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Date: April 9, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KUBOTA NORTH AMERICA CORPORATION,
Petitioner,

v.

VERMEER MANUFACTURING COMPANY,
Patent Owner.

IPR2025-00167 to -00169 (Patent 9,321,386 B1)
IPR2025-00170 (Patent 9,975,750 B2)
IPR2025-00171 (Patent 10,202,266 B2)¹

Before MEREDITH C. PETRAVICK, ANNETTE R. REIMERS, and
ERIC C. JESCHKE, *Administrative Patent Judges*.

JESCHKE, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding
Authorizing Additional Briefing
37 C.F.R. §§ 42.5, 42.20(d)

¹ This Order addresses issues that are the same in each of the above-listed proceedings. We issue one Order to be filed in each proceeding. The parties are authorized to use this heading for the briefing authorized by this Order, but are not authorized to use this heading in any subsequent papers, unless specifically authorized by the Board.

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I. BACKGROUND

Petitioner, Kubota North America Corporation, filed five petitions challenging claims in three different patents owned by Patent Owner, Vermeer Manufacturing Company. At least one challenged claim in each of these five proceedings recites the term “mainframe.” *See, e.g.*, 167IPR,² Paper 3 (Petition) at 30–32 (addressing limitation 1.2a in independent claim 1 of U.S. Patent No. 9,321,386 B1); 168IPR, Paper 3 (Petition) at 32–34 (addressing limitation 31.2a in independent claim 31 of U.S. Patent No. 9,321,386 B1); 169IPR, Paper 3 (Petition) at 30–32 (addressing limitation 50.2a in independent claim 50 of U.S. Patent No. 9,321,386 B1); 170IPR, Paper 2 (Petition) at 26–28 (addressing limitation 1.2a in independent claim 1 of U.S. Patent No. 9,975,750 B2); 171IPR, Paper 2 (Petition) at 89 (addressing limitation 19.1a in independent claim 19 of U.S. Patent No. 10,202,266 B2).

In each proceeding, Patent Owner proposes a construction for the term “mainframe” and presents arguments involving that construction. *See, e.g.*, IPR167, Paper 6 (Preliminary Response) at 22–27, 36–43; IPR168, Paper 6 (Preliminary Response) at 35–40, 50–56; IPR169, Paper 6 (Preliminary Response) at 23–29, 38–45; IPR170, Paper 5 (Preliminary Response) at 22–27, 34–41; IPR171, Paper 5 (Preliminary Response) at 23–29, 35–42. Petitioner does not provide an express construction for the term “mainframe” in any of these proceedings and has not requested to respond to

² For brevity, we refer to each of the five proceedings using the last three digits of the proceeding number, followed by “IPR.”

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Patent Owner’s express construction of the term. As discussed below, we *sua sponte* authorize additional briefing on the construction of “mainframe.”

II. DISCUSSION

In its Preliminary Responses in these proceedings, Patent Owner argues that the challenged claims, the specifications, and the prosecution histories of the patents all support construing “mainframe” as “the body of the compact tool carrier that supports the loader.” *See* IPR167, Paper 6 at 22–27; IPR168, Paper 6 at 35–40; IPR168, Paper 6 at 23–29; IPR170, Paper 5 at 22–27; IPR171, Paper 5 at 23–29. In those arguments, however, Patent Owner fails to address a sentence disclosed in each specification:

As used herein, the term “mainframe” generally refers to a single weldment to which the loader **8** is attached, optionally through one or more pivotal linkages.

IPR167, Ex. 1001, 4:5–8; IPR170, Ex. 1001, 4:5–8; IPR171, Ex. 1001, 4:13–16 (the “‘mainframe’ sentence”).

We view this sentence as potentially relevant to the scope of at least some of the claims challenged in these proceedings, and we seek briefing from the parties as to whether this sentence is (1) a lexicographical definition of “mainframe” or, in the alternative, (2) merely a description of a preferred embodiment. *See, e.g., Luminara Worldwide, LLC v. Liown Elecs. Co.*, 814 F.3d 1343, 1353 (Fed. Cir. 2016) (“To act as a lexicographer, a patentee must ‘clearly set forth a definition of the disputed claim term’ and ‘clearly express an intent to redefine the term.’” (quoting *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012))); *Parkervision, Inc. v. Vidal*, 88 F.4th 969, 976–77 (Fed. Cir. 2023) (collecting cases analyzing the distinction between statements in specifications defining terms and merely describing preferred embodiments).

