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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

APPLIED OPTOELECTRONICS, INC.,

Plaintiff,

vs.

CAMBRIDGE INDUSTRIES USA, INC.,

Defendant.

Case No. 3:24-cv-01010-JD

**PLAINTIFF'S REPLY CLAIM
CONSTRUCTION BRIEF**

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I. INTRODUCTION

Defendant Cambridge Industries USA, Inc.’s (“CIG USA” or “Defendant”) Responsive Claim Construction Brief (Dkt. 36, “Responsive Brief”) confirms that, as explained in Plaintiff Applied Optoelectronics, Inc.’s (“AOI” or Plaintiff) Opening Claim Construction Brief (Dkt. 35, “Opening Brief”), CIG USA’s proposed constructions violate multiple canons of claim construction, including by overstating alleged “disclaimers” made in the prosecution history, importing limitations directly from the specification, and limiting constructions to optionally disclosed embodiments. Furthermore, CIG USA’s constructions are unhelpful. CIG USA’s proposed construction do not clarify claim scope nor will they help the jury; they simply replace straightforward claim language with overly-wordy and unclear terminology that will inject uncertainty and force the parties or court to “construe the construction” down the road.

Faced with these flaws in its proposed constructions, CIG USA criticizes AOI for not saying what the plain and ordinary meaning is or how it is different than CIG USA’s proposed constructions. *See, e.g.*, Responsive Brief at p. 1:10-16. But the Federal Circuit has found a court’s duty to construe terms is satisfied when a court simply rejects an erroneous construction and concludes that a term does not require further construction. *See, e.g., ActiveVideo Networks v. Verizon Commc’ns*, 694 F.3d 1312, 1326 (Fed. Cir. 2012); *Summit 6 LLC v. Samsung Elecs. Co., Ltd.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015). That is the proper approach here. The identified claim terms are straightforward and do not require construction; CIG USA’s proposed constructions are improper and should be rejected. In so finding, the Court will have satisfied its duty to resolve the parties’ claim construction dispute. *See id.* Accordingly, CIG USA’s proposals should be rejected, and the all claims terms of the asserted patents should be given their plain and ordinary meaning.

II. ARGUMENT

A. ’024 Patent

1. Feedthrough device

CIG USA’s proposed construction improperly imports limitations from the specification (*See* Opening Brief at pp. 6:23-7:9), and CIG USA’s Responsive Brief only confirms that its proposal should be rejected. For example, in its Responsive Brief, CIG USA argues that the claim should be

1 construed as CIG USA proposes because a plain and ordinary meaning construction “completely
 2 omits reference to the hermetically sealed package expressly referenced by the specification...” *See*
 3 Responsive Brief at p. 2:17-19. But, this is a plain admission that CIG USA’s proposal improperly
 4 imports such discussion from the specification—a clear violation of claim construction principles.
 5 *See, e.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (“[A]lthough the
 6 specification often describes very specific embodiments of the invention, we have repeatedly
 7 warned against confining the claims to those embodiments.”); *Superguide Corp. v. DirecTV Enters.,*
 8 *Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) (“Though understanding the claim language may be aided
 9 by explanations contained in the written description, it is important not to import into a claim
 10 limitations that are not part of the claim.”).

11 The ’024 Patent specification makes clear that the “*feedthrough device may include*”—not
 12 must—“patterns/traces disposed thereon to propagate signals from external circuitry to components
 13 within the hermetic-sealed package.” ’024 patent, Col. 2, lines 7-12 (emphasis added); *See Morpho*
 14 *Detection, Inc. v. Smiths Detection Inc.*, 2012 WL 5194076, at *7 (E.D. Va. Oct. 19, 2012); *see also*
 15 *In re Johnston*, 435 F.3d 1381, 1384 (Fed. Cir. 2006). As explained in AOI’s Opening Brief (pp.
 16 5:21-6:22), the claim term “feedthrough device” is straightforward and does not require
 17 construction. *See Summit 6, LLC*, 802 F.3d at 1291.

