

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

VERMEER CORPORATION,

Plaintiff,

vs.

THE TORO COMPANY,

Defendant.

CASE NO: 4-17-CV-76-CRW-HCA

ORDER ON CLAIM CONSTRUCTION

On December 12, 2019, the court held a claim construction hearing at the U.S. Courthouse in Des Moines. With final claim construction briefs filed on January 20, 2020, the court now rules as follows:

I. Introduction

This is a patent infringement case involving vertical-lift loader-arm configurations for compact tool carriers¹. Plaintiff Vermeer Corporation (Vermeer) filed suit alleging Defendant The Toro Company (Toro) infringed U.S. Patent No. 10,202,266. Vermeer alleges that Toro's compact tool carrier infringes several claims of the '266 patent. The parties disagree as to the proper construction of the Asserted Claims. The disputed terms and parties' proposed constructions are outlined in the Join Claim Construction Statement (ECF No. 49). Disputed claim terms are also found in two other patents in the same patent family (the '750 patent and the '386 patent).

II. Legal Standards

Construing disputed terms of a claim are questions of law reserved to the Courts. *See Markman v. Westview Instruments, Inc.* 517 U.S. 370, 388-91 (1996). Generally, words of a claim are given their ordinary and customary meaning. *See Vitronics Corp. v. Conceptronic*, 90 F.3d 1576, 1582 (Fed. Cir.

¹ Compact tool carriers are specialized forms of construction equipment that allow users to work in tight spaces.

1996). The ordinary and customary meaning of a claim term is the meaning it would have to a person of ordinary skill in the art in question at the time of the invention. *See Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1117 (Fed. Cir. 2004). Specific “embodiments appearing in the written description will not be used to limit claim language that has a broader effect.” *Id.* Prosecution history of both the ’750 and ’386 patent is relevant intrinsic evidence to be considered during claim construction. *See E.I. du Pont Nemours & Co. v. Unifrax I LLC*, 921 F.3d 1060, 1070 (Fed. Cir. 2019).

III. Construction of Disputed Terms

Vermeer argued that certain claim terms should be given their plain and ordinary meaning and used its brief to provide specific meanings for various “plain and ordinary” terms. Each party presented arguments concerning the following terms:

- for standing or walk-behind operator control
- engine bracket
- pivotally attached
- being disposed below the operator controls of the control station
- the first, second, third, fourth, fifth, and sixth pivot points are (1) disposed between the operator controls and the bottom of the rigid frame and/or (2) disposed forward of the control station
- “front linkage” and “rear linkage”
- mainframe
- loader support
- rigid frame
- pivot point
- barrier guard
- (1) disposed within the barrier guard and/or (2) disposed forward of the barrier guard

Each of these terms are considered below.

For standing or walk-behind operator control

The plain language of the claim term “for standing or walk-behind operator control” does not require construction. Because the parties dispute whether the word “or” requires configuration where both standing and walk-behind operation is possible, the Court will consider the proposed constructions according to applicable standards.

The claim language uses a disjunctive “or” and not a conjunctive “and” to link the phrases “for standing” and “walk-behind operator control.” On its face, the invention is adapted for standing operator control, or walk-behind operator control, but not necessarily both.

Toro argued that prosecution history of the ’386 patent shows Vermeer disclaimed its proposed construction to overcome prior art and so it is estopped from making the same argument in claim construction. The Court rejects this argument. As outlined in Vermeer’s briefs, statements regarding walk-behind operator control as overcoming prior art were made by the Patent Examiner and not the inventor. This does not meet the clear and unmistakable disavowal required to limit claim terms. *See Univ. of Pittsburgh of Commonwealth Sys. of Higher Educ. V. Hedrick*, 573 F.3d 1290, 1297 (Fed. Cir. 2009).

In short, nothing in the intrinsic record suggests the term “for standing or walk-behind operator control” has any technical meaning to a person of ordinary skill in the art. The term “for standing or walk-behind operator control” will be given its plain and ordinary meaning.

