. Cir. 1995), *aff’d*, 517 U.S. 370 (1996). The prosecution history may also provide guidance as to how the PTO and inventor understood the scope of the patent. *See Phillips*, 415 F.3d at 1317.

Courts may consider extrinsic evidence, such as dictionaries, to determine the meaning of terms. *Id.* Such evidence, however, must not “contradict any definition found in or ascertained by a reading of the patent documents.” *Id.* at 1324 (citing *Vitronics*, 90 F.3d at 1584 n.6).

III. BACKGROUND

The '979 Patent claims an attachment for a hand held appliance (*e.g.*, a hair dryer). *See* Ex. A at 1:13–15. The attachment includes a “fluid outlet” (*i.e.*, air outlet) that “comprises parallel

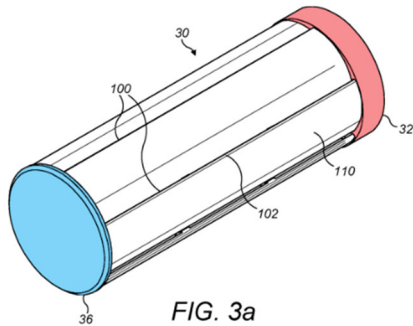


FIG. 3a

slots . . . each extending towards a second end . . . and radially around” the attachment, as shown in Figure 3a. *Id.* at 5:1–4. In use, “hair is wrapped around the [attachment]” while air “exits through the slots . . . drying the hair and/or styling the hair into curls or waves,” and “[t]he hair wraps

automatically due to the flow of air around the surface of the [attachment].” *Id.* at 5:8–12. In other words, when in use, air flows out of the long slots in a tangential direction so that it flows around the surface of the structure in a circular manner, which helps hair curl. *Id.* The patent explains that this automatic wrapping effect is caused by fluid exiting the slots that “is attracted to the curved surface of the [attachment] by the Coanda effect.”¹ *Id.* at 7:16–19.

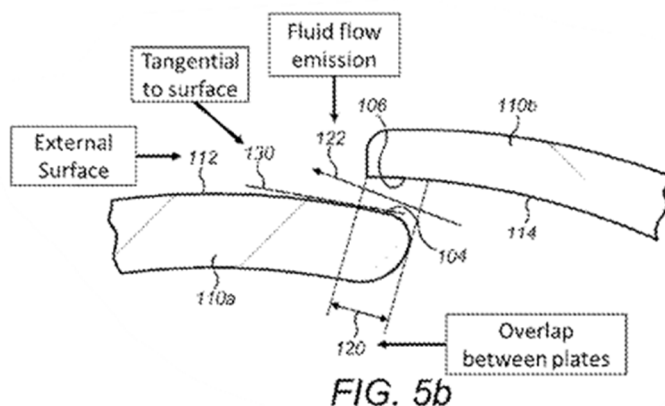
The claims are limited to a specific structure due to numerous amendments made during prosecution to overcome rejections. For example, a central structural feature of both independent claims² is “an outlet in a cylindrical second portion of the attachment” that “comprises at least one

¹ The Coanda effect was initially described in a 1936 patent issued to Henri Coanda, which claimed a structure including “a slot-shaped passage” for utilizing the effect, and a later 1966 patent to Coanda referred to such as a “Coanda slot.” Ex. M, cl. 4; Ex. N at 2:7–18.

² Dyson asserts claims 1–3, 5, 8–9, 12–15, 17–19, 21, 24–25, 27, and 29–31. Independent claim 1 is directed to “[a]n attachment for a hand held appliance,” whereas independent claim 17 is directed to “[a] hand held appliance comprising . . . an attachment.” Ex. A, cls. 1, 17. The limitations relating to the “attachment” are identical in both claims.

slot *extending continuously from the proximal first portion to a distal end of the attachment*,” which the specification describes as “extend[ing] along the length of the [attachment] from the first end . . . to the second end.” *Id.* at 7:1–3 (emphasis added). This limitation resulted from an Examiner’s Amendment that was required by the Examiner, and accepted by Dyson, in order for the claims to be allowed. That language replaced the broader language “at least one slot extending from near an inlet end of the attachment *towards* a distal end of the attachment.” Ex. L at 3 (emphasis added).

