

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

_____	)	
Spinelogik, Inc.,	)	
	)	
Plaintiff,	)	Case No. 2:23-cv-00529-JRG
	)	
v.	)	
	)	
Globus Medical, Inc.	)	
	)	
Defendant.	)	
_____	)	

GLOBUS MEDICAL, INC.’S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Spinelogik argues that each of the disputed claim terms should have its “plain and ordinary meaning.” This misguided approach would do nothing to help the jury understand the complex technology at issue in this case.¹ Unable to articulate alternative constructions for any of the disputed claim terms, Spinelogik brushes off the claim construction process, asserting that the terms are “straightforward, everyday, simple phrase[s].” *See, e.g.*, ECF No. 50 (“Op. Br.”) at 3, 7. The suggestion that the components of intervertebral fusion devices are a topic of everyday conversation for ordinary citizens in the jury pool is absurd. Claim construction is essential in this case for the jury to understand the scope of the asserted claims and to apply the claim language to both the accused medical devices and the prior art.

The disputed claim terms are not controversial. Amendments made during prosecution confirm the ordinary meaning expressed in the specification that the claimed “curved channels” are channels that traverse a curved path—that is, as opposed to straight or linear channels with tubular side walls. The intrinsic evidence establishes that the cross-sectional planes of these channels pass through the entire curvature of the path and are parallel to one another. Lastly, the intrinsic evidence also demonstrates that the “delivery mechanism” is an insertion tool that is distinct from the “driving member,” which is separately claimed. These are terms of art with specialized meanings within the field of spinal fusion, not “everyday, simple phrase[s].”

Spinelogik’s positions on claim construction (or lack thereof) are part of a litigation strategy designed to preserve the ability to argue that the “plain and ordinary meaning” of the claim language is broad enough to cover medical devices that fall outside of the scope of the claims. They should be rejected.

¹ The Court appointed a technical advisor in this case on December 19, 2024. ECF No. 47.

II. ARGUMENT

A. “curved channel” and “each channel of the fusion member is curved”²

Term	Spinelogik’s Proposed Construction	Globus’s Proposed Construction
“curved channel” (’385 Patent, cl. 1)	No construction necessary; plain and ordinary meaning	“channel that has a curved path”
“each channel of the fusion member is curved” (’805 Patent, cls. 5, 16)	No construction necessary; plain and ordinary meaning	“each channel of the fusion member has a curved path”

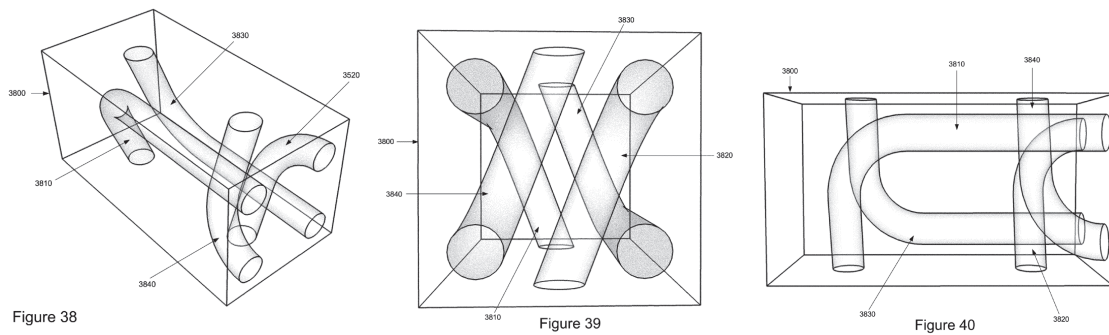
The intrinsic record establishes that a “curved channel” is channel with a curved path or trajectory, as opposed to tubular sidewalls in a straight or linear channel. Spinelogik has no case unless it can persuade the Court that “curved” means “straight.” Here, the specification of the ’385 Patent provides explicit guidance as to the meaning of “curved” in the context of the asserted claims:

The anchoring member is advanced through the curved fusion member channel and into the vertebral body. **As the fusion member channel is curved, the path that the anchoring member travels is also curved.** In other words, the anchoring member traverses in a second direction that is **curved throughout its advancement through the fusion member channel.** Accordingly, from the initial configuration of the anchoring mechanism to its final configuration, the tip of the anchoring member travels in a semi-circular path of movement.

