

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

OPTRONIC SCIENCES LLC,

Plaintiff,

v.

BOE TECHNOLOGY GROUP CO.,
LTD.,

Defendant.

Case No. 2:23-cv-00549-JRG

**PLAINTIFF OPTRONIC SCIENCES LLC'S
REPLY CLAIM CONSTRUCTION BRIEF**

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TABLE OF EXHIBITS¹

Ex.	Description
1	U.S. Patent No. 7,168,842 (“’842 patent”)
2	U.S. Patent No. 7,226,801 (“’801 patent”)
3	U.S. Patent No. 7,586,121 (“’121 patent”)
4	U.S. Patent No. 7,884,914 (“’914 patent”)
5	U.S. Patent No. 7,915,117 (“’117 patent”)
6	U.S. Patent No. 8,492,222 (“’222 patent”)
7	U.S. Patent No. 9,263,509 (“’509 patent”)
8	Disclosure of Eric Bretschneider, Ph.D. In Compliance With P.R. 4-3(B), dated April 18, 2025 (“Bretschneider Decl.”)
9	Declaration of R. Jacob Baker, Ph.D., P.E., dated April 18, 2025 (“Baker Decl.”)
10	Declaration of Dean Neikirk, Ph.D., dated April 18, 2025 (“Neikirk Decl.”)
11	Excerpts from Baker, R. Jacob, <i>CMOS: Circuit Design, Layout, and Simulation</i> (3 rd Ed. 2010)
12	Excerpts from the Declaration of Dr. R. Jacob Baker in Support of Petition for Inter Partes Review of U.S. Patent No. 9,263,509, filed as Exhibit 1003 in IPR2024-01133 (July 5, 2024)
13	Excerpts from Webster’s II New College Dictionary (2001)
14	Excerpts from Webster’s New World Dictionary (3 rd College Ed. 1994)
15	Excerpts from the File History of U.S. Patent No. 7,884,914 (OPTRONIC-BOE-00000523)
16	Excerpts from Petition for Inter Partes Review of U.S. Patent No. 7,586,121 Under 35 U.S.C. §§ 311-319 and 37 C.F.R. §§ 42.1-100, Et Seq in IPR2024-01132, dated July 12, 2024
17	U.S. Patent Publication No. 2003/0117059, published on June 26, 2003

¹ Alphabetic exhibits are attached to the Response (Dkt. 98 at iii-iv).

Ex.	Description
18	Excerpts from the File History of U.S. Patent No. 8,158,477 (OPTRONIC-BOE-00001151)
19	Defendant's P.R. 4-2 Preliminary Constructions and Extrinsic Evidence, dated April 1, 2025
20	Excerpts from the Petition for Inter Partes Review of U.S. Patent No. 8,158,477 Under 35 U.S.C. §§ 311-319 and 37 C.F.R. §§ 42.1-100, Et Seq in IPR2024-01315, dated August 27, 2024
21	Wiley Electrical and Electronics Engineering Dictionary (2004)
22	Excerpts from the transcript of Russel Jacob Baker, taking in IPR2024-01130, -01133, -01134 on April 2, 2025
23	U.S. Patent No. 9,291,586
24	U.S. Patent No. 8,878,274
25	Excerpts from the File History of U.S. Patent No. 7,884,914 (OPTRONIC-BOE-00000523)

As explained in the Opening Brief, Optronic's proposed constructions are supported by the intrinsic evidence and should be adopted. BOE's response provides no reason to its proposed constructions.

I. LEVEL OF ORDINARY SKILL IN THE ART

BOE wrongly asserts that the dispute over the level of skill in the art is "not significant." Resp. at 1. BOE ignores that it relies extensively on its characterization of the knowledge of a POSITA to support its arguments, but the actual level of knowledge it claims is required varies from term-to-term. In its indefiniteness arguments, BOE assumes a very low level of knowledge such that a POSITA would not understand how directional terms are typically used in the art. On the other hand, in when proposing to import "nonoverlapping" limitations into the "defining..." term, BOE relies on deep knowledge of OLED pixel technology based on a POSITA's understanding of "aperture ratio" in a pixel. BOE's proposed level of ordinary skill in the art does not account for such differences. And, for the reasons discussed in the Opening Brief, BOE's proposal is inappropriate.

