

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

VERMONT SAFETY DEVELOPMENTS
LLC,

Plaintiff,

vs.

HEAD SPORT GmbH,

Defendant.

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C.A. No. 2:23-cv-00089-GWC

**PLAINTIFF VERMONT SAFETY DEVELOPMENTS LLC’S PRELIMINARY CLAIM
CONSTRUCTIONS WITH SUPPORTING EVIDENCE**

Pursuant to the entered Stipulated Discovery Schedule/Order (Doc. 32), Plaintiff Vermont Safety Developments LLC (“VSD”) hereby provides to Defendant Head Sport GmbH (“Head”) its Preliminary Claim Constructions and Identification of Supporting Evidence.

The disclosures made herein are preliminary based on information available to date. Accordingly VSD reserves the right to supplement or modify this disclosure as new information becomes available through discovery, court order or other investigation.

To understand and interpret the limitations of the asserted claims, a person of ordinary skill in the art would rely upon other information, including other publications and general marketing, scientific, or engineering knowledge. VSD therefore reserves the right to rely upon currently unidentified portions of prior art references and on other publications and expert testimony to provide context and to help with understanding and interpretation of the identified claim limitations.

VSD also reserves the right to identify additional information in the intrinsic record or provide additional extrinsic evidence, including expert testimony, in rebuttal to any positions or evidence taken or submitted by Head hereinafter.

VSD also objects to the arbitrary parsing of the limitations of the asserted claims in its proposed terms for construction in a manner clearly intended to isolate lengthy phrases out of the context of the claim limitation as a whole to deprive the proposed “term” of contextual meaning and to obscure the fact that the proposed terms for construction include multiple terms that must

be defined to construe the complete parsed phrases as proposed by Head, thereby avoiding the fifteen term per party limitation on proposed claim terms as set forth the Stipulated Discovery Schedule/Order, paragraph 8. VSD reserves its right respond accordingly should Head persist in seeking construction of more than the agreed fifteen claim terms per party.

1. Claim Term (VSD + Head)	VSD Proposed Construction
a first release (claims 53, 58)	A mechanism within the ski binding assembly that allows separation of the ski boot from the ski automatically and without skier intervention in response to a predetermined external loading of the ski correlated to an estimated tibial axis load level selected to lessen the likelihood of ACL injury (<i>i.e.</i> in response to the “ release condition ” being met)
Intrinsic Evidence	
Ettlinger Patent: Abstract, 2:20-22, 2:30-33, 2:40-43, 4:13-16, 4:33-67, 5:45-48, 6:46-47, 7:25-65, 8:17-24, 8:34-67, 9:32-10:20, 10:29-46, 11:44-12:22, 12:24-26, 12:42-56, 13:13-42, 14:5-10, 14:19-25, 14:48-56, 15:1-17, 16:7-11, 17:5-25, 17:42-47, and FIGS. 2-8, 9B, 10B, 11-13, 15, 16, 17, 22-24 File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • Gordon Lipe, The ALLSOP-Pegged for Safety, Know Your Binding: 18, Ziff-Davis Publishing Company, Oct. 1973. • Gordon Lipe, The Allmat 8000, Jet, and PSC, Know Your Bindings: 19, Nov. 1973, pp. 155, 158 and 163. • Gordon Lipe, The Americana: Heel Release on a Plate, Know Your Bindings: 21, pp. 12-14, published prior to Aug. 7, 2005. • Carl Ettlinger, Bindings Performance Report: The Salomon 727, Reprinted from Skiing Magazine, Oct. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Moog Delta S. Reprinted from Skiing Magazine, Nov. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Burt II, Reprinted from Skiing Magazine, Dec. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Tyrolia 60 Series, Reprinted from Skiing Magazine, Oct. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The New Spademan Line, Reprinted from Skiing Magazine, Dec. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: Look Again, Reprinted from Skiing Magazine, Feb. 1983, Ziff-Davis Publishing Company, pp. 109-111. • Carl Ettlinger, How Your Bindings Work, Marker's Twincam Series, Skiing, Oct. 1987, pp. 225, 228, 230. • Carl Ettlinger, How Your Bindings Work. The Ess V.A.R., Skiing, Feb. 1988, pp. 94, 116. • Carl Ettlinger, The New Geze Line, Skiing, Oct. 1988, pp. 190, 192, 194. • Carl Ettlinger, The Salomon 37 Line, Skiing, Nov. 1982, pp. 175, 176, 178, 180. • Ettlinger, et al., A Method to Help Reduce the Risk of Serious Knee Sprains Incurred in Alpine Skiing, Am. J. of Sports Med., Vol. 23, No. 5, 1995, pp. 531-537 • Johnson et al., “Skier Injury Trends – 1972 to 1994,” Skiing Trauma and Safety: 11th Vol., ASTM STP 1289, Johnson et al., Eds., American Society for Testing and Materials, 1997, pp. 37-48	

