IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Unverferth Manufacturing Company, Inc.,	Case No. 3:16 CV 2282
Plaintiff,	*MARKMAN* ORDER
-vs-	JUDGE JACK ZOUHARY
J&M Manufacturing Company, Inc.,	
Defendant.	

INTRODUCTION

Pending are requests for claim construction in accordance with *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 390–91 (1996). Plaintiff Unverferth and Defendant J&M filed briefs (Docs. 47–48, 52–54), and this Court held a Record Hearing on June 28, 2017.

The patents at issue are U.S. Patent Nos. 8,221,047 (Patent No. 047) and 8,967,940 (Patent No. 940). Plaintiff Unverferth developed an agricultural tender with a pivoting conveyor that can be repositioned to load and unload seed or grain. The parties dispute the meaning of eight claim terms. The disputed claim terms appear in both patents, with the exception of "locking mechanism" which appears only in Patent No. 047.

LEGAL STANDARD

It is the duty of this Court to construe a patent claim. *Markman*, 517 U.S. at 391. Language in a particular claim must be construed in the context of both the individual claim and the entire patent, including the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). Indeed, the specification is the primary basis for construing patent claims. *Id.* at 1315.

Unverferth Exhibit 2036
Par-Kan v. Unverferth
IPR2024-01427

The specification's understanding is informed, as needed, by the prosecution history. *Id.* Extrinsic evidence -- evidence other than the patent and its prosecution history -- may also be considered, but it is secondary to the intrinsic evidence. *Id.* at 1317.

Claim terms generally must be "given their ordinary and customary meaning as understood by a person of ordinary skill in the art when read in the context of the specification and prosecution history." *Unwired Planet, LLC v. Apple Inc.*, 829 F.3d 1353, 1358 (Fed. Cir. 2016). This requires "a full understanding of what the inventors actually invented and intended to envelop with the claim. The construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction." *Phillips*, 415 F.3d at 1316 (quoting *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)).

CONSTRUCTION

- **"seed or grain tender"**

Unverferth: Needs no construction. If construed: a seed or grain delivery system.

J&M: A self-contained unit having the claim elements and designed to be transported by conventional means such as a trailer.

This term needs no construction. The jury will have no trouble determining what a "seed or grain tender" is in the context of the patents. Moreover, nothing in the claims or specifications requires that the unit be "self-contained" or that it be "designed to be transported by conventional means." J&M impermissibly seeks to impose its inferences, based on selected content from the specifications, as limitations on the claims. *See Comark Commc'ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187–88 (Fed. Cir. 1998) ("We have previously stated that '[w]hile . . . claims are to be interpreted in light of the specification and with a view to ascertaining the invention, it does not

follow that limitations from the specification may be read into the claims.'" (quoting *Sjoland v. Musland*, 847 F.2d 1558, 1563 (Fed. Cir. 1988))).

Further, whether a machine is a "seed or grain tender" does not depend on whether it has the elements claimed by Unverferth's patents. And whether a particular "seed or grain tender" infringes on Unverferth's claims is the ultimate issue for the jury to decide. It makes no sense to require the jury to determine first whether a given machine infringes all of the claimed elements before it determines whether the machine is a "seed or grain tender" capable of infringing those elements.

- **"frame"**

  Unverferth: Needs no construction.

  J&M: A hopper frame.

This Court agrees with Unverferth. "Frame" is a commonly used term, and the jury will have no difficulty understanding it in the context of these patents. J&M again seeks to impermissibly read limitations from the specifications into the claims. *See id.* Moreover, as a matter of logic, just because the specification indicates that the hopper is attached to the frame does not mean the frame is attached only to the hopper.

- **"base"**

  Unverferth: Needs no construction.

  J&M: A structure having a track about its perimeter to facilitate the support arm's motion about the perimeter.

This Court again agrees with Unverferth. "Base" is a commonly used term, and the jury will have no difficulty understanding its meaning in the context of the patents. Nothing in the claims or specifications requires that the base have the particular characteristics noted by J&M as being included in a particular embodiment of the invention. *See id.*

- **"first coupling"**

Unverferth: Needs no construction. If construed: first connector.

J&M: Governed by 35 U.S.C. § 112(f). Structure: a U-shaped member with a horizontal base portion and a pair of upright portions. Function: connecting the first end of the support arm with the base.

J&M's construction is premised on its argument that the term "first coupling" invokes the means-plus-function limitation of 35 U.S.C. § 112(f). This Court disagrees with that argument. Where, as here, the word "means" is not used in the claim, there is a rebuttable presumption that Section 112(f) does not apply. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015) (en banc). Nevertheless, the essential inquiry in a means-plus-function analysis is not whether the claim uses the word "means"; rather, it is "whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure." *Id.* "To determine whether a claim recites sufficient structure, it is sufficient if the claim term is used in common parlance or by persons of skill in the pertinent art to designate structure, even if the term covers a broad class of structures and even if the term identifies the structures by their function." *Skky, Inc. v. MindGeek, s.a.r.l.*, 859 F.3d 1014 (Fed. Cir. 2017).

