

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**BOYDSTUN EQUIPMENT
MANUFACTURING, LLC**, an Oregon
limited liability company

Plaintiff,

v.

Cottrell, Inc., a Georgia corporation,

Defendant.

Case No. 3:16-cv-790-SI

**OPINION AND ORDER ON
CLAIM CONSTRUCTION**

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Michael H. Simon, District Judge.

In this action brought by Plaintiff Boydstun Equipment Manufacturing, LLC (“Boydstun”) against Defendant Cottrell, Inc. (“Cottrell”), Boydstun seeks a declaratory judgment of non-infringement of U.S. Patent No. 7,585,140 (“the ’140 patent”), among other

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things. The parties disagree over the construction of two terms. On October 6, 2017, the Court held a claim construction hearing. Based on the parties' submissions and the arguments of counsel, the Court construes the two disputed terms as set forth below.

STANDARDS

Patent infringement analysis involves two steps. First, the court construes the asserted patent claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996). Second, the factfinder determines whether the accused product or method infringes the asserted claim as construed. *Id.* The first step, claim construction, is a matter of law. *See Markman*, 517 U.S. at 372; *Vitrionics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). "It is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). Patent claims must precisely define the relevant invention and thereby put both the public and competitors on notice of the claimed invention. *See Phillips*, 415 F.3d at 1312.

"[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips*, 415 F.3d at 1312 (quoting *Vitrionics*, 90 F.3d at 1582). There are two exceptions to this general rule: (1) "when a patentee sets out a definition and acts as his own lexicographer;" or (2) "when the patentee disavows the full scope of a claim term either in the specification or during prosecution." *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012); *see also Hormone Research Found., Inc. v. Genentech, Inc.*, 904 F.2d 1558, 1563 (Fed. Cir. 1990) ("It is a well-established axiom in patent law that a patentee is free to be his or her own lexicographer and thus may use terms in a manner contrary to or inconsistent with one or more of their ordinary meanings." (citation omitted)).

The ordinary and customary meaning “is the meaning that the term would have to a person of ordinary skill in the art in question at the time” of the effective filing date of the patent application. *Phillips*, 415 F.3d at 1313. This is because “inventors are typically persons skilled in the field of the invention,” and “patents are addressed to and intended to be read by others of skill in the pertinent art.” *Id.* “[T]he person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent,” *id.*, which includes the “written description and the prosecution history,” *Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005).

There are some cases in which “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 . . . involves little more than the application of the widely accepted meaning of commonly understood words.” *Phillips*, 415 F.3d at 1314. “A determination that a claim term ‘needs no construction’ or has [its] ‘plain and ordinary meaning’” may be sufficient when, for example, a term has only “one ‘ordinary’ meaning or when reliance on a term’s ‘ordinary’ meaning . . . resolve[s] the parties’ dispute.” *O2 Micro Intern. Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008).

In other cases, determining a claim’s ordinary and customary meaning requires further examination. This may be because the meaning is not “immediately apparent,” terms “have a particular meaning in a field of art,” or the patentee has used a term “idiosyncratically.” *Phillips*, 415 F.3d at 1314. In those cases, a court construing the claim will consider “those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean.” *Id.* (quoting *Innova*, 381 F.3d at 1116). Such “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.” *Id.* (quoting *Innova*, 381 F.3d at 1116).

The language of “the claims themselves provide substantial guidance as to the meaning of particular claim terms.” *Id.* Additionally, “[t]he context in which a claim term is used in the asserted claim can be highly instructive.” *Id.* “Other claims of the patent in question, both asserted and unasserted, can also be valuable sources of enlightenment as to the meaning of a claim term.” *Id.* For example, “[b]ecause claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims.” *Id.* Courts should also interpret claim terms in a manner that does not render subsequent claim terms superfluous. *See Stubmo v. Eastman Outdoors, Inc.*, 508 F.3d 1358, 1362 (Fed. Cir. 2007) (noting that the court has “denounced” claim construction that renders phrases “superfluous”); *Merck & Co. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”).

In addition to the claims themselves, courts must consider the specification in construing claim terms, as the terms “are part of ‘a fully integrated written instrument.’” *Phillips*, 415 F.3d at 1315 (quoting *Markman*, 52 F.3d at 978). As the Federal Circuit has stated: “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.’” *Id.* (quoting *Vitrionics*, 90 F.3d at 1582). A patent’s “specification may reveal a special definition given to a claim term . . . that differs from the meaning it would otherwise possess,” and such definition would govern. *Id.* at 1316. Similarly, a specification may “reveal an intentional disclaimer, or disavowal, of claim scope”—and again, “the inventor’s intention, as expressed in the specification, is regarded as dispositive.”

Id. Importantly, though, limitations from the specification should not be imported into the claims and claims should not necessarily be confined to the “very specific embodiments of the invention” in the specification. *Id.* at 1323; *see also Douglas Dynamics, LLC v. Buyers Prod. Co.*, 717 F.3d 1336, 1342 (Fed. Cir. 2013) (“While claim terms are understood in light of the specification, a claim construction must not import limitations from the specification into the claims.”); *Kara Tech. Inc. v. Stamps.com Inc.*, 582 F.3d 1341, 1348 (Fed. Cir. 2009) (“The patentee is entitled to the full scope of his claims, and we will not limit him to his preferred embodiment or import a limitation from the specification into the claims.”). Ultimately, a court must “read the specification in light of its purposes in order to determine ‘whether the patentee is setting out specific examples of the invention to accomplish those goals, or whether the patentee instead intends for the claims and the embodiments in the specification to be strictly coextensive.’” *Decisioning.com, Inc. v. Federated Dept. Stores, Inc.*, 527 F.3d 1300, 1308 (Fed. Cir. 2008) (quoting *Phillips*, 415 F.3d at 1323).

In addition to the text of the claims and specification, courts “should also consider the patent’s prosecution history, if it is in evidence.” *Phillips*, 415 F.3d at 1317 (quoting *Markman*, 52 F.3d at 980); *see also Graham v. John Deere Co.*, 383 U.S. 1, 33 (1966) (“[A]n invention is construed not only in light of the claims, but also with reference to the file wrapper or prosecution history in the Patent Office.”). The prosecution history of a patent “contains the complete record of all the proceedings . . . , including any express representations made by the applicant regarding the scope of the claims.” *Vitronics*, 90 F.3d at 1582. The prosecution history may “inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Abbott Labs. v. Sandoz, Inc.*, 566 F.3d

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