- Johnson et al., “Update on Injury Trends in Alpine Skiing,” Skiing Trauma and Safety: 13th Vol., ASTM STP 1397, Johnson et al., Eds., American Society for Testing and Materials, 2000, pp. 108-118
- ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings
- ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings
- 3,091,475 A 5, 1963 Wunder
- USP 3,876,218 A 4, 1975 Von Besser
- USP 5,064,215 A 1 1/1991 Ferdinand et al.
- USP 5,071,155. A 12/1991 Stepanek et al.
- USP 5,551,720 A 9/1996 Ruffinengo
- USP 5,722,681 A 3, 1998 Merino
- USP 6,007,086 A 12/1999 Hopkins
- USP 6,450,526 B1 9, 2002 Bressand
- USP 7,063,345 B2 6/2006 Holzer
- USP 7,086,662 B2 8/2006 Dodge
- US Pat. Pub. 2004/0145154 A1 7/2004 Holzer
- US Patent Pub. 2004/0173994 A1 9, 2004. Howell
- Provisional Application No. 60/836,454 filed August 8, 2006

Extrinsic Evidence

- Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date, and rebuttal declaration of patent practice and prosecution expert David R. Owens, Esq.
- Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein
- Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein
- Merriam-Webster Dictionary (www.merriam-webster.com/dictionary) – Release, noun, def. 6: a device adapted to hold or release a mechanism as required
- McGraw-Hill Dictionary of Scientific and Technical Terms, 6th Ed. 2003 (hereinafter “McGraw”) - Release: A mechanical arrangement of parts for holding or freeing a device or mechanism as required.

2. Claim Term (VSD + Head)	VSD Proposed Construction
release logic (claims 53, 58)	a specific sequence of actions executed by components of the ski binding assembly, and the components that execute the sequence of actions, in response to externally applied loads on the ski that allow or disallow binding release (via the first release) to occur dependent upon whether predetermined loading conditions are met that would indicate risk of ACL injury (i.e., the release condition).
Intrinsic Evidence	
Ettlinger Patent: 2:8-10, 2:19-25, 4:13-16, 4:50-5:10, 8:15-20, 8:42-50, 9:6-12:26; 12:34-13:42, 14:10-27, 14:64-15:41, 16:7-11, 16:37-18:23, and FIGS. FIG. 7, 9A, 9B, 10A, 10B, 11, 12, 13, 15, 16, and 22-24, also patent title File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
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• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein • Oxford English Dictionary – Logic, definition 4: The system or principles underlying the representation of logical operations and two-valued variables by electrical or other physical signals and their interactions; the forms and interconnections of logic elements in any particular piece of equipment, in so far as they relate to the interaction of signals and not to the physical nature of the components used; also, the actual components and circuitry; logical operations collectively, as performed by electronic or other devices. • Merriam-Webster Dictionary (www.merriam-webster.com/dictionary) – Logic, noun, def. 1.d: the arrangement of circuit elements (as in a computer) needed for computation, also: the circuits themselves • American Heritage Dictionary – Logic Gate: A mechanical, optical or electronic system that performs a logical operation on an input signal.	