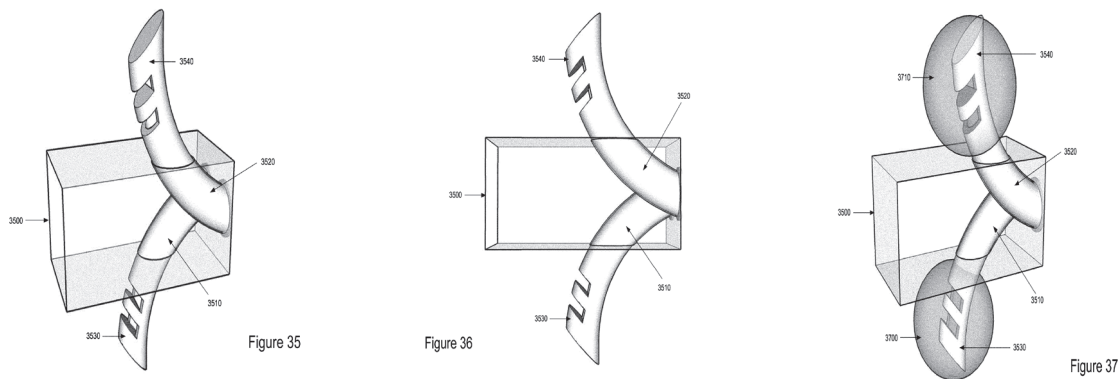
Ex. 1, ’385 Patent, 15:49-59 (emphasis added). The ’805 patent includes nearly identical language. *See* Ex. 2, ’805 Patent, 15:19-28. The language in both patents emphasizes that because “the fusion member *channel is curved*, the *path* that the anchoring member travels *is also curved.*” ’385 Patent, 15:51-53 (emphasis added); ’805 Patent, 15:21-22 (same).

² Globus addresses the terms “curved channel” and “each channel of the fusion member is covered” (collectively, the “curved channel terms”) together because the patents-in-suit are in the same patent family and reference the same provisional application. Accordingly, the curved channel terms should be given the same or substantially similar meanings. *See Nestle USA, Inc. v. Steuben Foods, Inc.*, 884 F.3d 1350, 1351-52 (Fed. Cir. 2018) (holding that where two related patents use related variations of the same claim term, and provide similar descriptions for those terms in their different specifications, the Court should provide a consistent claim construction).

The specifications of the asserted patents are replete with examples highlighting that the curvature of the channel refers to the path for the anchoring member (*i.e.*, bone screw). For example, the specifications of both patents depict “curved channels 3810 and 3820 and curved channels 3830 and 3840,” as shown below in Figures 38-40:



’385 Patent, 23:38-40; ’805 Patent, 22:60-64. The patents explain that these curved channels are traversed by curved anchoring members that follow the curved paths, as shown below in Figures 35-37. *E.g.*, ’385 Patent, 23:21-24 (“In FIGS. 35-37, an embodiment of the fusion member 3500 includes two curved semicircular channels 3510 and 3520.”); ’805 Patent, 22:43-45 (same).



