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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ADVANCED STEEL RECOVERY, LLC,	)	
	)	2:12-cv-01004-GEB-DAD
Plaintiff,	)	
	)	
v.	)	<u>CLAIM CONSTRUCTION ORDER</u>
	)	
X-BODY EQUIPMENT, INC., PALADIN	)	
BRANDS GROUP, INC., and JEWELL	)	
ATTACHMENTS, LLC,	)	
	)	
Defendants.	)	
_____	)	

This order issues following consideration of each party's briefs and argument concerning the meaning of nine claim terms in Plaintiff Advanced Steel Recovery, LLC's ("Plaintiff" or "ASR") U.S. Patent No. 8,061,950 ("the '950 Patent"), which is titled "Container Packer System and Method."

Plaintiff alleges that Defendants infringe "one or more claims of the '950 [P]atent . . . [with their] container packer systems, including the Acculoader container loader." (Complaint ¶¶ 11, 20; ECF No. 1.) Defendants filed answers containing non-infringement and invalidity affirmative defenses, and counterclaims of non-infringement and invalidity of both the '950 Patent and U.S. Patent No. 7,744,330 ("the '330 Patent"), of which the '950 Patent is a continuation. (Def. X-Body Equip., Inc.'s Answer ¶¶ 30-31, 55-62, ECF No. 9; Def. Jewell Attachments, LLC's Answer ¶¶ 30-31, 55-62, ECF No. 16.)

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1 **I. TECHNOLOGY BACKGROUND**

2 The '950 Patent's background section describes the patented  
3 technology as follows: "The present invention relates generally to  
4 handling waste and other bulk materials, and in particular to a system  
5 and method for packing a container with bulk material for transport."  
6 ('950 Patent col. 1:15-18; ECF No. 26-2.) "Heretofore there has not been  
7 available a bulk material handling system or method with the advantages  
8 and features of the present invention, including a container packer for  
9 receiving the material and transferring it to a container or other  
10 vessel for transport." (Id. col. 1:47-51.) The '950 Patent describes its  
11 container packer system as including:

12 a transfer base, which receives a container packer  
13 adapted for movement longitudinally between  
14 retracted and extended positions with respect to  
15 the transfer base. The transfer base includes a  
16 power subsystem with a motor or engine driving an  
17 hydraulic pump for powering hydraulic  
18 piston-and-cylinder units of the system, including  
19 a container packer piston-and-cylinder unit for  
20 hydraulically extending and retracting the  
21 container packer. The container packer generally  
22 encloses an interior adapted for receiving bulk  
23 material for transfer to a transport container,  
24 which can comprise a standard shipping container, a  
25 trailer or some other bulk material receptacle. The  
26 container packer includes a push blade assembly  
27 longitudinally movably mounted in its interior and  
28 actuated by a push blade piston-and-cylinder unit.

21 (Id. col. 1:55-2:3.) The '950 Patent describes its container packer  
22 method as follows:

23 [A] container packer method includes the steps of  
24 loading the interior of the container packer with  
25 bulk material in its retracted position on the  
26 transfer base, locating a transport container in  
27 alignment and behind the transfer base,  
28 hydraulically inserting part of the container  
packer into the transport container, hydraulically  
emptying the container packer of bulk material into  
the transport container with the push blade  
assembly, retracting the push blade assembly within

1 the container packer and extracting the container  
2 packer onto the transfer base.

3 (Id. col. 2:4-13.)

## 4 **II. LEGAL STANDARD**

5 "It is a 'bedrock principle' of patent law that 'the claims of  
6 a patent define the invention to which the patentee is entitled the  
7 right to exclude.'" Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed.  
8 Cir. 2005) (en banc) (quoting Innova/Pure Water, Inc. v. Safari Water  
9 Filtration Sys., Inc., 381 F.3d 1111, 1115 (Fed. Cir. 2004)). "There is  
10 a heavy presumption that claim terms are to be given their ordinary and  
11 customary meaning." Aventis Pharma. Inc. v. Amino Chems. Ltd., 715 F.3d  
12 1363, 1373 (Fed. Cir. 2013) (citing Phillips, 415 F.3d at 1312-13;  
13 Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir.  
14 1996)).

15 Claims, however, must be construed in light of the  
16 appropriate context in which the claim term is  
17 used. The written description and other parts of  
18 the specification, for example, may shed contextual  
19 light on the plain and ordinary meaning; however,  
20 they cannot be used to narrow a claim term to  
21 deviate from the plain and ordinary meaning unless  
22 the inventor acted as his own lexicographer or  
23 intentionally disclaimed or disavowed claim scope.  
24 The prosecution history too, as part of the  
25 intrinsic record, has an important role in claim  
26 construction by supplying context to the claim  
27 language. While the prosecution history lacks the  
28 clarity of the specification and thus is less  
useful for claim construction purposes, it still  
provides evidence of how the inventor intended the  
term to be construed.

29 Id. (citations omitted) (internal quotation marks omitted).

30 "We begin our claim construction analysis . . . with the words  
31 of the claim. The claim language defines the bounds of claim scope."  
32 Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1324 (Fed. Cir.  
33 2002). "[T]he ordinary meaning must be determined from the standpoint of  
34 a person of ordinary skill in the relevant art." Id. at 1325. "A court

1 construing a patent claim seeks to accord a claim the meaning it would  
2 have to a person of ordinary skill in the art at the time of the  
3 invention." Innova/Pure Water, Inc., 381 F.3d at 1116.

4  
5 The person of ordinary skill is a hypothetical  
6 person who is presumed to be aware of all the  
7 pertinent prior art. The actual inventor's skill  
8 is not determinative. Factors that may be  
9 considered in determining level of skill include:  
10 type of problems encountered in art; prior art  
11 solutions to those problems; rapidity with which  
12 innovations are made; sophistication of the  
13 technology; and educational level of active workers  
14 in the field. Not all such factors may be present  
15 in every case, and one or more of them may  
16 predominate.

17  
18 Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc., 807 F.2d 955,  
19 962-63 (Fed. Cir. 1986) (footnote omitted); see also Helifix Ltd. v.  
20 Blok-Lok, Ltd., 208 F.3d 1339, 1347 (Fed. Cir. 2000) (stating when  
21 fashioning the hypothetical construct of a person of ordinary skill in  
22 the art a court should consider, inter alia, "the educational level of  
23 the inventor; the type of problems encountered in the art; . . . the  
24 sophistication of the technology; and the educational level of workers  
25 in the field"). "Such person is deemed to read the words used in the  
26 patent documents with an understanding of their meaning in the field,  
27 and to have knowledge of any special meaning and usage in the field."  
28 Multiform Desiccants, Inc. v. Medzam Ltd., 133 F.3d 1473, 1477 (Fed.  
Cir. 1998). "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.

29 "In construing a claim term, . . . [i]f the claim term has a  
30 plain and ordinary meaning, [the] inquiry ends." Power Integrations,  
31 Inc. v. Fairchild Semiconductor Int'l, Inc., 711 F.3d 1348, 1361 (Fed.  
32 Cir. 2013) (citing Vitronics Corp., 90 F.3d at 1582). "In some cases,

1 the ordinary meaning of claim language as understood by a person of  
2 skill in the art may be readily apparent even to lay judges, and claim  
3 construction in such cases involves little more than the application of  
4 the widely accepted meaning of commonly understood words.” Phillips, 415  
5 F.3d at 1314 (citing Brown v. 3M, 265 F.3d 1349, 1352 (Fed. Cir. 2001)).  
6 Courts “must consider the word that the inventor actually chose and use  
7 the definitions of that term that are consistent with the written  
8 description,” rather than replacing the inventor’s words with synonyms.  
9 Int’l Rectifier Corp. v. IXYS Corp., 361 F.3d 1363, 1374 (Fed. Cir.  
10 2004) (holding that district court’s claim construction that replaced a  
11 claim term with its synonym was improper).

12 Further, “a sound claim construction need not always purge  
13 every shred of ambiguity. The resolution of some line-drawing  
14 problems-especially easy ones . . . -is properly left to the trier of  
15 fact.” Acumed LLC v. Stryker Corp., 483 F.3d 800, 806 (Fed. Cir. 2007).

16 Rather, claim construction is a matter of  
17 resolution of disputed meanings and technical  
18 scope, to clarify and when necessary to explain  
19 what the patentee covered by the claims, for use in  
20 the determination of infringement. When the parties  
present a fundamental dispute regarding the scope  
of a claim term, it is the court’s duty to resolve  
it.