BOE's criticizes of Optronic's proposal claiming that it allows for an engineering degree in a field unrelated to electrical engineering.² While most engineering degrees would require at least one survey course that would cover many relevant topics and Optronic believes the required work experience would make up for any deficiencies, to the extent this is an issue, Optronic proposes to alter its proposal to the degree proposed by BOE ("Bachelor's degree in electrical engineering or a comparable field," Ex. 9 at ¶ 32).

II. COMPRISING/SUBSTANTIALLY L-SHAPED STRUCTURE: '842 PATENT, CLAIMS 3 & 7

² BOE also cites to Dr. Bretschneider's testimony that this dispute did not change his opinions. Dr. Bretschneider did not opine about many of the terms at issue, so this testimony is irrelevant.

This term need not be construed, and BOE has provided no reason that its proposed rewording is necessary. This dispute is focused on BOE's concern that "comprising" could be used as a "weasel word." But, as explained in the Opening Brief, it is BOE that uses comprising as a "weasel word." Op. Br. at 4 (citing BOE's argument that "predetermined material layer" can be multiple layers of differing predetermined materials because of the open-ended nature of "comprising"); Resp. at 16³ (making same argument). BOE's argument here takes the "L-shaped" term out of context. This term applies to the shape of a fastener. BOE's explanation of the issue demonstrates its concern is one of infringement, not the construction of "comprising." For example, in BOE's "E" hypothetical, the factual question at issue is whether the claimed first fastener is the yellow L shape, black E shape, or some subset of the E shape. It may be that the entire E shape is part of the fastener, but it could also be that all (or part) of the upper two prongs of the E shape are not part of the fastener and are different structures such as other fasteners or heat dissipating elements. Unlike BOE, Optronic has not used "comprising" as a "weasel word," as demonstrated by the IPR arguments cited by BOE. Moreover, BOE's "comprising" proposal could serve to confuse the jury as it tries to figure out if the use of "other shapes" in BOE's comprising construction is meant to limit what can qualify as "substantially" L-shaped. The Court should reject BOE's proposed construction.

III. PURPORTEDLY INDEFINITE TERMS

BOE has not met its burden to show that the directional terms of the '509 and '842 patents are indefinite. With respect to the terms from the '509 patent, BOE cannot meet its burden regarding indefiniteness because, as the Opening Brief explained, a POSITA would understand

³ While Optronic has withdrawn its proposed construction for "layer" in order to streamline issues, it does not change the fact that BOE's reliance on "comprising" to support its construction is improper.

the point of reference is a substrate. BOE ignores, and does not rebut, the intrinsic evidence showing this as well as the fact that its own expert, and Dr. Baker, applied the plain meaning of “above” and “side” in its IPR petition⁴ (Ex. 12 at ¶¶ 95-96, 179-180, 182-183). BOE also ignores that Dr. Baker also used the “above” and “side” terms without BOE’s “context” in his book. Ex. 11 at 60, 90-91, 93. BOE’s reliance on Dr. Baker’s litigation declaration taking positions inconsistent with his own opinions and writings should be entitled to no weight. Nor should it matter that the claims do not claim a substrate because a POSITA would know such a structure was necessary to build the claimed pixel structure.⁵ *See, e.g.*, ’509 patent at 2:39-40, 3:43, 4:35-36, 7:1-5, 7:22-24, 8:4-6; Bretschneider Decl. at ¶¶ 79-84, 92-99. BOE has not shown otherwise. And BOE’s untimely arguments about its interpretation of Optronic’s infringement contentions (*see* Ex. 19 at 10) regarding alternative contentions are not claim construction arguments. These are instead a discussion of purported deficiencies with Optronic’s contentions (an issue that BOE has not raised and is outside the scope of claim construction).