3. Claim Term (VSD + Head)	VSD Proposed Construction
release condition (claim 53)	A predetermined external loading of the ski correlated to an estimated skier tibial axis load level selected to lessen the likelihood of ACL injury
Intrinsic Evidence	
Ettlinger Patent: Abstract, 2:40-43, 4:13-65, 5:3-9, 5:63-9:3, 9:47-56, 10:4-10, 10:19-28, 12:24-26, 13:13-25, 15:42-55, 16:7-11, 17:40-18:23, and FIGS. 2-5, 7-8 and 24. File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • Gordon Lipe, The ALLSOP-Pegged for Safety, Know Your Binding: 18, Ziff-Davis Publishing Company, Oct. 1973. • Gordon Lipe, The Allmat 8000, Jet, and PSC, Know Your Bindings: 19, Nov. 1973, pp. 155, 158 and 163. • Gordon Lipe, The Americana: Heel Release on a Plate, Know Your Bindings: 21, pp. 12-14, published prior to Aug. 7, 2005. • Carl Ettlinger, Bindings Performance Report: The Salomon 727, Reprinted from Skiing Magazine, Oct. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Moog Delta S. Reprinted from Skiing Magazine, Nov. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Burt II, Reprinted from Skiing Magazine, Dec. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Tyrolia 60 Series, Reprinted from Skiing Magazine, Oct. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The New Spademan Line, Reprinted from Skiing Magazine, Dec. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: Look Again, Reprinted from Skiing Magazine, Feb. 1983, Ziff-Davis Publishing Company, pp. 109-111. • Carl Ettlinger, How Your Bindings Work, Marker's Twincam Series, Skiing, Oct. 1987, pp. 225, 228, 230. • Carl Ettlinger, How Your Bindings Work. The Ess V.A.R., Skiing, Feb. 1988, pp. 94, 116. • Carl Ettlinger, The New Geze Line, Skiing, Oct. 1988, pp. 190, 192, 194. • Carl Ettlinger, The Salomon 37 Line, Skiing, Nov. 1982, pp. 175, 176, 178, 180. • Ettlinger, et al., A Method to Help Reduce the Risk of Serious Knee Sprains Incurred in Alpine Skiing, Am. J. of Sports Med., Vol. 23, No. 5, 1995, pp. 531-537 • Johnson et al., "Skier Injury Trends – 1972 to 1994," Skiing Trauma and Safety: 11th Vol., ASTM STP 1289, Johnson et al., Eds., American Society for Testing and Materials, 1997, pp. 37-48 • Johnson et al., "Update on Injury Trends in Alpine Skiing," Skiing Trauma and Safety: 13th Vol., ASTM STP 1397, Johnson et al., Eds., American Society for Testing and Materials, 2000, pp. 108-118	

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- USP 5,551,720 A 9/1996 Ruffinengo
- USP 5,722,681 A 3, 1998 Merino
- USP 6,007,086 A 12/1999 Hopkins
- USP 6,450,526 B1 9, 2002 Bressand
- USP 7,063,345 B2 6/2006 Holzer
- USP 7,086,662 B2 8/2006 Dodge
- US Pat. Pub. 2004/0145154 A1 7/2004 Holzer
- US Patent Pub. 2004/0173994 A1 9, 2004. Howell
- Provisional Application No. 60/836,454 filed August 8, 2006

Extrinsic Evidence

- Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date
- Plaintiff Vermont Safety Developments LLC's Updated Preliminary Infringement Contentions and materials cited and contained therein
- Defendant Head Sport GmbH's Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein
- Oxford English Dictionary – Condition, noun, def. I.4.a: Something that must exist or be present if something else is to be or take place; that on which anything else is contingent; a prerequisite

4. Claim Term (VSD)	VSD Proposed Construction
first axis (claims 53, 58)	An axis of rotation substantially perpendicular to the plane of the ski at a specific point on the ski relative to the tibial axis. (The first axis is the location at which the first loading is assessed as a trigger for enabling the first release)
Intrinsic Evidence	
Ettlinger Patent: 6:20-50, 7:25-8:23, 8:51-60, 9:38-42, 9:56-59, 9:65-67, 11:44-49, 13:5-12, 13:45-50, 14:30-42, 16:61-17:6, 17:52-18:3, and FIGS. 6, 9B, 11, 23 and 24 File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date, and rebuttal declaration of patent practice and prosecution expert David R. Owens, Esq. • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein	