18 **2. “first and second surfaces disposed opposite each other” AND “opposing**
 19 **arrangement”**

20 These disputed clauses also need no construction beyond plain and ordinary meaning, and
 21 CIG USA’s proposed constructions again seek to introduce unjustified limitations that are not
 22 supported by the specification. *See* Opening Brief at pp. 7:24-8:17. CIG USA essentially admits in
 23 its Responsive Brief that it is limiting these terms to a single embodiment in the ’024 Patent
 24 specification but attempts to justify that such a limitation is warranted by arguing “[a]ll of the above
 25 citations relate to the *only* described embodiment in the ’024 patent...” Responsive Brief at p. 4:2-
 26 4 (emphasis in original). However, the Federal Circuit “has expressly rejected the contention that if
 27 a patent describes only a single embodiment, the claims of the patent must be construed as being
 28

limited to that embodiment.” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004) (collecting cases).

In support of its improper constructions, CIG USA also incorrectly argues the “term ‘opposing arrangement’ is used interchangeably with the phrase ‘first and second surfaces disposed opposite each other.’” *See* Responsive Brief at p. 3:19-20. First, claim terms are not meant to be interchangeable, but rather the opposite: by using a different word, it is presumed that the patentee meant something different. *Cf. Board 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.”). Second, the claims actual usage of the terms confirms that they are used differently. Claim 1 of the ’024 Patent requires “a substrate defined by first and second surfaces disposed opposite each other” and then requires “the first and second traces being disposed in an opposing arrangement to provide electrical isolation...” Thus, CIG USA’s proposed constructions contradict the patent and should be rejected, and these terms should be given their plain and ordinary meaning.

B. ’826 Patent

1. “confined by the main body and the sliding component”

CIG USA’s attempt to limit the clear and easy to understand term “confined” to a proposed construction consisting of self-selected terms (i.e. “enclosed” and “within the limiting space”) that do not once appear in the ’826 Patent claims or specification should be roundly rejected. *See* Opening Brief at p. 9:23-10:23. Seeking to justify its improper construction, CIG USA in its Responsive Brief first turns to the prosecution history for the ’826 Patent. *See* Responsive Brief at 4:27-5:15. But, CIG USA’s reliance on the prosecution history is misplaced as the prosecution history also does not even include the very terms (i.e. “enclosed” and “within the limiting space”) that CIG USA now seeks to limit “confined” to. Indeed, in support of its failed argument, CIG USA only points to a single statement of the patentee in the prosecution history that makes no mention at all of “enclosed” or “within the limiting space”. *Id.* at 5:9-15 (arguing “the newly added language [confined by the main body and the sliding component] meant that the elastic component ‘*is covered*’ by the extending arm such that the elastic component is confined by the main body and the sliding component.”)(citing the ‘826 Patent Prosecution History).

But, covering something does not necessarily mean the same thing as entirely enclosing it within something as CIG USA would seem to suggest, and it certainly does not meet the “clear and unmistakable” standard to constitute “a disavowal of claim scope” for a prosecution history disclaimer. *Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1325-26 (Fed. Cir. 2003); *SanDisk Corp. v. Memorex Prods., Inc.*, 415 F.3d 1278, 1286 (Fed. Cir. 2005) (to argue a disclaimer of a claim term’s ordinary meaning, one must show “clear and unmistakable prosecution arguments limiting the meaning of a claim term.”) For example, if a “statement is amenable to multiple reasonable interpretations,” it does not constitute a clear and unmistakable surrender of scope. *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 1359 (Fed. Cir. 2003) (statement that prior art had “no wall surface having a plurality of slots” “could have meant either that coiled wire is not a wall surface or that the openings in the coil do not constitute slots”); *SanDisk Corp.*, 415 F.3d at 1286 (“There is no ‘clear and unmistakable’ disclaimer if a prosecution argument is subject to more than one reasonable interpretation, one of which is consistent with a proffered meaning of the disputed term.”)

There is no evidence—let alone a clear and unmistakable statement—that the patentee here distinguished the prior art here on the ground that “confined by” or “covered by” meant entirely “enclosed within.” Plus, even if it *could* be read this way under a stretched interpretation, it is still “amenable to multiple reasonable [other] interpretations” such that there is no disavowal of scope. *Id.* Thus, CIG USA’s citations to a single sentence made during prosecution that does not even use the same terms does not support CIG USA’s proposed construction. *See Omega*, 334 F.3d at 1326-28 (finding district court erred in its construction precluding projection of light into the interior of the energy zone because “the patentee’s arguments did not focus on the projected laser beams remaining outside the energy zone”).