BOE’s argument regarding the ’842 patent (Resp. at 4-7) is similarly devoid of common sense and support. As explained in footnote 1 of the Opening Brief, a light guiding plate (“LGP”) has an intended orientation (to ensure the surface where light is designed to escape faces the user), and a structure extending above the LGP would take this orientation into account. *E.g.*, Op. Br. at 6; Bretschneider Decl. at ¶¶ 78, 88. Just as people understand an iPhone’s battery is below its screen, and most bike seats are above the pedals,⁶ a POSITA would be reasonably certain how to

⁴ BOE’s IPR petition was filed well before the claim construction process began, and BOE was not simply adopting Optronic’s stated position as is often argued by a defendant.

⁵ BOE also cites to a hypothetical edge case where layers are built on both sides of a substrate. If any of the Accused Products include layers built on both sides of a substrate, whether the accused layers infringed would be a factual issue to be resolved by the jury. It does not render these terms indefinite.

⁶ Not all bikes have the same configuration. A recumbent bike has its seat to the side of the pedals.

understand whether a structure extends “above” the LGP in claim 7 of the ’842 patent. BOE faults Optronic for relying on a “conclusory statement of its expert,” but it is BOE that bears the burden which its reliance on a conclusory expert opinion fails to satisfy. (Baker Decl. at ¶ 50). BOE’s argument should fail for the very reasons its criticizes Optronic (which does not bear the burden in this dispute). The remainder of BOE’s argument (Resp. at 5-7) are irrelevant distractions. For example, Fig. 4 of the ’842 patent is a cross-section of a preferred embodiment that is cut in the wrong direction for this limitation. It is irrelevant to the plain meaning of the term, and Dr. Bretschneider’s testimony cited by BOE only concerns his reluctance to offer an opinion about a potential written description argument that he had not previously disclosed (and it outside the scope of claim construction).⁷ BOE’s cite to Optronic’s infringement contentions (evidence that was not timely disclosed, *see* Ex. 19 at 5) is similarly a distraction because the contentions disclose alternative theories based on different cross-sectional views, not conflicting plain meanings of the word “above.”

The Court should therefore reject BOE’s indefiniteness arguments.

IV. FASTENER: ’842 PATENT, CLAIMS 3 & 7

BOE has altered its proposed construction such that the dispute now appears to be between whether a faster “attaches” or “holds.” The Court should adopt Optronic’s proposed construction because it is consistent with the description of a fastener in the intrinsic evidence (’842 patent at 2:31-35, 4:1-9) and dictionaries (Ex. 13 at 407). BOE’s proposed “hold” language is overly broad. It has no support in the intrinsic evidence. And it is inconsistent with the plain understanding of the term. For example, although a single bookend is no one’s idea of a fastener, it meets BOE’s

⁷ A viable written description challenge is unlikely here as the second portion of the fastener can only extend above, below, or extend in neither direction. There is no legitimate dispute the inventors described such a fastener in the specification.

proposed construction of “a feature that holds something [books] in place” from tilting over. A bookend does not, for example, attach or fasten a book to a shelf in the same way that glue, tape, or nails do. A shelf, wall, or table might also meet BOE’s proposed construction. BOE confusingly makes the argument that “attach” is functionality and “hold” is not. It is not clear what BOE’s argument is meant to convey, but the available evidence supports that the plain meaning of a fastener is to attach something, as proposed by Optronic. And BOE’s cite to the use of “attach” in claim 6 does not change the plain meaning of a fastener. The Court should therefore adopt Optronic’s proposed construction.