These figures and description can be juxtaposed with what the patent refers to as “linear channels” designed for “straight anchoring members,” as depicted in Figures 41-42:

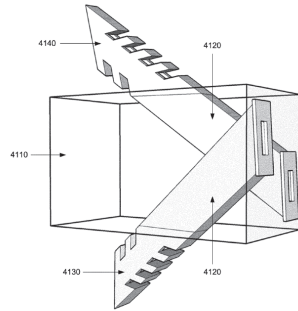


Figure 41

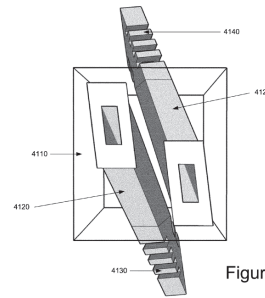


Figure 42

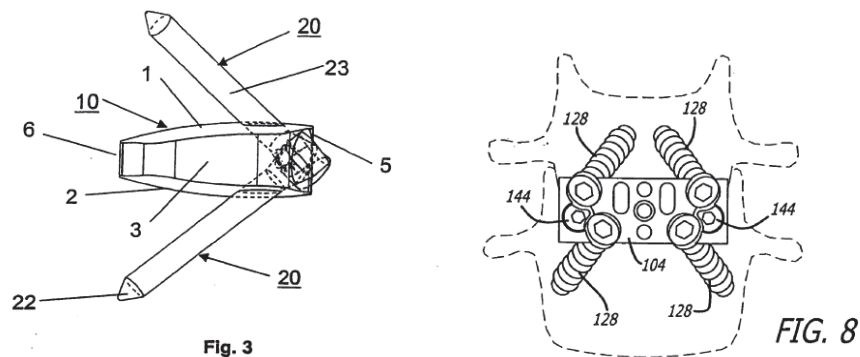
Id. at 5:56-59 (“FIGS. 41-42 illustrate different views of an **alternative** fusion member embodiment comprising oblique **linear channels** that are traversed by **straight anchoring members** which are rectangular in cross-sectional profile.”) (emphasis added).

The asserted patents only use the term “curved channel” to refer to the curved path of the channel, as opposed to the “tubular” shape of the channel walls. Indeed, the specifications explicitly refer to “curved **tubular** channels,” indicating that tubular shape of the channel is distinct from the curved path of the channel. *See, e.g.*, ’385 Patent, 5:41-44, 5:66-6:1; *see also id.* at 10:10-14 (“the fusion member channels shown in these figures are curved and tubular”); *id.* at 2:29-31 (referring to “tubular channels”).

The term “curved channel” does not broadly encompass channels with a straight path and a tubular shape. In that case, there would be no need for the patentee to refer to a channel that is both curved **and** tubular. The “tubular” descriptor would be superfluous. Because a “person of ordinary skill in the art is deemed to read the claim term . . . in the context of the entire patent including the specification,” the meaning of “curved channel” can only refer to a channel with a curved path. *Phillips v. AWH Corp.*, 415 F.3d at 1303, 1313 (Fed. Cir. 2005).

The patentee had to rely on the specification’s disclosures about curved channels in claim amendments to overcome rejections during prosecution. The patent applicant amended the claims in the ’385 patent to add the word “curved” before “channel” to overcome a prior art rejection.

See Ex. 3, '385 Patent File History, Applicant's Amendment (Dec. 17, 2012). The original claims—which only recited a first and second “channel”—were rejected as anticipated by two prior art references, Michelson and Mathieu. See Ex. 4, '385 Patent File History, Non-Final Office Action Summary (Oct. 4, 2012). As shown in exemplary figures below, the channels in the prior art, although tubular in shape, have straight, linear channel paths:



Ex. 5, U.S. Patent Pub. No. 2007/0219635 to Mathieu at Fig. 3; Ex. 6, U.S. Patent Pub. No. 2006/0079961 to Michelson at Fig. 8. The applicant's amendment reciting a “curved channel” is what put the pending claims in condition for allowance over prior art with tubular channels.

The ordinary meaning of the curved channel terms cannot be discerned “in a vacuum;” instead, “we must look at the ordinary meaning in the context of the written description and the prosecution history.” *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1324 (Fed. Cir. 2001). Here, both the specification and prosecution history support Globus's constructions and make clear that the “curved channel” in the asserted patents refers to a channel that has a curved path. See *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 375 F.3d 1341, 1351 (Fed. Cir. 2004) (the proper definition is the “definition that one of ordinary skill in the art could ascertain from the intrinsic evidence in the record.”); *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1144-45 (Fed. Cir. 2005) (finding plaintiff was “not entitled to a claim construction divorced from the context of the written description and prosecution history”).

