

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BELDEN CANADA ULC,

Plaintiff,

v.

COMMSCOPE, INC., COMMSCOPE, INC.
OF NORTH CAROLINA, and
COMMSCOPE TECHNOLOGIES, LLC,

Defendants.

C.A. No. 1:23-CV-00810-RGA

JURY TRIAL DEMANDED

CommScope's Answering Claim Construction Brief

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Preliminary Statement

It is highly unusual for a party to propose claim constructions that are the exact opposite of what it told the Patent Office the claim terms mean. If a party did this, one would expect the party to at least acknowledge and explain its inconsistency. This is the unusual case where Belden is proposing claim constructions that directly contradict what it told the Patent Office without even acknowledging its prior statements. For Terms 1-2, Belden is proposing that these terms refer to the number of receptacle modules and omitting that it expressly represented to the Patent Office that was clearly wrong, stating: “*Clearly*, therefore, a person of ordinary skill in the art would understand that the width of cassette is simply the width of the cassette from side to side and *not* some other ‘dimension’ such as the *number of receptacles* or the like.” J.Ex. G at 187. Belden’s proposed constructions of these terms are indicative of a larger problem—Belden simply skips whatever intrinsic evidence is unfavorable. By contrast, CommScope engages with the full intrinsic record. CommScope respectfully requests the Court adopt its constructions.

A. Term 1

The dispute centers on the meaning of “standard” for a “width unit,” i.e., what makes a width unit a “standard” width unit? CommScope’s construction correctly explains a “standard” width unit is a width unit that is standardized in the industry. This is supported by the plain language of the claim and specification. Belden does not dispute that the plain language of the claim supports CommScope. Belden never even discussed the plain language of the claim and only discussed the specification. Belden also skips the prosecution history because, as explained below, during prosecution Belden expressly disclaimed the very construction it now proposes. The Court should adopt CommScope’s construction for three reasons.

First, the actual words of the claim are the most important intrinsic evidence. *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1344 (Fed. Cir. 1998) (“Even within the intrinsic evidence, however, there is a hierarchy of analytical tools. The actual words of the claim are the controlling focus.”); *Skedco, Inc. v. Strategic Operations, Inc.*, 685 F. App’x 956, 959 (Fed. Cir. 2017) (“Claim construction must begin and remain centered on the claim language.”). The term “standard” has a well-known meaning. It means a measurement or value conforming to a standard. D.Ex. J at 3, D.Ex. P ¶31. As applied here, there are various industry standards that define the width of components. D.Ex. P ¶¶32-33. This is because interoperability is important. D.Ex. P ¶31. Nothing in the specification suggests that the patentee acted as his own lexicographer and redefined the term “standard.” Although Belden cites the specification, Belden never argues the patentee acted as his own lexicographer. Thus, the ordinary meaning of “standard” is the correct starting point and important intrinsic evidence.

Second, CommScope’s construction follows the claim construction rule that terms are normally used consistently throughout the claims. *Fin Control Sys. Pty v. Oam*, 265 F.3d 1311, 1318 (Fed. Cir. 2001) (“[W]e begin with the presumption that the same terms appearing in different portions of the claims should be given the same meaning”); *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (“Because claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims”). As applied here, there is a presumption that the term “standard” has the same meaning throughout the claim. The parties proposed two terms for construction: (1) standard width unit and (2) standard U-space width dimension. Both deal with the meaning of standard as applied to a width. Claim 1 of the ‘423 patent recites both terms:

1. A tray for providing a plurality of different modular fiber optic cassette configurations...
 wherein the tray width portion fits within a standard U-space width dimension...
 wherein the module width portion is configured to fit in a standard one width (1 W) unit...

J.Ex. E at claim 1. Although Belden disputes the meaning of the “standard” width unit, Belden stipulated in the joint claim construction statement that a “standard” U-space width dimension means “a width dimension defined in the EIA/ECA-310-E standard.” D.I. 56 at 2. The stipulated construction recognizes that the “standard” U-space width dimension does refer to actual widths standardized in the industry. The EIA/ECA-310-E document is an industry standard that defines actual specific widths. For example, the standard defines the width of a rack opening as 450, 577, or 730 millimeters. D.Ex. K at 2; D.Ex. P ¶32. Thus, applying the claim construction rule that terms are normally used consistently throughout the claims, “standard” width unit should also refer to an actual width standardized in the industry.¹ It would be inconsistent to assign different meanings to the same word when used twice within the same claim.

Third, CommScope’s construction is also consistent with the specification. The specification states that the standard width unit for the preferred embodiment is based on a “LC Quad (SC Duplex) technology footprint.” J.Ex. B at 3:61-63. The LC Quad (SC Duplex) technology footprint *is* an actual width standardized in the industry. The International Electrotechnical Commission (IEC) standardized the dimensions of the LC technology in IEC 61754-20. D.Ex. L; D.Ex. P ¶32. This standard defines the width of an LC quad adapter as 25.6 mm – 25.9 mm. Here are the excerpts from the standard for this width labeled “GC”:

¹ CommScope’s point is not that the specific *value* of the “standard U-space width” and the “standard width unit” are the same value but merely that a POSITA would expect they are both actual values standardized in the industry. There are different standardized values relevant to the U-space width and the cassette width.

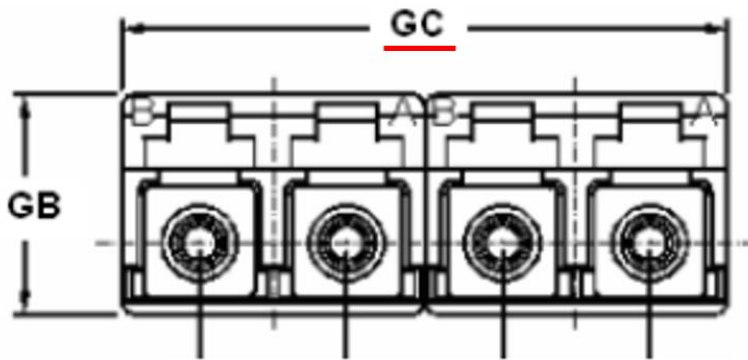
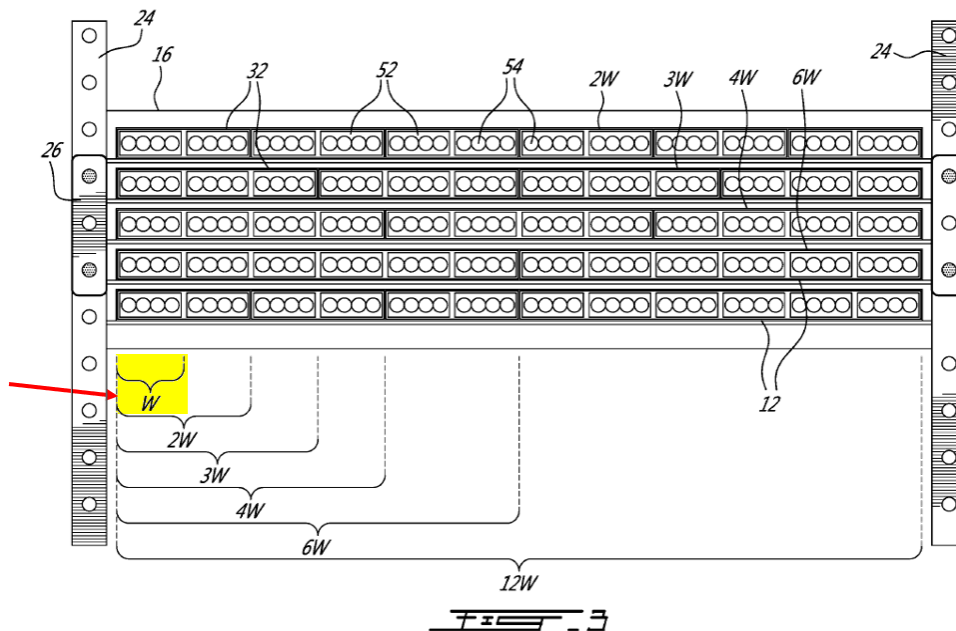