V. THE PREAMBLES ARE NOT LIMITING

BOE has not shown that the preambles should be limiting. As an initial matter, BOE has not provided any reason why the purpose elements of the preambles are limiting. *E.g.*, *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (a preamble is not limiting where it only “state[s] a purpose or intended use for the invention”); *TomTom, Inc. v. Adolph*, 790 F.3d 1315, 1323 (Fed. Cir. 2015) (portion of preamble being limiting does not mean all of preamble is limiting); *Cochlear Bone Anchored Sols. AB v. Oticon Med. AB*, 958 F.3d 1348, 1354-55 (Fed. Cir. 2020) (finding purpose portion of preamble not limiting).

With respect to the remainder of the preambles, BOE’s argument that the specification also refers to “a sealant region” or “an encapsulating structure” renders the preamble limiting is not consistent with its cited law. In BOE’s cited case, *On Demand Mach. Corp. v. Ingram Indus., Inc.*, like the *Catalina*, *Rowe*, and *Pitney Bowes* cases cited in the Opening Brief, the preamble was found to be limiting because the preamble was necessary to understand the scope of the claim limitations (the Federal Circuit cited “clauses [5], [6], [7], and [8]”). 442 F.3d 1331, 1344 (Fed. Cir. 2006); *see also id.* at 1335-36 (labeling each claim element with a clause number). BOE does

not cite any aspects of the claims here that are covered by the preamble. Instead, BOE's proposal is solely to introduce a limitation not otherwise present in the claims, which is improper. Similarly, in *Deere & Co. v. Bush Hog, LLC*, the Federal Circuit found both that certain elements of the claim were only understandable in light of the preamble ("torsional stiffness") and also that the preamble was used as an antecedent basis for a dependent claim. 703 F.3d 1349, 1357-58 (Fed. Cir. 2012). BOE does not present any such arguments here.

BOE also appears to urge prosecution history estoppel arguments that should fail. BOE cites to the introduction of the '801 patent IPR (Ex. R at 1) that is simply summarizing the first column of the specification. It is not arguing that the preamble is limiting. And, as addressed in the Opening Brief, the amendment to the preamble is irrelevant because the amendment was never used to distinguish prior art and BOE does not cite to any such arguments.

The Court should therefore find that the preambles are not limiting.

VI. THE SAW TOOTH LIMITATIONS

There is no dispute that saw tooth has a plain and ordinary meaning. The dispute is whether these terms need to be rewritten. BOE does not present a viable reason to rewrite these terms in other words. BOE even seems to acknowledge as much when it argues that the "more significant" dispute is BOE's unnecessary construction of "comprising." Optronic addresses "comprising" above and in the Opening Brief. It is BOE, not Optronic, that argues that "comprising" is a "weasel word" changing the plain meaning of terms. These terms need not be construed.

VII. LAYER: '801 PATENT, CLAIM 9

While Optronic does not believe BOE's argument is consistent with the intrinsic evidence, to streamline proceedings, Optronic agrees to BOE's proposed construction.

VIII. "FORMED ON" TERMS

BOE has failed to address the construction of “formed on” at all. As shown in the Opening Brief, Optronics’s proposed construction is not only consistent with the intrinsic evidence, but it is also consistent with how BOE’s experts have used the term in their own patents (Exs. 23, 24). BOE simply declares that “‘formed on’ is broader than ‘formed directly on’” without explaining the basis for its statement. Resp. at 19. The Court should adopt Optronics’s proposed construction.

