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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BLAST MOTION, INC., a California corporation,  Plaintiff,  v. ZEPP LABS, INC., a Delaware corporation,  Defendant.
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Case No.: 15-CV-700 JLS (NLS)  
  
**ORDER ON CLAIM CONSTRUCTION**

Plaintiff Blast Motion, Inc. (“Blast”) brings suit against Defendant Zepp Labs, Inc. (“Zepp”) for infringement of U.S. Patent Nos. 8,902,855 (the “855 patent”), 8,903,521 (the “521 patent”), 9,039,527 (the “527 patent”), 8,944,928 (the “928 patent”), and 8,941,723 (the “723 patent”). Defendant counterclaims against Plaintiff for infringement of U.S. Patent Nos. 8,781,610 (the “610 patent”), and 8,989,441 (the “441 patent”). The patents are in the field of motion detection and analysis, particularly as applied to analyzing a user’s motions in various sports (e.g., the swing of a baseball bat or golf club). After considering the briefing and oral argument, the Court construes the disputed claim terms as follows.

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## LEGAL STANDARD

### I. Claim Construction

“A determination of infringement involves a two-step analysis. ‘First, the claim must be properly construed to determine its scope and meaning. Second, the claim as properly construed must be compared to the accused device or process.’” *Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1320 (Fed. Cir. 2003) (citing *Carroll Touch, Inc. v. Electro Mech. Sys., Inc.*, 15 F.3d 1573, 1576 (Fed. Cir. 1993)).

The first step, commonly known as claim construction, is presently before the Court. Claim construction is a matter of law for the Court’s determination. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 388 (1996) (“[J]udges, not juries, are the better suited to find the acquired meaning of patent terms.”).

Words of a claim are “generally given their ordinary and customary meaning.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Because the inquiry into the meaning of claim terms is an objective one, “a court looks to those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean.” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004). “Those sources include the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.”<sup>1</sup> *Id.* (citing, *inter alia*, *Vitronics*, 90 F.3d at 1582–83).

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<sup>1</sup> The first three sources are considered “intrinsic evidence” of claim meaning. *See generally Phillips*, 415 F.3d at 1314–17.

1 Claim construction begins with an analysis of the words of the claims themselves.  
2 *See Scanner Techs. Corp. v. ICOS Vision Sys. Corp.*, 365 F.3d 1299, 1303 (Fed. Cir. 2004)  
3 (holding that claim construction “begins and ends” with claim’s actual words). “In some  
4 cases, the ordinary meaning of claim language as understood by a person of skill in the art  
5 may be readily apparent even to lay judges, and claim construction in such cases involves  
6 little more than the application of the widely accepted meaning of commonly understood  
7 words.” *Phillips*, 415 F.3d at 1314. However, the meaning of a claim term as understood  
8 by ordinarily skilled artisans often is not immediately apparent. *Id.* In those situations, the  
9 court looks to “sources available to the public that show what a person of skill in the art  
10 would have understood disputed claim language to mean.” *Id.* Or, when a patentee  
11 “chooses to be his own lexicographer and use terms in a manner other than their ordinary  
12 meaning,” the court can use the patentee’s meaning “as long as the special definition of the  
13 term is clearly stated in the patent specification or file history.” *Vitronics*, 90 F.3d at 1582.

14 In examining the claims themselves, “the context in which a term is used can be  
15 highly instructive.” *Phillips*, 415 F.3d at 1314. Moreover, “[o]ther claims of the patent in  
16 question, both asserted and unasserted can . . . be valuable sources of enlightenment as to  
17 the meaning of a claim term.” *Id.* (citing *Vitronics*, 90 F.3d at 1582). “Because claim  
18 terms are normally used consistently throughout the patent, the usage of a term in one claim  
19 can often illuminate the meaning of the same term in other claims.” *Id.* Conversely, under  
20 the doctrine of claim differentiation, “different words or phrases used in separate claims  
21 are presumed to indicate that the claims have different meanings and scope.” *Andersen*  
22 *Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1369 (Fed. Cir. 2007) (quoting *Karlin*  
23 *Tech., Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968, 971–72 (Fed. Cir. 1999)).