21 O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co., Ltd., 521 F.3d 1351,  
22 1362 (Fed. Cir. 2008). “[D]etermining the meaning and scope of the  
23 patent claims’ is a question that ‘the court, not the jury, must  
24 resolve’ . . . .” Function Media, L.L.C. v. Google, Inc., 708 F.3d 1310,  
25 1326 (2013) (quoting O2 Micro Int’l Ltd., 521 F.3d at 1360).

26 In this case, “the terminology utilized in the . . . patent  
27 claims seems capable of being understood by a person of average  
28 intelligence [and therefore, t]he configuration of the hypothetical

1 person of ordinary skill in the art [has] less significance." Piersons  
2 v. Quality Archery Designs, Inc., No. 3:06-CV-0408 (TJM/DEP), 2007 WL  
3 4995439, at \*6 (N.D.N.Y. Oct. 22, 2007).

4 "[I]n interpreting [a claim term], the court should look first  
5 to the intrinsic evidence of record, i.e., the patent itself, including  
6 the claims, the specification, and, if in evidence, the prosecution  
7 history." Vitronics Corp., 90 F.3d at 1582. "[T]he claims themselves  
8 provide substantial guidance as to the meaning of particular claim terms  
9 . . . [, and] the context in which a claim term is used in the asserted  
10 claim can be highly instructive." Phillips, 415 F.3d at 1314 (citations  
11 omitted) (citing Vitronics Corp., 90 F.3d at 1582; ACTV, Inc. v. Walt  
12 Disney Co., 346 F.3d 1082, 1088 (Fed. Cir. 2003)). "[T]he specification  
13 is always highly relevant to the claim construction analysis[;] . . . it  
14 is the single best guide to the meaning of a disputed term." Vitronics  
15 Corp., 90 F.3d at 1582.

16  
17 [T]he patent specification is written for a person  
18 of skill in the art, and such a person comes to the  
19 patent with the knowledge of what has come before.  
20 Placed in that context, it is unnecessary to spell  
21 out every detail of the invention in the  
specification; only enough must be included to  
convince a person of skill in the art that the  
inventor possessed the invention and to enable such  
a person to make and use the invention without  
undue experimentation.

22 LizardTech, Inc. v. Earth Resource Mapping, PTY, Inc., 424 F.3d 1336,  
23 1345 (Fed. Cir. 2005) (citation omitted) (citing In re GPAC Inc., 57  
24 F.3d 1573, 1579 (Fed. Cir. 1995)). "While claim terms are understood in  
25 light of the specification, a claim construction must not import  
26 limitations from the specification into the claims." Deere & Co. v. Bush  
27 Hog, LLC, 703 F.3d 1349, 1354 (Fed. Cir. 2012) (citing Phillips, 415  
28 F.3d at 1312-13). "While the prosecution history lacks the clarity of

1 the specification and thus is less useful for claim construction  
2 purposes,' it still provides evidence of how the inventor intended the  
3 term to be construed." Aventis Pharma. Inc., 715 F.3d at 1373 (Fed. Cir.  
4 2013) (citation omitted) (quoting Phillips, 415 F.3d at 1317) (citing  
5 Lemelson v. Gen. Mills, Inc., 968 F.2d 1202, 1206 (Fed. Cir. 1992)).

6 Each disputed claim term appears in both the '950 and '330  
7 Patents. Since "the ['950 Patent is a continuation of the ['330  
8 Patent, and their specifications are almost identical, the court will  
9 interpret shared terms in a consistent manner." Synvasive Corp. v.  
10 Stryker Corp., 478 F. Supp. 2d 1193, 1200 (E.D. Cal. 2007) (citing  
11 Arthur A. Collins, Inc. v. N. Telecom, Ltd., 216 F.3d 1042, 1044 (Fed.  
12 Cir. 2000)); see also Network Appliance, Inc. v. Bluearc Corp., No. C  
13 03-5665 MHP, 2004 WL 5651036, at \*5 (N.D. Cal. Nov. 30, 2004) ("Where  
14 two patents share the same written description, a common construction of  
15 the claims of the patents is 'appropriate.'" (quoting Arthur A. Collins,  
16 Inc., 216 F. 3d at 1044)); NTP, Inc. v. Research in Motion, Ltd., 418  
17 F.3d 1282, 1293 (Fed. Cir. 2005) (holding that when a "patent[] . . .  
18 derive[s] from [a] parent application and share[s] many common terms,  
19 [the court] must interpret the claims consistently across all asserted  
20 patents") (citing Microsoft Corp. v. Multi-Tech Sys., Inc., 357 F.3d  
21 1340, 1350 (Fed. Cir. 2004); Laitram Corp. v. Morehouse Indus., Inc.,  
22 143 F.3d 1456, 1460 & n.2 (Fed. Cir. 1998)).

### 23 **III. DISCUSSION**

24 The parties dispute the meaning of nine claim terms. The  
25 parties have agreed on a construction for "transport container" as  
26 follows: "the container for moving material from one geographic location  
27 to another," and this construction is adopted.

1 Plaintiff argues that each disputed term has a "plain and  
2 ordinary meaning" and needs no construction since each term is  
3 "unambiguous." (Pl.'s Opening Brief 1:24-25, 1:17-18.) Plaintiff further  
4 argues that when "claim terms, in the context of the claim as a whole,  
5 are clear and do not have special, technical meaning, courts need not  
6 construe them." (Id. 7:11-13 (citing Brown v. 3M, 265 F.3d 1349, 1352  
7 (Fed. Cir. 2001).) Plaintiff also contends that "[m]any of Defendants'  
8 proposed constructions import new limitations . . . while other  
9 constructions merely replace unambiguous claim language with different  
10 words to change the scope of the claims." (Id. 1:12-15.) Plaintiff also  
11 argues that "[w]hile the '950 [P]atent describes one embodiment of the  
12 invention, it expressly states that the specific embodiment is not  
13 intended to be limiting but rather is a basis for teaching the patented  
14 invention to one of ordinary skill in the art." (Id. 5:12-14 (citing  
15 '950 Patent cols. 2:51-59, 4:55-59; Liebel-Flarsheim Co. v. Medrad,  
16 Inc., 358 F.3d 898, 906 (Fed. Cir. 2004)).) The referenced language in  
17 the '950 Patent states:

18 As required, detailed embodiments of the present  
19 invention are disclosed herein; however, it is to  
20 be understood that the disclosed embodiments are  
21 merely exemplary of the invention, which may be  
22 embodied in various forms. Therefore, specific  
23 structural and functional details disclosed herein  
are not to be interpreted as limiting, but merely  
as a basis for the claims and as a representative  
basis for teaching one skilled in the art to  
variously employ the present invention in virtually  
any appropriately detailed structure.

24 ('950 Patent col. 2:51-59; see also id. col. 4:55-59 (stating materially  
25 similar language).)

26 Defendants propose constructions for seven of the disputed  
27 terms, each premised on intrinsic and extrinsic evidence. In support of  
28 their constructions, Defendants rely on a declaration from William J.



Maul, their expert witness, (Decl. of William J. Maul in Supp. of Defs.' Opening Brief ("Maul Decl."), ECF No. 32-5), and dictionary definitions. (Decl. of Robert Harkins, Exs. 5-8, ECF Nos. 32-6, 32-7, 32-8, 32-9.)

**A. Proposed Constructions**

Each party's proposed construction of the seven disputed claim terms, and support therefor, follows.

**1) "Container Packer Guide"**

<b>Claim Language (Disputed Term in Bold) ['950 Pat. Claims Implicated]</b>	<b>Pl.'s Proposed Construction &amp; Evidence in Support</b>	<b>Def's.' Proposed Construction &amp; Evidence in Support</b>
container packer guide  Exemplary Claim Language: A transfer base including proximate and distal ends and a <b>container packer guide</b>  said container packer being movable longitudinally along said <b>container packer guide</b> between a retracted position on said transfer base and an extended position extending at least partially from said transfer base distal end  [1, 9]	Plain and ordinary meaning.  '950 patent: Abstract; 1:55-2:15; 3:6-39; 4:14-46; Figs. 1-10 & discussion thereof.  '330 Patent: Abstract; 1:46-2:4; 2:66-3:26; 3:63-4:29; Figs. 1-10 & discussion thereof.  If Court is inclined to construe the phrase, Pl. suggests "a structure for guiding the container packer"	A pair of vertical structures adjacent to the outside of the container packer sidewalls and [sic] guides the container packer into the transport container.  '330 Patent, Fig. 10 no. 18.  '950 Patent, Fig. 10 no. 18.  '330 File Wrapper, Amendment and Request for Reconsideration After Non-Final Rejection, 9/10/2009, p.2 ("A container packer guide 19 is mounted on the transfer base and acts to guide the container packer 6 along the longitudinal path of the transfer base.").  '330 File Wrapper, Applicant Argument/Remarks Made in an Amendment, 9/10/2009, Fig. 10 no. 19 ("#19 refers to the container packer guide located on the transfer base.").  '330 File Wrapper, Amendment Submitted/Entered, 03/23/2010, p. 2 (reference to element 19, the container packer guide, was deleted in the specification and figures).  Maul Decl., ¶ 6.