Table A.4 – Dimensions for quad rectangular flange adaptor

Ref.	Dimensions in millimeters		Remarks
	Min.	Max.	
GB	9,35	9,45	Holes optional
<u>GC</u>	<u>25,6</u>	<u>25,9</u>	
GD	26,0	26,5	
GE	9,5	10,0	
GG	30,6	30,8	
GP	2,39	2,59	

D.Ex. L at 25; D.Ex. P ¶33. The IEC also defines the technology footprint for the SC Duplex and MPO adapters as actual widths. D.Ex. P ¶33.

Belden only makes one counterargument against CommScope’s construction. Belden argues that the specification “never references” an “actual width.” Not true. Figure 3 shows the standard width unit abbreviated as “W” is an actual width measured between two lines:



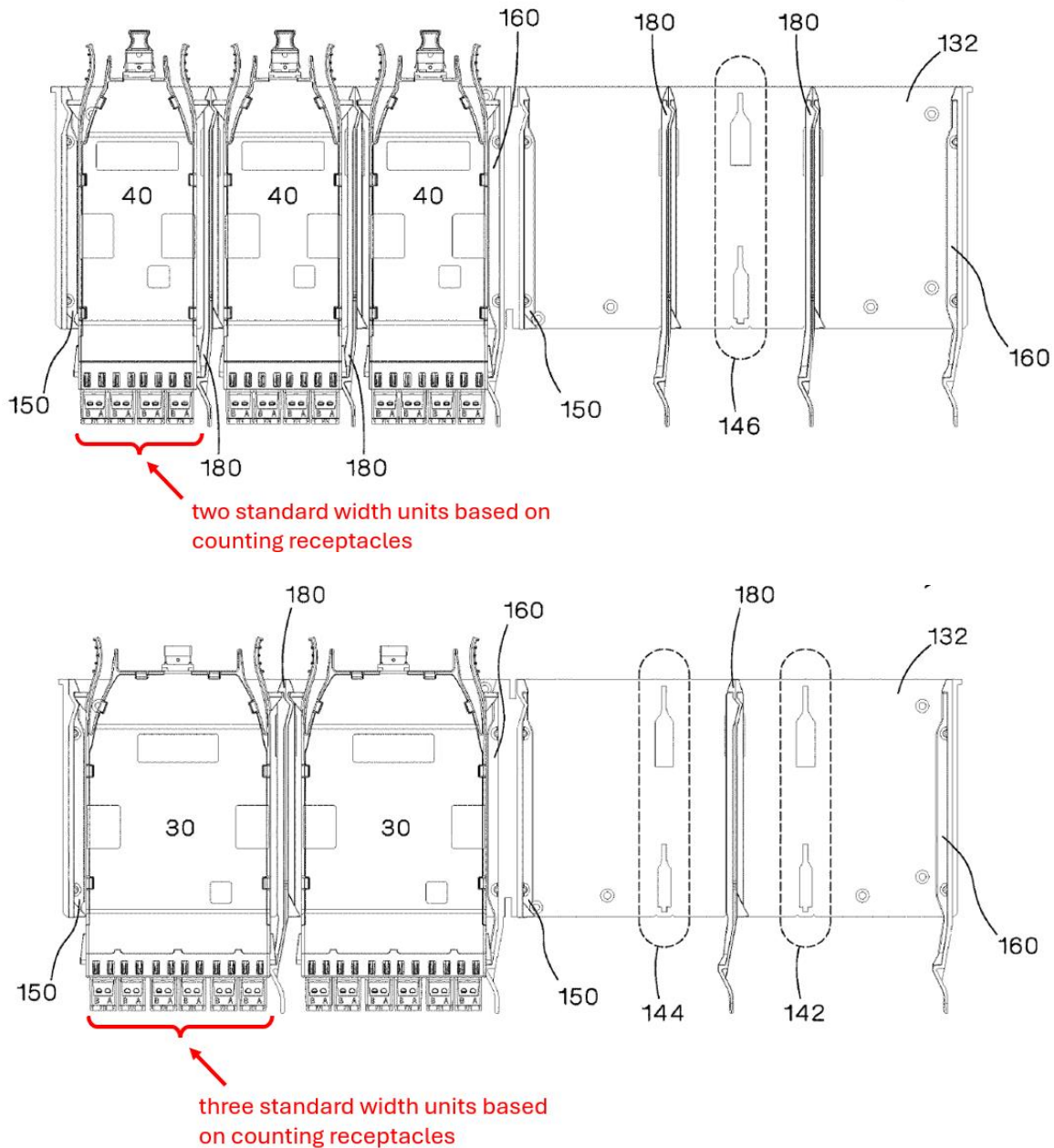
J.Ex. B, Fig. 3.

On the other hand, Belden’s construction for Term 1 and Term 2 incorrectly defines the “standard width unit” in terms of the number of receptacle modules accommodated by the width unit. The Court should reject Belden’s construction for four reasons.

First, Belden’s construction cannot be right based on the prosecution history. The prosecution history discusses the precise issue raised by Belden’s construction. The examiner initially believed that the standard width unit did refer to a number of receptacle modules and cited the specification:

Paragraph [0015] of the Specification defines one standardized width unit accommodates a single receptacle module comprising four receptacles. In the Figures of the Specification, a 2W cassette 32 comprising two (2) modules 52 accommodating eight (8) optic fibers (Figure 4A) is provided, a 3W cassette 32 comprising three (3) modules 52 accommodating twelve (12) optic fibers (Figure 4B) is provided.

J.Ex. G at 142-43. If that was true, the examiner explained the “Sedor” prior art reference disclosed the standard width limitation based on counting receptacles. *Id.* Sedor, for example, disclosed cassettes sizes based on the number of receptacles:



D.Ex. M at Figs. 7, 9.

In response, Belden emphatically explained that the width limitation did not refer to the number of receptacles:

Applicant respectfully disagrees with the Examiner's characterization of width and her finding that paragraph [0015] defines the width in terms of the number of receptacles. Indeed, nowhere does the specification define width in such a fashion. In particular, such a definition of width makes no sense when viewed in respect to Claim 8, and where the standard width is defined in terms of a width of a front edge of a tray on which the cassettes are secured.

Clearly, therefore, a person of ordinary skill in the art would understand that the width of a cassette is simply the width of the cassette from side to side and not some other "dimension" such as the number of receptacles or the like.