Another central structural feature of the claims is that “the outlet,” which “comprises at least one slot,” “is at least partially defined by an external surface of a *substantially contiguous wall* of the attachment.” That language also arose by amendment, replacing the original language that the outlet is “at least partially defined by an external surface of the attachment.” *See* Ex. F at 2; Ex. J at 2. Dyson explained this language with its annotated version of Figure 5b that was submitted by Dyson to the PTO:



Ex. K at 4. As Dyson explained, “the slot . . . can be created by an overlap (120) between a first plate (110a) and a second plate (110b) which creates an outlet for the fluid flow emission (122) that is at least partially defined by the external surface (112) of the substantially contiguous wall.” *Id.* at 5.

For a full picture of how the claims changed over the course of prosecution, below is a redline between the original claim 1 of the '979 Patent as filed, and the issued claim 1:

1. An attachment for a hand held appliance comprising an inlet in a proximal first portion of the attachment; an outlet in a cylindrical second portion of the attachment; and a fluid flow path between the inlet and the outlet, wherein the outlet in the cylindrical second portion of the attachment comprises at least one slot extending ~~from near an inlet end of the attachment towards~~ continuously from the proximal first portion to a distal end of the attachment ~~and~~, wherein the outlet is at least partially defined by an external surface of a substantially contiguous wall of the attachment ~~wherein~~ and is configured to direct fluid flow emitted from the outlet ~~is blown along the external surface and wherein fluid emitted from the outlet flows~~ tangentially along and around the external surface of the ~~attachment~~ substantially contiguous wall to form a circumferential fluid flow around the cylindrical second portion of the attachment that encourages hair to automatically wrap around the cylindrical second portion, wherein the external surface of the substantially contiguous wall is an outermost surface of the attachment along an entire length of the attachment from a beginning of the at least one slot to an end of the at least one slot, and wherein the distal end of the attachment is closed.

In total, the claims were rejected seven times by the Examiner, Dyson amended its claims eight separate times, and an Examiner's amendment was required before issuance.

IV. TERMS FOR CONSTRUCTION

A. Affirmative Constructions

1. “cylindrical second portion of the attachment” (claims 1 and 17)

SharkNinja's Proposed Construction	Dyson's Proposed Construction
“a portion of the attachment defined by a solid geometric figure with straight parallel sides and a circular cross section”	Plain and ordinary meaning and does not require construction. Alternative construction if the Court deems one necessary: “a portion of the attachment defined by a geometric shape with straight sides connecting congruent bases which may be of various shapes.”

SharkNinja's construction clarifies that the term “cylindrical” means exactly what it says: “cylindrical” in the geometric sense, and not something that is “generally” cylindrical, “essentially” cylindrical, or some other similar shape. *See, e.g., Int'l Rectifier Corp. v. IXYS Corp.*,

361 F.3d 1363, 1371–72 (Fed. Cir. 2004) (rejecting broad construction of “polygonal” that would “allow round corners and not straight edges” where patentee “could have claimed . . . more broadly but chose to use the word ‘polygonal’ without modification or qualification.”).

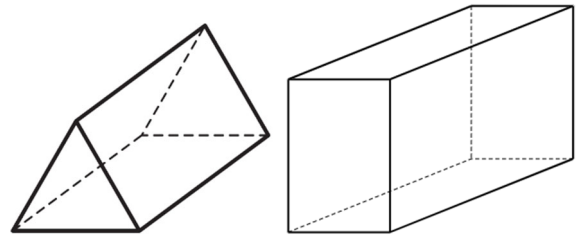
Dyson’s choice of the word “cylindrical” was deliberate and necessary to obtain its claims. During prosecution, the examiner rejected the claims *four times* over the Lindsey prior art reference. Ex. C at 7; Ex. D at 3; Ex. E at 3; Ex. G at 2. After numerous amendments, Dyson could not convince the examiner that there was anything inventive about the claims in view of Lindsey. Finally, Dyson amended the claims to add that the outlet must be “in a cylindrical second portion of the attachment.” Ex. H at 2. It was only by that amendment that Dyson escaped the Lindsey rejections (although Dyson had to amend the claims several more times to avoid other prior art).