Spinelogik’s inability to articulate the plain and ordinary meaning of these terms is telling. At minimum, the parties’ dispute over the meaning of the two curved channel terms requires resolution by this Court. “When the parties present a fundamental dispute regarding the scope of a claim term, it is the court’s duty to resolve it.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). Where a term may have more than one “ordinary meaning,” or where determining that a term “needs no construction” does not resolve the parties’ dispute, construction is required. *Id.* at 1361. Because the parties dispute the meaning of these claim terms (*i.e.*, curved path vs. curved shape of the channel walls), they are ripe for construction at this time as claim construction may not be left to a jury. *See Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1319 (Fed. Cir. 2016).

B. “cross-sectional planes are parallel to each other”

Term	Spinelogik’s Proposed Construction	Globus’s Proposed Construction
“cross-sectional planes are parallel to each other” (’385 Patent, cl. 1)	No construction necessary; plain and ordinary meaning	“cross-sectional planes passing through the entire curved channel paths (e.g., as shown in FIG. 46B) and are parallel to each other”

Here again, Spinelogik argues that the disputed term is a “plain and straightforward limitation” comprising a “simple plain-English phrase,” without offering an alternative meaning. Op. Br. at 4. This reductive argument ignores the complex geometry of how the cross-sections planes interact along the channel paths of the fusion device. Globus’s construction is not only supported by the claim language and intrinsic record, it is also “accurate, and useful to the jury”. *Multilift Wellbore Tech., Ltd. v. ESP Completion Techs., LLC*, No. H-17-2611, 2018 WL 925062, at *9 (S.D. Tex. Feb. 16, 2018).

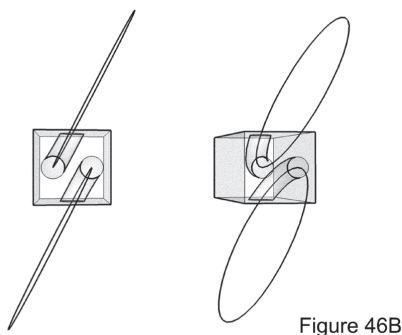
The full context of the disputed term in claim 1 of the ’385 patent appears below:

wherein *the first curved channel has a first cross-sectional plane along a first path* that is traversed by the first curved channel through the fusion member and the second curved channel has a second cross-sectional plane along a second path that is traversed by the second curved channel through the fusion member, **wherein the first and second cross-sectional planes are parallel to each other.**

'385 Patent, 27:4-11 (emphases added).

Based on the plain language of the claim, “the first and second cross-sectional planes” which are parallel to each other, refer to the cross-sectional planes along the paths of the first and second curved channels. What is not made clear by the claim language alone—or by Spinelogik’s opening brief—is where the cross-sectional planes are drawn to discern whether the first and second cross-sectional planes are parallel to each other.

To make this determination, the specification is instructive, as claims “must be read in view of the specification, of which they are a part.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995). The specification explains that Figure 46B illustrates a fusion member with “curved tubular *channels that run in parallel planes with respect to each other.*” '385 Patent, 5:66-6:3 (emphasis added). Figure 46B is shown below:



'385 Patent, Fig. 46B. This figure can be juxtaposed with Figure 38 which, according to the specification, shows “different views of an alternative fusion member embodiment with nonparalleled angled curved channels.” *Id.* at 5:53-55.

