

VERMONT SAFETY)
DEVELOPMENTS)
LLC,)
)
Plaintiff,) Case No. 2:23-cv-00089
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v.)
)
HEAD SPORT GmbH,)
)
Defendant.)

Pursuant to the entered Revised Stipulated Discovery Schedule Order (Dkt. 32), Defendant Head Sport GmbH (“Head”) hereby provides to Plaintiff Vermont Safety Developments, LLC (“VSD”) its proposed claim term constructions for the terms identified by the parties in their Identifications of Claim Terms Requiring Construction for United States Patent No. 7,523,953 (“the ’953 patent”). On March 8, 2024, VSD served Updated Preliminary Infringement Contentions, withdrawing assertions of infringement of claims 30, 31, and 34-38 and asserting infringement of only claims 53-56 and 58-60 of the ’953 patent. Head reserves the right to modify or supplement its list of proposed terms, proposed constructions, and/or citations of intrinsic and extrinsic evidence based on any further amendments or supplements to VSD’s infringement contentions and/or discovery responses. Head further reserves the right to make such amendments or supplements to its non-infringement and invalidity

contentions based on, without limitation, the constructions propounded by VSD, intrinsic and extrinsic evidence identified by VSD, and/or information learned in the course of discovery or by other means. Head reserves the right to rely on any intrinsic and extrinsic evidence identified by VSD in the disclosure of proposed constructions, or to supplement such evidence to the extent called for in response to any specific positions taken by VSD in its proposed constructions.

No.	Claim Number(s)	Claim Term Requiring Construction	Proposed Construction
1	53, 58	a first release	A lateral toe release, i.e., a release of the ski boot from the toe piece of the binding in a transverse direction substantially perpendicular to the longitudinal axis of the ski. Otherwise, indefinite under § 112. <u>Intrinsic Evidence</u> <i>See, e.g., '953 patent at 7:28-36; 8:34-50; 9:32-10-46; 11:44-65; 13:13-42; 14:8-13; 14:20-25; 14:53-63.</i> <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence, including a November 24, 2017 email from David Dodge to Robert Stanzl et al., explaining that the asserted patent does not involve lateral heel release.
2	53, 58	release logic	Means plus function term subject to § 112, ¶ 6. Thus, this limitation must be construed to cover the corresponding structure, material, or acts described

		in the specification. <i>Lockheed Martin Corp. v. Space Systems/Loral, Inc.</i>, 324 F.3d 1308, 1318, (Fed. Cir. 2003) (affirming summary judgment of no infringement because accused device did not perform the function of means-plus-function limitation as described in the specification); <i>Vulcan Eng'g Co. v. Fata Aluminium, Inc.</i>, 278 F.3d 1366, 1373 (Fed. Cir. 2002) (functional terms are “construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof,” such that “[i]nfringement is found literally if the claimed function is performed by either the structure described in the patent or an equivalent of that structure”). Although this term does not use the word “means,” it should be construed as means-plus-function terms because it does not “‘recite sufficiently definite structure’ or else recite[] ‘function without reciting sufficient structure for performing that function.’” <i>Williamson v. Citrix Online, LLC</i>, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (en banc) (internal citations omitted). The term “is a “nonce” term, as in <i>Williamson</i> (“element”, “mechanism”, “module”) and does not, standing alone, connote any particular structure. <i>See Williamson</i>, 792 F.3d at 1350; <i>See also, Diebold Nixdorf, Inc. v. Int’l Trade Comm’n</i>, 899 F.3d 1291, 1301 (Fed. Cir. 2018). Function: laterally releasing the toe of the ski boot
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			from the ski binding. Structure: A secondary toe release secured to a trigger platform, pivotable substantially only in one direction, wherein a triggerable latch mechanism is also pivotably secured to a trigger platform and includes a latch that will release a catch on the secondary toe release under a threshold-exceeding force, allowing the secondary toe release to pivot freely to release the toe of the ski boot. <u>Intrinsic Evidence</u> <i>See, e.g., '953 patent at 9:9-45, 9:65-10:46, 12:34-13:12; 14:14-20.</i> <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
3	53	release condition	A release condition occurs when a load applied to the ski binding exceeds a certain magnitude, requiring a release of the ski boot from the ski binding. <u>Intrinsic Evidence</u>

			'953 patent at 13:13-21. <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
4	53, 58	first axis	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
5	53, 58	second axis	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.