Plaintiff argues that

1 Defendants' proposed construction attempts to place  
2 very specific limitations on the "container packer  
3 guide," requiring that it (1) consist of a "pair  
4 . . . of structures"; (2) that the structures be  
5 "vertical"; (3) that they be adjacent to the  
6 outside of the container packer sidewalls; and (4)  
7 that they guide the container packer not only  
8 between a retracted and extended position but also  
9 "into the transport container." These added  
10 limitations are found nowhere in the claims and are  
11 not supported by the specification or the  
12 prosecution history, and accordingly should be  
13 rejected.

14 (Pl.'s Opening Brief 8:25-9:2.) Plaintiff also argues that "[t]he  
15 particular aspects of Figure 10" on which Defendants rely in support of  
16 their construction argument "cannot define the full contours of the  
17 claims of the patent as a whole" since the "figures depict embodiments  
18 in [a] patent, but are not meant to constitute limitations on the scope  
19 of the claims." (Pl.'s Responsive Claim Construction Brief ("Pl.'s  
20 Responsive Brief") 3:19-20, 3:23-24 (citing Gart, 254 F.3d at 1342;  
21 Howmedica Osteonics Corp. v. Wright Med. Tech., Inc., 540 F.3d 1337,  
22 1345 (Fed. Cir. 2008)), ECF No. 38.)

23 Plaintiff further argued at the hearing that this claim term  
24 need not be construed since the word "guide" provides enough information  
25 for a person having ordinary skill in the art to know where the  
26 container packer guide is, specifically, that it is on the transfer  
27 base, as well as what the container packer guide does, specifically,  
28 that it helps guide the container packer longitudinally along the  
transfer base between retracted and extended positions. Plaintiff  
further argued that the specification need not contain every detail,  
that the claim terms of the '330 and '950 Patents must be construed  
consistently, and that the following language from claim 1 of the '330  
Patent supports its argument against Defendants' proposed construction:  
"a transfer base including proximate and distal ends and a container

1 packer guide, said transfer base including a floor, and said container  
2 packer guide comprising said transfer base floor." ('330 Patent col.  
3 4:46-49.)

4 Defendants argue that Plaintiff's construction is barred since  
5 the applicant's "attempt to modify the patent disclosure" was "rejected  
6 as new matter, constitut[ing] prosecution history estoppel," and  
7 Plaintiff's proposed plain and ordinary meaning for this claim term  
8 "encompass[es] the rejected matter." (Defs.' Responsive Brief 4:13-15  
9 (citing Austl. Vision Servs. Pty. Ltd. v. Dioptics Med. Prods., Inc., 29  
10 F. Supp. 2d 1152, 1158 (C.D. Cal. 1998)).) Specifically, Defendants  
11 contend that after the applicant removed references to element 19 from  
12 the patent application, "the claim term [was] entirely without support  
13 in the patent" unless element 18 (transfer base sidewalls) could serve  
14 as the container packer guide. (Defs.' Responsive Brief 3:1.) However,  
15 this argument is not supported by the language quoted by Plaintiff from  
16 claim 1 of the '330 Patent, which states "said container packer guide  
17 comprising said transfer base floor," thereby indicating that the  
18 container packer guide can be (and must include) the transfer base  
19 floor.

20 At the hearing, Defendants cited Baldwin Graphic Systems, Inc.  
21 v. Siebert, Inc., 512 F.3d 1338, 1344 (Fed. Cir. 2008), in support of  
22 their position that the applicant surrendered a broader scope of  
23 "container packer guide" during patent prosecution. Plaintiff rejoined  
24 that the Baldwin prosecution history differs from the instant  
25 prosecution history. Specifically, Plaintiff argued that the Baldwin  
26 applicant had tried to broaden its patent's scope (and was therefore  
27 prevented from claiming the broader scope); in contrast, here, the  
28 applicant did not try to broaden the disclosure by adding element 19,

1 and in fact adding element 19 would, if anything, have narrowed the  
2 disclosure's scope.

3 As an initial matter, although the parties have  
4 labeled their disagreement as one pertaining to  
5 prosecution history estoppel, we note some  
6 ambiguity as to whether the substance of their  
7 arguments . . . in fact concerns . . . prosecution  
8 disclaimer . . . . Prosecution history estoppel  
9 applies as part of an infringement analysis to  
10 prevent a patentee from using the doctrine of  
equivalents to recapture subject matter surrendered  
from the literal scope of a claim during  
prosecution. Prosecution disclaimer, on the other  
hand, affects claim construction and applies where  
an applicant's actions during prosecution  
prospectively narrow the literal scope of an  
otherwise more expansive claim limitation.

11 Trading Techs. Int'l, Inc. v. Open E Cry, LLC, --- F.3d ----, No. 2012-  
12 1583, 2013 WL 4610693, at \*10 (Fed. Cir. 2013) (citations omitted).  
13 "[T]he doctrine of prosecution disclaimer attaches and narrows the  
14 ordinary meaning of the claim congruent with the scope of the  
15 surrender." Omega Eng'g, Inc., 334 F.3d 1314, 1325 (Fed. Cir. 2003).  
16 "When a patentee makes a 'clear and unmistakable disavowal of scope  
17 during prosecution,' a claim's scope may be narrowed under the doctrine  
18 of prosecution disclaimer." Grober v. Mako Prods., Inc., 686 F.3d 1335,  
19 1341 (Fed. Cir. 2012) (quoting Computer Docking Station Corp. v. Dell,  
20 Inc., 519 F.3d 1366, 1374 (Fed. Cir. 2008)).

21 Prosecution disclaimer typically applies when the patent  
22 examiner requires an applicant to include a limitation in a claim to  
23 distinguish the invention from prior art; the applicant may not later  
24 argue for a claim construction consistent with the prior, broader claim  
25 scope. Here, the applicant was instructed to remove language and an  
26 element in a figure from the patent application, not add language (or an  
27 element to a drawing) to the application. (McCracken Decl., Ex. E,  
28 Office Action 12/13/2009, at ¶ 2 ("[T]he newly added element 19 is

1 considered new matter and must be removed from the drawings."); id. ¶ 3  
 2 ("Applicant is required to cancel the new matter in the reply to this  
 3 Office Action.") This removal of element 19 does not constitute a  
 4 "'clear and unmistakable disavowal of [claim] scope'" that would invoke  
 5 the doctrine of prosecution disclaimer. Grober, 686 F.3d at 1341  
 6 (quoting Computer Docking Station Corp., 519 F.3d at 1374). Therefore,  
 7 prosecution disclaimer does not apply.

8 For the stated reasons, Defendants' proposed construction is  
 9 not adopted.<sup>1</sup> Further, the claim term does not require construction.

10 **2) "Distal End with an Opening"**

Claim Language (Disputed Term in Bold) ['950 Pat. Claims Implicated]	Pl.'s Proposed Construction & Evidence in Support	Defs.' Proposed Construction & Evidence in Support
distal end with an opening  Exemplary Claim Language: A container packer including a proximate end, a <b>distal end with an opening,</b>	Plain and ordinary meaning.  '950 Patent: Abstract; cols. 2:53- 61; 3:28- 54; 4:33- 35; Figs. 1-10 & discussion thereof.	A structure that contains a hole, is attached to the opposite side walls and resides opposite the proximate end.  '330 Patent, Fig. 2 no. 32, Fig. 4 no. 32, Fig. 10 no. 32, col. 3:24-25.  '950 Patent, Fig. 2 no. 32, Fig. 4 no. 32, Fig. 10 no. 32, col. 3:32-33.  <b>Distal</b> "situated away from the point of attachment or origin or a central point" Source: distal. Merriam Webster Dictionary. Merriam-Webster, Inc. 2013.