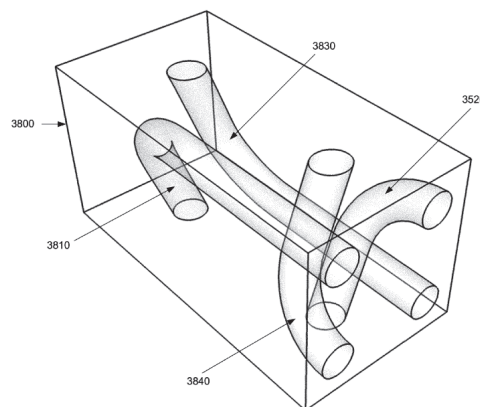


Figure 38

Id. at Fig. 38. Because the “curved tubular channels . . . run in parallel planes with respect to each other,” a person of ordinary skill in the art reading the ’385 patent would have understood that the cross-sectional planes are those that pass through the entirety of the curved channels, as shown in Figure 46B, and are not taken at any other, unaligned cross-sections.

Contrary to Spinelogik’s assertion, Globus’s construction is not based on one embodiment (*e.g.*, Figure 46B). To the contrary, Globus’s construction identifies Figure 46B as a visual aid for the jury to understand the manner in which the cross-sectional planes through the two curved channel runs parallel to each other. The specification is fully consistent with this meaning and identifies parallel cross-sectional planes in Figures 4 and 5B as well. *Id.* at 10:63-11:4 (noting that in different embodiments the cross-sectional planes that traverse the full channel may be parallel to one another but not necessarily parallel to the sides of the fusion member). On the other hand, the specification describes “nonparalleled” embodiments (as shown in Figure 38 above) in which the cross-sectional planes are not parallel to one another. Claim 1 is expressly limited to the parallel embodiment.

The meaning of this claim term may be confusing to a jury such that construction is necessary, particularly in view of Spinelogik’s refusal to agree on what the claim term means. Even where this Court has found a term has its plain and ordinary meaning, “a construction may

nevertheless be helpful for the jury.” *Image Processing Techs., LLC v. Samsung Elecs. Co., Ltd.*, 2017 WL 2672616, at *29 (E.D. Tex. June 21, 2017); *see also Multilift Wellbore Tech., Ltd. v. ESP Completion Techs., LLC*, No. H-17-2611, 2018 WL 925062, at *9 (S.D. Tex. Feb. 16, 2018) (adopting a construction over the contention that it was “unnecessary” because it was “accurate, and useful to the jury”). Globus’s proposed construction of “cross-sectional planes are parallel to each other” is accurate and provides appropriate guidance for a jury to understand what is meant by the claim language.

C. “delivery mechanism”

Term	Spinelogik’s Proposed Construction	Globus’s Proposed Construction
“delivery mechanism” (’805 Patent, cls. 1, 6, 11, 17)	No construction necessary; plain and ordinary meaning	“insertion tool separate from the driving member”

Globus has proposed this term for construction to resolve a dispute between the parties regarding whether the “delivery mechanism” and the “driving member”—which are separately claimed—can be the same thing. The claim language itself, as supported by the prosecution history and specification, demonstrates that the “delivery mechanism” is separate and distinct from the “driving member,” and further confirms that the delivery mechanism is an insertion tool used to deliver the fusion member into a patient.

Globus’s proposed construction aligns with the patentee’s and the Examiner’s understanding of “delivery mechanism,” as represented during prosecution of the ’805 Patent. During prosecution, the patent applicant added that the delivery mechanism is “extending outside a patient’s body to a medical practitioner . . .” to the independent claim to overcome the prior art and put the claims into condition for allowance. Ex. 7, ’805 Patent File History, Applicant Amendment (Oct. 24, 2016). The claims had previously been rejected over prior art that disclosed an end plug and a front plate on a fusion member which “can be considered a delivery mechanism.”