Here, the patents use the term "coupling" to refer to an object that is itself rotatable (Doc. 48-1 at 16 (5:18–23)) (claiming "a first coupling connecting said first end of said support arm with said base, *said first coupling being rotatable* in relation to said base"). In context, the term "coupling" unmistakably refers to a structure, even though it also connotes the structure's function. Further, the patents use "coupling" as a singular noun, and this Court notes that the term is commonly used in that context to refer to "[a] device for connecting parts of machinery." Oxford English Dictionary, http://en.oxforddictionaries.com/definition/coupling (last visited July 5, 2017). A person of ordinary

skill in the art would understand it as such. Thus, this Court finds that the term "first coupling" refers to structure, that it is not limited under Section 112(f), and that it refers to a "device for connecting parts of machinery."

- **"locking mechanism"**

  Unverferth: Needs no construction. If construed: parts forming a lock.

  J&M: Governed by 35 U.S.C. § 112(f). Structure: the locking mechanism includes a pin releasably engageable with only one of a plurality of holes formed in the base. Function: locking or unlocking the support arm in relation to the base.

As stated above, 35 U.S.C. § 112(f) does not apply where a term is used, in common parlance or by those skilled in the art, to "designate structure, even if the term covers a broad class of structures and even if the term identifies the structures by their function." *Skky, Inc.*, 859 F.3d 1014. In the context of the patents, the term "locking mechanism" refers to a broad class of physical structures that can be used to lock the support arm's position in place relative to the base. Thus, the term is not limited by Section 112(f). Further, this Court agrees with Unverferth that the term needs no construction. The jury will have no difficulty understanding what a "locking mechanism" is in the context of the patents.

- **"below"**

  Unverferth: Needs no construction. If construed: under.

  J&M: Lower than.

At the hearing, Unverferth conceded that "below" means "lower than." Thus, despite questioning whether the jury will need clarification on this term, this Court adopts J&M's construction.

- **"main hopper [mounted on said frame and] having a main hopper discharge"**

  Unverferth: Needs no construction. If construed: container for seed or grain having a discharge for discharging seed or grain directly into the conveyor hopper.

  J&M: A one-piece unit having a primary container discharge for discharging agricultural product directly into the conveyor hopper.

The parties do not dispute the ordinary meaning of the term "hopper" -- they both acknowledge that, in this context, it refers to a container with a discharge. Nor do they dispute the ordinary meanings of "discharge" or "main." Instead, the parties disagree about whether the "main hopper" referred to in the claims must be a "one-piece unit" with a "primary container." Nothing in the claims or specifications requires as much. Again, J&M impermissibly seeks to impose features of disclosed embodiments as limitations on the claims. *See Comark Commc'ns, Inc.*, 156 F.3d at 1187–88. This Court therefore declines to adopt J&M's construction. And, because the parties do not dispute the ordinary meanings of the phrase's individual terms, this Court agrees with Unverferth that the phrase needs no further construction.

- **"vertical"**

  Unverferth: Generally upright.

  J&M: At right angles to a horizontal plane; in a direction, or having any alignment, such that the top is directly above the bottom.

The crux of the parties' dispute about this term is whether the word "vertical" in "vertical axis" requires that the axis be perpendicular to a horizontal plane at precisely a 90º angle. J&M says it does; this Court disagrees.

Outside the study of mathematics, the words vertical and horizontal are commonly used and understood to refer *generally* to an object's orientation as either up-and-down or side-to-side. In most

contexts, using the adjective "vertical" as a modifier does not imply that the modified object is perpendicular to a horizontal plane at precisely a 90º angle. For example, a vertical jump is no less vertical if an athlete jumps at an angle that is either greater or less than 90º. Likewise, a vertical ascent up a mountain is rarely undertaken at precisely a 90º angle. The word "vertical" in these contexts merely reflects an up-and-down orientation. The same is true with respect to how the term is used in the patents.

Nothing in the claims or specification requires that the vertical axes, on which the support arm rotates, be oriented at *precisely* a 90º angle. And construing the phrase to require as much would lead to an absurd result. As Unverferth points out, requiring precise verticality along one axis would limit the support arm's ability to move along another. At the very least, it would require adjustments that are neither explained nor contemplated by the patents.

Nevertheless, J&M claims that the term "vertical" in the patents cannot be understood to mean "substantially" or "generally" vertical, because Unverferth disavowed the term "substantially vertical" during the patent's prosecution. Not so. Nothing in the record suggests that dropping the word "substantially" from "substantially vertical" was necessary (or even material) to Unverferth's ability to obtain the patents. Thus, there is no basis on which this Court could conclude Unverforth clearly disavowed the term "substantially vertical" in an effort to obtain the patents. Accordingly, this Court adopts Unverforth's construction and finds that "vertical" refers to the "generally upright" orientation of the axis.

IT IS SO ORDERED.

s/ *Jack Zouhary*
JACK ZOUHARY
U. S. DISTRICT JUDGE

July 7, 2017