Next, CIG USA’s argument relies on CIG USA’s own self-serving characterization of the patent figures as supposedly showing “the patentee expressly noted that confined included ‘being covered.’” Responsive Brief at p. 5:14-20. At best, CIG USA’s argument boils down to a plea to limit the claims to the specification, which is improper. *See, e.g., Phillips*, 415 F.3d at 1323; *Superguide Corp.*, 358 F.3d at 875. Worse still, the words CIG USA proposes do not even appear in

the specification, and again require interpreting “covered by” to mean the same as being “enclosed with.” There is no reason to substitute other words and to inject confusion to what the patent teaches and the claims require. *Tessenderlo Kerley, Inc. v. Or-Cal, Inc.*, 2012 WL 3276981, at *3 (N.D. Cal. Aug. 9, 2012). The easily understood term “confined” should be given its plain and ordinary meaning, and CIG USA’s attempt to improperly limit the term should be rejected.

C. ’432 Patent

1. “fiber interface”

The term “fiber interface” is clear and easily understandable and needs no construction, while CIG USA’s proposed construction does nothing more than add additional unsupported terms that do not appear in the ’432 Patent and would need further construction. *See* Opening Brief at p. 11:25-12:6. Therefore, CIG USA’s proposed construction should be rejected.

2. “passive optical element”

Recognizing the impropriety with its own original proposed construction, CIG USA seeks for the first time in its Responsive Brief to redraft its proposed construction. *See* Responsive Brief at p. 7:15-18; *ft. n. 2*. However, CIG USA’s newly amended proposed claim construction still violates basic principles of claim construction by trying to improperly limit the claim term to the background section of the specification while also misconstruing the prosecution history in support of its newly proposed construction.

In its Responsive Brief, CIG USA first points to the prosecution history wherein the examiner simply noted that the “passive optical element is a separate component from the PCBA board” that is combined together. *See id.* at 8:12-22. CIG USA then applies its own overreaching interpretation to the examiner’s statement to somehow mean that the passive optical element “therefore may be not soldered or welded to the PCBA” *Id.* at 9:5-6. However, nothing in the claims or prosecution history specifically requires or even mentions a lack of soldering or welding, let alone something rising to the level of a “clear and unmistakable” “disavowal of claim scope” as necessary for a prosecution history disclaimer. *Omega Eng’g, Inc.*, 334 F.3d at 1325-26.

CIG USA next argues that the ’432 Patent’s discussion of “soldering the PCBA component to the optical engine” in the background section also somehow should be read as requiring that the

passive optical element has to be “coupled without soldering to a printed (“PCBA”).” *See* Responsive Brief at pp. 8:23-9:10. But, again, CIG USA’s argument boils down to nothing more than a failed attempt to limit the claims to not just the specification but to limit the claims to a general discussion in the background section. *See, e.g., Phillips*, 415 F.3d at 1323; *Superguide Corp.*, 358 F.3d at 875. Accordingly, CIG USA’s revised claim construction proposal should be rejected. The term should be given its plain and ordinary meaning.

D. ’116 Patent

1. “substrate”

CIG USA is again attempting to improperly limit a term that does not require construction. The term “substrate” is clear, easy to understand, and requires no construction, whereas CIG USA’s proposed claim construction improperly attempts to limit “substrate” to an optional embodiment. *See* Opening Brief at p. 15:10-24. First, CIG USA argues “the prosecution history makes plain that the claims were narrowed to cover only the single disclosed embodiment,” but CIG USA fails to actually point or cite to anything in the prosecution history to support this assertion or attach any excerpts from the prosecution history for the ’116 Patent. *See* Responsive Brief at p. 9:15-22; *see also* Dkt. No. 36-1 (Declaration of Scott A. Penner ISO Responsive Claim Construction Brief).

CIG USA next argues that this unidentified “amendment limits the claimed ‘substrate’ (of silicon or similar material) to that on which the cladding and core layers are deposited to form the AWG” because it is the only disclosed embodiment. *Id.* at p. 9:25-26. But, “[e]mbodiments in the specification—even if there is only one embodiment—cannot limit the scope of the claims absent the patentee’s ‘words or expressions of manifest exclusion or restriction.’” *Apple Inc.*, 25 F.4th at 967; *Morpho Detection*, 2012 WL 5194076, at *7 (permissive language indicates an intent not to limit the claims). And, here, this falls far short of the “exacting” standard for lexicography, under which “a patentee must clearly set forth a definition of the disputed claim term other than its plain and ordinary meaning” and “clearly express an intent to redefine the term.” *Hill- Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014).

