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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Clim-A-Tech Industries Incorporated,
10 Plaintiff/Counterdefendant,

11 v.

12 William A. Ebert, et al.,
13 Defendants/Counterclaimants.
14

No. CV-15-00873-PHX-GMS

ORDER

15 Pending before this Court are the briefs addressing claim construction. (Docs. 90–
16 91, 93–94). The Court held a *Markman* Hearing on February 23, 2018, at which the
17 parties presented additional arguments. For the reasons set forth below, the Court makes
18 the following constructions and interpretations of the meaning of the disputed claims.

19 **BACKGROUND**

20 Defendant William Ebert patented a device to protect the edges of cathode plates
21 used in copper refinement. US Patent RE46,212 E ('212) (Doc. 39-1). In the underlying
22 lawsuit, Plaintiff Clim-A-Tech Industries seeks a declaratory judgment that it is not
23 infringing on Mr. Ebert's patent.

24 A typical process for copper refinement requires submersion of steel cathode
25 plates in a copper electrolyte solution. Because copper gathers irregularly on the edges of
26 the cathode plates, refiners cover the edges of the cathode plates with a non-conductive
27 frame. Due to a number of issues with the previous art, Mr. Ebert patented a process of
28 placing the bevel-cut ends of edge protector strips next to each other in a molding jig,

1 then introducing a fluid plastic into the jig that molds over the bevel cut ends of the edge
2 protectors at the two corners of the frame to form a unitary U-shaped edge protector
3 frame.

4 The parties dispute the meaning of “mating engagement” and “junction” in claims
5 1, 15, and 17 of the patent. The full text of Claim 1 of the ‘212 patent, with disputed
6 phrases underlined, is as follows:

7 1. A U-shaped edge protector system for a cathode plate,
8 comprising:

9 a. a first side edge strip and a second side edge strip, each of said
10 side edge strips having an upper end and a lower end, and, an inner, open
11 side portion extending therebetween, said lower end having a bevel
12 termination;

13 b. a bottom edge strip having an [sic] first end with a bevel
14 termination in mating engagement with said bevel termination of said first
15 side edge strip forming a first junction, and having a second end with a
16 bevel termination in mating engagement with said bevel termination of said
17 second side edge strip forming a second junction, said bottom edge strip
18 having an inner, open side portion extending between said first end and said
19 second end;

20 c. a first molded comer piece, said first corner piece being molded
21 over said first junction; and,

22 d. a second molded comer piece, said second corner piece being
23 molded over said second junction, forming a unitary structure.

24 (Doc. 39-1 at 10).

25 The full text of Claim 15, with disputed phrases underlined, is as follows:

26 15. A method for making a U-shaped edge protector system for a
27 cathode plate, comprising the steps of:

28 a. providing a first side edge strip and a second side edge strip, each
of said side edge strips having an upper end and a lower end, and an inner,
open side portion extending therebetween, said lower end having a bevel
termination;

1 b. providing a bottom edge strip having a first end with a bevel
2 termination and a second end with a bevel termination;

3 c. maintaining said bevel termination of said first end of said bottom
4 edge strip in mating engagement with said bevel termination of said first
5 side edge strip, forming a first junction;

6 d. molding a first corner piece over said first junction;

7 e. maintaining said bevel termination of said second end of said
8 bottom edge strip in mating engagement with said bevel termination of said
9 second side edge strip, forming a second junction; and,

10 f. molding a second corner piece over said second junction.

11 (Doc. 39-1 at 11–12).

12 The full text of Claim 17, with disputed phrases underlined, is as follows:

13
14 17. A U-shaped edge protector system for a cathode plate, comprising:

15 a. a first side edge strip [sic] and a second side edge strip, each of said
16 side edge strips having an upper end and a lower end, and an inner, open
17 side portion extending therebetween, said lower end having a bevel
18 termination;

19 b. a bottom edge strip having a first end with a bevel termination in
20 mating engagement with said bevel termination of said first side edge strip
21 forming a first junction, such that said bevel termination of said first side
22 edge strip and said bevel termination of said bottom edge strip are in
23 parallel relation, and having a second end with a bevel termination in
24 mating engagement with said bevel termination of said second side edge
25 strip forming a second junction, such that said bevel termination of said
26 second side edge strip and said bevel termination of said bottom edge strip
27 are in parallel relation, said bottom edge strip having an inner, open side
28 portion extending between said first end and said second end;

 c. a first molded corner piece, said first corner piece being molded
over said first junction; and,

 d. a second molded corner piece, said second corner piece being
molded over said second junction, forming a unitary structure.

