

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ATLEISURE, LLC	)	
	)	
Plaintiff,	)	Civil Action No. 1:20-cv-04662-TWT
	)	
v.	)	JURY TRIAL DEMANDED
	)	
SUNVILLA CORPORATION	)	
	)	
Defendant.	)	

PLAINTIFF’S OPENING CLAIM CONSTRUCTION BRIEF

Plaintiff ATLeisure, LLC (“ATLeisure”), hereby files its Opening Claim Construction Brief, and in support thereof ATLeisure shows the Court as follows:

I. **THE ‘492 PATENT.**

Headquartered in Atlanta, Georgia, ATLeisure designs, manufactures, and supplies the outdoor furniture and accessories market with proprietary, innovative products. One of its primary product lines is outdoor patio umbrellas. ATLeisure has various patented designs and inventions, some of which are reflected in its own products. Of relevance here is U.S. Patent No. 8,104,492 (“the ‘492 patent”), which is embodied by certain of ATLeisure’s products, as well as products offered by Defendant Sunvilla Corporation (“Sunvilla”).

On May 5, 2009, utility patent application No. 12/435,640 was filed for an “Adjustable Offset Umbrella.” The patent application claimed priority back to May 5, 2008, the date on which provisional application Serial No. 61/050,353 was filed by the inventor. On January 31, 2012, the ‘492 patent issued. Broadly speaking, the ‘492 patent is “an offset umbrella with an improved mechanism for raising and lowering the umbrella canopy and for adjusting the angle of the canopy with respect to a vertical support member.” (Ex. A, ‘492 patent, 1:11-15.) The ‘492 patent explains that “[e]xisting adjustable offset umbrellas...utilize a crank mechanism both for raising and lowering the canopy and for adjusting the angle of the canopy.” (‘492 patent, 1:33-36.) Prior art configurations resulted in the rope routed in “a complex path with many turning points [that] requires more winding force, and the rope can easy bind and wear, adversely affecting the umbrella's operation.” (‘492 patent, 1:36-40.)

To solve these and other problems in the prior art, the ‘492 patent implements “A sliding member is associated with the main pole and is selectably moveable thereon [that] includes a locking means for releasably securing the sliding member to the main pole at a desired location.” (‘492 patent, 1:49-53.) “A winding element is mounted to the sliding member and is movable therewith[; a] line extends along the arm from the winding element to engage the umbrella

canopy [to apply] tension to the line to open or close the umbrella canopy...” (‘492 patent, 1:60-65.) This novel configuration provided, among other benefits, an improved offset umbrella that “simplifies the path of the line from the winding mechanism” and separates raising and lowering the umbrella from adjusting the angle of the umbrella to make both adjustments easier to perform. (‘492 patent, 2:1-12.)

II. CLAIM TERMS/PHRASES AT ISSUE FOR CLAIM CONSTRUCTION.

A. “Locking Means” as set forth in Claims 1 and 3

The term “locking means” is implicated by all claims of the ‘492 patent because it is an element of the only independent claim, claim 1. Additionally, dependent claims 2-4 recite specific limitations on the “locking means” set forth in claim 1. The parties agree “locking means” or “locking means for releasably securing the sliding member to the main pole at a selected location along the main pole” is interpreted as a means plus function claim under 35 U.S.C. §112(f)¹. The text of 35 U.S.C. §112(f) provides the following when interpreting a means plus function term:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be

¹ 35 U.S.C. § 112(f) is also referred to as pre-AIA 35 U.S.C. §112(6).

construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof

The parties agree the specification for the '492 patent describes structures corresponding to the "locking means," and these corresponding structure are shown in Figures 4, 7, 8, and the portions of the issued '492 patent specification describing those figures and the locking means, including 3:25-40, 4:12-31, and 4:36-40.² While there is no dispute the term "locking means" is interpreted under 35 U.S.C. §112(f), Sunvilla takes the position that the ATLeisure is not entitled to equivalent structures (despite the unequivocal language of §112(f)), contending that prosecution history estoppel and disclaimer "narrow or preclude the application of equivalents for this claim element."

"Prosecution history estoppel requires that the claims of a patent be interpreted in light of the proceedings in the PTO during the application process." *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 733, 122 S. Ct. 1831, 1838 (2002). Prosecution history estoppel can limit the equivalents available where subject matter was surrendered by a narrowing amendment made during prosecution. *See Festo*, 535 U.S. at 737. "The determination of equivalence should

² Notably, this Court interpreted the same provision in a prior proceeding, *ATLeisure, Inc. v. Ace Evert, Inc.*, Case No. 1:12-cv-1260-CAP, Dkt. No. 85. ATLeisure proposes the same interpretation accepted by the Court in that action.

be applied as an objective inquiry on an element-by-element basis.” *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 40 (1997).