Dyson could have tried to use the word “generally cylindrical”—as it did in foreign corresponding patents—or “essentially cylindrical,” which is how the specification describes some embodiments of the attachment. For example, in one instance, the specification more broadly describes the “head 30” (*i.e.*, the attachment) as “*essentially* cylindrical,” rather than just “cylindrical.” *Id.* at 6:58–60. In another passage, the specification describes all of the “heads 30, 130, 230” as “all *generally* cylindrical in shape.” *Id.* at 11:8–10. By contrast, the specification identifies another head embodiment with a “first cylindrical part 310” and describes various other components as “cylindrical” (handle 20, foam block 48, housing 62) without describing them as “generally cylindrical,” confirming that Dyson was choosing its language carefully. *See, e.g., id.* at 5:23–27, 6:11–13, 6:41–44, 10:6–13. Indeed, in many foreign corresponding patents, Dyson chose to use the word “generally cylindrical” in the claims, rather than just “cylindrical.” *See, e.g.,* Ex. F at 13:13–14, cl. 1 (“[T]he attachment is generally cylindrical.”) But in the ’979 Patent,

Dyson chose instead to use the word “cylindrical,” unmodified. Dyson should not be excused “from the consequences of its own word choice.” *Int’l Rectifier*, 361 F.3d at 1372.

Dyson limited the meaning of “cylindrical,” to its common meaning (*i.e.*, having a circular cross-section) and expressly disclaimed other shapes that might be captured by a looser use of the word. Specifically, the ’979 patent states: “The heads 30, 130, 230 are all generally cylindrical in shape, however as the skilled person would realise, *alternative shapes* could be used such as ovals.” Ex. A at 11:8–10 (emphasis added). This passage *distinguishes* cylindrical from objects whose base surfaces are oval or other non-circular shapes. As such, the word “cylindrical” cannot encompass ovals or other shapes for the base surfaces. *SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187, 1203–04 (Fed. Cir. 2013) (finding patentees “disclaimed a potential embodiment from the ordinary scope of a claim term” where they “describe[d] how the characteristics of the disclaimed embodiment were different from those of the claimed feature”). This stricter definition of the word “cylindrical” is consistent with the Cambridge English Dictionary, which defines “cylinder” as “a solid or hollow tube with long straight sides and two circular ends the same size, or an object shaped like this, often used as a container.” Ex. P at 1; *see also* Ex. Q (Collins English Dictionary) at 1 (“A cylinder is an object with flat, circular ends and long, straight sides.”).

Dyson’s intent in leaving the term “cylindrical” un-construed is laid bare by its alternative proposed construction. Dyson apparently wants to argue that “cylindrical” encompasses objects with base surface “of various shapes.” That construction is plainly wrong, because it would ensnare non-cylindrical shapes such as triangular and rectangular prisms, as shown here, and as expressly disclaimed in the patent. Dyson’s alternative construction places no limit whatsoever on the “congruent bases which may be of various shapes,”



and impermissibly broadens this term way beyond its meaning. SharkNinja’s proposed construction is necessary to hold Dyson to the word it chose—“cylindrical,” without modification.

2. “distal end of the attachment” (claims 1 and 17)

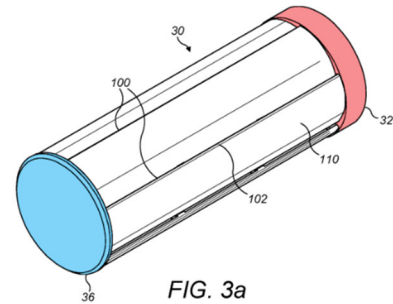
SharkNinja’s Proposed Construction	Dyson’s Proposed Construction
“the base surface of the attachment that is farthest from the handle of the handheld device”	Plain and ordinary meaning and does not require construction. Alternative construction if the Court deems one necessary: “the end of the attachment farther from the handle of the handheld device.”

The intrinsic record is clear that the “distal end of the attachment” is “the base surface of the attachment that is farthest from the handle of the handheld device.” Dyson seeks to leave this term undefined—referring only generally to “the end” that is “farther from the handle”—presumably so that it can argue that a “distal end” refers to the broader, colloquial meaning of “end” encompassing the *end portion* of the attachment generally, not just limited to the base surface. Dyson’s attempt to broaden “end” beyond the actual end (*i.e.*, base surface) of the device is contrary not only to the intrinsic record, but also to Dyson’s own interpretation of identical claim language, supported by an identical specification, in a German proceeding regarding a European counterpart patent to the ’979 Patent at issue here. *See* Ex. B.