5. Claim Term (VSD)	VSD Proposed Construction
second axis (claims 53, 58)	An axis of rotation parallel to and spaced from the “ first axis ,” and substantially perpendicular to the plane of the ski at a different specific point on the ski relative to the tibial axis (The second axis is the location at which the second loading is assessed to permit the first release to occur.)
Intrinsic Evidence	
Ettlinger Patent: 6:20-50, 7:25-8:23, 8:51-60, 9:38-42, 9:56-59, 9:65-67, 11:44-49, 13:5-12, 13:45-50, 14:30-42, 16:61-17:6, 17:52-18:3, and FIGS. 6, 9B, 11, 23 and 24, claims 32, 33, 34 File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date, and rebuttal declaration of patent practice and prosecution expert David R. Owens, Esq. • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein	

6. Claim Term (VSD)	VSD Proposed Construction
first loading (claims 53, 58)	A torque, moment or force resolvable at the first axis in response to an externally applied load on the ski
Intrinsic Evidence	
Ettlinger Patent: 4:12-25, 5:31-41, 7:40-8:16, 8:34-40, 8:51-60, 9:47-62, 11:11-42, 12:63-67, 14:25-30, 15:9-15, 16:61-17:6, 17:48-18:23, and FIGS. 1, 6, 7, 8, 9B, 10B, 11, 23, 24 File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date, and rebuttal declaration of patent practice and prosecution expert David R. Owens, Esq. • Plaintiff Vermont Safety Developments LLC's Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH's Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein	

7. Claim Term (VSD)	VSD Proposed Construction
second loading (claims 53, 58)	A torque, moment or force resolvable at the second axis in response to an externally applied load on the ski
Intrinsic Evidence	
Ettlinger Patent: 4:12-25, 5:31-41, 7:40-8:19, 8:51-62, 10:5-11, 10:29-31, 16:61-17:6, 17:48-18:23, and FIGS. 1, 6, 7, 8, 9B, 10B, 11, 23, 24, claims 32, 33, 34 File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date, and rebuttal declaration of patent practice and prosecution expert David R. Owens, Esq. • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein	

8. Claim Term (VSD + Head)	VSD Proposed Construction
assess, relative to a first axis, a first loading internal to the ski system caused by an external loading applied to the ski system (claim 53)	“first axis” and “first loading” defined above “internal to the ski system caused by an external loading applied to the ski system” – refers to loads acting on and between parts of the ski binding assembly as a result of a load applied externally to the ski system such as by impact of a ski edge on the snow Overall construction: provide an indication of or a response to a magnitude and direction of the first loading at the first axis by permitting or causing movement of one or more mechanical components or creating an electronic signal when an external load, such as an impact on the snow, is applied to the ski
Intrinsic Evidence Ettlenger Patent: 4:18-24, 4:50-5:10, 8:1-20, 8:36-65, 9:32-12:26; 12:34-13:42, 14:10-27, 14:64-15:41, 16:7-11, 16:37-18:23, and FIGS. FIG. 7, 9A, 9B, 10A, 10B, 11, 12, 13, 15, 16, and 22-24 and citations identified above with respect to the construction of included terms “first axis” and “first loading” File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence • Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein • Merriam-Webster Dictionary (www.merriam-webster.com/dictionary) – Asses, verb, def. 1: to determine the rate or amount of	

9. Claim Term (VSD + Head)	VSD Proposed Construction
assess, relative to a second axis spaced from the first axis and substantially parallel to the first axis, a second a loading internal to the ski system caused by the external loading (claim 53)	“second axis” and “second loading” defined above “internal to the ski system caused by the external loading applied to the ski system” also as defined above. Overall construction: provide an indication of or a response to a magnitude and direction of the second loading at the second axis by permitting or causing movement of one or more mechanical components or creating an electronic signal when an external load, such as an impact on the snow, is applied to the ski
Intrinsic Evidence	
Ettlinger Patent: 4:18-24, 4:50-5:10, 8:1-20, 8:36-65, 9:32-12:26; 12:34-13:42, 14:10-27, 14:64-15:41, 16:7-11, 16:37-18:23, and FIGS. FIG. 7, 9A, 9B, 10A, 10B, 11, 12, 13, 15, 16, and 22-24 and citations identified above with respect to the construction of included terms “second axis” and “second loading” File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein • Merriam-Webster Dictionary (www.merriam-webster.com/dictionary) – Asses, verb, def. 1: to determine the rate or amount of	