23  
 24 <sup>1</sup> Defendants argued at the hearing that their proposed construction  
 25 could be modified to include the transfer base floor as part of the  
 26 construction of "container packer guide," based on the following  
 27 language quoted by Plaintiff from the '330 Patent: "said transfer base  
 28 including a floor, and said container packer guide comprising said  
 transfer base floor." ('330 Patent col. 4:47-49.) However, adopting this  
 proposed construction would "narrow [the] claim term to deviate from the  
 plain and ordinary meaning" when the inventor has not "intentionally  
 disclaimed or disavowed claim scope." Aventis Pharma., Inc., 715 F.3d at  
 1373.

<p>opposite sidewalls, a floor and an interior</p> <p>[1, 9]</p>	<p>'330 Patent: Abstract; cols. 2:60-64; 3:21-46; 4:16-18; Figs. 1-10 &amp; discussion thereof.</p>	<p><a href="http://www.merriamwebster.com/dictionary/distal">http://www.merriamwebster.com/dictionary/distal</a></p> <p><b>End</b>  "a part or place at or adjacent to an extremity"  Source: end. Dictionary.com.  Unabridged based on the Random House Dictionary. Random House, Inc.  <a href="http://dictionary.reference.com/browse/end">http://dictionary.reference.com/browse/end</a>  "the terminal unit of something spatial that is marked off by units"  Source: end. Merriam Webster Dictionary. Merriam-Webster, Inc. 2013.  <a href="http://www.merriam-webster.com/dictionary/end">http://www.merriam-webster.com/dictionary/end</a></p> <p><b>Opening</b>  "a void in solid matter; a gap, hole, or aperture."  Source: opening. Dictionary.com.  Unabridged based on the Random House Dictionary. Random House, Inc.  <a href="http://dictionary.reference.com/browse/opening">http://dictionary.reference.com/browse/opening</a></p> <p>Maul Decl., ¶ 7.</p>
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Defendants contend they "construe 'distal end' as [a] 'structure'" "as it must be [construed] in order to contain an opening, and the structure is further set forth as 'distal,' that is, opposite the 'proximate end' and adjacent to the opposite side walls." (Defs.' Responsive Brief 5:17, 6:12-14.)<sup>2</sup> The gravamen of Defendants' argument is that a "distal end" must be its own structure and cannot be construed as being part of another structure.

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<sup>2</sup> Defendants also argue that "[t]he distal end is not just simply the 'back opening' (element 35) as [Plaintiff] contends. It actually is not the back opening at all. It is 'back end 36,' which contains back opening 35." (Defs.' Responsive Brief 6:1-2 (quoting '330 Patent col. 3:33-34).) However, Defendants misstate Plaintiff's construction of "distal end." Plaintiff actually states that "distal end with an opening" means "far end with an opening." (Pl.'s Responsive Brief 4:14.) Thus, Plaintiff's meaning of "distal end" is simply "far end," and has no reference to an opening at all.

1 Defendants point to sections of the '950 and '330 Patents as  
2 support for their argument. However, these sections describe the  
3 container packer drive rather than the container packer, and therefore  
4 provide no support for Defendants' proposed construction. (See '330  
5 Patent, Fig. 2 no. 32, Fig. 4 no. 32, Fig. 10 no. 32, col. 3:24-25; '950  
6 Patent, Fig. 2 no. 32, Fig. 4 no. 32, Fig. 10 no. 32, col. 3:32-33.)

7 Plaintiff contends that Defendants' proposed construction "is  
8 inconsistent with the use of 'distal end' elsewhere in the patent  
9 claims, [e.g.,] the transfer base also has proximate and distal ends.'" (Pl.'s Responsive Brief 5:6-8.) Plaintiff further argues that if  
10 Defendants' proposed construction were adopted, "th[e] phrase 'distal  
11 end' would have to be given a different meaning in each location where  
12 it appears in the claims[, which] would be improper." (Id. 5:11-12.)  
13 Plaintiff conveyed at the hearing that "end" more logically refers to a  
14 location than a structure.  
15

16 "[T]he same terms appearing in different claims in the same  
17 patent . . . should have the same meaning 'unless it is clear from the  
18 specification and prosecution history that the terms have different  
19 meanings at different portions of the claims.'" Wilson Sporting Goods  
20 Co. v. Hillerich & Bradsby Co., 442 F.3d 1322, 1328 (Fed. Cir. 2006)  
21 (quoting Fin. Control Sys. Pty, Ltd. v. OAM, Inc., 265 F.3d 1311, 1318  
22 (Fed Cir. 2001)) (citing Phillips, 415 F.3d at 1314). Here, "distal end"  
23 appears in claims referring to the transfer base, ('950 Patent col.  
24 4:62-63 ("a transfer base including proximate and distal ends"); id.  
25 cols. 5:34-35, 5:42-43 ("said transfer base distal end")), which only  
26 has a structure on its proximate end. (See '950 Patent, Figs. 1, 2.)  
27 Descriptions of the container packer and transfer base ends as either  
28 "distal" or "proximate" identify those ends to the reader of the patent

1 based on the orientation of the figures in the patent, and, based on the  
2 intrinsic evidence, are not required to be separate structures.

3 Plaintiff also argued at the hearing that the doctrine of  
4 claim differentiation applies to this claim term, quoting from Phillips:  
5 “[T]he presence of a dependent claim that adds a particular limitation  
6 gives rise to a presumption that the limitation in question is not  
7 present in the independent claim.” Phillips, 415 F.3d at 1315. Plaintiff  
8 further argued that, under the doctrine of claim differentiation, since  
9 claim 4 contains reference to a door, claim 1 cannot contain a door-and  
10 therefore the container packer distal end does not require a structure  
11 to which a door could be attached. Plaintiff also contends that  
12 “Defendants’ proposed construction is predicated upon an importation of  
13 one embodiment into the claim language . . . rely[ing] upon an  
14 embodiment having an overhead door, which opens and closes a back  
15 opening, in order to construct a new claim limitation of a structure  
16 with a hole.” (Pl.’s Responsive Brief 4:18-21.)

17 Here, the ’950 Patent states: “It is to be understood that  
18 while certain embodiments and/or aspects of the invention have been  
19 shown and described, the invention is not limited thereto and  
20 encompasses various other embodiments and aspects.” (’950 Patent col.  
21 4:55-58.) This specifically contradicts the possibility that Plaintiff  
22 “demonstrated a clear intention to limit the claim scope using ‘words or  
23 expressions of manifest exclusion or restriction.’” Liebel-Flarsheim  
24 Co., 358 F.3d at 906 (quoting Teleflex, Inc., 299 F.3d at 1327).

25 The disputed claim term “distal end with an opening” is  
26 readily understood when given its plain and ordinary meaning, and  
27 Defendants’ proposed construction is unsupported since it references  
28



portions of the patent about the container packer drive rather than the container packer. Therefore, this claim term need not be construed.

**3) "Interior"**

Claim Language (Disputed Term in Bold) ['950 Pat. Claims Implicated]	Pl.'s Proposed Construction & Evidence in Support	Defs.' Proposed Construction & Evidence in Support
<p>interior</p> <p>Exemplary Claim Language: A container packer including a proximate end, a distal end with an opening, opposite sidewalls, a floor and an <b>interior</b> [1, 7, 9, 15]</p>	<p>Plain and ordinary meaning.</p> <p>'950 Patent: Abstract; cols. 1:55-2:14; 3:6-9; 3:34-54; 3:63-4:2; 4:14-35; Figs. 1-10 &amp; discussion thereof.</p> <p>'330 Patent: Abstract; cols. 1:46-2:5; 2:66-3:3; 3:26-3:47; 3:55-4:18; Figs. 1-10 &amp; discussion thereof.</p>	<p>The space defined by the proximate end, distal end, opposite sidewalls and floor for holding bulk material in the container packer.</p> <p>'330 Patent, Fig. 5 no. 46, col. 3:46-50.</p> <p>'950 Patent, Fig. 5 no. 46, col. 3:54-68.</p> <p><b>Interior</b>          "the internal or inner part; inside"          Source: interior. Dictionary.com. Unabridged based on the Random House Dictionary. Random House, Inc. <a href="http://dictionary.reference.com/browse/interior">http://dictionary.reference.com/browse/interior</a>          "a part, surface, or region that is inside or on the inside"          Source: interior. Dictionary.com. Collins English Dictionary - Complete &amp; Unabridged 10th Edition. Harper Collins Publishers. <a href="http://dictionary.reference.com/browse/interior">http://dictionary.reference.com/browse/interior</a></p> <p>Maul Decl., ¶ 10.</p>

Defendants argue that their proposed construction "makes it clear that the interior is not some additional or other space, but is the space that is bounded by the four sides and the floor for the purpose set out in the patent, which is to hold bulk material." (Defs.' Opening Brief 12:1-3.) Plaintiff rejoins that "Defendants' . . . motive for [this] non-infringement-based construction [is] to require that the only structure that can have an 'interior' is one that has four walls.'" (Pl.'s Responsive Brief 6:16-17 (citing Defs.' Opening Brief at 12).)