The doctrine of prosecution disclaimer is well established in Supreme Court precedent, precluding patentees from recapturing through claim interpretation specific meanings disclaimed during prosecution. *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003), citing *Schriber-Schroth Co. v. Cleveland Trust Co.*, 311 U.S. 211, 220-21 (1940). “[The Federal Circuit] has often stated that prosecution history limits claim meaning when an applicant “clearly and unmistakably” disclaims claim scope or meaning.” *Grober v. Mako Prods.*, 686 F.3d 1335, 1342 (Fed. Cir. 2012). Prosecution disclaimer does not apply to “an ambiguous disavowal” where statements in prosecution have multiple reasonable interpretations, nor where “the applicant simply describes features of the prior art and does not distinguish the claimed invention based on those features.” *Comput. Docking Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1375 (Fed. Cir. 2008); *see also N. Telecom Ltd. v. Samsung Elecs. Co.*, 215 F.3d 1281, 1293-95 (Fed. Cir. 2000). Instead, the prosecution history must show that the patentee “clearly and unambiguously” disclaimed or disavowed the proposed interpretation “during prosecution to obtain claim allowance.” *Middleton, Inc. v. 3M Co.*, 311 F.3d 1384, 1388 (Fed. Cir. 2002).

The only element of Claim 1 reciting a locking means reads as follows: “locking means for releasably securing the sliding member to the main pole at a selected location along the main pole.” (492 patent, Cl. 1.) This element was unchanged during prosecution and there was no unambiguous disclaimer to secure claim allowance. Similarly, dependent claims 2-4, all of which also recite the locking means, were also unchanged during prosecution. With no amendment or clear disavowal to the locking means element, there can be no prosecution history estoppel nor disclaimer as to the construction of locking means. *See Warner-Jenkinson*, 520 U.S. at 40; *see also Vae Nortrak N. Am. v. Progress Rail Servs. Corp.*, No. 03-AR-1480-M, 2005 U.S. Dist. LEXIS 58932, at *34 (N.D. Ala. Mar. 1, 2005) (holding that where no amendment was made to a means plus function element, prosecution history estoppel cannot apply); *See Middleton*, 311 F.3d at 1388. Locking means should be interpreted to include the three embodiments for releasably securing the sliding member to the main pole at a selected location along the main pole, and the equivalents of each of the three embodiments, as shown in Figures 4, 7, 8, and further described at 3:25-40, 4:12-31, and 4:36-40.

- B. “A winding mechanism having a winder hub around which a line can be wound, the winder hub being mounted to the sliding member and movable therewith”

ATLeisure contends no special meaning or definition for this phrase is required, as the terms contained therein are straightforward and can be easily understood by a layperson. In contrast, Sunvilla contending it should be construed under §112(f), though there is no use of the term “means” in the phrase. Sunvilla’s motivation is obvious—it seeks to limit this claim element to only structures disclosed in the specification (and their equivalents), rather than providing the claim its plain meaning as required. Indeed, Sunvilla’s contention in the Parties’ Joint Claim Construction Statements highlights the narrowing construction is seeks, arguing that a “latch mechanism” be imported into the claim, although it is not found in any claim of the ‘492 patent. Efforts to graft limitations from the specification during claim construction is improper and unsupported.

Claim construction begins with the ordinary and accustomed meanings. To the extent that a term is disputed, the court may examine the specification, drawings and prosecution history to confirm that the patentee’s use of the term is consistent with the ordinary meaning. *See Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342-1343 (Fed. Cir. 2001). Sometimes “the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than

the application of the widely accepted meaning of commonly understood words.” *Phillips*, 415 F.3d at 1314, citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001).

Courts have often stated that claim interpretation is not to be “an obligatory exercise in redundancy.” *United States Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997). “There is a “heavy presumption” that the terms used in claims “mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art.” *Resonate Inc. v. Alteon Websystems, Inc.*, 338 F.3d 1360, 1364 (Fed. Cir. 2003), citing *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1201 (Fed. Cir. 2002). The claims themselves “provide substantial guidance as to the meaning of particular claim terms.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005). The specification “is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). However, courts must guard against importing limitations from the specification into a claim. *See Phillips*, 415 F.3d at 1323. It is generally improper to limit what is claimed to preferred embodiments or specific examples in the specification. *Teleflex Inc. v. Ficosa North Am. Corp.*, 299 F.3d 1313, 1326-28 (Fed. Cir. 2002).