10. Claim Term (VSD + Head)	VSD Proposed Construction
determine whether or not the release condition is occurring as a function of both of the first loading and the second loading (claim 53)	“release condition,” “first loading” and “second loading” defined above the ski binding assembly release logic indicating occurrence or nonoccurrence of the release condition dependent upon the assessments of the first loading and second loading (which causes a result as thereafter stated in the claim)
Intrinsic Evidence	
Ettlinger Patent: 4:50-5:10, 8:1-20, 8:36-65, 9:32-12:26; 12:34-13:42, 14:10-27, 14:64-15:41, 16:7-11, 16:37-18:23, and FIGS. FIG. 7, 9A, 9B, 10A, 10B, 11, 12, 13, 15, 16, and 22-24 and citations identified above with respect to the construction of included terms “first loading”, “second loading”, and “release condition” File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein	

11. Claim Term (VSD + Head)	VSD Proposed Construction
a second release (claims 53, 58)	A mechanism of the ski binding assembly that allows separation of the ski boot from the ski automatically and without skier intervention (<i>i.e.</i>, releases) in response to a predetermined external loading of the ski correlated to an estimated maximum tibial axis load level selected to lessen the likelihood of tibial shaft injuries such as tibial spiral fractures. The second release is the standard release mode in typical prior art conventional alpine bindings
Intrinsic Evidence	
Ettlinger Patent: 4:56-63, 5:24-30, 5:43-47, 5:62-6:35, 7:4-15, 7:25-67, 8:12-18, 9:13-25, 13:39-42, 16:7-11, 17:45-48, and FIGS. 1-6 File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • Gordon Lipe, The ALLSOP-Pegged for Safety, Know Your Binding: 18, Ziff-Davis Publishing Company, Oct. 1973. • Gordon Lipe, The Allmat 8000, Jet, and PSC, Know Your Bindings: 19, Nov. 1973, pp. 155, 158 and 163. • Gordon Lipe, The Americana: Heel Release on a Plate, Know Your Bindings: 21, pp. 12-14, published prior to Aug. 7, 2005. • Carl Ettlinger, Bindings Performance Report: The Salomon 727, Reprinted from Skiing Magazine, Oct. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Moog Delta S. Reprinted from Skiing Magazine, Nov. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Burt II, Reprinted from Skiing Magazine, Dec. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Tyrolia 60 Series, Reprinted from Skiing Magazine, Oct. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The New Spademan Line, Reprinted from Skiing Magazine, Dec. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: Look Again, Reprinted from Skiing Magazine, Feb. 1983, Ziff-Davis Publishing Company, pp. 109-111. • Carl Ettlinger, How Your Bindings Work, Marker's Twincam Series, Skiing, Oct. 1987, pp. 225, 228, 230. • Carl Ettlinger, How Your Bindings Work. The Ess V.A.R., Skiing, Feb. 1988, pp. 94, 116. • Carl Ettlinger, The New Geze Line, Skiing, Oct. 1988, pp. 190, 192, 194. • Carl Ettlinger, The Salomon 37 Line, Skiing, Nov. 1982, pp. 175, 176, 178, 180. • Ettlinger, et al., A Method to Help Reduce the Risk of Serious Knee Sprains Incurred in Alpine Skiing, Am. J. of Sports Med., Vol. 23, No. 5, 1995, pp. 531-537	

- Johnson et al., “Skier Injury Trends – 1972 to 1994,” Skiing Trauma and Safety: 11th Vol., ASTM STP 1289, Johnson et al., Eds., American Society for Testing and Materials, 1997, pp. 37-48
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- USP 5,064,215 A 1 1/1991 Ferdinand et al.
- USP 5,071,155. A 12/1991 Stepanek et al.
- USP 5,551,720 A 9/1996 Ruffinengo
- USP 5,722,681 A 3, 1998 Merino
- USP 6,007,086 A 12/1999 Hopkins
- USP 6,450,526 B1 9, 2002 Bressand
- USP 7,063,345 B2 6/2006 Holzer
- USP 7,086,662 B2 8/2006 Dodge
- US Pat. Pub. 2004/0145154 A1 7/2004 Holzer
- US Patent Pub. 2004/0173994 A1 9, 2004. Howell
- Provisional Application No. 60/836,454 filed August 8, 2006

Extrinsic Evidence

- Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date, and rebuttal declaration of patent practice and prosecution expert David R. Owens, Esq.
- Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein
- Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein
- Merriam-Webster Dictionary (www.merriam-webster.com/dictionary) – Release, noun, def. 6: a device adapted to hold or release a mechanism as required
- McGraw- Release: A mechanical arrangement of parts for holding or freeing a device or mechanism as required.