1 Plaintiff further argued at the hearing that an interior "need not be  
2 completely closed."

3 The Federal Circuit has upheld the district court's decision  
4 to decline to construe a claim term including the word "interior" in a  
5 system patent. E.g., Aero Prods. Int'l, Inc. v. Intex Recreation Corp.,  
6 466 F.3d 1000, 1011 n.5 (Fed. Cir. 2006) ("We see no error in the  
7 district court's construction of the term passageway ('a way that allows  
8 a passage of air to and from the interior of the bed').").

9 Here, the disputed claim term "interior" does not require  
10 construction and therefore need not be construed. See generally Aero  
11 Prods. Int'l, Inc., 466 F.3d at 1011 n.5.

12 **4) "Said Container Packer Being Movable . . ."**

Claim Language (Disputed Term in Bold) ['950 Pat. Claims Implicated]	Pl.'s Proposed Construction & Evidence in Support	Defs.' Proposed Construction & Evidence in Support
<p>17 <b>said</b> 18 <b>container</b> 19 <b>packer</b> 20 <b>being</b> 21 <b>movable...</b> 22 <b>between a</b> 23 <b>retracted</b> 24 <b>position</b> 25 <b>on said</b> 26 <b>transfer</b> 27 <b>base and</b> 28 <b>an</b> <b>extended</b> <b>position</b> <b>extending</b> <b>at least</b> <b>partially</b> <b>from said</b> <b>transfer</b> <b>base</b> <b>distal end</b></p> <p>[1, 9]</p>	<p>Plain and ordinary meaning.</p> <p>'950 Patent: Abstract; cols. 1:55-2:14; 3:6-9; 3:34-54; 3:63-4:2; 4:9-46; Figs. 1-10 &amp; discussion thereof.</p> <p>'330 Patent: Abstract; cols. 1:46-2:5; 2:66-3:3; 3:26-3:47; 3:49-4:29; Figs. 1-10 &amp;</p>	<p>The container packer moves between a position that is not extended at least partially beyond the transfer base distal end and a position that is extended at least partially from the transfer base distal end.</p> <p>'330 Patent, Figs. 1 &amp; 2, col. 1:46-50, col. 4:7-10, 4:25-27.</p> <p>'950 Patent, Figs. 1 &amp; 2, col. 1:55-59, col. 4:24-27, 4:42-44.</p> <p><b>Retract</b> "to draw back within itself or oneself, fold up, or the like, or to be capable of doing this: The blade retracts." Source: retract. Dictionary.com. Unabridged based on the Random House Dictionary. Random House, Inc. <a href="http://dictionary.reference.com/browse/retract">http://dictionary.reference.com/browse/retract</a> "to draw or pull back"</p>

	discussion thereof.	Source: retract. Merriam Webster Dictionary. Merriam-Webster, Inc. 2013. <a href="http://www.merriamwebster.com/dictionary/retract">http://www.merriamwebster.com/dictionary/retract</a>  Maul Decl., ¶ 11.
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Plaintiff argues that Defendants' construction is an "attempt to rewrite the claims in order to add a limitation to 'retracted position' that is not contained in the patent, namely that the retracted position must not extend past the distal end of the transfer base." (Pl.'s Opening Brief 15:1-3.) Plaintiff further contends that "[e]ven though the retracted and extended positions referred to in the claim language are distinct," the key distinction is not that the two positions are mutually exclusive regarding extension past the transfer base distal end, but that "the extended position extends *further* beyond the transfer base distal end" than the retracted position. (Pl.'s Responsive Brief 7:14-15, 7:17-18.)

Defendants contend that since the definition of "extended position" is "'extending at least partially from said transfer base distal end,' the retracted position must necessarily be the position that is not at least partially extended from the transfer base distal end"; "that is, the container packer [could] not be in the retracted position and extended position simultaneously." (*Id.* 12:21-23 (quoting '950 Patent), 12:18-20.)

When "the 'ordinary' meaning of a term does not resolve the parties' dispute, . . . claim construction requires the court to determine what claim scope is appropriate in the context of the patents-in-suit." *Q2 Micro Int'l Ltd.*, 521 F.3d at 1361. Here, the parties' dispute, narrowly defined, is whether when the container packer is in a retracted position, it must be entirely on the transfer base; Defendants

1 argue it must be, while Plaintiff argues that it can be partially  
2 extended beyond the transfer base distal end and still within the  
3 claim's scope. Declining to construe this claim term could result in the  
4 parties arguing the definition of "on" to the jurors at trial.  
5 Therefore, the claim term must be construed to clarify the scope of "on"  
6 within the claim term.

7           Although Figure 1 of the '950 Patent shows the container  
8 packer fully on the transfer base (i.e., not partially extended over  
9 it), the patent expressly states that "embodiments and/or aspects of the  
10 invention [that] have been shown and described[ do] not limit[ the  
11 patent] thereto." ('950 Patent col. 4:55-57; see '950 Patent, Fig. 1.)  
12 At the hearing, Plaintiff provided drawings of an alternate embodiment  
13 of the container packer in which the container packer extends beyond the  
14 transfer base distal end when the container packer is in a retracted  
15 position. (Pl.'s Claim Construction Hearing Presentation, at 45.) The  
16 claim language defines the bounds of claim scope." Teleflex, Inc. v.  
17 Ficosa N. Am. Corp., 299 F.3d 1313, 1324 (Fed. Cir. 2002). This  
18 alternate embodiment was within the scope of the claim.

19           Further, the patents contain no reference to the size of the  
20 transfer base relative to the size of the container packer. Defendants'  
21 proposed construction requires that the transfer base be at least as  
22 long as the container packer (since the container packer cannot extend  
23 beyond the container packer distal end when it is in its retracted  
24 position). To read language into the claim term that dictates the size  
25 of the transfer base relative to the size of the container packer  
26 without evidence of an "intentional[] disclaim[er] or disavow[al of]  
27 claim scope"-none of which has been provided-would improperly "narrow  
28 [the] claim term." Aventis Pharma. Inc., 715 F.3d at 1373.

Defendants' proposed construction is not adopted. However, since the parties dispute the scope of the word "on" in this claim term, the following claim construction is adopted: "said container packer being movable . . . between a retracted position at least partially on said transfer base and an extended position extending at least partially from said transfer base distal end."

**5) "Discharging Bulk Material Through Said Container Packer Distal End Opening"**

Claim Language (Disputed Term in Bold) ['950 Pat. Claims Implicated]	Pl.'s Proposed Construction & Evidence in Support	Def.' Proposed Construction & Evidence in Support
discharging bulk material through said container packer distal end opening  Exemplary Claim Language: a material transfer assembly mounted in said container packer interior and adapted for <b>discharging bulk material through said container packer distal end opening</b>  [1, 9]	Plain and ordinary meaning.  '950 Patent: Abstract; cols. 1:55- 2:14; 3:6- 9; 3:34-54; 3:63-4:2; 4:14-35; Figs. 1-10 & discussion thereof.  '330 Patent: Abstract; cols. 1:46- 2:5; 2:66- 3:3; 3:26- 3:47; 3:55- 4:19; Figs. 1-10 & discussion thereof.	Moving bulk material out of the container packer through the opening in the container packer distal end.  '330 Patent, Fig. 8, cols. 3:39-46, 4:10-13, 4:16-18.  '950 Patent, Fig. 8, cols. 3:46-54, 4:27-30, 4:33-35.  <b>Discharge</b> "to remove (the cargo) from (a boat, etc); unload" Source: discharge. Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition. Harper Collins Publishers. <a href="http://dictionary.reference.com/browse/dischARGE">http://dictionary.reference.com/browse/dischARGE</a> "to unload or empty (contents)" Source: discharge. American Heritage Dictionary of the English Language, Fifth Edition. Houghton Mifflin Harcourt Publishing Company. <a href="http://www.ahdictionary.com/word/search.html?q=discharge">http://www.ahdictionary.com/word/search.html?q=discharge</a>  Maul Decl., ¶ 12.