1 (Doc. 39-1 at 12).

2 DISCUSSION

3 I. Legal Standard

4 A patent includes two basic components: (1) a written description of the invention,
5 which is referred to as the “specification” of the patent, and (2) the patent claims. The
6 claims of a patent define the scope of the invention to which the patentee is entitled.
7 *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005); *see also Vitronics Corp. v.*
8 *Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The purpose of claim
9 construction is to “determin[e] the meaning and scope of the patent claims asserted to be
10 infringed.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995)
11 (en banc), *aff’d* 517 U.S. 370 (1996). Claim construction is exclusively within the
12 province of the Court. *Markman*, 517 U.S. at 372. If a disputed claim term has a plain
13 and ordinary meaning such that it needs no clarification or explanation, the Court need
14 not adopt a construction beyond that plain meaning. *See U.S. Surgical Corp. v. Ethicon,*
15 *Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997).

16 When construing a patent’s claims, the words of a claim are generally given their
17 ordinary and customary meaning. *Phillips*, 415 F.3d at 1312. The ordinary and
18 customary meaning of a claim term is the meaning that the term would have to a person
19 of ordinary skill in the art in question at the time of the invention, read “not only in the
20 context of the particular claim in which the disputed term appears, but in the context of
21 the entire patent, including the specification.” *Id.* at 1313. Courts should consider
22 claims as a whole and should consistently construe terms used in multiple claims.
23 *Inverness Med. Switz. BmbH v. Princeton Biomeditech Corp.*, 309 F.3d 1365, 1371 (Fed.
24 Cir. 2002).

25 When construing the claims, the Court should look first and primarily to the
26 intrinsic evidence of the patent, which includes the claims, specification, and prosecution
27 history. *Id.* The claims can provide substantial guidance by showing how the disputed
28 words are used in context. *Id.*

1 The specification is the primary basis for claim construction and the best source
2 for understanding a technical term in the proper context. *Id.* at 1315. The specification
3 may narrow the scope of a disputed claim term if the patentee has “demonstrate[d] intent
4 to deviate from the ordinary and accustomed meaning of a claim term by including in the
5 specification expressions of manifest exclusion or restriction, representing a clear
6 disavowal of claim scope.” *Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362,
7 1365 (Fed. Cir. 2012), (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313,
8 1325 (Fed. Cir. 2002)). In ascertaining whether the patentee has disavowed the full scope
9 of a claim, the Court must not read limitations from the specification into the claims.
10 *Teleflex*, 299 F.3d at 1326 (citing *Comark Commc’ns, Inc. v. Harris Corp.*, 156 F.3d
11 1182, 1186 (Fed. Cir. 1998)). In other words, the claims are not necessarily limited to the
12 embodiments disclosed in the specification. *See SRI Int’l v. Matsushita Elec. Corp. of*
13 *Am.*, 775 F.2d 1107, 1121 n.14 (Fed. Cir. 1985) (en banc).

14 In addition to the specification and the claims themselves, the Court should also
15 consider the patent’s prosecution history, although it can be less useful. *Id.* at 1317.
16 “The purpose . . . is to ‘exclude any interpretation that was disclaimed during
17 prosecution.’” *Chimie v. PPG Indus., Inc.*, 402 F.3d 1371, 1384 (Fed. Cir. 2005)
18 (citation omitted). The prosecution history may reveal that the patentee “has
19 unequivocally disavowed a certain meaning to obtain [its] patent.” *Omega Eng’g, Inc. v.*
20 *Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003). Thus, the Court examines both the
21 specification and prosecution history to ascertain whether the patentee has disavowed
22 some portion of the full and ordinary scope of a claim term.

23 Extrinsic evidence may also be used to assist the Court’s claim construction.
24 Extrinsic evidence consists of all evidence external to the patent and prosecution history,
25 including expert and inventor testimony, dictionaries, learned treatises, and other patents.
26 *Phillips*, 415 F.3d at 1317. Although extrinsic evidence can shed useful light, it is less
27 significant than the intrinsic record. *Id.* Extrinsic evidence must not be used to vary or
28 contradict claim terms. *Vitronics*, 90 F.3d at 1584.

1 **II. Construction of Disputed Terms**

2 **A. “Mating engagement”**

3 Plaintiff Clim-A-Tech argues that the Court should construe “mating engagement”
4 as “direct contact,” and Defendant Ebert argues that the Court should construe it as
5 “reasonable proximity.”