Moreover, the cases cited by CIG USA are inapplicable. *UCB, Inc. v. Yeda Research & Dev. Co.*, 837 F.3d 1256, 1260-61 (Fed. Cir. 2016) dealt with applying prosecution history estoppel to

limit the claims and “holding that Yeda is estopped from including chimeric and humanized antibodies within the scope of the monoclonal antibodies claimed” in the asserted patent. *Data Engine Techs. LLC v. Google LLC*, 10 F.4th 1375, 1381 (Fed. Cir. 2021) similarly dealt with whether emphasis placed on the preamble during a patent eligibility subject matter analysis under U.S.C. § 101 during patent prosecution made the preamble limiting. In contrast, CIG USA is attempting to limit substrate to a single disclosed embodiment, which has nothing to do with the prosecution history. CIG USA’s proposal should be rejected and the term should be given its plain and ordinary meaning.

E. ’431 Patent

1. “minimum bend radius”

As explained in AOI’s Opening Brief, it is CIG USA that bears the burden of proving indefiniteness by clear and convincing evidence. *Sonix Tech. Co., Ltd. v. Publications Int’l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017). However, in its Responsive Brief, CIG USA points to no extrinsic evidence, expert testimony, or anything in the prosecution history in trying to meet its burden. Instead, in its failed attempt to establish indefiniteness by clear and convincing evidence, CIG USA only points to statements in the specification that use language such as “generally suggests” or “about” or “may” and argues none of these provide clear notice of what is claimed. See Responsive Brief at p. 11:18-28. But, in *BJ Servs. Co. v. Halliburton Energy Servs., Inc.*, 338 F.3d 1368 (Fed. Cir. 2003), the Federal Circuit rejected an indefiniteness argument regarding “about” where evidence indicated “that the term ‘about’ is intended to encompass the range of experimental error that occurs in any measurement.” 338 F.3d at 1372–73.

Indeed, “[t]he Federal Circuit has held that claims using terms of degree are not indefinite where the written description provides sufficient guidance through examples and criteria to determine whether the term of degree has been met.” *RAH Color Techs. LLC v. Adobe Inc. (In re RAH Color Techs. LLC Patent Litig.)*, U.S. Dist. LEXIS 14661, at *26 (N.D.Cal. Jan. 22, 2021) (concluding “that the term ‘appear substantially the same’ is not indefinite and that it does not require construction”). For example, in *Enzo Biochem, Inc. v. Applera Corp.*, 599 F.3d 1325 (Fed. Cir. 2010) the Federal Circuit held that the clause “not interfering substantially” did not render a

claim invalid as indefinite because the intrinsic evidence provided guidance as to the scope of the claims, including, *inter alia*, examples of noninterfering structures and criteria for their selection. *Id.* at 1334-35. This guidance allowed a skilled artisan to compare a potentially infringing product “with the examples in the specification to determine whether interference . . . is substantial.” *Id.* at 1336. Similarly, in *Sonix Tech. Co., Ltd.*, the Federal Circuit held that “‘visually negligible’ is not a purely subjective term and that, on this record, the written description and prosecution history provide sufficient support to inform with reasonable certainty those skilled in the art of the scope of the invention.” 844 F.3d at 1381. The Federal Circuit reasoned that it was sufficient that the written description provides “guidance on how to create visually-negligible indicators, and specific examples that provide points of comparison for the result.” *Id.*; *see also Tinnus Enterprises, LLC v. Telebrands Corp.*, 846 F.3d 1190, 1206 (Fed. Cir. 2017) (claim term requiring a balloon to be “substantially filled” was not indefinite because claims teach that if balloons detached after shaking they were “substantially filled”).