Plaintiff argues that "Defendants provide no reason why 'discharge' needs special interpretation for the jury by the Court or why it is necessary to substitute Defendants' language for the

1 patentee's," (Pl.'s Responsive Brief 8:20-21), and "[t]he term does not  
 2 need any . . . construction." (Pl.'s Opening Brief 16:5.) At the  
 3 hearing, Plaintiff contended that Defendants' proposed construction  
 4 would rearrange the claim term language and add ambiguity to the claim  
 5 term.

6 Defendants counter that their "proposal assists the jury to  
 7 understand what the claim requires, that is, that the bulk material is  
 8 moved out of the container loader and into the transport container  
 9 through the opening that is in the distal end." (Defs.' Responsive Brief  
 10 10:13-15.) At the hearing, Defendants admitted that the differences  
 11 between "discharging" and "moving out of" were not significant but  
 12 suggested that the latter phrase would be easier for jurors to  
 13 understand.

14 Since Defendants have not shown that their word choice is  
 15 better than "the word that the inventor actually chose," or that the  
 16 plain and ordinary meaning of this claim term is unclear, the claim term  
 17 need not be construed. Int'l Rectifier Corp., 361 F.3d at 1374.

18 **6) "Said Push Blade Assembly Is Adapted for Compacting Bulk Materials  
 19 in Said Container"**

20 Claim Language (Disputed Term in Bold) ['950 Pat. Claims Implicated]	21 Pl.'s Proposed Construction & Evidence in Support	Defs.' Proposed Construction & Evidence in Support
22 said push blade 23 assembly is 24 adapted for 25 compacting 26 bulk material in 27 said container Exemplary Claim Language: 28 said push blade assembly movement sequentially cooperating with	Plain and ordinary meaning. '950 Patent: Abstract; cols. 1:33- 46; 1:55- 2:14; 3:6-9; 3:34-4:46; Figs. 1-10 & discussion thereof.	The push blade assembly presses together bulk material in the container packer. Alternate Construction: "the push blade assembly is adapted so that it presses together bulk material in the container packer" '330 Patent, col. 4:16-20. '950 Patent, col. 4:30-37.

<p>said container packer movement whereby <b>said push blade assembly is adapted for compacting bulk material in said container</b></p> <p>[1, 9]</p>	<p>'330 Patent: Abstract; cols. 1:09-38; 1:46-2:5; 2:66-3:3; 3:26-4:29; Figs. 1-10 &amp; discussion thereof.</p>	<p><b>Compact</b>          "to press together: COMPRESS"          Source: compact. Merriam Webster Dictionary.          Merriam-Webster, Inc. 2013.  <a href="http://www.merriamwebster.com/dictionary/compact">http://www.merriamwebster.com/dictionary/compact</a>          Maul Decl., ¶ 14.</p>
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At the hearing, the Court proposed the following tentative claim construction for the phrase "said container" in this claim term: "the container for moving material from one geographic location to another." Plaintiff did not argue against this construction, and Defendants opposed it.

Defendants argue that "said container" must refer to the "container packer" since "said container packer" appears earlier in the claim. Defendants further contended that the use of "said" provides an antecedent basis for the earlier use of "container packer" in claims 1 and 9. Defendants also argued since the container packer is itself a container its proposed construction is supported.

Plaintiff countered that any reference to compacting in the patent claims has it occurring in the transport container.

Defendants' argument is not supported by the text of claim 9 of the '950 Patent, which states:

activating said material transfer assembly drive, thereby extending said push blade assembly piston-and-cylinder unit, wherein said push blade assembly movement sequentially cooperates with said container packer movement whereby said bulk material is pushed from within said container packer into said transport container, and whereby said bulk material is compacted within said container[.]

('950 Patent col. 7:14-21 (emphasis added).) Thus, claim 9 provides an antecedent of "said transport container" for "said container." Further,

1 this portion of the method in claim 9 corresponds directly to the  
2 portion of the system in claim 1, suggesting that the phrase "said  
3 container" at the end of each clause should have the same meaning. Other  
4 language in the patent supports Plaintiff's argument that material is  
5 compacted in the transport container rather than the container packer;  
6 the written description of the '950 Patent states: "Depending upon the  
7 nature of the bulk material **10**, it may be compacted by the push blade  
8 assembly **50** in the transport container **8**." ('950 Patent col. 4:35-37.)  
9 The '950 Patent contains no reference to compacting occurring within the  
10 container packer.

11 The prosecution history further supports Plaintiff's position  
12 that "said container" refers to the transport container rather than the  
13 container packer. In distinguishing the instant invention from the prior  
14 art during patent prosecution of the '330 Patent, the applicant states:

15 The main difference between the present invention  
16 as claimed presently, and Frankel [prior art  
17 patent], is that the present invention includes a  
18 two-stage hydraulic system that both loads and  
19 compacts bulk material into a transportation  
20 container. . . . The presently claimed invention is  
distinguishable [from Frankel] because it employs a  
two-direction motion system that allows material to  
be pushed away from the loading end of the  
transport container and optionally compact that  
material as the container is being loaded.

21 (Amendment to Accompany RCE and Stmt. of Substance of Mar. 10, 2010  
22 Interview, at 8 (Mar. 23, 2010), Complete Prosecution History, Ex. B, at  
23 p. 34 of 201 (emphases added); ECF No. 42-2.) The '330 Patent was  
24 subsequently granted. (See Notice of Allowance & Fee(s) Due, Complete  
25 Prosecution History, Ex. B, pp. 13-15 of 201.) This argument made to the  
26 patent examiner demonstrates that the applicant differentiated the  
27 instant invention from prior art based on its ability to both load into  
28 and compact within a transport container.



1 Defendants also argued that language in dependent claims 7 and  
 2 15 supports their contention that the patent's purpose is to compact  
 3 within the container packer; they quoted the following language from the  
 4 claims: "the material transfer assembly can move and compact the entire  
 5 volume of bulk material within said container packer assembly with one  
 6 extension of said assembly piston-and-cylinder." ('950 Patent col.  
 7 6:16-19; id. col. 8:30-34.) The gravamen of Defendants' argument is that  
 8 these claims demonstrate that in claims 7 and 15, "the material transfer  
 9 assembly" is "compact[ing] . . . within said container packer," which  
 10 supports their proposed construction.

11 Plaintiff countered that the appropriate interpretation of  
 12 those claims' language is that "the material transfer assembly"  
 13 "compact[s] the entire volume of bulk material [located] within said  
 14 container packer assembly." By inserting the word "located" for clarity,  
 15 Plaintiff demonstrates that "within said container packer assembly"  
 16 modifies "the entire volume of bulk material" rather than "compact."  
 17 Therefore, Defendants' proposed construction is not adopted.

18 However, since the phrase "said container" is more confusing  
 19 than "transport container" in the context of this claim, and since a  
 20 construction for "transport container" has been adopted, the following  
 21 claim construction is adopted for clarity: "said push blade assembly is  
 22 adapted for compacting bulk material in the container for moving  
 23 material from one geographic location to another."

24 **7) "Compact the Entire Volume of Bulk Material Within Said Container**  
 25 **Packer Assembly with One Extension of Said Assembly Piston-and-**  
 26 **Cylinder"**

Claim Language (Disputed Term in Bold) ['950 Pat. Claims Implicated]	Pl.'s Proposed Construction & Evidence in Support	Defs.' Proposed Construction & Evidence in Support

<p>compact the entire volume of bulk material within said container packer assembly with one extension of said assembly piston-and-cylinder.</p> <p>Exemplary Claim Language: The system of claim 1 wherein said push blade is of substantially equal height and width of the container packer interior so that the material transfer assembly can move and <b>compact the entire volume of bulk material within said container packer assembly with one extension of said assembly piston-and-cylinder.</b></p> <p>[7, 15]</p>	<p>Plain and ordinary meaning.</p> <p>'950 Patent: cols. 3:54-66; 4:30-37; Figs. 1-10 &amp; discussion thereof; claims 7, 15.</p> <p>'330 Patent: cols. 3:46-61; 4:13-20; Figs. 1-10 &amp; discussion thereof.</p>	<p>Completely compress the bulk material inside the container packer assembly by moving the piston-and-cylinder into an extended position one time.</p> <p>'330 Patent File Wrapper, Amendment After Final Rejection 02/23/2010, p. 10 ("The Hamill push blade lacks the compaction ability have [sic] because it could not possibly turn the entire load of bulk material located in its storage bay into one bale of material. The blade is too short to compact the entire volume of material, and thus only a small portion of material could be compacted at a time. This is not an issue with the invention as presently claimed. Claim 1, as presently amended, points out that the push blade employed in the present invention fills the entire volume of the container packer and can move the entire volume of bulk material in one full extension of its hydraulic arm.")</p> <p><b>Compact</b> "to press together: COMPRESS" Source: compact. Merriam Webster Dictionary. Merriam-Webster, Inc. 2013. <a href="http://www.merriamwebster.com/dictionary/compact">http://www.merriamwebster.com/dictionary/compact</a></p> <p>Maul Decl., ¶ 17.</p>
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Defendants contend that their "phrase 'completely compress' is just as clear in meaning as the phrase 'compact the entire volume.'" (Defs.' Responsive Brief 12:21-22.) Defendants further argued at the hearing that Plaintiff "incorrectly asserts the bulk material can remain partially uncompressed." Defendants also made a non-infringement-based argument that their accused device does not "completely compress anything."

