

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ZIPSTRING, LLC,

Plaintiff,

v.

NXTGEN TOYS, LLC, LIVE GLEAM LLC,
and BENZION SADIGURSKY,

Defendants.

Case No. 1:24-cv-00136-TCB

DEFENDANTS' RESPONSIVE CLAIM CONSTRUCTION BRIEF

Pursuant to Local Patent Rule 6.5(b), Defendants submit this brief in response to Plaintiff's opening claim construction brief as follows:

(1) Disputed Terms

A. "Loading Slot"

Plaintiff's Proposed Construction	Defendants' Proposed Construction
slot through which the string is loaded or removed from between the pair of wheels	slot that facilitates loading of the looped string through the string loading slot to a position between a first wheel and a second wheel

Plaintiff argues that the term "loading slot" should be construed to include "reference to both loading and removal of the string loop as clearly defined in the specifications." (Doc. 25 at 13). Plaintiff's expert opines Defendants' "interpretation is incorrect at least because it reads out the ability to remove the string loop." (Doc. 25-4 at ¶ 38). Plaintiff further points to specific embodiments of the specifications describing that the looped string can be removed through the loading slot. (See Doc. 25 at 13). It is notable that in describing the "loading slot" during prosecution of the '774 and '703 patents, Plaintiff did not once mention the term "remove."

Plaintiff's proposed construction is not consistent with the plain claim language. See *Hoganas AB v. Dresser Indus., Inc.*, 9 F.3d 948, 950 (Fed. Cir. 1993) ("It is improper for a court to add 'extraneous' limitations to a claim, that is, limitations added 'wholly apart from any need to interpret what the patentee meant by particular words or phrases in the claim.'"); See also *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004) ("it is improper to read limitations from a preferred embodiment described in the specification even if it is the only embodiment – into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited."). Plaintiff's construction reads in extraneous limitations by

requiring that the “loading slot” allows the string to be “removed” from between the pair of wheels.

Plaintiff’s proposed construction adds extraneous limitations. Defendants’ construction is consistent with the plain claim language, the specification, and the applicable legal authorities. Defendants’ proposed construction should be adopted accordingly.

B. “Guide Slot” / “Guiding Slot”

Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
slot extending around a portion of the circumference of at least one of the pair of wheels	a slot different from the loading slot that moves the string to the operation position between a drive wheel and a guide wheel

Plaintiff argues that defining the guide slot as a “slot different from the loading slot” is directly contrary to the claim language. (Doc. 25 at 15.) But the claims recite “guide slot” / “guiding slot” and “loading slot” as separate elements. (Ex. 1, claims 1, 4, 5, 6, 7, 8, 9, 16, 18, 19, 20.) “Where a claim lists elements separately, the clear implication of the claim language is that those elements are ‘distinct component[s]’ of the patented invention.” *See Becton, Dickinson and Co. v. Tyco Healthcare Gr., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2020). Plaintiff’s attempts to muddle the difference between the “guide slot” and the “loading slot” should thus be rejected.

Further, Plaintiff’s proposed construction ignores the term “guide” in “guide slot.” The term “guide” must be construed to mean something, as it directly modifies one of multiple “slots” recited and required by the claims. *See Merck & Co., Inc. v. Teva Pharmaceuticals. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”); *see also Simpleair, Inc. v. Sony Ericsson Mobile Communications AB*, 820 F.3d 419, 429 (“interpretations that render some portion of the claim language superfluous are disfavored.”). Here, the use of “guide” preceding

“slot” clearly indicates the “guide slot” has a special guiding function. Plaintiff’s expert even states “Defendants also seem to read out the ‘around a portion of the circumference,’ which a POSITA would understand could negate the stated purpose of the guide/guiding slot.” (Doc. 25-4 at ¶ 42). Defendants agree that the “guide slot” has a stated purpose, namely to move the string to the operation position between a drive wheel and a guide wheel.

Additionally, the specifications of the asserted patents make clear that the “guide slot” “urges the string back to the operational position between the drive wheel and the guide wheel.” (Ex. 1 at 9:32-34, 9:17-21). In ignoring the modifying term “guide,” Plaintiff’s proposed construction merely repeats the claim language surrounding the term.

Defendants’ construction is consistent with the plain claim language, the specification, and the applicable legal authorities. Plaintiff’s proposed construction is improper at least for the foregoing reasons and should be rejected.

C. “Loading Tab”

Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
a structure which guides the string from the loading slot to the intake aperture	a tab extending from the loading slot that leads the string into the intake aperture

Plaintiff has not provided any support from the specification to substantiate its proposal to define “tab” as “a structure.” In fact, the specifications of the ’774 and ’703 patents do not use the term “structure” in relation to the “loading tab” at all. Plaintiff simply states that “[t]he asserted claims refer to embodiments where the loading slot is defined at one edge by a loading tab, where the loading tab includes a tip that is thinner than a body of the loading tab, where the loading tab functions to guide the string from the loading slot to the intake aperture.” (Doc. 25 at 16). Plaintiff then concludes “the proper construction of the ‘loading tab’ as defined in the

specification is ‘a structure which guides the string from the loading slot to the intake aperture,’” without citation. (*Id.* at 17).