In an appeal regarding the European counterpart patent to the ’979 Patent, EP 3,119,234, Dyson *agreed* with SharkNinja’s proposed construction here. *See* Ex. B at 4. Specifically, in arguing that the reference to “distal end” was precise enough for patentability, Dyson argued that “the ‘first end’ and ‘distal end’ describes the two *base surfaces of the cylindrical attachment*, and specifically how those ends are arranged relative to the handheld device.” *Id.* In support, Dyson cited paragraph [0063] of the European patent’s specification, which is identical to the paragraph

at 6:56–67 in the specification of the '979 Patent. *Id.* at 5–6. Dyson concluded that, based on the specification, that “when the claim also refers to the first and distal end, *the base surfaces* of the generally cylindrical attachment are meant and not, for example, its lateral surface (which connects the base surface).” Dyson’s arguments in the German proceeding, while not dispositive, are nevertheless relevant to the interpretation of “distal end” here. *Cf. Starhome GmbH v. AT&T Mobility LLC*, 743 F.3d 849, 858 (Fed. Cir. 2014) (“We have previously held that statements made before foreign patent offices are sometimes relevant to interpreting the claims.”); *Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co.*, 228 F.3d 1338, 1349 (Fed. Cir. 2000) (finding no error in district court’s reference to the usage and description of claim term by patent owner in a submission to the Japanese Ministry of Agriculture, Forestry and Fisheries in construing term).

SharkNinja’s construction is also mandated by the surrounding claim language. As explained above, Dyson obtained its claims only after amending them to require at least one slot “*extending continuously from the proximal first portion to a distal end of the attachment.*” The reference to a “proximal first portion” and a “distal end” raises the presumption that an “end” is different from a “portion,” and accordingly, the claimed “distal end” is *not* the same as a distal portion. *CAE*



Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG, 224 F.3d 1308, 1317 (Fed. Cir. 2000) (“In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.”). The specification reinforces this understanding. It states that the attachment has “a **second end 36** distal to the **first end 32**,” both of which are depicted in Figs. 3a, 6a, and 7a, among others. Ex. A at 6:58–60. As shown in these figures, the

“second end 36”—which is the “distal end of the attachment,” as claimed—is “the base surface of the attachment.” Accordingly, SharkNinja’s proposed construction should be adopted.

3. “outlet” (claims 1 and 17)

SharkNinja’s Proposed Construction	Dyson’s Proposed Construction
“opening(s) through which fluid flow is emitted”	Plain and ordinary meaning and does not require construction. Alternative construction if the Court deems one necessary: “the opening(s) through which fluid flow is emitted and the nearby external surface(s) of the attachment”

SharkNinja’s proposed construction clarifies exactly what an “outlet” is in the context of the patent: it is the opening(s) through which fluid flow (*i.e.*, air) is emitted. This construction captures what any skilled artisan (or lay juror) would understand “outlet” to mean.

The specification consistently explains that the “fluid outlet” of the attachment “is formed from a number of parallel slots,” and that the slots “are formed from an overlap 120 (FIG. 5b)

formed between adjacent plates 110.” Ex. A at

7:3–5. As shown in Fig. 5b, the “fluid 122 flow[s] out of the slot 102,” and “is blown out along the external surface of the [attachment].” *Id.* at 7:9–

15. Thus, the intrinsic evidence is clear that the

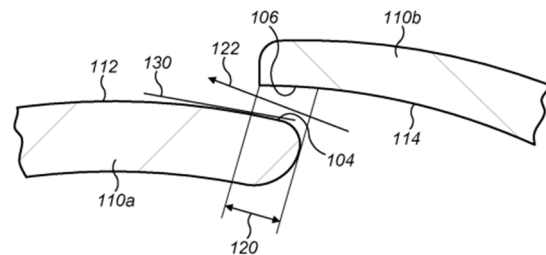


FIG. 5b

“outlet” is an “opening” that is *defined by*—not comprised of—the external surfaces of the attachment, such as the “adjacent plates” depicted in Fig. 5b. The plates are not *themselves* part of the outlet; they merely define the outlet.

Dyson urges the Court to leave the term undefined, but its plans for this term are apparent from its alternative construction. Dyson’s alternative construction is “the opening(s) through

which fluid flow is emitted and the nearby external surface(s) of the attachment,” where the underlined portion is the only difference between the parties’ constructions. It would be hard to imagine a more transparent attempt to expand claim language. The reason for Dyson’s unabashed attempt to add the amorphous “nearby external surfaces” to the meaning of “outlet” is simple: the outlets in SharkNinja’s accused devices are not defined in any part by “an external surface of a substantially contiguous wall,” as required by the claims. They are instead defined entirely by internal-facing structures. Dyson’s solution to this fatal flaw in its infringement case is to try to expand the simple word “outlet” to include not only the opening itself, but also additional structures that do not define the outlet at all, so it can thereby argue that the rest of the claim is satisfied. But nothing in the claims or specification supports Dyson’s overly broad reading, and its attempt to construe the term in light of the accused device should be rejected. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[C]laims are construed objectively and without reference to the accused device . . .”).