J.Ex. G at 187. Belden (the applicant) expressly disagreed that the specification defined the width in terms of the "the number of receptacles and emphasized that "clearly" the width is "not" the "number of receptacles." *Id.* Belden also emphasized that "clearly" Sedor did not disclose the claimed dimensions (i.e., the standard width limitation):

Clearly, therefore, Sedor et al. fails to disclose a system where the cassettes have the dimensions of the those as claimed at Claim 1.

J.Ex. G at 188. The examiner allowed the claims over Sedor and concluded in the "notice of allowance" that Sedor did not disclose the standard width limitation. J.Ex. G at 221.

Belden has now inexplicably reversed its position. But Belden is not allowed to do that. When the applicant (Belden) disavows an interpretation of the claim during prosecution, the applicant is bound by this position under the doctrine of prosecution history "disclaimer." *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003) ("But where the patentee has unequivocally disavowed a certain meaning to obtain his patent, the doctrine of prosecution disclaimer attaches and narrows the ordinary meaning of the claim congruent with the scope of the surrender."); *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576 (Fed.

Cir. 1995) (“The prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution.”). The Federal Circuit has colorfully explained that a plaintiff cannot request a “mulligan” to ignore its own position in prosecution. *Hockerson-Halberstadt, Inc. v. Avia Grp. Int’l*, 222 F.3d 951, 957 (Fed. Cir. 2000). The test for the disclaimer is whether the applicant’s statement is “clear and unmistakable.”

Belden’s statement quoted above was clear and unmistakable. Belden itself even used “clearly” to explain its position during prosecution. And this was no mistake. The prosecution history addressed the specific portion of the specification Belden’s attorneys now cite. J.Ex. G at 142-43. Belden unequivocally explained during prosecution that this portion of the specification did not define the standard width unit. J.Ex. G at 187 (“Indeed, nowhere does the specification define width in such as fashion.”). Belden plainly has no good answer for switching positions. Belden’s lead section, above, conspicuously fails to mention its prior position during prosecution.

Even if Belden disputes disclaimer, that does not solve Belden’s inconsistency because the prosecution history is still highly relevant intrinsic evidence even when there is no disclaimer. *Ultravision Techs., LLC v. Govision, LLC*, No. 2022-1098, 2023 WL 2182285, at *10-11 (Fed. Cir. Feb. 23, 2023) (“The prosecution history is relevant for more than an evaluation of disclaimer—it provides additional context for evaluating how the term would be understood and how it was used in the patent.”); *Graham v. John Deere Co.*, 383 U.S. 1, 33 (1966) (“It is, of course, well settled that an invention is construed not only in the light of the claims, but also with reference to the file wrapper or prosecution history in the Patent Office”). For example, the Federal Circuit has explained: “regardless of whether the examiner agreed with [plaintiff’s] arguments concerning ‘integral,’ its statements still inform the proper construction of

the term.” *Am. Piledriving Equip., Inc. v. Geoquip, Inc.*, 637 F.3d 1324, 1336 (Fed. Cir. 2011).

The Federal Circuit has explained: “We take the patentee at its word and will not construe the scope of the [asserted] patent’s claims more broadly than the patentee itself clearly envisioned.”

Microsoft Corp. v. Multi-Tech Sys., 357 F.3d 1340, 1350 (Fed. Cir. 2004).

Second, Belden’s construction conflicts with the claim language because it renders other claim language redundant. *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 810 (Fed. Cir. 2021) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.”). For example, claim 1 of the ‘423 patent clarifies that fitting a “receptacle module” as recited in Belden’s construction is supposed to be an additional limitation:

1. A tray for providing a plurality of different modular fiber optic cassette configurations... wherein each of the plurality of different modular fiber optic cassette configurations include a modular fiber optic cassette that is <u>configured to support a receptacle module</u> ... wherein <u>the module width portion is configured to fit in a standard one width (1 W) unit</u> ;
--

Belden’s construction renders the underlined language redundant.

Third, Belden’s argument about the specification is misplaced. Belden conflated the *use* of a standard width unit in the preferred embodiment with the *meaning* of a standard width unit. Belden relies on this statement: “one standardized width unit accommodates a single receptacle module 52 comprising four (4) receptacles 54.” J.Ex. B, 3:44-45. This statement describes the *use* of the standard width unit in the preferred embodiment (to accommodate the receptacle module) but does not define what makes the width unit a “standard” width unit. There is no definitional language in this statement. The statement does not say what one standard width unit *means* or is *defined to be* or even *is*. If there was any doubt, Belden unequivocally stated during prosecution that there was no definition in the specification. J.Ex. G at 187 (“Indeed, nowhere does the specification define width in such as fashion.”). Consider a traffic lane as an analogy.

The width of a traffic lane does accommodate one car—that is its use. But that does not mean any width of a traffic lane that accommodates one car constitutes the “standard” width of a traffic lane. The “standard” width of a traffic lane is the actual specific width set forth in the applicable standards for roads.

Belden’s reliance on the specification is misplaced for another reason. The correct construction must be consistent with the plain language of the claim and prosecution, not only the specification. Otherwise, the party is improperly importing a limitation from the specification into the claims. *Pulse Elecs., Inc. v. U.D. Elec. Corp.*, 860 F. App’x 735, 737 (Fed. Cir. 2021) (“As we have repeatedly held, it is improper ‘to import limitations from the specification into the claim.’”). Belden does not even argue its construction is consistent with the plain language of the claim or prosecution history. Belden also does not argue the patentee acted as his own lexicographer in the specification and provided a definition. Nor could Belden because it expressly stated during prosecution that there was no definition in the specification. J.Ex. G at 187 (“Indeed, nowhere does the specification define width in such as fashion.”). Thus, by its own terms, Belden is importing a limitation from the specification into the claims.

Fourth, Belden’s construction is way too broad. Consider two units of width: (a) 25.9 mm and (b) 49 mm. Both are big enough to support a single receptacle module as proposed in Belden’s construction. But only 25.9 mm is standardized in the industry. 49 mm is a totally arbitrary value the drafter of this brief made up. It does not make sense, per Belden’s construction, to deem them both “standard” width units. These are just two examples. Under Belden’s logic, Belden can argue a huge range of widths are a “standard” width unit. For example, Belden could argue 25 mm, 30 mm, 35 mm, 40 mm, 45 mm, 50 mm, etc. are all “standard” width units because they all are big enough to accommodate a single receptacle

module. In this way, Belden’s construction gives no meaning to the term “standard.” The claims do not generically claim any unit of width for a receptacle module. It specifically claimed a “standard” width unit.

Lastly, if the Court declines to adopt CommScope’s construction, CommScope alternatively proposes this term is indefinite. Belden’s construction, as just discussed, cannot be right based on the prosecution history. Thus, there is no viable construction left if the Court declines to adopt CommScope’s construction.

B. Term 2

Term 2 overlaps with Term 1 but presents additional issues, including whether the claim allows for the width to include additional amounts. The Court should adopt CommScope’s construction for three reasons.

First, the plain language of the claims supports CommScope’s construction. Belden states that Term 2a is a “representative” example for these terms. CommScope agrees. Term 2a recites:

“cassette width of **one of** one, two, three, four, and six standard width units”

J.Ex. B, claim 1. To be “one of” these choices, the width must equal one of the choices; otherwise, the width is not “one of” these choices but some other value. For example, 3.5 standard width units is not “one of” these choices. By adding an additional amount (0.5 standard width units), the cassette width would no longer be “one of” the recited amounts in the claim.

