

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HEAD SPORT GMBH,
Petitioner

v.

VERMONT SAFETY DEVELOPMENTS LLC,
Patent Owner

Case IPR2024-01099
Patent No. 7,523,953

PETITIONER'S BRIEF REGARDING CLAIM CONSTRUCTION

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Pursuant to the Board’s Order, Petitioner, Head Sport GmbH, respectfully submits this brief, setting forth the proposed construction that should be applied to “release logic” in this proceeding.

I. THE PETITION PRESENTS THAT PATENT OWNER’S CONSTRUCTION SHOULD APPLY FOR “RELEASE LOGIC”

Patent Owner is attempting to secure an unfair advantage by asserting incompatible positions. Indeed, Patent Owner contends in a parallel district court proceeding that “release logic” is not a means-plus-function term and is therefore infringed by Petitioner’s product. Ex-1010, 5. At the same time, it argues that this Board should deny institution because Petitioner was required to construe the term as a means-plus-function claim in the Petition. Prelim. Resp. 10-12. Patent Owner cannot have it both ways—asserting one construction for infringement and another for validity. *Data Engine Techs. LLC v. Google LLC*, 10 F.4th 1375, 1381 (Fed. Cir. 2021) (repeatedly finding that claims cannot be twisted “like ‘a nose of wax’” in “one way to avoid [invalidity] and another to find infringement”).

Petitioner attempts to solve this gamesmanship by suggesting that the Board apply the “release logic” construction Patent Owner advocated for in the related district court case. *See* Pet., 6 (stating that, while Petitioner does not concede that the constructions are correct, “the Board should analyze patentability under [Patent Owner’s] interpretation”). This approach is consistent with the Board’s prior decisions. *Lennox Indus. Inc. v. Rosen Techs. LLC*, IPR2023-00717, Paper 9, 7

(PTAB Nov. 14, 2023). In *Lennox*, the Board granted institution where the Petition applied Patent Owner's proposed district court constructions because Patent Owner contended that means-plus-function did not apply. *Lennox*, Paper 2, 9-10 (presenting in the petition that while the Board need not construe any terms to find the challenged claims invalid, "Petitioner applie[d] PO's interpretations without conceding that they are correct").

Similarly, here, the Petition presents how the claims are unpatentable under Patent Owner's construction for "release logic," which provides:

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.

Ex-1010, 5.¹ Although wordy and convoluted, the Petition identifies each aspect of Patent Owner's "release logic" construction. As one example, the Petition provides

¹ Patent Owner later changed its interpretation after the Petition was filed, contending that "release logic" means "An arrangement of components of the binding assembly that causes a specific sequence of actions to actuate or not actuate the first release in response to whether externally applied loads on the ski exceed a predetermined threshold correlated with risk of ACL injury." Ex. 2001, 3. Even

that Freudiger-1 includes components (front jaw 2, rear jaw 3, and control element 5) that execute a sequence of actions (the component displacing in a way to reduce the release force under lateral force torsion) in response to externally applied loads on the ski (front force P_v and rear force P_h under lateral force torsion) that allow or disallow the binding to release (the first release) dependent upon whether predetermined loading conditions are met (releasing the binding when the desired release condition occurs under lateral force torsion) that would indicate risk of ACL injury (explaining that this is true even if Patent Owner contends that the force must be applied to the ski's inside edge, corresponding to loading conditions indicative of ACL injury). Pet., 14-15; *see also id.*, 7-10. The same is true for Ground 3 regarding Dodge, Howell, and Gulick. *Id.*, 48-51.

Petitioner thus satisfied the Rules and set forth how the challenged claims are unpatentable under Patent Owner's interpretations, while also presenting that there is a reasonable likelihood that the Petitioner would prevail under a plain and

under this interpretation, Petitioner's grounds still render the challenged claims unpatentable for the same reasons.

ordinary meaning to the extent the Board disagrees with Patent Owner's claim construction proposals.

Moreover, "[P]etitioner does not run afoul of the 37 C.F.R. § 42.104(b)(3) merely by asserting in a petition a claim construction that differs from a construction [P]etitioner asserts in a parallel proceeding in a district court." *Allen Medical Sys. Inc. v. Mizuho Orthopedic Sys., Inc.*, IPR2022-00919, Paper 12, 16 (PTAB Nov. 2, 2022) (citing *10x Genomics, Inc. v. Bio-Rad Labs., Inc.*, IPR2020-00086, Paper 8, 18 (PTAB Apr. 27, 2020)). Indeed, Petitioner is not prohibited "from relying on a claim construction that it believes is incorrect, namely a claim construction relied upon by Patent Owner to assert infringement in the related district court action." *Id.*, 17-18 (citing *10x Genomics*, Paper 8, 17-22). While Petitioner did not concede that the claim terms meet the statutory requirements or that Patent Owner's constructions are correct, it did not affirmatively argue that Patent Owner's constructions are wrong in the Petition. *Id.*, 16-17.

II. MEANS-PLUS-FUNCTION DOES NOT APPLY IN THIS IPR

"Release logic" does not include the word "means." It is accordingly afforded a presumption that 35 U.S.C. § 112(f) does not apply. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015) (en banc).

Further, Patent Owner has expressly stated that "release logic" should not be construed as a means-plus-function term. Ex-1023, 16-18. Therefore, for purposes

of this Petition, Petitioner has not applied, and was not required to apply, a means-plus-function construction. *Abbott Diabetes Care Inc. v. Dexcom, Inc.*, IPR2022-00922, Paper 13, 11-12 (PTAB Nov. 3, 2022) (granting institution and declining to find that Petitioner failed to satisfy Rule 42.104(b)(3) when it applied Patent Owner’s district court constructions and where “[n]one of the challenged claims expressly recite[d] ‘means’ and [thus were] presumed not to contain terms that [were] subject to interpretation under § 112, ¶ 6”). Moreover, Petitioner presented and cited each side’s proposed district court construction with its Petition in an attempt to be forthcoming. Ex-1010, Ex-1014. While these proposals are preliminary and have not yet been briefed, Petitioner in no way sought to conceal these positions from the Board. It merely presented that no dispute regarding “release logic” exists in this forum. And unless Patent Owner now suggests that means-plus-function claiming does apply to “release logic,” there remains no controversy here regarding “release logic.” *Abbott*, IPR2022-00922, Paper 13, 15.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Board should apply Patent Owner’s construction or, alternatively, apply a plain and ordinary meaning of “release logic” without applying a means-plus-function framework in this IPR proceeding because doing so would be consistent with Patent Owner’s interpretations in the district court proceeding.

Respectfully submitted,

Dated: November 15, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. §§ 42.6(e), the **Petitioner's Brief Regarding Claim Construction** was served electronically via email on the following:

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