			supporting evidence.
6	53, 58	first loading	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
7	53, 58	second loading	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
8	53	assess, relative to a first axis, a first loading internal to the ski system caused by an external loading applied to the ski system;	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence

			in response to VSD's proposed construction and supporting evidence.
9	53	assess, relative to a second axis spaced from said first axis and substantially parallel to said first axis, a second loading internal to the ski system caused by the external loading;	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
10	53	determine whether or not the release condition is occurring as a function of both of the first loading and the second loading	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
11	53, 58	a second release	A second lateral toe release, i.e., a second release of the ski boot from the toe piece of the binding in a transverse direction substantially perpendicular to the longitudinal axis of the ski. Otherwise, indefinite under § 112.

			<u>Intrinsic Evidence</u> <i>See, e.g., '953 patent at 7:28-36; 8:34-50; 9:32-10-46; 11:44-65; 13:13-42; 14:8-13; 14:20-25; 14:53-63.</i> <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence, including a November 24, 2017 email from David Dodge to Robert Stanzl et al., explaining that the asserted patent does not involve lateral heel release.
12	53, 58	an attenuated release	A lateral toe release wherein the torque exceeds a lower release threshold or level. Otherwise, indefinite under § 112. <u>Intrinsic Evidence</u> <i>See, e.g., '953 patent at 7:28-36; 8:34-50; 9:32-10-46; 11:44-65; 13:13-42; 14:8-13; 14:20-25; 14:53-63.</i> <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order

			(Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
13	54	said first release is at least 20% less than said second release	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
14	55, 59	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	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
15	56, 60	wherein said first release torque is at least 20% less than said second release torque	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with

			the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
16	58	said release logic set to activate said first release substantially only when	Means plus function term subject to § 112, ¶ 6. Thus, this limitation must be construed to cover the corresponding structure, material, or acts described in the specification. <i>Lockheed Martin Corp. v. Space Systems/Loral, Inc.</i>, 324 F.3d 1308, 1318, (Fed. Cir. 2003) (affirming summary judgment of no infringement because accused device did not perform the function of means-plus-function limitation as described in the specification); <i>Vulcan Eng'g Co. v. Fata Aluminium, Inc.</i>, 278 F.3d 1366, 1373 (Fed. Cir. 2002) (functional terms are “construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof,” such that “[i]nfringement is found literally if the claimed function is performed by either the structure described in the patent or an equivalent of that structure”). Although this term does not use the word “means,” it should be construed as means-plus-function terms because it does not “‘recite sufficiently definite structure’ or else recite[] ‘function without reciting sufficient structure for performing that function.’” <i>Williamson v. Citrix Online, LLC</i>, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (en banc) (internal citations omitted). The term “is a “nonce” term, as

			in <i>Williamson</i> (“element”, “mechanism”, “module”) and does not, standing alone, connote any particular structure. <i>See Williamson</i>, 792 F.3d at 1350; <i>See also, Diebold Nixdorf, Inc. v. Int’l Trade Comm’n</i>, 899 F.3d 1291, 1301 (Fed. Cir. 2018). Function: laterally releasing the toe of the ski boot from the ski binding substantially only under certain loading conditions. Structure: A secondary toe release secured to a trigger platform, pivotable substantially only in one direction, wherein a triggerable latch mechanism is also pivotably secured to a trigger platform and includes a latch that will release a catch on the secondary toe release substantially only under a torque exceeding a threshold or level, allowing the secondary toe release to pivot freely to release the toe of the ski boot. <u>Intrinsic Evidence</u> <i>See, e.g., ’953 patent at 9:9-45, 9:65-10:46, 12:34-13:12; 14:14-20.</i> <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD’s proposed construction and
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			supporting evidence.
17	58	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	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
18	58	exceeds a first defined level and has a first defined sense	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.
19	58	a second loading, internal to the ski system along or about a second axis and caused by the external loading	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence

			in response to VSD's proposed construction and supporting evidence.
20	58	exceeds a second defined level and has a second defined sense	Indefinite under § 112 <u>Extrinsic Evidence</u> Head reserves the right to offer the expert testimony of Dr. Maury Hull in accordance with the Revised Stipulated Discovery Schedule Order (Dkt. 32) and may provide other extrinsic evidence in response to VSD's proposed construction and supporting evidence.

Dated: April 23, 2024

Respectfully submitted,

/s/ Aaron L. Parker

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