Second, the specification supports CommScope’s construction. The specification teaches that the cassette width is “based on” an “integer multiple” of the standard width unit. J.Ex. B at 3:60-63. This corresponds to the claim language of “one, two, three, four, and six” standard width units—one, two, three, four, and six are integers. An “integer” multiple cannot include an

additional amount because the result would not be an integer. For example, 3.5 standard width units is not an integer multiple. It is fractional multiple.

Belden ignores “integer multiple” and argues “based on” means the cassette size does not need to be an actual integer multiple of the standard width unit. Not true. The term “based on” recognizes that the “base” is the standard width unit. Belden’s argument also cuts against Belden. The claims do not recite “based on.” The claim more precisely recites “one of” the integer multiples. Thus, even if “based on” was broader, Belden chose narrower language in the claim. *Laitram Corp. v. NEC Corp.*, 163 F.3d 1342, 1347 (Fed. Cir. 1998) (“Thus, it is the *claims*, not the written description, which define the scope of the patent right.”) (emphasis original).

Third, the prosecution history emphatically supports CommScope. During prosecution, Belden repeatedly used mathematical equations to explain these claims terms. The entire point of the equations was that the claim required the cassette width *equal* a multiple of the standard width unit without an additional amount.

The examiner initially rejected the claims in Belden’s first patent based on the “Sedor” prior art reference. J.Ex. F at 64-65. In response, Belden presented a mathematical equation to show that the widths of Sedor’s cassettes did not meet the claim because the widths included the additional amounts of $+W_r$ and $+2*W_r$

$$2*W_2 + \underline{W_R} = 3*W_3 + \underline{2*W_R} = W_1$$

J.Ex. F at 87. Belden explained this point further during prosecution of the second patent in this patent family. As mentioned in Term 1, the examiner of Belden’s second patent again initially rejected the claims based on the “Sedor” reference. J.Ex. G at 81-82. In response, Belden made a mathematical argument:

tray. If, as characterized by the Examiner in his Official Action, each 8-optical fiber module (40) is of two unit widths $2U$, the 12-optical fiber modules (30) would not have a width of $3U$. Indeed, as clearly shown in the figures, the 3 8-optical fiber modules (40) and 2 rails (180) occupy the same space as 2 12-optical fiber modules (40) and a single rail (180), or $3*2U + 2*(\text{width of rail}) = 2*\text{width of 12-optical fiber modules (40)} + \text{width of rail}$, or width of 12-optical fiber modules (40) = $3U + \frac{1}{2} \text{ the width of a rail (180)}$.

Clearly, therefore, Sedor et al. fails to disclose a system where the cassettes have the dimensions of the those as claimed at Claim 1.

J.Ex. G at 134. Belden emphasized the width of Sedor's second module did not *equal* three times the width unit ($3U$) but rather equaled " $3U + \frac{1}{2}$ the width of a rail," i.e., the width included an additional amount.

Belden doubled down on its position when the examiner again rejected the claims. After clarifying that the claim did not refer to the number of receptacle modules, as discussed in Term 1, Belden presented the same mathematical analysis and said Sedor "clearly" did not disclose the claimed dimensions:

(40) and single 24-optical fiber module (20) all which fit in the same space of the tray. If, as characterized by the Examiner in his Official Action, each 8-optical fiber module (40) is of two unit widths $2U$, the 12-optical fiber modules (30) would not have a width of $3U$. Indeed, as clearly shown in the figures, the 3 8-optical fiber modules (40) and 2 rails (180) occupy the same space as 2 12-optical fiber modules (40) and a single rail (180), or $3*2U + 2*(\text{width of rail}) = 2*\text{width of 12-optical fiber modules (40)} + \text{width of rail}$, or width of 12-optical fiber modules (40) = $3U + \frac{1}{2} \text{ the width of a rail (180)}$.

Clearly, therefore, Sedor et al. fails to disclose a system where the cassettes have the dimensions of the those as claimed at Claim 1.

J.Ex. G at 188. Belden tripled down on its position in the final office action:

rail (180). As such, its clear that each of the two 12-optical fiber modules would not have a width 3U, as required in order to fall within the scope of Claim1 as amended, but rather a width of 3U plus the width of ½ the rail.

Clearly, therefore, Sedor et al. fails to disclose a system where the cassettes have the dimensions of the those as now claimed at Claim 1 as amended.

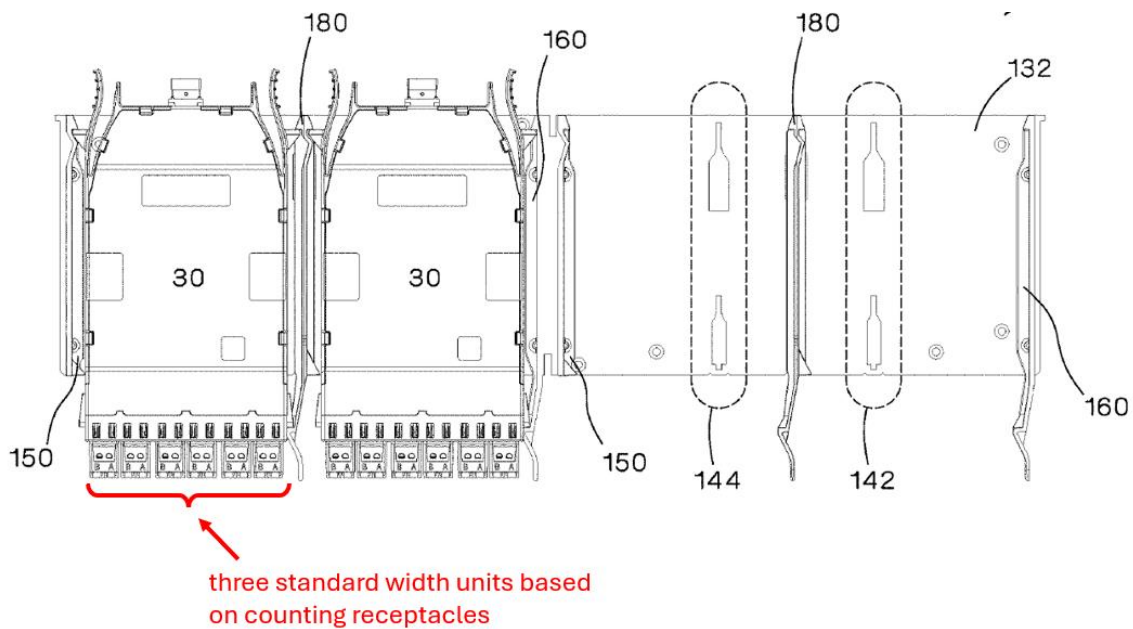
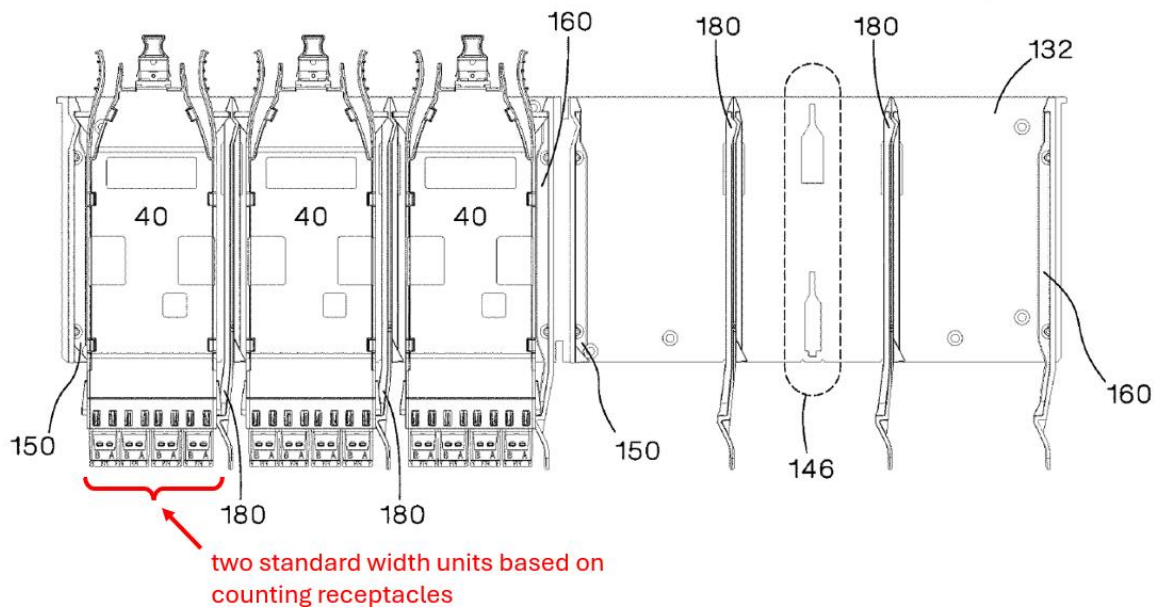
J.Ex. G at 209. Belden again distinguished Sedor based on the small additional amount of “plus the width of ½ the rail.” Belden unequivocally explained its position as to what was “required to fall within the scope of claim 1.” *Id.*