Ex. 8, '805 Patent File History, Non-Final Rejection (Jan. 21, 2016) at 4; Ex. 9, '805 Patent File History, Final Rejection (June 22, 2016) at 3. During an interview, the Examiner clarified that “*the delivery mechanism is an insertion tool* that is configured to extend outside of a patient’s body to a medical practioner [sic].” Ex. 10, '805 Patent File History, Examiner-Initiated Interview (June 17, 2016). The patent applicant amended the claims according to the Examiner’s understanding to put the claims into condition for allowance. *Id.* at Applicant Amendment (Oct. 24, 2016); *see also Personalized Media Commc’ns, LLC v. Apple Inc.*, 952 F.3d 1336, 1340 (Fed. Cir. 2020) (“[A]n applicant’s amendment accompanied by explanatory remarks can define a claim term by demonstrating what the applicant meant by the amendment.”).

Dependent claim 15 recites: “The fusion device of claim 11 further comprising a *driving member* configured to drive each independently anchoring member through the *delivery mechanism*.” '805 Patent, cl. 15 (emphasis added). The inventor’s choice to separately refer to a “delivery mechanism” and “driving member” in the same claim indicates that these terms must have different meanings. *See SimpleAir, Inc. v. Sony Ericsson Mobile Comm’cns AB*, 820 F.3d 419, 431 (Fed. Cir. 2016) (“The choice to use ‘data channel’ in claim 1 rather than ‘data feed,’ notwithstanding use of the latter elsewhere in the patent, lends further support to our conclusion that the ‘data feed’ does not carry the same meaning as ‘data channel’.”); *Bd. of Regents of the Univ. of Tex. Sys v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008) (“Different claim terms are presumed to have different meanings.”). Accordingly, the “delivery mechanism” must be separate from the driving member, as reflected in Globus’s proposed construction.

The rest of the intrinsic record further underscores that the “delivery mechanism” is an “insertion tool,” not the “driving member.” For example, the specification explains: “One technique for *inserting* the fusion member involves the use of the *delivery mechanism* of the

apparatus 110.” ’805 Patent, 20:31-33; *see also id.* at 6:48-49 (“a delivery mechanism that delivers and positions the fusion member between the vertebral bodies”). In other words, the delivery mechanism “inserts” the fusion member in between vertebral bodies of a patient.³ The specification also explains that the delivery mechanism is a “tool,” separate from the fusion member itself. Indeed, the delivery mechanism can be attached and detached from the fusion member. *See* ’805 Patent, 7:22-24; 9:43-45; 10:56-57; *see also* ’385 Patent, 3:20-24, 4:21-24 (explaining the delivery mechanism “may be removed” from the fusion member).

Globus’s construction is supported by the intrinsic record and would be helpful to the jury. The patentee’s claim amendments during prosecution distinguish the “delivery mechanism,” which acts as an insertion tool for the spinal implant, from the “driving member” used to fasten the anchors that pass through the curved channels of the spinal implant. Despite this evidence, Spinelogik has taken the position in its infringement contentions that the “delivery mechanism” is coextensive with the “driving member.” This position is untenable. Given the parties’ disagreement, and to avoid an *O2 Micro* dispute on the eve of trial, Globus respectfully submits that this term is ripe for construction.⁴

³ Claim 1 of the ’805 patent states that the delivery mechanism “deliver[s] the fusion member between the two vertebral bodies” and “extend[s] outside a patient’s body to a medical practitioner while the delivery mechanism is coupled to the fusion member.” This provides further evidentiary support showing that the delivery mechanism is an insertion tool that delivers the fusion member into the patient.

⁴ In a single conclusory sentence, Spinelogik argues that Globus’s proposed construction introduces a “functional purpose” for the “delivery mechanism.” Op. Br. at 6. Not so. Globus’s construction aligns with the Examiner’s remarks, without ascribing any function to the term beyond what is already stated in the claims.

III. CONCLUSION

For the foregoing reasons, the Court should adopt Globus's proposed constructions for the disputed claim terms: (1) "curved channel"; (2) "each channel of the fusion member is curved"; (3) "cross-sectional planes are parallel to each other"; and (4) "delivery mechanism".

Dated: January 22, 2025

Respectfully submitted,

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