12. Claim Term (VSD)	VSD Proposed Construction
attenuated release (claims 53, 58)	A release of the ski binding assembly that occurs at lower tibial axis loading relative to another release
Intrinsic Evidence	
Ettlinger Patent: Abstract, 4:13-16, 5:43-47, 7:3-25, Table column 7, 10:8-10, 17:40-18:23, and FIGS. 1, 2-5, 7, 8 and 24; see also constructions and support above for “ first release ” and “ second release ”	
File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009.	
• Gordon Lipe, The ALLSOP-Pegged for Safety, Know Your Binding: 18, Ziff-Davis Publishing Company, Oct. 1973. • Gordon Lipe, The Allmat 8000, Jet, and PSC, Know Your Bindings: 19, Nov. 1973, pp. 155, 158 and 163. • Gordon Lipe, The Americana: Heel Release on a Plate, Know Your Bindings: 21, pp. 12-14, published prior to Aug. 7, 2005. • Carl Ettlinger, Bindings Performance Report: The Salomon 727, Reprinted from Skiing Magazine, Oct. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Moog Delta S. Reprinted from Skiing Magazine, Nov. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Burt II, Reprinted from Skiing Magazine, Dec. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Tyrolia 60 Series, Reprinted from Skiing Magazine, Oct. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The New Spademan Line, Reprinted from Skiing Magazine, Dec. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: Look Again, Reprinted from Skiing Magazine, Feb. 1983, Ziff-Davis Publishing Company, pp. 109-111. • Carl Ettlinger, How Your Bindings Work, Marker's Twincam Series, Skiing, Oct. 1987, pp. 225, 228, 230. • Carl Ettlinger, How Your Bindings Work. The Ess V.A.R., Skiing, Feb. 1988, pp. 94, 116. • Carl Ettlinger, The New Geze Line, Skiing, Oct. 1988, pp. 190, 192, 194. • Carl Ettlinger, The Salomon 37 Line, Skiing, Nov. 1982, pp. 175, 176, 178, 180. • Ettlinger, et al., A Method to Help Reduce the Risk of Serious Knee Sprains Incurred in Alpine Skiing, Am. J. of Sports Med., Vol. 23, No. 5, 1995, pp. 531-537 • Johnson et al., “Skier Injury Trends – 1972 to 1994,” Skiing Trauma and Safety: 11th Vol., ASTM STP 1289, Johnson et al., Eds., American Society for Testing and Materials, 1997, pp. 37-48 • Johnson et al., “Update on Injury Trends in Alpine Skiing,” Skiing Trauma and Safety: 13th Vol., ASTM STP 1397, Johnson et al., Eds., American Society for Testing and Materials, 2000, pp. 108-118	

- ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings
- ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings
- 3,091,475 A 5, 1963 Wunder
- USP 3,876,218 A 4, 1975 Von Besser
- USP 5,064,215 A 1 1/1991 Ferdinand et al.
- USP 5,071,155. A 12/1991 Stepanek et al.
- USP 5,551,720 A 9/1996 Ruffinengo
- USP 5,722,681 A 3, 1998 Merino
- USP 6,007,086 A 12/1999 Hopkins
- USP 6,450,526 B1 9, 2002 Bressand
- USP 7,063,345 B2 6/2006 Holzer
- USP 7,086,662 B2 8/2006 Dodge
- US Pat. Pub. 2004/0145154 A1 7/2004 Holzer
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Extrinsic Evidence

- Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date
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- Merriam-Webster Dictionary (www.merriam-webster.com/dictionary) – Release, noun, def. 6: a device adapted to hold or release a mechanism as required; Attenuate, verb, def. 1: to lessen the amount, force, magnitude, or value of
- McGraw-Hill Dictionary of Scientific and Technical Terms, 6th Ed. 2003 (hereinafter "McGraw") - Release: A mechanical arrangement of parts for holding or freeing a device or mechanism as required.