The only logical interpretation of Belden’s position during prosecution is that the claim requires the width of the cassettes be an integer multiple of the standard width unit (e.g., the integer multiple of 3U that is three times the standard with unit), without an additional amount. Otherwise, the whole discussion of the mathematical equality and “+½ the width of a rail” would be irrelevant.

In addition to being informative intrinsic evidence, Belden’s repeated statements during prosecution qualify as prosecution history disclaimer. Belden’s statements were clear and unmistakable. Belden repeatedly said Sedor “clearly” did not disclose the limitation. Belden’s statements were not a mistake. Belden repeated them three times and emphatically stated its interpretation during prosecution was “required in order to fall within the scope of Claim 1.” J.Ex. G at 209. Belden now says the claim does not require “mathematical precision.” But, as shown above, Belden used mathematical equations during prosecution to describe the invention.

On the other hand, the intrinsic record does not support Belden. Belden’s construction again refers to the number of receptacle modules.

First, as explained for Term 1, Belden's construction directly conflicts with the prosecution history. Belden expressly said during prosecution that "clearly" the width is "not" the "number of receptacles." Belden's construction also directly conflicts with the prosecution history because it would incorrectly read the claims back on the Sedor prior art reference. If the claim merely requires different numbers of receptacle modules, Sedor does disclose this:



D.Ex. 9 at Figs. 7, 9. But Belden said Sedor “clearly” did not disclose the width limitations, and the examiner allowed the claim over Sedor; thus, the correct interpretation cannot broadly cover any width that accommodates one, two, three, four, or six receptacle modules.

Second, the plain language of the claim does not support Belden. Belden does not even argue the plain language of the claim supports Belden. Instead, Belden makes two modifications to the plain language: (1) Belden replaces “of” with “that accommodates” and (2) Belden replaces “standard width unit” with “receptacle modules”:

Plain language	Belden
“cassette width <i>of</i> one of one, two, three, four, and <i>six standard width units</i> ”	cassette width <i>that accommodates</i> one of one, two, three, four, or six <i>receptacle modules</i>

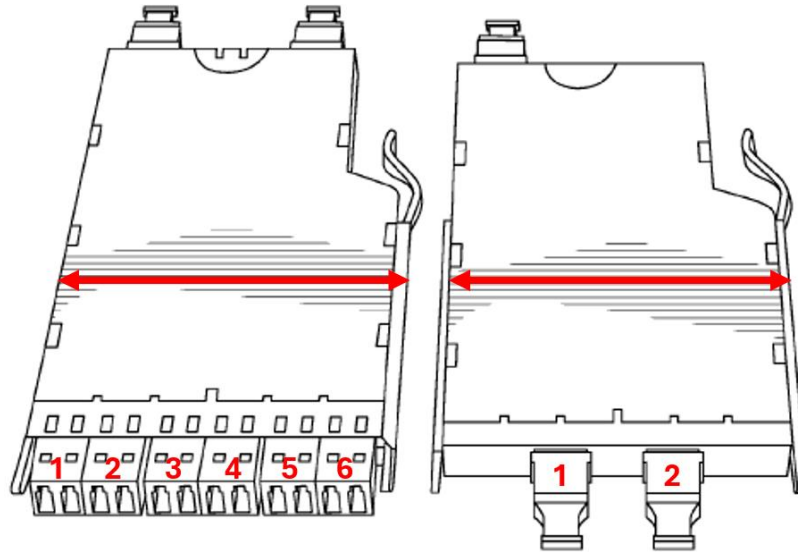
The term “of” does not mean “that accommodates.” The second change—replacing “standard width unit” with “receptacle modules”— gives no meaning to the term “standard” and is wrong for the reason discussed in Term 1.

Like Term 1, Belden’s construction also conflicts with the claim language because it renders other claim language redundant. For example, claim 1 of the ‘423 patent recites that the cassettes fit a specified number of “receptacle modules” as an additional limitation after already reciting the various multiples of the standard width unit:

1. A tray for providing a plurality of different modular fiber optic cassette configurations in a standard U-space fiber optic management system comprising: ... wherein each modular <i>two standard width (2 W)</i> cassette <u>is configured to fit two receptacle modules</u>; wherein each modular <i>three standard width (3 W)</i> cassette <u>is configured to fit three receptacle modules</u>; wherein each modular <i>four standard width (4 W)</i> cassette <u>is configured to fit four receptacle modules</u>; wherein each modular <i>six standard width (6 W)</i> cassette <u>is configured to fit six receptacle module</u>...

Belden’s construction renders the underlined language entirely redundant.

Belden's construction conflicts with the claim language for another reason. The claims say the cassette width is "one of" the recited amounts. Thus, no width should be two of the values. Belden's construction, however, allows for exactly that. Consider the below example:



The "width" (red) is the same on the left and right. But, under Belden's construction, the same "width" constitutes 6 standard width units on the left (because it accommodates six receptacle modules) and 2 standard width units right on the right (because it now accommodates two receptacle modules). This is contrary to phrase "one of" and common sense. The "width" of both cassettes should constitute the same number of standard width units because the cassettes have the same width.