1 Plaintiff rejoins that "Defendants' proposed construction  
2 . . . essentially adds the word 'completely' to the claim, thus  
3 conflating 'compact the entire volume' with 'entirely compact the  
4 volume.'" (Pl.'s Responsive Brief 10:12-14.) Plaintiff reiterated at the  
5 hearing that "compact the entire volume" does not mean "entirely compact  
6 the volume." Plaintiff further argues that "[b]eing able to compact, or  
7 press, bulk material to some degree based on a single extension of a  
8 push blade does not define the degree to which that bulk material would  
9 have to be compressed." (Pl.'s Responsive Brief 10:17-19.)

10 Defendants relied on the '330 Patent prosecution history to  
11 support their argument. However, the prosecution history supports  
12 Plaintiff's argument. In response to the PTO action of December 23,  
13 2009, the applicant made the following argument to distinguish the  
14 container packer system and method from prior art, specifically the push  
15 blade in the Hamill invention:

16 The Hamill push blade cannot possibly compress  
17 and move the entire volume of material located in  
18 the material storage bay in one movement of the  
19 push blade's hydraulic arm. The push blade employed  
20 by Hamill does not fill the entire volume of the  
21 material storage bay, and thus would have to move  
22 back and forth several times to compact or unload  
23 the entire load of bulk material.

24 The Hamill push blade lacks the compaction  
25 ability have [sic] because it could not possibly  
26 turn the entire load of bulk material located in  
27 its storage bay into one bale of material. The  
28 blade is too short to compact the entire volume of  
material, and thus only a small portion of material  
could be compacted at a time. This is not an issue  
with the invention as presently claimed. Claim 1,  
as presently amended, points out that the push  
blade employed in the present invention fills the  
entire volume of the container packer and can move  
the entire volume of bulk material in one full  
extension of its hydraulic arm.

(Appl. No. 12/138,973; Amdt. dated Mar. 23, 2010; Reply to Office action  
of Dec. 23, 2009, at 9; ECF No. 42-2 (p. 35 of 201).) These arguments do

1 not distinguish the prior art of the Hamill push blade based on the  
2 degree to which the invention's push blade compacts the bulk material.  
3 Instead, to distinguish this invention from the Hamill push blade, which  
4 is described as "too short to compact the entire volume of material" and  
5 as "not fill[ing] the entire volume of the material storage bay," the  
6 applicant argued that this invention's push blade "fills the entire  
7 volume of the container packer and can move the entire volume of bulk  
8 material in one full extension of its hydraulic arm." (Id.) This  
9 supports Plaintiff's argument that the claim term "does not define the  
10 degree to which th[e] bulk material would have to be compressed." (Pl.'s  
11 Responsive Brief 10:18-19.)

12 Here, Defendants' proposed construction conflates "compact the  
13 entire volume" with "entirely compact the volume," which changes the  
14 term's meaning, and which the intrinsic evidence does not support.  
15 Therefore, Defendants' proposed construction is not adopted, and the  
16 claim term need not be construed.

## 17 **B. Indefiniteness**

18 Defendants argue that the two remaining disputed terms fail  
19 for indefiniteness; Plaintiff rejoins that they do not.

20 Defendants argued at the hearing that the inability to  
21 construe a claim term means the term is indefinite, and both  
22 "approximate" and "in proximity to" fail for indefiniteness. Defendants  
23 further contended that without construction both terms "are ripe for  
24 abuse." Plaintiff responds, *inter alia*, quoting from Hearing Components,  
25 Inc. v. Shure Inc.: "A patentee need not define his invention with  
26 mathematical precision in order to comply with the definiteness  
27 requirement." 600 F.3d at 1367. Plaintiff also cited to a number of  
28 cases in which terms of degree were upheld by the Federal Circuit.

1 Defendants rejoined that since every case requires a fact-specific  
2 inquiry, Plaintiff could not rely on the Federal Circuit upholding like  
3 terms in other cases.

4           “The definiteness analysis requires a determination of  
5 ‘whether one skilled in the art would understand the bounds of the claim  
6 when read in light of the specification.’” Kinetic Concepts, Inc. v.  
7 Blue Sky Med. Grp., Inc., 554 F.3d 1010, 1022 (Fed. Cir. 2009) (quoting  
8 Personalized Media Commc’ns, LLC v. Int’l Trade Comm’n, 161 F.3d 696,  
9 705 (Fed. Cir. 1998)). “A claim is indefinite only when it is ‘not  
10 amenable to construction’ or ‘insolubly ambiguous.’” Biosig Instruments,  
11 Inc. v. Nautilus, Inc., 715 F.3d 891, 897 (Fed. Cir. 2013) (quoting  
12 Datamize, LLC v. Plumtree Software, Inc., 417 F.3d 1342, 1347 (Fed. Cir.  
13 2005)).

14           Plaintiff argued at the hearing that the Maul Declaration did  
15 not support Defendants’ indefiniteness argument since it provides only  
16 conclusory statements. Defendants rejoined that the Maul Declaration  
17 “explains why” the terms fail for indefiniteness. Defendants relied on  
18 Martek Biosciences Corp. v. Nutrinova, Inc., 579 F.3d 1363, 1371 (Fed.  
19 Cir. 2009), quoting from the decision as follows: “When an expert states  
20 why he reaches a conclusion regarding claim construction, it is not  
21 conclusory and can be relied upon.” Defendants further argued that  
22 Plaintiff wants to ignore the Maul Declaration because Plaintiff has no  
23 expert testimony.

24           Maul declares that: “One of skill in the art would not be able  
25 to tell if a device practiced the claim in the patents-at-issue or not  
26 because the term ‘approximate’ is too vague and renders the term  
27 indefinite.” (Maul. Decl. ¶ 16.) However, Maul does not provide any  
28 support for Defendants’ argument that the term “in proximity to” is

indefinite, but instead refers to the term "proximate," (*id.* ¶ 13), for which Defendants do not make an indefiniteness argument.

The parties' respective positions, and support therefor, on whether the terms are indefinite follows.

**1) "In Proximity To"**

Claim Language (Disputed Term in Bold) ['950 Pat. Claims Implicated]	Pl.'s Proposed Construction & Evidence in Support	Def.' Proposed Construction & Evidence in Support
<p>in proximity to Exemplary Claim Language: said material transfer assembly comprising a push blade assembly located in and affixed to said container packer and movable longitudinally between a retracted position <b>in proximity to</b> said container packer proximate end and an extended position <b>in proximity to</b> said container packer distal end; A transport container selectively located <b>in proximity to</b> said transfer base distal end.</p> <p>[1, 9]</p>	<p>Plain and ordinary meaning.</p> <p>'950 Patent: Abstract; cols. 1:55-2:14; 3:6-9; 3:28-4:35; Figs. 1-10 &amp; discussion thereof.</p> <p>'330 Patent: Abstract; cols. 1:39-42; 1:46-2:5; 3:20-4:18; Figs. 1-10 &amp; discussion thereof.</p>	<p>Indefinite - No way of determining whether one structure is sufficiently close to be "in proximity to" another.</p> <p>Proximity "the quality or state of being proximate: closeness" Source: compact. [sic] Merriam Webster Dictionary. Merriam-Webster, Inc. 2013. <a href="http://www.merriamwebster.com/dictionary/proximity">http://www.merriamwebster.com/dictionary/proximity</a></p> <p>Proximate [sic] "very near: close" Source: compact. [sic] Merriam Webster Dictionary. Merriam-Webster, Inc. 2013. <a href="http://www.merriamwebster.com/dictionary/proximate">http://www.merriamwebster.com/dictionary/proximate</a></p> <p>Maul Decl., ¶ 13.</p>

Defendants argue that "there is no way to determine whether one structure is sufficiently close to be 'in proximity to' another structure." (Def.' Responsive Brief 13:5-6.) Defendants also contend that "[a] claim term with no objective anchor defining with certainty the bounds of a claim's scope renders the term indefinite and the claim invalid." (Def.' Opening Brief 13:17-18 (citing *Datamize, LLC*, 417 F.3d at 1350-51).) Defendants contend "that one skilled in the art cannot

1 possibly know how close is close enough to fall within the scope of the  
2 claim," and "it is not possible to tell how close a referenced element  
3 would have to be in order to be 'proximate' [sic]." (Defs.' Opening  
4 Brief 14:12-13, 14:18-19 (citing Maul Decl. ¶ 13).)

