

**ENTERED**

July 09, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

SANDBOX LOGISTICS LLC, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 3:16-CV-12
	§	CIVIL ACTION NO. 4:17-CV-589
GRIT ENERGY SOLUTIONS LLC, <i>et al</i> ,	§	
	§	
Defendants.	§	

**MEMORANDUM OPINION ON CLAIM CONSTRUCTION**

On March 1, 2018, the Court held a *Markman* hearing at which the parties proposed meanings for several terms that are used in the patents at issue in this litigation and that the parties have asked the Court to construe. *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996) (“[T]he construction of a patent, including terms of art within its claim, is exclusively within the province of the court.”). The parties have also filed thorough and well-written briefing. Having carefully considered the parties’ arguments, the evidence, and the applicable law, the Court construes the disputed claim terms as stated below. For the sake of clarity, the plaintiffs will be referred to collectively as “Sandbox,” and the defendants will be referred to collectively as “Grit.”

**I. LEGAL STANDARD GOVERNING CLAIM CONSTRUCTION**

The claims of a patent define the scope of the patented invention and function to forbid “not only exact copies of an invention, but products that go to the heart of an invention [while avoiding] the literal language of the claim by making a noncritical change.” *Id.* at 373–74 (citations and quotation marks omitted). Claim construction is “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. Service Engineering Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000) (brackets and quotation marks omitted).

Claim construction requires a determination as to how a person of ordinary skill in the relevant art would understand a claim term in the context of the entire patent, including the specification and prosecution history, at the time of invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313–14 (Fed. Cir. 2005). “There is a heavy presumption that claim terms are to be given their ordinary and customary meaning.” *Aventis Pharm. Inc. v. Amino Chems. Ltd.*, 715 F.3d 1363, 1373 (Fed. Cir. 2013). “Properly viewed, the ‘ordinary meaning’ of a claim term is its meaning to the ordinary artisan after reading the entire patent.” *Phillips*, 415 F.3d at 1321.

The Court begins its analysis by considering the language of the claims themselves but must keep in mind that “claims must be read in view of the specification, of which they are a part.” *Id.* at 1314–15 (quotation marks omitted). The specification, being “the single best guide to the meaning of a disputed term[,]” is “always highly relevant to the claim construction analysis” and will “usually” be “dispositive[.]” *Id.* at 1315. The Court should also consider the patent’s prosecution history, if that history is in evidence. *Id.* at 1317. The prosecution history “represents an ongoing negotiation between the [Patent and Trademark Office] and the applicant” and, as a result, “often lacks the clarity of the specification[;]” but, nevertheless, it “can often 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.” *Id.* Put another way, “[t]he best source for understanding a technical term is the specification from which it arose, informed, as needed, by the prosecution history.” *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1478 (Fed. Cir. 1998). The Court may also rely on “extrinsic” evidence, which is defined as “all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises[;]” but extrinsic evidence is generally seen “as less reliable than the patent and its prosecution history in determining how to read claim terms[.]” *Phillips*, 415 F.3d at 1317–18 (quotation marks omitted).

With respect to many of the claim terms at issue, Sandbox calls for the Court to construe the terms in accordance with their “plain and ordinary meaning[s.]” Sandbox highlights the Federal Circuit’s statement that “the specification and prosecution history [of a patent] only compel departure from the plain meaning [of a term] in two instances: lexicography and disavowal.” *GE Lighting Solutions, LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014). A district court must apply an “exacting” standard in determining whether a patentee has acted as its own lexicographer or limited its claims by disavowal (which is sometimes referred to as “disclaimer”). *Id.* Lexicography requires a clear expression by the patentee of an intent to define the claim term, while a determination of disavowal (or disclaimer) requires a clear indication by the specification or prosecution history that the invention does not include a particular feature. *Id.* However, “clear,” the Federal Circuit has noted, does not always mean “explicit.” *Trs. of Columbia Univ. in City of N. Y. v. Symantec Corp.*, 811 F.3d 1359, 1363 (Fed. Cir. 2016) (“Our case law does not require explicit redefinition or disavowal.”).

Grit counters Sandbox’s “plain and ordinary meaning” arguments by contending that the relevant patents’ specifications and prosecution histories demonstrate that Sandbox did in fact limit its claims by “describ[ing] its invention narrowly in the patent specifications and during the prosecution of its applications” in order “[t]o obtain patent protection over a crowded field” (Dkt. 111 at p. 9).<sup>1</sup> Sandbox’s claim construction proposals, Grit’s argument continues, are an impermissible attempt “to expand the scope of [Sandbox’s patent] protection by proposing undefined ‘plain and ordinary meanings’ of terms” (Dkt. 111 at p. 9) (some brackets omitted). The Federal Circuit has indeed emphasized that the doctrine of disavowal exists to prevent a patentee from unfairly broadening its patent protection once a patent has been secured. *Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1360 (Fed. Cir. 2017) (“Ultimately, the doctrine of prosecution disclaimer ensures that claims are not construed one way in order to obtain their allowance and in a different way against accused infringers.”) (quotation marks omitted).

## II. THE PATENTS AT ISSUE

Four patents form the basis of this litigation. Those patents deal with containers for and methods of storing, transporting, and unloading proppant in hydraulic fracturing operations. The patent numbers at issue are: 9,296,518 (“the ‘518 patent”); 9,403,626 (“the ‘626 patent”); 9,511,929 (“the ‘929 patent”); and 9,440,785 (“the ‘785 patent”). At the *Markman* hearing, the parties grouped the first three patents together and discussed the ‘785 patent separately. The Court will group the patents in the manner in which the

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<sup>1</sup> All record citations correspond to the docket numbers in case number 4:17-CV-589.

parties did in their *Markman* presentations and will address the terms in the order in which the parties did in their *Markman* presentations.

### **III. THE ‘518, ‘626, AND ‘929 PATENTS**

The parties have asked the Court to conduct nine constructions related to the ‘518, ‘626, and ‘929 patents. Grit has also argued that a claim contained in the ‘626 and ‘929 patents is indefinite.

- 1. The term “adjacent” in claim 13 of the ‘626 and ‘929 patents: The Court concludes that a person of ordinary skill in the art would understand the phrase “moving the first container to a position adjacent the second container” in claim 13 to mean placing the two containers in a stacked configuration.**

The parties first contest the meaning of the term “adjacent” as it is used in the phrase “moving the first container to a position adjacent the second container.” *See* Claim 13 of the ‘626 and ‘929 patents. Sandbox argues that the term “adjacent” should be given its “plain and ordinary meaning,” which is set forth in the fourth edition of *Webster’s New World College Dictionary* as “near or close.” In response, Grit argues that the term “adjacent,” as used in the context of claim 13, must actually mean “above.” To support its proposed construction, Grit points to diagrams and language in the patent specifications that, according to Grit, indicate that claim 13 of the ‘626 and ‘929 patents only claims a method of discharging proppant onto a portable conveyor belt from a stacked configuration of multiple ocean freight containers, meaning that Sandbox’s specifications have disclaimed any definition of “adjacent” in claim 13 that is not “above” or “below.”

Grit’s argument regarding the language of claim 13 has force. The intrinsic evidence shows that the stacked configuration of multiple ocean freight containers is

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