Lastly, the second sentence in CommScope's construction ("This means the cassette widths must be evenly divisible by the standard width unit.") does not add any limitation. The second sentence merely explains the first sentence in CommScope's construction. CommScope's concern is that some jurors might be confused if, for example, Belden restated the width of CommScope's cassettes in a different mathematical form. Suppose the cassette width is 85 mm, and the standard width unit is 25 mm. 85 mm is $3 \times 25 \text{ mm} + 10 \text{ mm}$, which does not meet the

claim because it includes the additional amount of 10 mm. Belden should not be able to avoid this conclusion by restating 85 mm in the different form of $3.\underline{4} \times 25 \text{ mm} + 0$. The “+0” is deceptive. The same additional amount is now stated as $3.\underline{4}$. CommScope’s second sentence clarifies this. No matter how 85 mm is stated, 85 mm is not “evenly” divisible by 25 mm. There is always a remainder. By contrast, a correctly sized cassette such as one that is 75 mm would be evenly divisible by a standard width unit of 25 mm ($75 \text{ mm} / 25 \text{ mm} = 3$, with no remainder).

C. Term 3

The dispute is whether “and” means “or.” Belden does not dispute that the ordinary meaning of “and” is not “or.” Instead, Belden argues that the “context” shows “and” means “or.” Belden, however, left out three critical points.

First, Belden specifically changed from “or” in claim 1 to “and” in claims 18 and 40.

There are three independent claims in the ‘422 patent: claims 1, 18, 40. Claim 1 does recite “or”:

1. A fiber optic cassette tray...
...first cassette width, as measured between outer side edges thereof, of two, three, four, **or** six standard width units

J.Ex. D, claim 1. Belden, however, changed the “or” to “and” in claim 18 and 40:

18. A fiber optic cassette tray...
...first cassette width, as measured between outer side edges thereof, of two, three, four, **and** six standard width units
40. A tray...
...first cassette width, as measured between outer side edges thereof, of two, three, four, **and** six standard width units

J.Ex. D, claims 18, 40. Nowhere does Belden argue this change was an error. Belden only argues Terms 7-8, below, contain errors. There is a presumption that different independent claims have different scope when they use different words. *Seachange Int’l, Inc. v. C-COR Inc.*, 413 F.3d 1361, 1369 (Fed. Cir. 2005) (“[T]here is still a presumption that two independent claims

have different scope when different words or phrases are used in those claims”). Thus, consistent with this presumption, “and” does not mean “or” because Belden deliberately changed that claim language to say “and” instead of “or.”

Second, the context of the claims also shows Belden’s main argument is wrong. Belden says “and” is being used to mean that any “one of” the listed group. But, again, Belden specifically changed the disputed claims. Belden obtained earlier claims in its parent and grandparent patents that did recite “one of...and”:

1. A modular fiber optic cassette system...
...first cassette width as measured between outer side edges thereof of **one of** one, two, three, four **and** six standard width units

J.Ex. C, claim 1. When Belden drafted the disputed claims, however, Belden removed “one of” and only recited “and”:

18. A fiber optic cassette tray...
...first cassette width, as measured between outer side edges thereof, of two, three, four, **and** six standard width units

Having itself removed “one of,” Belden cannot plausibly argue the claims really means “one of.”

Third, as mentioned in Term 1, claim terms are presumed to be used consistently throughout a claim. Claim 18 recites “and” twice:

18. A fiber optic cassette tray...
a tray having a cassette engaging portion **and** configured to be slidably received in at least a portion of the tray receiving space of a housing of a fiber optic management system...
wherein a first of the selected plurality of fiber optic cassettes comprises a first cassette width, as measured between outer side edges thereof, of two, three, four, **and** six standard width units

Belden never argues “and” in the first instance means “or.” It would be highly unusual to interpret “and” to differently mean “and” then “or” in the same claim.

Belden postures the issue as CommScope creating a “nonsensical” result because the specification does not disclose the claimed “and” embodiment. But Belden created this result. Belden chose to change “or” in claim 1 to “and” in claims 9 and 18. *Bio-Rad Labs., Inc. v. Int'l Trade Comm'n*, 998 F.3d 1320, 1331 (Fed. Cir. 2021) (“Inventors are masters of their claims, and the words they use to describe and claim their invention are decisive and binding.”).

There is an important line between construing the claim and redrafting the claim. Even when the claim states a nonsensical result, the patentee cannot use claim construction to redraft the claim. *Horizon Pharma, Inc. v. Reddy's Labs. Inc.*, 839 F. App'x 500, 505 (Fed. Cir. 2021) (“That the proper construction of the claims is nonsensical does not warrant judicial redrafting of the claims.”); *Chef Am., Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1374 (Fed. Cir. 2004) (“This court, however, repeatedly and consistently has recognized that courts may not redraft claims, whether to make them operable or to sustain their validity.”). The intrinsic evidence cited above shows Belden chose to recite “and” instead of “or” and chose to delete “one of.” Belden cannot use claim construction to undue those choices because that would be improperly redrafting of the claim. The proper solution is not redrafting claims 18 and 40, but for Belden to proceed on claim 1 that uses the terminology (“or”) that Belden wants. Belden should be reducing the number of asserted claims, not redrafting the claims through incorrect *post hoc* claim construction.

Belden’s one case (*Ortho-McNeil*) also does not justify changing “and” to “or” in this case. *Ortho-McNeil* does not provide broad permission to redraft “and” to mean “or.” Rather, *Ortho-McNeil* turned on the specific intrinsic evidence. The Court explained “specifically” that the claim includes the terms “independently and together” that clarified the meaning of “and.” *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1362 (Fed. Cir. 2008) (“Specifically, *and* appears in conjunction with the adverbs independently and together.”). The

claim here does not include that specific context. To the contrary, the context here shows the patentee made a deliberate drafting choice to recite “and” instead of “or.” Nothing in *Ortho-McNeil* countenances changing “and” to “or” where the patentee made a deliberate drafting choice.

D. Term 4

The dispute centers on the scope of the term “substantially evenly divisible.” Evenly divisible is a known mathematical term that means there is no remainder after the division. D.Ex. P ¶36. For example, 12 is evenly divisible by 4 because there is no remainder: $12 / 4 = 3.0$. By contrast, $13 / 4 = 3$ with a remainder of 1. Thus, 13 is not “evenly divisible” by four. Belden, however, modified this known phrase to recite “substantially evenly divisible.” By this modification, Belden suggests a remainder from the claimed division operation is permissible. But the immediate question is how much remainder is permissible? *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1364 (Fed. Cir. 2018) (affirming indefinite when no guidance on “how much” is minimal).

A POSITA (person of ordinary skill) needs guidance for this question to understand the scope of Claim 8. Claim 8 only covers configurations where the width of the front edge of the tray is substantially evenly divisible by the standard width unit. Thus, a POSITA must do a division operation (tray width / standard width unit) and draw a conclusion about whether the remainder from the division is small enough such that tray is “substantially evenly divisible.” D.Ex. P ¶37.

There are three important facts here. (1) The intrinsic record itself provides no guidance whatsoever to understand how much remainder is permissible even in a general or qualitative sense—there is simply no guidance at all. (2) Even Belden’s own construction provides no

guidance. Belden vaguely recites that “some” excess space (i.e., remainder) is allowed. Thus, the claim is still indefinite even under Belden’s proposed construction. (3) There is an improper “zone of uncertainty.” CommScope explains these points in reverse order.