Dyson’s transparent attempt to add “nearby” structure to the claimed “outlet” should be rejected. Instead, the Court should construe “outlet” to mean what one of ordinary skill in the art would readily understand it to mean, which is “opening(s) through which fluid flow is emitted.”

4. “flow directing element” (claims 8 and 24)

SharkNinja’s Proposed Construction	Dyson’s Proposed Construction
This term is subject to 35 U.S.C. § 112(f). <i>Function</i>: “direct the flow of fluid” <i>Structure</i>: internal sock 420, which is “mesh formed from a metal wire.” Figs. 15a, 15b, 15c, 15d, 15e, 16, a, 16b; col. 8:61-9:11.	Plain and ordinary meaning and does not require construction. Alternative construction if the Court deems one necessary: “an element inside the attachment to direct the flow of fluid (air).” If the term is deemed subject to 35 U.S.C. § 112(f), the correct structure is “a perforated layer.” Col. 2:6; 3:30.

This term is a means-plus-function element that must be limited—under Federal Circuit law—to the specific structures disclosed in the specification and their equivalents. Dyson seeks to avoid the language it chose and instead leave this structural element undefined and merely functional. Dyson’s attempt to ignore the law and the language of the claim should be rejected.

The parties dispute: (1) whether the claimed “flow directing element” is a means-plus-function limitation governed by Section 112(f); and (2) if so, what the corresponding structure is. On the first issue, Federal Circuit case law confirms that “element” is a generic “nonce” word that invokes Section 112(f). *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1350 (Fed. Cir. 2015) (en banc) (“Generic terms such as ‘mechanism,’ ‘*element*,’ ‘device,’ and other nonce words that reflect nothing more than verbal constructs may be used in a claim in a manner that is tantamount to using the word ‘means’ because they typically do not connote sufficiently definite structure and therefore may invoke [pre-AIA] § 112, para. 6.” (emphasis added)). On the second issue, the only alleged corresponding structure identified by Dyson is a generic “perforated layer” structure that the specification does not describe as performing the recited function. The correct structure is the “internal sock 420,” which is “mesh formed from a metal wire.”

(a) “Element” Is a Nonce Term Triggering Section 112(f)

Although there is a presumption that “where the claim language does not recite the term ‘means,’ . . . the limitation does not invoke [pre-AIA] § 112, ¶ 6,” that presumption is overcome where “the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function.” *Robert Bosch, LLC v. Snap-On Inc.*, 769 F.3d 1094, 1097 (Fed. Cir. 2014). That is exactly the case here: the claim language recites the nonce word “element” without providing structure in the claim sufficient to allow a POSA to determine what performs the claimed “flow directing” function. *See Williamson*, 792 F.3d at 1350 (stating that “element” is a nonce word that is tantamount to using the word “means”); *Mas-*

Hamilton Group v. LaGard, Inc., 156 F.3d 1206, 1213–15 (Fed. Cir. 1998) (noting that “lever moving element” is “drafted as a function to be performed rather than definite structure or materials” and therefore was properly construed as a means-plus-function element).

Even if the Court were to adopt Dyson’s construction, this limitation would still be a means-plus-function term, because Dyson’s construction does nothing more than: (1) repeat the nonce word “element”; (2) state that the “element” is “inside the attachment” without identifying any specific structure; and (3) recite the function of the “element” (“direct the fluid flow of air”).

(b) The Corresponding Structure is “internal sock 420,” which is “mesh formed from a metal wire”

The parties do not dispute that if “flow directing element” is a means-plus-function limitation, its function is to “direct the flow of fluid.” The only structure in the specification that is clearly linked with that function is “internal sock 420,” which “is a mesh formed from a metal wire.” Ex. A at 8:61–63. The specification explains that “[t]he sock 420 *diffuses the fluid flowing* in the cavity 418 within the head 500 and *slows down the longitudinal velocity of the flow.*” *Id.* at 9:1–3 (emphasis added). Further, the diffusion of the fluid by the sock 420 “results in more even wrapping of hair around the head 400 as the *direction of fluid exiting the head 400 is more normal to the slots 102.*” *Id.* at 9:3–5 (emphasis added). In other words—the sock 420 “direct[s] the flow of fluid” by diffusing the fluid flowing in the cavity, which slows down the longitudinal velocity of the flow, and causes the direction of the fluid exiting the attachment to be “more normal” (*i.e.*, more perpendicular). Thus, the “internal sock 420” is the corresponding structure.