Engine bracket

The plain language of the claim term “engine bracket” does not require there be only one engine bracket. *See Baldwin Graphic Sys., Inc. v. Sierbert, Inc.*, 512 F.3d 1338, 1342-1343 (Fed. Cir. 2008). The Court will give “engine bracket” its plain and ordinary meaning.

Pivotally attached

The plain and ordinary meaning of “pivotally attached” does not require direct attachment with no intervening structure. *See Southco, Inc. v. Fivetech Tech, Inc.*, 611 Fed. Appx. 681, 686 (Fed. Cir. 2015). The term “pivotally attached” is plain on its face and does not have a technical meaning to a person of ordinary skill in the art. *See Deere & Co. v. Toro Co.*, 57 Fed. Appx. 442, 447 (Fed Cir. 2003). The Court will give “pivotally attached” its plain and ordinary meaning.

Being disposed below the operator controls of the control station

The parties agreed that “being disposed below the operator controls of the control station” should be given its plain and ordinary meaning. The parties’ dispute centers on the meaning of the word “below.”

Toro contended that “below” and “beneath” are synonymous. The Court agrees and does not believe substituting one synonym for another will make the claim term any clearer. What Toro is attempting to do is to limit the claim term to mean “directly” below. Toro cites case law that does just the opposite. *See Zimmer Surgical, Inc., v. Stryker Corp.*, 2018 LEXIS 102055, at 30-32 (D. Del.) (adopting “beneath” to replace “below” and declining to modify “below” with “directly”).

While the Court agrees with Toro that the specification is silent on specific distances between the operator controls and the pivot points, the intrinsic record does show distances in relation to the rotational axis. (ECF 117-2, Ex. 1, 2:7-10). A person of ordinary skill in the art could interpret and replicate the invention written as such. In short, the Court gives the term “being disposed below the operator controls of the control station” its plain and ordinary meaning.

The first, second, fourth, fifth, and sixth pivot points are (1) disposed between the operator controls and the bottom of the rigid frame and/or (2) disposed forward of the control station

The parties agreed that the term should be given its plain and ordinary meaning. Toro argued that “between” should be construed as “in the space which separates two points.” The Court rejects this construction as unhelpful.

The parties agreed that “and/or” in the claim term means that “one or both” of the two conditions identified must be met. The parties disagreed as to whether the pivot points must collectively or individually satisfy one or both identified orientations. Reading the claim in context and for reasons stated in Vermeer’s brief, the Court finds that the pivot points must meet one or both of the two conditions individually.

“Front linkage” and “rear linkage”

These terms do not require construction and readily can be understood by a jury. Nothing in the intrinsic evidence suggests that a specific orientation is required.

Mainframe

For reasons outlined in Vermeer’s brief, “mainframe” will be given its plain and ordinary meaning and does not require a single weldment.

“Loader support” & “Rigid frame”

For reasons outlined in Vermeer’s brief, these terms will be given their plain and ordinary meaning.

Pivot point

For reasons outlined in Vermeer’s brief, this term will be given its plain and ordinary meaning.

Barrier guard

Toro alleged that “barrier guard” is indefinite and incapable of construction. For a claim term to be indefinite, “reasonable efforts at claim construction must result in a definition that does not provide sufficient particularity or clarity to inform a skilled artisan of the bounds of the claim.” *3M innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1333 (Fed. Cir. 2013) (internal citations omitted). This type of ambiguity is not applicable to the term “barrier guard.” The Court adopts Vermeer’s proposed construction of “barrier guard” as “perimeter of the machine structure.” A person of ordinary skill in the art can determine the scope of the claimed barrier guard.

(1) Disposed within the barrier guard and/or (2) disposed forward of the barrier guard

The parties agreed, except for the term “barrier guard,” that the claim term should be given its plain and ordinary meaning. The Court has previously determined that the term “barrier guard” is not indefinite and so the entire claim term will be given its plain and ordinary meaning.

IT IS SO ORDERED.

DATED this 26th day of February, 2020.



CHARLES R. WOLLE
United States District Judge