13. Claim Term (Head)	VSD Proposed Construction
said first release is at least 20% less than said second release (claim 54)	“first release” and “second release” defined above The tibial axis torque at the first release is at least 20% less than the tibial axis torque at the second release
Intrinsic Evidence	
Ettlinger Patent: 5:43-47, 6:35-67, 7:1-25, Table at bottom of col. 7, 18:4-23 and FIGS. 2-5 and 7; see also constructions and support above for “first release” and “second release” File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein	

14. Claim Term (Head)	VSD Proposed Construction
wherein said first release is a first release torque about a tibial axis of a skier . . . and said second release is a second release torque about a tibial axis (claims 55, 59)	“first release” and “second release” defined above The torque experienced at the tibial axis at binding release settings of the first release is the first release torque and the torque experienced at the tibial axis is at binding release settings of the second release is the second release torque.
Intrinsic Evidence	
Ettlinger Patent: Abstract, 4:13-50, 5:42-7:25, 8:25-67 and FIGS. 2-5, 7 and 8; see also constructions and support above for “first release” and “second release” File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein	

15. Claim Term (Head)	VSD Proposed Construction
wherein said first release torque is at least 20% less than said second release torque (claims 56, 60)	“first release torque” and “second release torque” are defined above in term #14 Plain meaning: the first release torque (as defined above) is lower than the second release torque (as defined above) by 20% or more
Intrinsic Evidence	
Ettlinger Patent: Table at bottom of col. 7; ; see also constructions and support above for “first release torque” and “second release torque” File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
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16. Claim Term (Head)	VSD Proposed Construction
said release logic set to activate said first release substantially only when (claim 58)	“release logic” and “first release” defined above The release logic enables the first release when both of the loading conditions set forth thereafter in the claim are satisfied. “substantially only” addresses the fact that no ski binding system is 100% accurate and as such an expected small amount of false releases may occur but the occurrence of such false releases does not cause a ski binding that otherwise meets the requirements of the claim to fall outside the claim
Intrinsic Evidence	
Ettlinger Patent: 4:40-49, 5:1-6, 6:53-67, 8:20-23, 8:51-67, 9:63-64, 10:43-47, 11:57; 15:28-32, 16:51 and FIGS. 2, 5 and 8; see also constructions and support above for “first release” and “release logic” File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • Gordon Lipe, The ALLSOP-Pegged for Safety, Know Your Binding: 18, Ziff-Davis Publishing Company, Oct. 1973. • Gordon Lipe, The Allmat 8000, Jet, and PSC, Know Your Bindings: 19, Nov. 1973, pp. 155, 158 and 163. • Gordon Lipe, The Americana: Heel Release on a Plate, Know Your Bindings: 21, pp. 12-14, published prior to Aug. 7, 2005. • Carl Ettlinger, Bindings Performance Report: The Salomon 727, Reprinted from Skiing Magazine, Oct. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Moog Delta S. Reprinted from Skiing Magazine, Nov. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Burt II, Reprinted from Skiing Magazine, Dec. 1978, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The Tyrolia 60 Series, Reprinted from Skiing Magazine, Oct. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: The New Spademan Line, Reprinted from Skiing Magazine, Dec. 1979, Ziff-Davis Publishing Company. • Carl Ettlinger, Bindings Performance Report: Look Again, Reprinted from Skiing Magazine, Feb. 1983, Ziff-Davis Publishing Company, pp. 109-111. • Carl Ettlinger, How Your Bindings Work, Marker's Twincam Series, Skiing, Oct. 1987, pp. 225, 228, 230. • Carl Ettlinger, How Your Bindings Work. The Ess V.A.R., Skiing, Feb. 1988, pp. 94, 116. • Carl Ettlinger, The New Geze Line, Skiing, Oct. 1988, pp. 190, 192, 194. • Carl Ettlinger, The Salomon 37 Line, Skiing, Nov. 1982, pp. 175, 176, 178, 180. • Ettlinger, et al., A Method to Help Reduce the Risk of Serious Knee Sprains Incurred in Alpine Skiing, Am. J. of Sports Med., Vol. 23, No. 5, 1995, pp. 531-537	