Dyson contends that “a perforated layer” is the correct structure, and cites two sentences that say only: “It is preferred that the flow directing element comprises a perforated layer.” Ex. A at 2:5–6, 3:29–30; *see also id.*, cls. 9, 25. Although the patent states that the “flow directing element *comprises* a perforated layer,” it never describes how a generic “perforated layer” is

sufficient to perform the required function. Conversely, the “internal sock 420” is expressly linked to the function of “direct[ing] the flow of fluid.” *See, e.g., Mettler-Toledo, Inc. v. B-Tek Scales, LLC*, 671 F.3d 1291, 1296 (Fed. Cir. 2012) (district court properly limited structure to a particular form of an A/D converter and excluded generic A/D converters since the patent disclosed only the specific form of a converter “linked . . . to the claimed function” and never disclosed a generic A/D converter to perform the claimed function); *Axcelis Techs., Inc. v. Applied Materials, Inc.*, 2003 WL 21361339, at *2 (D. Mass. June 12, 2003) (“means-plus-function element . . . must be limited by the structure disclosed in the specification, but limitation will not necessarily be drawn from the preferred embodiment”).

B. Indefinite Terms

1. **“wherein the outlet . . . is configured to direct fluid flow emitted from the outlet tangentially along and around the external surface of the substantially contiguous wall to form a circumferential fluid flow around the cylindrical second portion of the attachment that encourages hair to automatically wrap around the cylindrical second portion”**

SharkNinja’s Proposed Construction	Dyson’s Proposed Construction
Either indefinite or “to form a circumferential fluid flow around the cylindrical second portion of the attachment that encourages hair to automatically wrap around the cylindrical second portion” is non-limiting.	Plain and ordinary meaning and does not require construction.

This claim term includes functional language that renders the independent claims indefinite as hybrid apparatus/method claims. *IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377, 1384 (Fed. Cir. 2005). Accordingly, claims 1 and 17 should be found indefinite, or in the alternative, the inoperative functional language should be given no patentable weight, and be construed as non-limiting. Indeed, during prosecution, the Examiner repeatedly advised Dyson regarding this functional language—“configured to direct fluid flow emitted from the outlet along

and around the external surface of the attachment”—that “it has been held by the courts that where a prior art apparatus is identical or substantially identical in structure, claimed properties or functional characteristics are presumed to be inherent, and a prima facie case of either anticipation or obviousness has been established.” Ex. D at 3. Accordingly, the Examiner found that the Lindsey prior art reference “disclose[d] all of the structural features of the claimed invention . . . and was therefore considered to anticipate the cited functional limitations.” *Id.*; Ex. E at 3 (functional limitations inherent in and anticipated by Lindsey); Ex. G at 2–3 (same); Ex. I at 4 (functional limitations inherent in and anticipated by McDougall). The same rationale continues to apply here: this functional language should be found to be indefinite or given no patentable weight.

(a) Indefiniteness

The Federal Circuit has held that “apparatus claims are not necessarily indefinite for using functional language.” *MasterMine Software, Inc. v. Microsoft Corp.*, 874 F.3d 1307, 1313 (Fed. Cir. 2017) (quoting *Microprocessor Enhancement Corp. v. Tex. Instruments Inc. (MEC)*, 520 F.3d 1367, 1375 (Fed. Cir. 2008) (internal quotation marks omitted)). Specifically, functional language that is used to describe *capabilities* of an apparatus rather than activities of the user is permissible. *See id.* at 1315–16. However, under *IPXL* and its progeny, a patentee may not “claim[] both an apparatus and method of using the apparatus within a single claim” so that it is “unclear whether infringement . . . occurs when one creates a[n infringing] system, or whether infringement occurs when the user actually uses [the system in an infringing manner].” *Id.* (alteration in original) (quoting *UltimatePointer, L.L.C. v. Nintendo Co.*, 816 F.3d 816, 826 (Fed. Cir. 2016)).