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In seemingly analogous situations, the Federal Circuit has viewed as “definitional” language similar to that in the “mainframe” sentence. *See, e.g., Parkervision*, 88 F.4th at 976 (affirming the Board and stating that “[t]he patentee’s use of the phrases “as used herein” and “refer to” conveys an intent for [certain language in the specification] to be definitional”) (citing *Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1378 (Fed. Cir. 2022) (finding a lexicographical definition when a patentee used the phrase “also sometimes referred to herein as”)); *see also Sinorgchem Co., Shandong v. Int’l Trade Comm’n*, 511 F.3d 1132, 1136 (Fed. Cir. 2007) (explaining that a term “set off by quotation marks” is “often a strong indication that what follows is a definition”).

Under the rules applicable to these proceedings, we will consider “[a]ny prior claim construction determination concerning a term of the claim in a civil action . . . that is timely made of record.” 37 C.F.R. § 42.100(b). In a now-terminated proceeding in the U.S. District Court for the Southern District of Iowa involving two of the three patents³ challenged in these proceedings—*Vermeer Manufacturing Corp. v. The Toro Co.*, No. 4-17-cv-00076 (S.D. Iowa) (filed Feb. 28, 2017; terminated May 17, 2021) (the “Iowa Litigation”)—the parties (including Patent Owner in these proceedings⁴) briefed the construction of “mainframe.” *See* Joint Claim

³ The third patent at issue in these proceedings had not issued as of the filing date of the Iowa Litigation. *See* 171IPR, Ex. 1001, code (45) (showing an issuance date of February 12, 2019).

⁴ Although some filings in the Iowa Litigation include “Vermeer Corporation” in the caption, “Vermeer Manufacturing Company” (i.e., Patent Owner to these proceedings) was formally substituted into the caption

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Construction Statement, Ex. A at 3 (Oct. 5, 2018), ECF No. 111; Vermeer Corporation’s Opening Claim Construction Brief (Nov. 2, 2018), ECF No. 117 at 12–15; Defendant The Toro Company’s Opening Claim Construction Brief (Nov. 2, 2018), ECF No. 118 (“Toro Op. Br.”) at 10–16; Defendant The Toro Company’s Rebuttal Claim Construction Brief (Nov. 30, 2018), ECF No. 120 at 1–6; Vermeer Corporation’s Rebuttal Claim Construction Brief (Nov. 30, 2018), ECF No. 122 (“Vermeer Reb. Br.”) at 4–7.

In that briefing, defendant The Toro Co. (not involved in these proceedings) argued that—with the “mainframe” sentence—Patent Owner “unequivocally acted as its own lexicographer and expressly defined the term ‘mainframe,’ and it should be bound by its definition.” Toro Op. Br. 11; *see also id.* at 10 (proposing to construe “mainframe” as “[a] single weldment to which the loader is attached”). Patent Owner responded that the term “mainframe” should not be limited to a “single weldment” based, in part, on the presence of the word “generally” in the “mainframe” sentence. *See* Vermeer Reb. Br. 4–7. The Iowa District Court stated, without additional analysis, that, “[f]or reasons outlined in Vermeer’s brief, ‘mainframe’ will be given its plain and ordinary meaning and does not require a single weldment.” *E.g.*, 167IPR, Ex. 1020.⁵

and pleadings in the Iowa Litigation. *See* ECF No. 129 (Dec. 21, 2018) (Text Order).

⁵ The Iowa District Court’s Claim Construction Order is Exhibit 1020 in each of these proceedings. Petitioner included that Order in its filings, and mentioned it briefly in a footnote in each proceeding, but did not substantively discuss it. *See* 167IPR, Paper 3 at 18 n.3; 168IPR, Paper 3 at 18 n.2; 169IPR, Paper 3 at 17 n.1; 170IPR, Paper 2 at 18 n.2; 171IPR, Paper 2 at 19 n.4.

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In the circumstances here, and in order to more fully and fairly develop the record, we *sua sponte* authorize the parties to file initial and responsive briefing on the construction of “mainframe,” including whether the “mainframe” sentence in each of the patents at issue is lexicographical. *See* 37 C.F.R. § 42.20(d).

III. ORDER

It is hereby:

ORDERED that Petitioner and Patent Owner are each authorized to file an initial brief in each proceeding, limited to addressing the claim construction issues discussed above;

FURTHER ORDERED that each initial brief shall be five pages or less in substantive length and filed no later than April 18, 2025;

FURTHER ORDERED that Petitioner and Patent Owner are each authorized to file a responsive brief in each proceeding, limited to addressing the arguments in the opposing initial brief;

FURTHER ORDERED that any responsive brief shall be three pages or less in substantive length and filed no later than April 25, 2025; and

FURTHER ORDERED that Petitioner and Patent Owner are not authorized to file additional evidence with their briefs and are not authorized a sur-reply on these issues.

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