First, the “zone of uncertainty” is an important principle recognized by the Supreme Court. In *Nautilus, Inc. v. Biosig Instruments, Inc.*, the Supreme Court rejected the Federal Circuit’s prior test for indefiniteness because it tolerated too much uncertainty. 572 U.S. 898, 911 (2014). Although the definiteness requirement must take into account the “inherent limitations of language,” patentees must be precise enough to afford “clear notice” of what is claimed thereby appraising the public “what is still open to them.” *Id.* at 909. Otherwise, the Supreme Court explained there would be a “zone of uncertainty” and a competitor could not fairly design around a patent to avoid accusations of infringement. *Id.* at 909-10. The Supreme Court has also explained: “A patent holder should know what he owns, and the public should know what he does not.” *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 731 (2002).

There is a zone of uncertainty here and the public cannot tell what Belden does not own. The subject matter of the claim—a tray—is a physical object. A competitor should be entitled to avoid being accused of infringing claim 8 by changing the width of the tray so it is not substantially evenly divisible by the standard width unit. A competitor can change the width by adding (or subtracting) material. But how can the competitor obtain any certainty that Belden cannot claim the new width is still “substantially” evenly divisible? Consider the examples of adding 0.1 mm vs. 1 mm vs. 10 mm. Belden’s construction is so vague (“some” excess space) that it permits Belden to argue all of these constitute “some” excess space even though 10 mm is

a hundred times more excess space than 0.1 mm. Thus, a competitor is stuck in a zone of uncertainty under Belden's construction because Belden's construction is intentionally uncertain.

Second, as already mentioned, the claim is indefinite even under Belden's construction. Belden's construction says "substantially" means "*some* excess space." The "excess space" is the remainder. But "some" means an "unknown, undetermined, or unspecified unit or thing." D.Ex. O at 3. The term "some" provides no guidance. The claim is still indefinite under Belden's construction. D.Ex. P ¶51.

Third, the intrinsic record itself provides no guidance whatsoever to understand how much remainder is permissible even in a general or qualitative sense. The claim language itself does not provide any guidance. None of the other limitations in claim 8 explain the scope of permissible remainders from the division operation. Likewise, there is no discussion in the specification of the scope of permissible remainders. The specification is particularly unhelpful because the description of the embodiments (a) never uses (much less explains) the phrase "substantially evenly divisible" and (b) never describes (much less explains) any division operation for the front edge of the tray compared to the standard width unit. *E.g.*, J.Ex. B at 2:47-5:24.

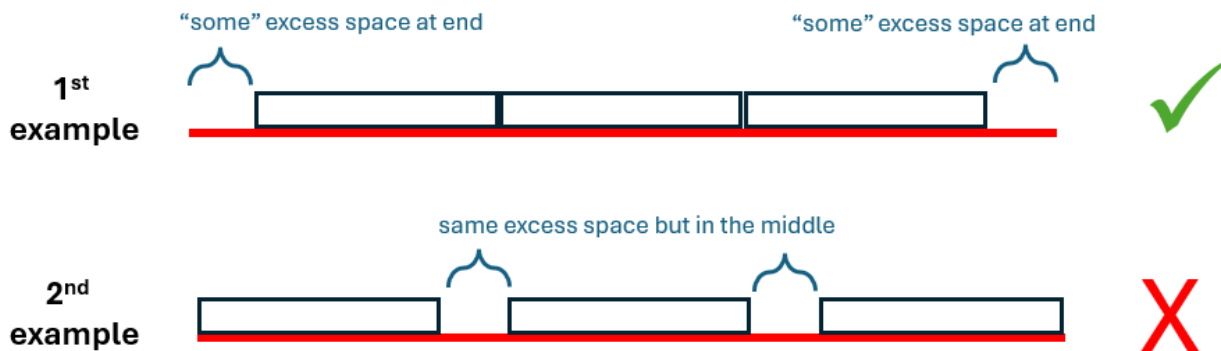
The background prior art listed on the face of Belden's patents also provides no guidance for substantially evenly divisible. None of them ever use the term. Even a broad search for *any* patent explaining the term substantially evenly divisible in this art yields no results (other than Belden's patents that do not explain that term). D.Ex. N. The industry standards for the width of various components also provide no guidance. None of the standards discuss dividing the width of the tray by another value much less how to determine if the result is "substantially" evenly divisible. *See, e.g.*, Exs. 6-7. Dictionaries provide no guidance. CommScope's expert has

located no general or technical dictionary explaining this term. D.Ex. P ¶49. CommScope's expert confirms that substantially evenly divisible is not an accepted term in this art. D.Ex. P ¶¶46-50.

Thus, the scope of "substantially evenly divisible" has an "zone of uncertainty" and is indefinite. There are two final points. First, the Supreme Court explained that the amount of certainty expected from a patent depends on the "subject-matter." *Nautilus*, 572 U.S. at 910. The subject matter of this limitation is the division of two widths. That is a subject matter that can be recited with precision and does not suffer from inherent limitations of language. Belden could have easily claimed a range, e.g., the width of the tray is substantially evenly divisible by the standard width unit *such that the remainder is less than 1/4 of a standard width unit*. Second, there is no alternative to indefiniteness here because not only is the claim still indefinite under Belden's own construction, but Belden's own construction is not even a plausible construction.

Belden's construction has no basis in the intrinsic evidence. Belden proposes that "substantially" refers to a measurement "between a cassette and an end of the front edge." The claim, however, never refers to this measurement. Belden apparently cherry-picks its construction from figures of the preferred embodiment. But nothing in the specification supports this cherry picking. The specification never directs the reader to the figures to understand the scope of "substantially evenly divisible" or indicates in any way that the figures should be reviewed for a measurement "between a cassette and an end of the front edge."

Belden's construction also cannot be right because it leads to inconsistent results if the remainder. The scope of the claim should at least remain the same for a specific width of the front edge, i.e., the edge should either be substantially evenly divisible or not. But that is not true for Belden's construction. Consider two examples:



D.Ex. P ¶54. The red lines represent the front edge of two trays, and the black boxes represent cassettes arranged on the trays. Under Belden’s construction, the first example infringes but the second example does not even though the width of the front edge (red) remains exactly the same because the location of the remainder (ends of the tray vs. middle of the tray) changed. That makes no sense.

E. Term 5

The dispute is whether Belden disclaimed arrangements with intervening “rails” during prosecution, which the second sentence of CommScope’s construction addresses. Belden’s construction acknowledges this term broadly excludes “any” intervening structure, but Belden wishes to leave it unclear whether this excludes rails. Disclaimer, however, is a question of law for the Court to resolve. *Ecolab, Inc. v. FMC Corp.*, 569 F.3d 1335, 1342 (Fed. Cir. 2009).