The claim term here is improper under *IPXL*. Here, the language “to form a circumferential fluid flow around the cylindrical second portion of the attachment that encourages hair to

automatically wrap around the cylindrical second portion” describes a *natural effect* that only occurs when the claimed attachment is actually *in use*—*i.e.*, when a user has wrapped hair around the apparatus—not a mere *capability* of the claimed attachment. But the claim language explicitly recites that the “circumferential fluid flow . . . encourages *hair* to automatically wrap,” indicating that the hair of the user is necessary in order for this claim limitation to be met. *See* Ex. A, cl. 1. Accordingly, it is unclear whether creating an attachment that would cause “circumferential fluid flow” would meet this claim limitation, or whether this limitation is met only when the attachment is in use, and the user’s hair “is presented to the attachment” and is automatically wrapped. Under *IPXL*, the claim is therefore indefinite.

Even if the Court disagrees that the claim language is indefinite under *IPXL*, the term is nonetheless indefinite because the claim and specification provide no guidance that enable a POSA to determine when hair is sufficiently “encouraged” to “automatically wrap” in a manner that infringes the claim, rendering the term purely subjective and therefore indefinite. *See, e.g., DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1260 (Fed. Cir. 2014) (“When a claim term ‘depend[s] solely on the unrestrained, subjective opinion of a particular individual purportedly practicing the invention,’ without sufficient guidance in the specification to provide objective direction to one of skill in the art, the term is indefinite.”).

(b) No Patentable Weight

Alternatively, SharkNinja requests that the Court determine that the functional language (“to form a circumferential fluid flow . . . that encourages hair to automatically wrap”) is entitled to no patentable weight, and construe that portion of the term as non-limiting. It is well-settled that “the recitation of a new intended use for an old product does not make a claim to that old product patentable.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) (collecting cases and

concluding that a contention that a claimed structure will be used for a particular purpose “does not have patentable weight if the structure is already known, regardless of whether it has ever been used in any way in connection with” that purpose). Accordingly, the functional language indicating that the claimed structure of the attachment may cause a particular effect when in use (“circumferential fluid flow . . . that encourages hair to automatically wrap”) should not be given patentable weight, as those functional characteristics will be presumed to be inherent as long as a prior art apparatus is identical or substantially identical in structure. *See, e.g., In re Best*, 562 F.2d 1252, 1254–55 (C.C.P.A. 1976). Thus, any device that meets the structural limitations of the claimed “outlet” would be capable of generating a “circumferential fluid flow . . . that encourages hair to automatically wrap.” As noted above, during prosecution the Examiner repeatedly noted that the functional characteristics of the attachment relating to the “fluid flow emitted” were presumed to be inherent over prior art references that disclosed all the structural features of the claimed invention. *See, e.g., Ex. D at 3; Ex. E at 3; Ex. G at 2–3; Ex. I at 4.* That rationale still applies, and the functional language should be given no patentable weight.

2. “is configured so that, in use, the fluid emitted from the outlet is attracted to the external surface of the attachment” (claims 3 and 19)

SharkNinja’s Proposed Construction	Dyson’s Proposed Construction
Indefinite.	Plain and ordinary meaning and does not require construction. Alternative construction if the Court deems one necessary: “is configured so that, in use, the direction of fluid emitted from the outlet tends to follow the curvature of the external surface of the attachment, rather than a linear direction.”

As with the preceding term, this term, which is the sole additional limitation of dependent claims 3 and 19, consists only of functional language that renders the claims indefinite as hybrid

apparatus/method claims. *See IPXL*, 430 F.3d at 1384. These claims should be found indefinite.³

As explained above, the specification states that “[t]he fluid 12 exiting the slots 102 *is attracted to the curved surface of the [attachment]* by the Coanda effect.” Ex. A at 7:16–17 (emphasis added). Thus, this claim limitation again recites a natural effect that only occurs when the attachment is *in use*, and not a permissible functional capability of the attachment. Thus, these claims are indefinite, as it is unclear whether creating an attachment that would attract the fluid emitted from the outlet to the external surface of the attachment would meet the claims, or whether the claims are only infringed when the attachment is “in use,” and the fluid emitted from the outlet is actively attracted to the external surface of the attachment.

Dyson’s proposed construction does not render the claims definite, as it merely replaces the phrase “attracted to the external surface of the attachment” with other functional language in an attempt to clarify the direction of the emitted fluid.

3. “proximal first portion of the attachment” (claims 1 and 17)

SharkNinja’s Proposed Construction	Dyson’s Proposed Construction
Indefinite.	Plain and ordinary meaning and does not require construction. Alternative construction if the Court deems one necessary: “a portion of the attachment close to the handle of the handheld appliance.”