BOE’s argument for the “directly” formed on terms also fails. As BOE’s cited evidence shows, the “directly formed on” term was added to distinguish the Yamazaki reference that showed a wire 229 passing through a gap in gate insulating film 205. *See* Resp. at 19 (highlighted version of Fig. 5D from Yamazaki); Ex. Q at 9-10. The inventors said nothing about requiring “directly formed on” to include BOE’s proposed “without any intervening material” limitation. And BOE provides no explanation for its proposed language, which is narrower than the plain meaning of the term. For example, the specification of the ’121 patent describes Fig. 2 as showing “organic 218” “formed on passivation SiN 212 over area A.” ’121 patent at 5:43-46. Under BOE’s proposed construction, organic 218 would not meet the “directly” formed on limitation because there are areas where an intervening material (capping SiN 216) are shown. There is no evidence, let alone clear and ambiguous evidence, that the inventors intended “directly” formed on to be as limited as proposed by BOE. The Court should therefore find that it has its plain and ordinary meaning, which is the same meaning as “formed on” in the ’801 patent.

IX. A PREDETERMINED MATERIAL LAYER FORMED ON THE FIRST SUBSTRATE: ’801 PATENT, CLAIM 9

BOE provides conclusory argument that its imported ordering limitation (“prior to...”) is appropriate, arguing that the limitation is inherent in the plain meaning of “formed on.” BOE does not explain why, if the limitation is already present in its view of other terms, it should be imported here. BOE shies away from such an argument because the reason is apparent. The claim does not

otherwise have an ordering element, as explained in the Opening Brief. BOE seeks to import one without identifying clear and unambiguous evidence showing the inventors had such an intention.

The Court should decline BOE's invitation and should reject its proposed construction.

X. WHEREIN THE SEALANT IS ADAPTED TO CONTACT THE FIRST MATERIAL LAYER AND THE SECOND MATERIAL LAYER THROUGH THE OPENING, AND THE SEALANT HAS SUBSTANTIALLY FLAT CONTACT BOTTOM SURFACES WITH THE FIRST AND SECOND MATERIAL LAYERS VIA THE OPENING: '914 PATENT, CLAIM 1

BOE argues it has withdrawn the "i.e." portion of its construction, but it is not clear what BOE's proposed construction is. Optronic has never taken the position that "and" should be accorded anything other than its plain and ordinary meaning.

Despite purportedly withdrawing its "i.e." language, BOE still argues the same limitations are present as the unspecified plain meaning. BOE justifies its imported limitations by using excerpts to argue that the inventors narrowed the plain meaning of this term when using it to overcome the Bae reference in the file history. Contrary to BOE's argument, the flat contact bottom surfaces limitation was not used to distinguish the Bae reference. Rather, the inventors distinguish the Bae reference because it did not disclose a "second material layer includ[ing] an opening with a saw tooth pattern extending along the sealant region to expose the underlying first material layer." Ex. 25 at OPTRONIC-BOE-00000748-49 (emphasis removed; BOE does not include the remarks section of the amendment in its Response exhibits). The file history does not limit this term beyond its plain and ordinary meaning, which does not include BOE's proposed limitations about "both" layers having multiple features.

The Court should therefore not construe this term.

XI. EACH PIXEL / EACH PIXEL AREA: '121 PATENT, CLAIMS 1 & 2

BOE has no provided no justification for its proposed construction importing the "and every" limitation. BOE cites a non-existent dispute (BOE's stated reasoning is consistent with the

plain meaning of the terms, without construction, discussed in the Opening Brief). And it cites to *In re Skvorecz*, 580 F.3d 1262 (Fed. Cir. 2009), which does not support its argument. There, the claim included a limitation for “each wire leg” limitation, and the Patent Office argued that the “comprising” signal meant that there could be wire legs without the limitation. *Id.* at 1267. The Federal Circuit rejected the argument because it was contrary to the explicit “each” limitation. *Id.* at 1267-68. The Federal Circuit did not, as BOE proposes here, construe “each” as “each and every.” BOE’s proposal should be rejected.