In further support of its proposed construction, Plaintiff argues “[a] POSITA would identify that the loading tab 102 cannot extend from space, i.e. loading slot but instead extends along a portion of the housing 100.” (*Id.* at 16). First, Plaintiff’s construction does not include that the “loading tab” extends along a portion of the housing, so this is of no moment, even if taken to be correct, which Defendants dispute. Second, Plaintiff’s construction directly contradicts its earlier statement that the “loading slot is defined at one edge by a loading tab.” (*Id.* at 16). If the loading slot is defined by the loading tab, it is clear the loading tab “extends from the loading slot” as proposed by Defendants. The specifications state “[t]he loading tab 102 on the right side of the loading slot 101.” (Ex. 1 at 10:30-31). Thus, the loading tab extends from the loading slot.

Plaintiff’s proposed construction is overly broad and unsupported. On the other hand, Defendants’ construction follows the express teachings provided in the ’774 and ’703 patents. Defendants’ proposed construction should be adopted accordingly.

D. “About at Least a Portion”

Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
See 10 above re “portion”; plain and ordinary meaning; a part of any whole; The claim term meets the requirements of 35 U.S.C. § 112 and therefore is definite. There is adequate disclosure in the specification such that one of ordinary skill in the art would understand the meaning of the term.	indefinite

“The claims, when read in light of the specification and the prosecution history, must provide objective boundaries for those of skill in the art.” *Interval Licensing LLC v. AOL, Inc.*

766 F.3d 1364, 1371 (Fed. Cir. 2014); *see Amgen, Inc. v. Chugai Pharmaceutical Co. LTD*, 927 F.2d 1200, 1218 (Fed Cir. 1991) (finding “at least about 160,000 IU/AU” to be indefinite). In *Amgen*, the court found the term “at least about” to be indefinite due to “the fact that nothing in the specification, prosecution history, or prior art provides any indication as to what range of specific activity is covered by the term “about,” and because no expert provided a definite meaning for the term in the context of the prior art.” *Amgen, Inc.*, 927 F.2d at 1218. Further, the *Amgen* court relied on the fact that the expert “tried to define ‘about’ 160,000, but he could only say that ‘while somewhere between 155[,000] might fit within that number,’ he had not ‘given a lot of direct considerations to that.’” *Id.*

It is telling that Plaintiff only argues “a POSITA would readily understand the term ‘about at least a portion’ in the context described throughout the specification,” without pointing to any description for the term. (Doc. 25 at 18.) “About at least a portion” is not used or described anywhere within the specifications of the asserted patents and appears for the first time in the ’703 patent claims.

Further, Plaintiff’s expert opines: “A POSITA would understand that estimative terms (“about”, “at least”) do not diminish the POSITA’s understanding of this phrase. In aggregate, terms used within ‘about at least a portion’ mean some portion of a whole. A POSITA would know that “About” means “approximately” or roughly near a particular quantity, which in basic English language is an approximation of the amount within the whole. “At least” is synonymous with no less than, which, when used in conjunction with “a portion,” indicates that, at a minimum, some part of the whole. Accordingly, it is my opinion that the term “about at least a portion” is sufficiently definite.” (Doc. 25-4 at 27-28.) Similar to *Amgen*, there is no disclosure in the asserted patents to define what range of the outer perimeter would be considered “about at

least a portion,” nor does Plaintiff’s expert provide any definite meaning for what range of values constitutes “about at least a portion” of an outer perimeter, in the context of the prior art or otherwise. Thus, the term “about at least a portion” is indefinite.

E. “Configured to Illuminate a Location on a Path of Travel of a String”

Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
designed to light a portion of a path along which the string travels; The claim term meets the requirements of 35 U.S.C. § 112 and therefore is definite. There is adequate disclosure in the specification such that one of ordinary skill in the art would understand the meaning of the term.	indefinite

In support of its construction, Plaintiff first points to disclosure of a light switch having a photo sensor where the photo sensor causes the light source to illuminate in response to a level of light sensed at the photo sensor being below a predetermined value. (*Id.* 25 at 19). It is unclear how reference to a light switch and a photo sensor clarifies the meaning of “configured to illuminate a location on a path of travel of a string.”

Plaintiff’s remaining arguments highlight the indefiniteness of the term caused by the spacing used in claim 13 of the ’927 patent. Plaintiff cites to description in the specification which indicates another component (i.e., light switch or light guide) is configured to illuminate the location on the path of travel of the string. Thus, it would appear a possible construction for the term is that the “light source” that precedes the term is “configured to illuminate” and the “location on a path of travel” is a separate element. This interpretation is further supported by claim 14 of the ’927 patent which states “wherein the light guide is positioned between the light source and the location, and wherein the light guide guides the illumination from the light source

to the location.” (Ex. 3 at 18:13-16.) This indicates that some kind of mechanism (e.g., light guide) is required in order for the light from the light source to illuminate the location.

However, Plaintiff’s proposed construction — “designed to light a portion of a path along which the string travels” — appears to require that the “light source” is specifically configured to “illuminate a location on a path of travel of a string.” Therefore, there are two equally reasonable interpretations of the term such that one of skill in the art would not be able to determine the metes and bounds of the term. It is thus indefinite.

2. Conclusion

For the foregoing reasons, Defendants request that the Court adopt their proposed constructions for the disputed terms and deny Plaintiff’s proposed constructions, and otherwise find the terms so identified to be indefinite, and all other relief to which they may be entitled.

Dated: January 27, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Jason A. Wietjes
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