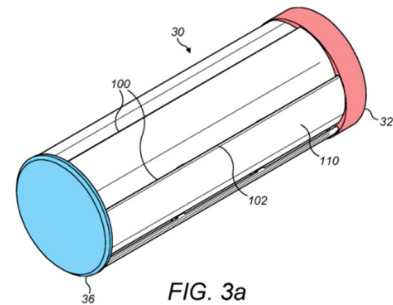
The intrinsic record gives zero guidance as to where a “proximal first portion of the attachment” starts or ends relative to the claimed attachment as a whole. Because the intrinsic

³ As with the previous term, the functional limitations of these dependent claims are also not entitled to patentable weight, and there are no other limitations recited in the dependent claims. *See, e.g.*, Ex. D at 3; Ex. E at 3; Ex. G at 2–3; Ex. I at 4. Thus, these claims are indefinite as failing to specify a further limitation of the subject matter claimed. *See* 35 U.S.C. § 112(d).

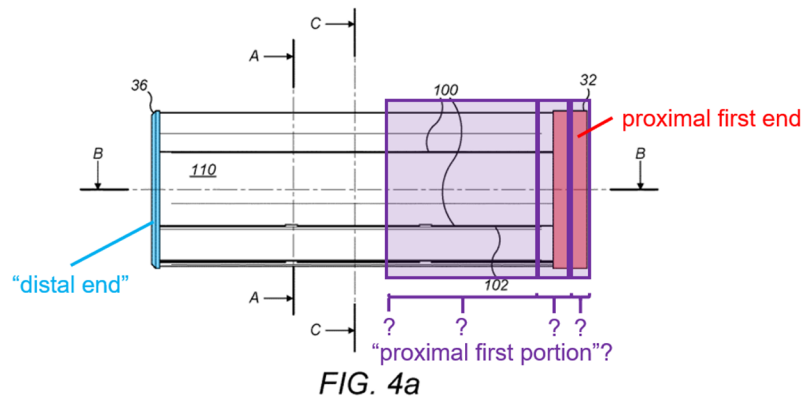
record “fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of” this term, it is indefinite. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014).

As an initial matter, the claim language itself does not provide any objective boundaries as to the dimensions of a “proximal first portion of the attachment.” Both independent claims require an “inlet” located “*in a proximal first portion of the attachment*,” and “at least one slot extending continuously *from the proximal first portion* to a distal end of the attachment.” Ex. A, cls. 1, 17. These are the only limitations relating to the “proximal first portion” in the claims.

The specification discloses “a **first end 32** for connection to a handle 20 and a **second end 36** distal to the first end,” both of which are depicted in Fig. 3a, and both of which are clearly “ends” of the attachment. Ex. B at 6:58–60. The second end 36 is the distal end of the attachment, and is claimed as the “distal end.” The claims, however, never claim a “proximal first end,” but rather only a “proximal first portion,” thereby creating the presumption that the claimed “proximal first portion” is *not* the same as a “proximal first end.” *CAE Screenplates Inc.*, 224 F.3d at 1317.



This ambiguity gives rise to further questions. For example: (1) must the “proximal first portion” include the proximal first end of the attachment? If so: (2) how much of the proximal first end is included in the “proximal first portion”? And if not: (3) how close must the “proximal first portion” be to the proximal first end? In the figure to the right, there is no way to



know which of the purple boxes constitutes a “proximal first portion” from which the slots must begin. Under the governing *Nautilus* standard, it is not enough that “a court can ascribe some meaning to a patent’s claims.” *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1370–71 (Fed. Cir. 2014) (quoting *Nautilus*, 572 U.S. at 911). Instead, “[t]he claims, . . . must provide objective boundaries for those of skill in the art.” *Id.* at 1371. Here, there is no objective standard in the intrinsic record that explains what the dimensional bounds of a “proximal first portion of the attachment” actually are. Without this objective guidance, one of skill in the art would be left to guess as to what “portion,” if any, is sufficient to satisfy the “proximal first portion” element. Claims 1 and 17 are therefore indefinite. This is critical, as competitors should be able to avoid the patent by positioning the slots to begin outside the “proximal first portion.” But without knowing where that is, competitors would be unable to know how to avoid this patent.

Dyson’s alternative construction does not save this term from indefiniteness, as it does nothing more than explain what is meant by “proximal,” and there is no disagreement between the parties about the meaning of “proximal” (*i.e.*, close to the point of attachment to the hand held appliance (*i.e.*, close to the handle)). Dyson’s alternative construction therefore does not provide the objective bounds necessary to preclude a finding of indefiniteness.

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