Like the patents in *Sonix*, *Tinnus*, and *Enzo Biochem*, the ’432 Patent provides both criteria for selecting the minimum bend radius (i.e. “the minimum ($R_{\min}$) bending radius for an optical fiber be about no less than 15-20× the diameter of the optical fiber to avoid introducing macro and/or micro bending and maintain nominal performance. Stated differently, an acute bending radius that is less than 15× the diameter of the optical fiber may introduce unacceptable power loss”) and an explicit example of a minimum bend radius for comparison (i.e. “[f]or instance, a fiber diameter of 0.25 mm may include a minimum bending radius of 4 mm.”). *See* 432 Patent, Col. 2, lines 41-49.

CIG USA also argues minimum bend radius is indefinite because “there is no indication that even between different manufacturers the results would be the same” and the claims of the ’431 patent will have different scope for different manufacturers. Responsive Brief at p. 12:1-7; 13:11-14:7. But, the Federal Circuit in *Takeda* dealt with a similar scenario in finding “Zydus has not met its burden of establishing by clear and convincing evidence that claim 1 of the ’994 patent is invalid for indefiniteness.” *Takeda Pharm. Co. v. Zydus Pharms. USA, Inc.* (Fed.Cir. 2014) 743 F.3d 1359, 1366-1367. Specifically, the Federal Circuit noted “[b]ecause the two methods use different means of approximating average particle diameter, they can produce different results even for the same

sample.” *Id.* However, the Federal Circuit then reasoned “we do not believe that the mere possibility of different results from different measurement techniques renders claim 1 indefinite.” *Id.* Similarly, here, the possibility of different values for the minimum bend radius for different manufacturers does not render the term indefinite.

In sum, a person of ordinary skill in the art would have understood the “minimum bed radius” term with reasonable certainty in light of the ’432 Patent specification, and CIG USA has failed to show by clear and convincing evidence that the applicable claims are indefinite.

F. ’301 Patent

1. “carrier”

As CIG USA’s proposed construction seeks to impose limitations on “carrier” that the specification never mentions at all, CIG USA relies entirely on extrinsic evidence in support of its proposed construction in its Responsive Brief. *See* Opening Brief at p. 19:8-26; *see also* Responsive Brief at pp. 14:20-15:17. However, extrinsic evidence cannot be used to contradict the meaning imparted by the intrinsic record. *Id.* (citing cases). The specification is clear that a “carrier” is a supporting structure on which other claim elements could be disposed, and supporting structure is not limited to being made of any specific material. *See, e.g.,* ’301 Patent, Col. 1, lines 38-43. Even CIG USA acknowledges the specification only requires the substrate be such that other components can be “placed [or disposed] on top of it.” *See* Responsive Brief at p. 15:22-28. Therefore, CIG USA’s attempt to limit substrate to a ceramic or silicon material with only extrinsic evidence and no intrinsic support should be rejected, as should CIG USA’s attempts to define what one of skill in art would understand without offering any expert testimony in this regard.

2. “the same top surface of the end of the carrier”

The term “same top surface of the end of the carrier” is plain English and easily understandable. However, CIG USA attempts to limit this term through its proposed construction by again overstating and mischaracterizing the prosecution history in its Response Brief. Specifically, there is nothing in the prosecution history that requires “the same top surface of the end of the carrier” to be the “topmost surface of the carrier.” The only limitation in the prosecution history is that there are “three distinct ‘top surface’ portions of the carrier element (reference #8 in Fig. 1)...” *See* Dkt.

No. 36-10 at p. 3 (Notice of Allowance). But, importantly, there was no requirement or limitation in the prosecution history that the end portion of the carrier be the “topmost surface.” *See id.*

Indeed, CIG USA even explicitly recognizes this point in its Responsive Brief. *See* Responsive Brief at p. 17:7-9 (recognizing “the amendments did not address whether those ‘top surfaces’ were all located on the same plane or different planes.”). Thus, even CIG USA recognizes this not a “clear and unmistakable” “disavowal of claim scope” as necessary for a prosecution history disclaimer. *Omega Eng’g, Inc.*, 334 F.3d 1314, 1325-26 (Fed. Cir. 2003). Instead, CIG USA attempts to read this limitation into its proposed construction by reference to Figure 1, which CIG USA claims shows the left end of the carrier as higher in elevation than the other sections of the carrier. But, even if true (the specification makes no reference to it), this is still only a single example embodiment that cannot used to limit claim terms. *See, e.g., Phillips*, 415 F.3d at 1323; *Superguide Corp.*, 358 F.3d at 875. Thus, CIG USA’s proposed construction should be rejected.

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