UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of **CERTAIN RELOAD CARTRIDGES FOR LAPAROSCOPIC SURGICAL STAPLERS**	**Inv. No. 337-TA-1167**

ORDER 15: CONSTRUING THE TERMS OF THE ASSERTED CLAIMS OF THE PATENTS AT ISSUE

(January 7, 2020)

TABLE OF CONTENTS

I. INTRODUCTION

This Investigation was instituted on July 5, 2019 to determine whether the importation into the United States, the sale for importation, and the sale within the United States after importation of certain reload cartridges for laparoscopic surgical staplers violates section 337 of the Tariff Act of 1930, as amended, due to the infringement of U.S. Patent Nos. 7,490,749 ("the '749 patent"); 8,479,969 ("the '969 patent"); 9,113,874 ("the '874 patent")[1]; 9,844,369 ("the '369 patent"); and 9,844,379 ("the '379 patent") (collectively, the "Asserted Patents"). *See* 84 Fed. Reg. 32,220-221.

A *Markman* hearing was held on October 29, 2019. After the hearing and pursuant to Order No. 8, the parties submitted an updated Joint Claim Construction Chart.[2]

II. IN GENERAL

The claim terms construed in this Order are done so for the purposes of this section 337 Investigation. Those terms not in dispute need not be construed. *See Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311, 1323 (Fed. Cir. 2004) (noting that the administrative law judge need only construe disputed claim terms).

III. RELEVANT LAW

"An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly

---

[1] Ethicon and Intuitive have identified terms from claim 9 of the '874 patent as requiring construction. *See* JC at 2, 4. However, the Notice of Investigation and the Amended Complaint both list claim 19 as the sole asserted claim for the '874 patent. *See* 84 Fed. Reg. 32,221-222 (July 5, 2019); Am. Compl. at ¶ 2. As the parties are well aware, the Notice of Investigation defines the scope of the investigation. *See* 19 C.F.R. § 210.10(b). To date, Ethicon has not moved to amend its Complaint or the Notice of Investigation to bring claim 9 within the scope of this Investigation. For this reason, the undersigned declines to consider any arguments related to claim 9.

[2] For convenience, the briefs and chart submitted by the parties are referred to hereafter as:

CMIB	Ethicon's Initial *Markman* Brief
CMRB	Ethicon's Reply *Markman* Brief
RMIB	Intuitive's Initial *Markman* Brief
RMRB	Intuitive's Reply *Markman* Brief
JC	Updated Joint Proposed Claim Construction Chart

construed claims to the device accused of infringing." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*) (internal citations omitted), *aff'd*, 517 U.S. 370 (1996). Claim construction is a "matter of law exclusively for the court." *Id.* at 970-71. "The construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims." *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000).

Claim construction focuses on the intrinsic evidence, which consists of the claims themselves, the specification, and the prosecution history. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*); *see also Markman*, 52 F.3d at 979. As the Federal Circuit in *Phillips* explained, courts must analyze each of these components to determine the "ordinary and customary meaning of a claim term" as understood by a person of ordinary skill in the art at the time of the invention. 415 F.3d at 1313. "Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language." *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Grp., Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001).

"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*, 415 F.3d at 1312 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). "Quite apart from the written description and the prosecution history, the claims themselves provide substantial guidance as to the meaning of particular claims terms." *Id.* at 1314; *see also Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001) ("In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to 'particularly point[ ] out and distinctly claim[ ] the subject matter which the patentee regards as his invention.'"). The context in which a term is used in an asserted claim can be "highly instructive." *Phillips*, 415 F.3d

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.