XII. DEFINING AT LEAST A FIRST AREA FOR CAPACITORS AND A SECOND AREA FOR A TRANSISTOR ON THE SUBSTRATE: ’117 PATENT, CLAIM 1; ’222 PATENT, CLAIM 1

BOE admits it is importing its proposed “nonoverlapping” limitations. Resp. at 23 (calling the imported limitations “meaningful metes and bounds to this claimed ‘defining...’ step”). BOE does not identify any clear and unambiguous evidence demonstrating the intent of the inventors to import these limitations. Instead, BOE argues that the potential for overlapping areas renders the claim steps “superfluous.” BOE’s argument is meritless as areas remain defined whether they are overlapping or not. For example, in a Venn diagram, the fact that portions of the circles overlap does not change the fact that the circles are defined by certain characteristics. BOE’s specification cites are also silent as to whether the defined areas can overlap. Instead, the cites describe preferred embodiments (*e.g.*, ’222 patent at 4:24-47), and discuss the placement of devices such as capacitors, not the definition of the claimed areas. The Court should reject BOE’s imported limitations.

XIII. IS ELECTRICALLY CONNECTED TO: ’222 PATENT, CLAIM 1

It continues to be undisputed that the plain meaning of this term is broad. Resp. at 25-26. As addressed in the Opening Brief, there is no clear and undisputed evidence of an intent to further narrow the term. BOE’s own argument, which has variously proposed “electric current can flow”

(Ex. 25 at 9), “electric conduction current can flow” (its proposed construction), and cannot “encompass capacitive coupling” (BOE’s description of the “crux of the dispute,” Resp. at 28), demonstrates that the scope of a purported disclaimer is not clear and unambiguous. BOE’s expansion of the file history discussed on pages 20-21 of the Opening Brief demonstrates similar ambiguity because it is not explained why a POSITA would make the same assumptions BOE does. In cases where the purported disclaimer is ambiguous, no disclaimer should be found. *E.g.*, *Avid Tech., Inc. v. Harmonic, Inc.*, 812 F.3d 1040, 1046-47 (Fed. Cir. 2016). The Court should there not further limit this term.

If the Court determines that a limitation should be imported, it should be limited to the “not encompass solely capacitively coupling” limitation BOE argues is directly shown by Fig. 2A in the Koo reference (*see* Resp. at 26).

XIV. AUXILIARY ELECTRODE: ’509 PATENT, CLAIMS 1, 5 & 10

BOE’s Response demonstrates that its proposed construction is expansive enough to cover any electrode other than the first electrode regardless of its relationship to the first electrode. Ex. 22 at 69:1-70:4 (Dr. Baker explaining BOE’s position). BOE does not explain how such an expansive construction is consistent with the plain meaning of “auxiliary” or “supplemental.” Indeed, as discussed in the Opening Brief, BOE’s own cited dictionary contradicts the expansive nature of BOE’s construction. Ex. 21 at 51 (an “auxiliary device” “is added to enhance the performance of the main device”; “auxiliary contacts” are “contacts whose function is linked to that of the main circuit contacts”); Resp. at 29 (citing “auxiliary” terms including “auxiliary device” and “auxiliary contacts”). The Court should enter Optronic’s proposed construction because it is consistent with the plain meaning of “auxiliary” and resolves the claim construction dispute between the parties and BOE’s proposal does not.

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Respectfully submitted,

/s/ Benjamin T. Wang

Benjamin T. Wang (CA SBN 228712)

Email: bwang@raklaw.com

Andrew D. Weiss (CA SBN 232974)

Email: aweiss@raklaw.com

Christian W. Conkle (CA SBN 306374)

Email: cconkle@raklaw.com

RUSS AUGUST & KABAT

12424 Wilshire Blvd. 12th Floor

Los Angeles, CA 90025

Phone: (310) 826-7474

Elizabeth L. DeRieux (TX SBN 05770585)

Email: ederieux@capshawlaw.com

Capshaw DeRieux LLP

114 E. Commerce St.

Gladewater, TX 75647

903 845-5770 Office

***Attorneys for Plaintiff Optronic Sciences
LLC***

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on June 24, 2025.

/s/ Benjamin T. Wang
Benjamin T. Wang