Belden did disclaim arrangements with intervening “rails” during prosecution. Belden’s lead section only partially quotes the prosecution history. During prosecution, Belden argued that the Sedor prior art reference did not disclose the width limitations (discussed for Terms 1-2), and Belden emphasized with underlining that Sedor’s modules were not “directly adjacent” (Term 5) because Sedor modules were separated by a “rail”:

Additionally, the optical fiber modules cannot be said to be directly adjacent to at least one other selected cassette. In this regard, Applicant notes that all of the modules of Sedor et al. are separated by a rail. Applicant also notes that according to the Examiner, on a broadest reasonable interpretation, “directly adjacent” would not preclude an intervening structure between the objects. Applicant respectfully disagrees. Indeed, such an interpretation effectively assigns no weight to the adjective “directly”. Applicant also submits that a person of ordinary skill in the art would clearly understand that the modification of adjacent by “directly” was clearly intended to exclude any intervening structure, and such that, although the cassettes may be separated by a relatively small gap, cassettes which are “directly adjacent” are almost touching or touching without any intervening structure.

J.Ex. G at 135. Belden’s broad exclusion of “any” intervening structure—which Belden’s own construction quotes—certainly excluded rails because that was the specific intervening structure at issue.

This was no mistake. After the examiner again rejected the claim, Belden re-emphasized these same positions:

Additionally, the optical fiber modules cannot be said to be directly adjacent to at least one other selected cassette. In this regard, Applicant notes that all of the modules of Sedor et al. are separated by a rail. Applicant also notes that according to the Examiner, on a broadest reasonable interpretation, “directly adjacent” would not preclude an intervening structure between the objects. Applicant respectfully disagrees. Indeed, such an interpretation effectively assigns no weight to the adjective “directly”. Applicant also submits that a person of ordinary skill in the art would clearly understand that the modification of adjacent by “directly” was clearly intended to exclude any intervening structure, and such that, although the cassettes may be separated by a relatively small gap, cassettes which are “directly adjacent” are almost touching or touching without any intervening structure.

J.Ex. G at 188. Belden’s language was again clear and unmistakable. Belden itself used the term “clearly” and underlined the “rail.”

Belden makes two counterarguments. First, Belden argues that CommScope “twists” the language to “broaden” the disclaimer because CommScope’s construction does not refer to “the” outer side edge. Belden’s argument is a non sequitur. The claims do not say “the” outer side edge. The claims say “a” outer side edge, which CommScope’s construction repeats verbatim. Second, Belden argues that the claims do not require there be no intervening structure between “all” outer side edges. But Belden does not grapple with the fact that it broadly excluded “any” intervening structure. The term “any” is comprehensive. Belden never said the claim excluded intervening structure between only some portions of the cassettes. Belden included no exceptions when it comprehensively stated the term “directly” excluded “any” intervening structure. Furthermore, a POSITA would know Belden did not limit its disclaimer to only some outer side edges because Belden made the disclaimer before it even amended the claim to recite outer side edges (to clarify the width limitations). When Belden amended the claim to recite outer side edges, Belden explained this meant Sedor did not disclose the width limitations and did not retract or qualify its prior disclaimer of “any” intervening structure. J.Ex. G at 208-210.

F. Term 6

The dispute is the scope of the requirement that “each” of “the plurality” of configurations includes different sizes. CommScope’s construction correctly explains this requires every one of the first, second, third, fourth, and fifth configurations include different sizes. By contrast, Belden’s construction only lists the fifth configuration.

The plain language of the claim resolves the dispute. The claim recites two related limitations:

9. A tray for providing a plurality of different modular fiber optic cassette configurations...
wherein **each** of **the** plurality of different modular fiber optic cassette configurations includes a plurality of different sizes of modular fiber optic cassettes...
wherein **the** plurality of different modular fiber optic cassette configurations comprise:
 a first modular fiber optic cassette configuration...
 a second modular fiber optic cassette configuration...
 a third modular fiber optic cassette configuration...
 a fourth modular fiber optic cassette configuration...
 a fifth modular fiber optic cassette configuration...

J.Ex. E, claim 9. The ordinary meaning of “each” of “the” plurality of configurations is every one of the plurality of configurations. The claim expressly says “the plurality” of configurations comprises the first, second, third, fourth, and five configurations as CommScope proposes, not just the fifth configuration as Belden proposes.

Belden has only one counterargument. Belden argues that the first, second, third, and fourth configurations cannot include different sizes because, supposedly, the claim says these configurations “only” include the same sizes. Not true. The claim language for the first configuration is representative (“[A]” and “[B]” added):

9. A tray for providing a plurality of different modular fiber optic cassette configurations...
[A] wherein **each** of **the** plurality of different modular fiber optic cassette configurations includes a plurality of different sizes of modular fiber optic cassettes...
[B] wherein **the** plurality of different modular fiber optic cassette configurations comprise:
 a first modular fiber optic cassette configuration that **includes** six modular 2 standard width unit size cassettes that are each arranged side by side of each other ...

J.Ex. E, claim 9. Note that the claim does not say “only.” Limitation B merely recites that the first configuration “includes” certain cassettes but does not say those are the “only” cassettes in the configuration. The first configuration can both include some cassettes that are different sizes (limitation A) and some cassettes that are the same size (limitation B). Belden suggest this is a “physical impossibility.” Not true. Consider a first configuration that has six two standard width

cassettes and one three standard width cassette. That meets both limitations. It has different sizes and includes six two standard width cassettes.

Belden provides no explanation for its construction. The ordinary meaning of “each” is not “such as....” as Belden proposes.

G. Term 7

This term is not amenable to correction because the proper correction is subject to reasonable debate. The proper correction is subject reasonable debate when there are multiple reasonable corrections. *Novo Indus., L.P. v. Micro Molds Corp.*, 350 F.3d 1348, 1357 (Fed. Cir. 2003). Belden says that the first “the plurality” should be deleted to resolve the antecedent basis problem. But it is equally plausible that the proper correction is for the term “the” to be replaced with “a.” This also resolves the antecedent basis problem because “a” does not require antecedent basis. Here are the two potential corrections:

Option 1 (Belden):

when each of the modular fiber optic cassettes are in ~~the plurality of~~ the plurality of different modular fiber optic cassette configurations

Option 2:

when each of the modular fiber optic cassettes are in ~~the~~ [a] plurality of the plurality of different modular fiber optic cassette configurations

Belden suggests there is no reason to recite a “a plurality of the plurality.” Not true. This language captures the concept of a subset of the original plurality.

H. Term 8

This term is not amenable to correction because the proper correction is subject to reasonable debate. Belden says “claim 40” should be rewritten to “claim 41” to resolve the antecedent basis problem. But it is equally plausible that the proper correction is that “the”

should be replaced with “a.” This also resolves the antecedent basis problem. Here are the two potential corrections:

Option 1 (Belden):

The tray of ~~claim 40~~ [claim 41], wherein the cassette engaging portion comprises a shoulder....

Option 2:

The tray of claim 40, wherein ~~the~~ [a] cassette engaging portion comprises a shoulder ...

Option 2 is certainly a plausible alternative because many dependent claims (claims 44-58) do depend from claim 40 (not claim 41), which suggests the error might be “the” vs. “a”.

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CERTIFICATE OF COMPLIANCE

In accordance with the Court's Scheduling Order (D.I. 19, ¶8 n.2), The undersigned hereby certifies that the foregoing document contains 7,240 words, exclusive of caption, tables of competing proposals, figures or illustrations, and signature block, counted using Microsoft Word's word count feature.

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