5 Plaintiff rejoins that "[w]hen the term is considered in [the]  
6 context [of the patent], it is clear that not only is the term definite,  
7 but its meaning is clear and does not require further construction."  
8 (Pl.'s Responsive Brief 12:1-4.) Plaintiff further argues that "the  
9 phrase 'in proximity to' has been widely accepted by the Federal  
10 Circuit." (Id. 12:18.) Plaintiff also contends that "[b]ecause a  
11 layperson, let alone a person of ordinary skill in the art, can  
12 understand the scope of 'in proximity to' when read in the context of  
13 the claims, the term is not indefinite and should be given its ordinary  
14 meaning." (Pl.'s Opening Brief 21:14-16 (citing Shimano, Inc. v.  
15 Campagnolo S.R.L., No. CV 00-7710 (GAF) (SHx), 2001 WL 36169714 (C.D. Cal.  
16 July 2, 2001); Rosemount, Inc. v. Beckman Instruments, Inc., 727 F.2d  
17 1540, 1546-47 (Fed. Cir. 1984)).)

18 The Federal Circuit has held that terms such as "close to" and  
19 "closely approximate" "are ubiquitous in patent claims. Such usages when  
20 serving reasonably to describe the claimed subject matter to those of  
21 skill in the field of the invention, and to distinguish the claimed  
22 subject matter from the prior art, have been accepted in patent  
23 examination and upheld by the courts." Andrew Corp. v. Gabriel Elecs.,  
24 Inc., 847 F.2d 819, 821 (Fed. Cir. 1988); see also Rosemount, Inc. v.  
25 Beckman Instruments, Inc., 727 F.2d 1540, 1546-47 (Fed. Cir. 1984)  
26 (indicating the context in which the terms are used is considered and  
27 stating that "'close proximity' is as precise as the subject matter  
28 permits"). This supports Plaintiff's arguments that the phrase "in

proximity to" is not indefinite and requires no construction in light of the context in which the terms are used.

For the stated reasons, "in proximity to" neither fails for indefiniteness nor requires construction.

**2) "Said Push Blade Assembly Piston-and-Cylinder Unit Is Attached at the Approximate Center of Said Push Blade Assembly"**

Claim Language (Disputed Term in Bold) ['950 Pat. Claims Implicated]	Pl.'s Proposed Construction & Evidence in Support	Defs.' Proposed Construction & Evidence in Support
<p>said push blade assembly piston-and-cylinder unit is attached at the approximate center of said push blade assembly</p> <p>Exemplary Claim Language: The system of claim 1, wherein said container packer drive piston-and-cylinder unit is attached at a position relative to the base of said container packer, and <b>said push blade assembly piston-and-cylinder unit is attached at the approximate center of said push blade assembly.</b></p> <p>[6, 14]</p>	<p>Plain and ordinary meaning.</p> <p>'950 Patent: Abstract; cols. 1:55-2:14; 3:4-9; 3:28-4:47; Figs. 1-10 &amp; discussion thereof.</p>	<p>"approximate" renders the term indefinite.</p> <p>Alternatively: "push blade assembly piston-and-cylinder unit is attached at a point halfway between the top and bottom edges and halfway between the left and right edges of the push blade assembly"</p> <p>'330 Patent, Fig. 3 no. 56. '950 Patent, Fig. 3 no. 56.</p> <p><b>Center</b> "A point or place that is equally distant from the sides or outer boundaries of something; the middle: the center of a stage." Source: center. American Heritage Dictionary of the English Language, Fifth Edition. Houghton Mifflin Harcourt Publishing Company. <a href="http://www.ahdictionary.com/word/search.html?q=center">http://www.ahdictionary.com/word/search.html?q=center</a> "the midpoint of any line or figure, esp the point within a circle or sphere that is equidistant from any point on the circumference or surface" Source: center. Dictionary.com. Collins English Dictionary - Complete &amp; Unabridged 10th Edition. Harper Collins Publishers. <a href="http://dictionary.reference.com/browse/center">http://dictionary.reference.com/browse/center</a></p> <p>Maul Decl., ¶ 16.</p>



1 Defendants argue that "approximate" "renders the [claim term]  
2 indefinite [since o]ne skilled in the art would not be able to tell if  
3 a device practiced the claims at issue because the term 'approximate' is  
4 vague." (Defs.' Opening Brief 15:21-24.)

5 Plaintiff contends that "there is no requirement that the  
6 claims define the 'approximate center' with mathematical precision."  
7 (Pl.'s Opening Brief 22:10-11 (citing Hearing Components, Inc., 600 F.3d  
8 at 1367).) Plaintiff also argues that "[t]he Federal Circuit recognizes  
9 that 'words of approximation, such as "generally" and "substantially,"  
10 are descriptive terms commonly used in patent claims to avoid strict  
11 numerical boundary to the specified parameter.'" (Id. 22:11-13 (quoting  
12 Anchor Wall Sys., Inc. v. Rockwood Retaining Walls, Inc., 340 F.3d 1298,  
13 1310-11 (Fed. Cir. 2003)).) Plaintiff further contends that "Defendants'  
14 alternative construction . . . is at odds with the claim language  
15 because it reads 'approximate[]' completely out of the claim." (Id.  
16 13:19-21.) Plaintiff also argued at the hearing that the Federal Circuit  
17 decision in Playtex Products, Inc. v. Procter & Gamble Co., 400 F.3d  
18 901, 907 (Fed. Cir. 2005), in which the Federal Circuit upheld the trial  
19 court's decision not to construe the claim term "substantially flattened  
20 surfaces," supports Plaintiff's position that "approximate" need not be  
21 construed.

22 Here, Defendants' proposed construction eliminates the word  
23 "approximate" from the claims entirely. Given that other similar terms  
24 are "ubiquitously used in patent claims," Anchor Wall Sys., Inc., 340  
25 F.3d at 1311, and given the context in which the word is used,  
26 Defendants' proposed construction is overly limiting and is not adopted.  
27 Further, the claim term neither fails for indefiniteness nor requires  
28 construction.

1 **IV. CONCLUSION**

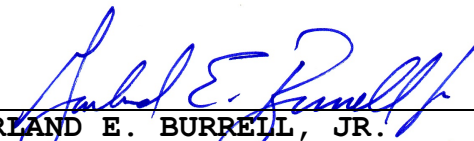
2 For the stated reasons, Defendants' proposed claim  
3 constructions are not adopted. Further, no disputed claim terms fail for  
4 indefiniteness. In addition, the following construction of "transport  
5 container" has been adopted: "a container for moving material from one  
6 geographic location to another," which is adopted.

7 Each of the disputed claim terms addressed in this ruling is  
8 not construed, with the exception of two claim terms, which are  
9 construed as follows:

10 (1) "said push blade assembly is adapted for compacting bulk  
11 material in said container" is construed as "said push blade  
12 assembly is adapted for compacting bulk material in the  
13 container for moving material from one geographic location to  
14 another";

15 (2) "said container packer being movable . . . between a  
16 retracted position on said transfer base and an extended  
17 position extending at least partially from said transfer base  
18 distal end" is construed as "said container packer being  
19 movable . . . between a retracted position at least partially  
20 on said transfer base and an extended position extending at  
21 least partially from said transfer base distal end."

22 **Dated: September 6, 2013**

23   
24 **GARLAND E. BURRELL, JR.**  
25 **Senior United States District Judge**