Perhaps recognizing it cannot graft limitations from the specification such as a latch mechanism onto the claims, it attempts to do so by arguing the claim element should be interpreted as a means plus function claim. A claim's use of the word "means" raises a presumption that § 112(f) applies. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (en banc). The failure to include the word "means" triggers a presumption in the opposite direction—that § 112(f) does not apply. *Id.* In order to overcome the presumption against interpretation as a means plus function, Sunvilla must prove the "claim element recited a function without reciting sufficient structure for performing that function." *Watts v. XL Sys.*, 232 F.3d 877, 880 (Fed. Cir. 2000). Sunvilla cannot do so.

There is nothing complicated about the phrase identified by Sunvilla identifies for construction, nor is there a basis to suggest a normal layperson could not easily understand the term. Indeed, the structure is defined within the claim itself, namely, the winding mechanism has a winder hub mounted to and moveable with the sliding member such that the line can be wound. The claim goes on (in another element) to explain that the line winds around the winder hub and attached to the umbrella canopy in order to open and close the canopy. The winding mechanism recited in claim 1 means what it says, and the meaning is easily appreciated by laypersons. *See Resonate*, 338 F.3d at 1364; *Phillips*, 415 F.3d

at 1314. There is no basis to change straightforward language or import limitations from the specification.

C. “Wherein operation of the winding mechanism to apply tension to the line opens and closes the umbrella canopy in response to movement of the line”

Sunvilla proposing the Court interpret an entire claim element. As with the limitation in the prior section, no special meaning or definition for this phrase is required, as the claim element can be easily understood by a layperson. The bulk of the language in this claim element is permissible functional language that is used to provide context and describe the capabilities of the structure. *See, e.g., Mastermine Software, Inc. v. Microsoft Corp.*, 874 F.3d 1307, 1315 (Fed. Cir. 2017)(discussing the use of functional language tied to structure of the claim). As the ‘492 patent explains for one embodiment, to open the umbrella canopy, the winder hub of the winding mechanism winds the line to increase tension on the line to open the canopy. (‘492 patent, Cl. 1; *see also* 1:63-65.) To close the canopy, the tension on the line is reduced by rotating the winder hub in the opposite direction. (‘492 patent, Cl. 1; *see also* 1:63-65.)

Sunvilla contends that this claim element, and in particular the language “to apply tension to the line,” should be construed to mean “to increase tension on the line.” It is unclear what Sunvilla’s change in language is attempting to narrow or

change. Is Sunvilla suggesting the winding mechanism can only “increase” tension? If so, this would be absurd and directly contrary to the claim itself, which explains that the line is wound in both directions (i.e. by applying more tension or less tension) to open and close the umbrella canopy. (‘492 patent, Cl. 1.) Sunvilla’s proposed limitation should be rejected and the claim should simply be applied with the ordinary meaning of the language as set forth in the claim itself.

D. “The umbrella of claim 1, wherein the locking means for releasably securing the sliding member to the main pole comprises a plurality of teeth formed on the main pole and a cooperating pawl associated with the sliding member and selectively operative to engage a selected one of the teeth to prevent movement of the sliding member with respect to the main pole”

ATLeisure and Sunvilla agree that this term is subject to means plus function, because it recites a specific “locking means” from the specification. ATLeisure agrees with Sunvilla that the construction of this claim is tied to the embodiment it refers to with respect to Claim 1, namely Figure 8 and the portions of the specification directed to Figure 8, 4:12-31, and 4:36-40. The parties differ in that ATLeisure contends no further definition is required beyond the plain language, and that the claim is entitled to the structure and its equivalents.

Sunvilla again argues that the doctrines of prosecution history estoppel and disclaimer narrow or preclude the application of equivalents for this claim element, an issue ATLeisure addresses above. Particularly for Claim 3, Sunvilla

argues the locking means in Claim 3 should further be narrowed in two ways. First, Sunvilla contends the language “engage a selected one of the teeth” should be clarified to mean “engage one and only one of the teeth formed on the main pole.” However, the specification discusses an embodiment that engages not only one of the ratchet teeth but “reengage the ratchet teeth,” which are described as a plurality of teeth. (‘492 Patent, 4:21-22, 4:28-31.)