24 “Importantly, the person of ordinary skill in the art is deemed to read the claim term  
25 not only in the context of the particular claim in which the disputed term appears, but in  
26 the context of the entire patent, including the specification.” *Phillips*, 415 F.3d at 1313.  
27 “The specification acts as a dictionary when it expressly defines terms used in the claims  
28 or when it defines them by implication.” *Vitronics*, 90 F.3d at 1582. “In addition to

1 providing contemporaneous technological context for defining claim terms, the patent  
2 applicant may also define a claim term in the specification ‘in a manner inconsistent with  
3 its ordinary meaning.’” *Metabolite Labs., Inc. v. Lab. Corp. of Am.*, 370 F.3d 1354, 1360  
4 (Fed. Cir. 2004). “Usually, [the specification] is dispositive; it is the single best guide to  
5 the meaning of a disputed term.” *Vitronics*, 90 F.3d at 1582; *accord Phillips*, 415 F.3d at  
6 1317 (“It is . . . entirely appropriate for a court, when conducting claim construction, to  
7 rely heavily on the written description for guidance as to the meaning of the claims.”).

8 Patent claims should ordinarily be construed to encompass the preferred  
9 embodiments described in the specification, for “[a] claim construction that excludes a  
10 preferred embodiment . . . ‘is rarely, if ever, correct.’” *SanDisk Corp. v. Memorex Prods.,*  
11 *Inc.*, 415 F.3d 1278, 1285 (Fed. Cir. 2005) (quoting *Vitronics*, 90 F.3d at 1583). However,  
12 a court should not import limitations from the specification into the claims, *Phillips*, 415  
13 F.3d at 1323 (“[A]lthough the specification often describes very specific embodiments of  
14 the invention, we have repeatedly warned against confining the claims to those  
15 embodiments.”), absent a specific reference in the claims themselves, *Reinshaw PLC v.*  
16 *Marposs Societa’ per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998) (“[A] party wishing to  
17 use statements in the written description to confine or otherwise affect a patent’s scope  
18 must, at the very least, point to a term or terms in the claim with which to draw in those  
19 statements.”).

20 The patent’s prosecution history, if in evidence, may also shed light on claim  
21 construction. *Vitronics*, 90 F.3d at 1582. “This history contains the complete record of all  
22 proceedings before the Patent and Trademark Office [(“PTO”)], including any express  
23 representations made by the applicant regarding scope of the claims.” *Id.* “Like the  
24 specification, the prosecution history provides evidence of how the PTO and the inventor  
25 understood the patent.” *Phillips*, 415 F.3d at 1317. Although the prosecution history  
26 “often lacks the clarity of the specification,” it is nevertheless useful to show “how the  
27 inventor understood the invention and whether the inventor limited the invention in the  
28 course of prosecution, making the claim scope narrower than it would otherwise be.” *Id.*

1 “In most situations, an analysis of the intrinsic evidence alone will resolve any  
2 ambiguity in a disputed claim term. In such circumstances, it is improper to rely on  
3 extrinsic evidence.” *Vitronics*, 90 F.3d at 1583. Thus, expert testimony on the proper  
4 construction of disputed claim terms “may only be relied upon if the patent documents,  
5 taken as a whole, are insufficient to enable the court to construe disputed claim terms.”  
6 *Vitronics*, 90 F.3d at 1585.

7 However, *Vitronics* does not state a rule of admissibility, nor does it “prohibit courts  
8 from examining extrinsic evidence, even where the patent document is itself clear.” *Pitney*  
9 *Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1308 (Fed. Cir. 1999). As the Federal  
10 Circuit has made clear:

11  
12 [B]ecause extrinsic evidence can help educate the court regarding the field of  
13 the invention and can help the court determine what a person of ordinary skill  
14 in the art would understand claim terms to mean, it is permissible for the  
15 district court in its sound discretion to admit and use such evidence.

16 *Phillips*, 415 F.3d at 1319; accord *Key Pharms. v. Hercon Labs. Corp.*, 161 F.3d 709, 716  
17 (Fed. Cir. 1998) (“[T]rial courts generally can hear expert testimony for background and  
18 education on the technology implicated by the presented claim construction issues, and  
19 trial courts have broad discretion in this regard.”). The court is not “barred from  
20 considering any particular sources or required to analyze sources in any specific sequence,  
21 as long as those sources are not used to contradict claim meaning that is unambiguous in  
22 light of the intrinsic evidence.” *Phillips*, 415 F.3d at 1324 (emphasis added); see also  
23 *Biagro W. Sales, Inc. v. Grow More, Inc.*, 423 F.3d 1296, 1302 (Fed. Cir. 2005) (“Extrinsic  
24 evidence, such as expert testimony, may be useful in claim construction, but it should be  
25 considered in the context of the intrinsic evidence.”).

## 26 **II. Definiteness**

27 Patent claims must point out with particularity the subject matter regarded as the  
28 claimed invention. 35 U.S.C. § 112(b). Section 112(b) requires that “a patent’s claims,

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