6 First, the Court considers the claims in the patent. The claims protect a U-shaped
7 edge protector system where ends of protector strips are molded over to form a unitary
8 structure. Concerning “mating engagement,” the language in the claims specifically
9 states that a “bevel termination in mating engagement with [another] bevel termination”
10 forms a juncture. ‘212 Patent at 8:46–49. Nothing in the claims explicitly state that the
11 terminations must be in direct contact to each other before the molding process.

12 Next, the Court considers the specification of the patent. Similar to the claims, the
13 preferred embodiment describes that the “[b]evel termination [of the bottom edge strip] is
14 adapted for mating engagement with bevel termination of the . . . side edge strip, forming
15 a . . . juncture.” *Id.* at 4:37–40. Here, the idea of mating engagement suggests that
16 corresponding parts are adapted to each other, but not necessarily that the corresponding
17 parts are in direct contact. Although the patent’s figures show the end product with a
18 single dotted line, this simply shows that the end product is a unitary structure, and not
19 that the beveled ends were in direct contact prior to the molding process. Nothing in the
20 embodiment explicitly states that the terminations must be in direct contact before the
21 molding process forms a unitary structure. Additionally, Clim-A-Tech does not reference
22 any specific language in the prosecution history that explicitly states that the patent
23 requires the bevel terminations to be in direct contact with each other. Because the patent
24 claims and specification are sufficient to resolve the contested language, the Court
25 construes “mating engagement” without addressing extrinsic evidence.

26 Given the over-molding process at issue, direct contact between the beveled ends
27 is not a necessity to create an effective unitary structure. Such direct contact is not
28 described in the patent. Especially as it pertains to an over-molding process, the plain

1 meaning of the language “mating engagement” has a larger scope than “direct contact.”
2 Certainly had direct contact been deemed a part of the process described in the patent, it
3 would have been simpler to use the word “contact” or “direct contact” rather than
4 “mating engagement” which is and appears intended to be more-encompassing than
5 merely direct contact.

6 In fact, at the February 23 *Markman* hearing, the Court asked Clim-A-Tech if a
7 process that left one hundredth of an inch gap between beveled ends would be a process
8 that would not be protected by Mr. Ebert’s patent. Counsel for Clim-A-Tech recognized
9 that the patent might still cover such a process.

10 Consequently, the patent language does not designate a limiting construction that
11 the beveled terminations be in direct contact with each other. On the other hand,
12 Mr. Ebert’s proposed construction of “reasonable proximity” is too vague, especially
13 considering the claims’ requirement that the ends be close enough to be “molded over” to
14 form a “unitary structure.” ‘212 Patent at 8:56–59. Therefore, the Court construes
15 “mating engagement” as “reasonable proximity sufficient to form an effective unitary
16 structure.”

17 **B. “Juncture”**

18 Plaintiff Clim-A-Tech argues that the Court should construe “juncture” as “a
19 mitered joint or a mitered corner,” and Defendant Ebert argues that the Court should
20 construe it as “corner.” At the February 23 *Markman* hearing, counsel for Mr. Ebert
21 acknowledged that the ‘212 patent consistently refers to beveled ends, and that Mr. Ebert
22 distinguished his patent from prior art by its beveled ends. Counsel for Mr. Ebert
23 subsequently conceded that the Court may construe “juncture” as a mitered corner having
24 beveled ends. Counsel for Mr. Ebert also noted that beveled ends are used to create a
25 miter.

26 Considering the consistent use of “bevel” in the patent claims, the distinction of
27 beveled ends in the prosecution history, and Mr. Ebert’s concessions at the *Markman*
28 hearing, the Court therefore construes “juncture” as “a mitered corner having beveled

1 ends.”

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CONCLUSION

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For the foregoing reasons,

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IT IS HERBY ORDERED that the claims are construed under *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996) as specified:

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a. “mating engagement” is construed as “reasonable proximity sufficient to form an effective unitary structure,” and

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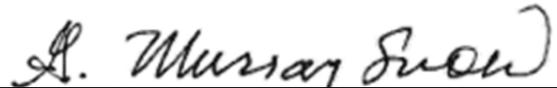
b. “juncture” is construed as “a mitered corner having beveled ends.”

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Dated this 7th day of March, 2018.

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Honorable G. Murray Snow
United States District Judge

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