“Open claim language, such as the word “comprising” as a transition from the preamble to the body of a claim, ‘signals that the entire claim is presumptively open-ended.’” *MagSil Corp. v. Hitachi Glob. Storage Techs., Inc.*, 687 F.3d 1377, 1383 (Fed. Cir. 2012), quoting *Gillette Co. v. Energizer Holdings, Inc.*, 405 F.3d 1367, 1371 (Fed. Cir. 2005). “The transition ‘comprising’ creates a presumption that the recited elements are only a part of the device, that the claim does not exclude additional, unrecited elements.” *Id.*, quoting *Crystal Semiconductor Corp. v. TriTech Microelectronics Int’l, Inc.*, 246 F.3d 1336, 1348 (Fed. Cir. 2001). Alternatively, “‘Consisting of’ is a term of patent convention meaning that the claimed invention contains only what is expressly set forth in the claim.” *Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp.*, 831 F.3d 1350, 1358 (Fed. Cir. 2016), quoting *Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1331 (Fed. Cir. 2004).

“Basic patent law holds that a party may not avoid infringement of a patent claim using an open transitional phrase, such as comprising, by adding additional elements.” *Free Motion Fitness, Inc. v. Cybex Int'l*, 423 F.3d 1343, 1353 (Fed. Cir. 2005). Both Claim 3 is dependent on Claim 1, with both reciting the locking means and both using the open-ended transitional phrase “comprising.” Sunvilla cannot avoid infringement by adding additional structure, but that seems to be the goal with its proposed claim construction. Sunvilla argues the language “engage a selected one of the teeth” should mean “engage one and only one of the teeth formed,” effectively arguing that by adding engagement with additional structures it avoids infringement. The Federal Circuit has recognized that “‘a’ or ‘an’ can mean ‘one or more’ is best described as a rule, rather than merely as a presumption or even a convention.” *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed. Cir. 2008). While there are exceptions to this rule, the patentee must “evinced [] a clear intent to limit” the claim term. *Id.*, quoting *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000). There is nothing in the specification that specifically limits the embodiment (or equivalents thereof) to engaging one and only one ratchet “tooth.” There is no “clear intent” to limit the claim to one and only one tooth – if the inventor had intended such a limitation he could have included it in the claim.

Sunvilla proposes a second limitation for Claim 3, namely it proposes that “a plurality of teeth formed on the main pole and a cooperating pawl associated with the sliding member and selectively operative to engage a selected one of the teeth to prevent movement of the sliding member with respect to the main pole” be further restricted to mean “a ratchet and pawl mechanism, in which the ratchet takes the form of two or more teeth formed on the main pole, the pawl is attached to the sliding mechanism and engages only one of the teeth on the pole at a time, and the teeth are angled so that the sliding mechanism is free to move in the upward direction and the pawl must be released to permit motion of the sliding member in the downward direction.” In other words, Sunvilla contends that the sliding member can be moved without disengaging the pawl from the ratchet teeth. This is contrary that described in the specification, which states that when moving from one location on the main pole or another, without regard to whether that is upwards or downwards, a user “disengage[s] the pawl from the ratchet teeth 220, moves the sliding member 216 to a new desired location, and releases the spring-loaded pawl to re-engage the ratchet teeth.” (the ‘492 patent, 4:26-31.) Sunvilla’s proposed limitations are contrary the specification and the presumption based on open-ended claim language. Claim 3 should be interpreted consistent

with the specification as to locking means, as further described by the plain language of the claim itself.

III. CONCLUSION

Predictable for a defendant in patent litigation, Sunvilla lobbies for various claim interpretations that improperly narrow the scope of the claims rather than to assist the jury with claim language interpreted consistent with the patent itself. Each of Sunvilla's theories would require the Court to disregard the specification and rules of claim construction. Sunvilla cannot point to any amendment made for patentability as it pertains to the locking means, and therefore cannot establish prosecution history estoppel. Sunvilla likewise cannot establish a clear disavowal of scope or clear intent to limit the claims as suggested by Sunvilla with respect to Claims 1-3. The Court should construe the terms with their plain and ordinary meaning consistent with §112 ¶6, which includes the three embodiments for releasably securing the sliding member to the main pole at a selected location along the main pole, and the equivalents of each of the three embodiments as shown in Figures 4, 7, 8 and described at 3:25-40, 4:12-31, and 4:36-40.

Respectfully submitted, July 26, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1D, the undersigned counsel certify that the foregoing has been prepared in Century Schoolbook 13 point, one of the four fonts and points approved by the Court in LR 5.1C.

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CERTIFICATE OF SERVICE

I also certify that I have electronically filed a copy of the foregoing and understand that notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system and that parties may access this filing through the CM/ECF system.

Dated: July 26, 2021

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