- Johnson et al., “Skier Injury Trends – 1972 to 1994,” Skiing Trauma and Safety: 11th Vol., ASTM STP 1289, Johnson et al., Eds., American Society for Testing and Materials, 1997, pp. 37-48
- Johnson et al., “Update on Injury Trends in Alpine Skiing,” Skiing Trauma and Safety: 13th Vol., ASTM STP 1397, Johnson et al., Eds., American Society for Testing and Materials, 2000, pp. 108-118
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- USP 5,722,681 A 3, 1998 Merino
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- USP 6,450,526 B1 9, 2002 Bressand
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- US Pat. Pub. 2004/0145154 A1 7/2004 Holzer
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Extrinsic Evidence

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- Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein

17. Claim Term (Head)	VSD Proposed Construction
a first loading, internal to the ski system along or about a first axis and caused by an external loading applied to the ski system (claim 58)	“first loading” and “first axis” defined above “internal to the ski system” defined above Given constructions above no further definition required.
Intrinsic Evidence	
Citations to intrinsic record given above with respect to “first loading” , “first axis” and “internal to the ski system” (#8) are repeated and incorporated by reference here.	
Extrinsic Evidence	
Citations to extrinsic record given above with respect to “first loading” , “first axis” and “internal to the ski system” (#8) are repeated and incorporated by reference here.	

18. Claim Term (Head)	VSD Proposed Construction
exceeds a first defined level and has a first defined sense (claim 58)	“Exceeds” means greater than (plain meaning) “first defined level” is a magnitude of the first loading corresponding to a release setting of the binding at the defined release condition “first defined sense” is the direction of the first loading corresponding to a release setting of the binding at the defined release condition
Intrinsic Evidence	
Ettlenger Patent: 8:6-19, 8:24-28, 17:40-18:24 and FIGS. 5, 7, 8 and 24; see also constructions and support above for “first loading” and “release condition” File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009. • ASTM standard F504-05, Standard Test Method for Measuring the Quasi-Static Release Moments of Alpine Ski Bindings • ASTM standard F939, Standard Practice for Selection of Release Torque Values for Alpine Ski Bindings • Provisional Application No. 60/836,454 filed August 8, 2006	
Extrinsic Evidence	
• Expert testimony to be served in accordance with the 4/15/2024 Revised Stipulated Discovery Schedule/Order, ¶ 11 as agreed by the parties, including expert declaration of Jasper E. Shealy, Ph.D., CPE with respect to at least general understanding by persons of ordinary skill in the art of the terminology used in the specification and claims as of the filing date, and rebuttal declaration of patent practice and prosecution expert David R. Owens, Esq. • Plaintiff Vermont Safety Developments LLC’s Updated Preliminary Infringement Contentions and materials cited and contained therein • Defendant Head Sport GmbH’s Initial Non-Infringement and Invalidity Contentions and materials cited and contained therein • Oxford English Dictionary – Exceed, verb, def. 2a: to be greater than; Level, noun, def. I.3.d: A position (on a real or imaginary scale) in respect of amount, intensity, extent, or the like; the relative amount or intensity of any property, attribute, or activity. Frequently preceded by a noun denoting the property, etc.; Sense, noun, def. I.9.a: A direction, esp. one of two opposite directions	

19. Claim Term (Head)	VSD Proposed Construction
a second loading, internal to the ski system along or about a second axis and caused by the external loading (claim 58)	“second loading” and “second axis” defined above “internal to the ski system” defined above Given constructions above no further definition required.
Intrinsic Evidence	
Citations to intrinsic record given above with respect to “second loading” , “second axis” and “internal to the ski system” (#8) are repeated and incorporated by reference here.	
Extrinsic Evidence	
Citations to extrinsic record given above with respect to “second loading” , “second axis” and “internal to the ski system” (#8) are repeated and incorporated by reference here.	

20. Claim Term (Head)	VSD Proposed Construction
exceeds a second defined level and has a second defined sense (claim 58)	“Exceeds” means greater than “second defined level” is a magnitude of the second loading corresponding to a release setting of the binding at the defined release condition “second defined sense” is the direction of the second loading corresponding to a release setting of the binding at the defined release condition
Intrinsic Evidence	
Ettlinger Patent: 8:6-19, 8:34-45, 17:40-18:24 and FIGS. 5, 7, 8 and 24; see also constructions and support above for “second loading” and “release condition”	
File History: Office Action of October 14, 2008, Response of January 13, 2009, and Notice of Allowability on March 10, 2009.	
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