

United States District Court  
For the Northern District of California

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

STEVEN ROTH, No C-08-02156 VRW  
Plaintiff, ORDER  
v  
LOOS & COMPANY, INC and SEISMIC  
SOLUTIONS, INC,  
Defendants.

This suit focuses on United States Patent No 7,188,809 ("809 Patent") which describes an apparatus designed to stabilize rods employed to hold or support pipes, conduits or other components of a building. Doc #58, Exh A, '809 Patent at 1:15-19. The apparatus can be used for bracing electrical conduits, cable trays and mechanical piping systems in the event of an earthquake. Id at 1:24-27.

On June 16, 2009, plaintiff Steven Roth filed a complaint against defendants Loos & Company, Inc and Seismic Solutions, Inc for infringement of the '809 Patent. Doc #1. After filing a joint claim construction statement (Doc #56), the parties filed claim construction briefs, seeking to have the court construe a number of disputed claim terms from the '809 Patent (Doc ##57, 59). This order addresses those disputed terms.

I

1  
2 Claim construction is an issue of law, and it begins  
3 "with the words of the claim." Nystrom v TREX Co, Inc, 424 F3d  
4 1136, 1142 (Fed Cir 2005), citing Vitronics Corp v Conceptoronic,  
5 Inc, 90 F3d 1576, 1582 (Fed Cir 1996); see also Comark  
6 Communications, Inc v Harris Corp, 156 F3d 1182, 1186 (Fed Cir  
7 1998) ("The appropriate starting point \* \* \* is always with the  
8 language of the asserted claim itself."). Claim terms are  
9 "generally given their ordinary and customary meaning" unless the  
10 patent specification or file history contains a clearly stated  
11 "special definition." Vitronics Corp, 156 F3d at 1582. Moreover,  
12 "the ordinary and customary meaning of a claim term is the meaning  
13 that the term would have to a person of ordinary skill in the art  
14 in question at the time of the invention." Phillips v AWH Corp,  
15 415 F3d 1303, 1313 (Fed Cir 2005). Such a person is deemed to have  
16 consulted not just the claim term at issue, but the "entire patent,  
17 including the specification." Id. The Federal Circuit described  
18 the "person of ordinary skill" inquiry as follows:

19 It is the person of ordinary skill in the field of the  
20 invention through whose eyes the claims are construed. Such  
21 person is deemed to read the words used in the patent  
22 documents with an understanding of their meaning in the field,  
23 and to have knowledge of any special meaning and usage in the  
24 field. The inventor's words that are used to describe the  
25 invention—the inventor's lexicography—must be understood and  
26 interpreted by the court as they would be understood and  
27 interpreted by a person in that field of technology. Thus the  
28 court starts the decisionmaking process by reviewing the same  
resources as would that person, viz, the patent specification  
and the prosecution history.

26 Multiform Desiccants, Inc v Medzam, Ltd, 133 F3d 1473, 1477 (Fed  
27 Cir 1998). See also Medrad, Inc v MRI Devices Corp, 401 F3d 1313,  
28 1319 (Fed Cir 2005) ("We cannot look at the ordinary meaning of the

1 term \* \* \* in a vacuum. Rather, we must look at the ordinary  
2 meaning in the context of the written description and the  
3 prosecution history." ).

4 Relatedly, courts should not rely on extrinsic evidence  
5 in claim construction to contradict the meaning of claims  
6 discernable from examination of the claims, the written description  
7 and the prosecution history. Vitronics, 90 F3d at 1583.  
8 Nevertheless, it is appropriate "for a court to consult trustworthy  
9 extrinsic evidence to ensure that the claim construction it is  
10 tending to from the patent file is not inconsistent with clearly  
11 expressed, plainly apposite and widely held understandings in the  
12 pertinent technical field." Pitney Bowes, Inc v Hewlett-Packard  
13 Co, 182 F3d 1298, 1309 (Fed Cir 1999). Extrinsic evidence  
14 "consists of all evidence external to the patent and prosecution  
15 history, including expert and inventor testimony, dictionaries, and  
16 learned treatises." Phillips, 415 F3d at 1317. All extrinsic  
17 evidence should be evaluated in light of the intrinsic evidence. *Id*  
18 at 1319.

19 With these principles in mind, the court turns to the  
20 construction of the disputed claim language of the '809 Patent.

21  
22 II

23 This order refers to the various surfaces of the  
24 invention using the same numbering as those in the figures in the  
25 '809 patent. The following brief description of the invention is  
26 best read in conjunction with Figures 1, 2, 3, 4 and 5 of  
27 Attachments 1 and 2.

28 //

1           The '809 Patent describes an apparatus consisting of a  
2 hanging rod (10) that is reinforced by affixing a stiffener member  
3 (18) using one or more deformable clamps (20). See Attachment 1,  
4 Fig 1, 2. The clamps are defined by various segments (22, 24, 26).  
5 See Attachment 2, Fig 5. The clamps are secured to the rod and  
6 stiffener member by a bolt (36) and nut (38) which, when tightened,  
7 bring two clamp segments (22, 24) together, causing them (22, 24)  
8 and other segments (26) to deform to the shape of a portion of the  
9 outer surface of the hanger rod (10) and stiffener member (18),  
10 until the two clamp segments (22, 24) are secured together in  
11 locked relation. See Attachment 1, Fig 3. The clamp, when secured  
12 together in locked relation by the nut and bolt, resists relative  
13 movement between the hanging rod (10) and stiffener member (18) and  
14 between the clamp and the member it encircles. See Id.

15           The '809 Patent includes three claims. Doc #58, Exh A,  
16 '809 Patent at 6:6-8:18. There are four disputed terms that  
17 require claim construction all of which are part of the first  
18 claim. Doc #56 at 2. The disputed terms are presented and  
19 underlined below:

20           The invention claimed is:

21           1. In combination:

22           a vertically disposed hanger rod \* \* \* and stiffener apparatus  
23           stabilizing said hanger rod, said stiffener apparatus  
              comprising:

24           a clamp integrally constructed of deformable sheet metal  
25           having deformable first and second clamp segments and a  
26           deformable third clamp segment integral with and located  
              between said first and second segments \* \* \*

27           a threaded bolt extending between said first and second clamp  
              segments \* \* \*

28 //

1 a nut threadedly engaged with said threaded bolt, said  
2 threaded nut and bolt fastening together said first and  
3 second clamp segments \* \* \*

4 an elongated stiffener member \* \* \* having a side thereof in  
5 engagement with a side of said threaded hanger rod and  
6 having said outer peripheral surface thereof disposed in  
7 a space defined by first, second, and third clamp  
8 segments and said threaded bolt along with said threaded  
9 hanger rod, \* \* \*

10 and said nut upon tightening thereof causing interaction  
11 between said clamp and said threaded hanger rod resulting  
12 in deformation of said first and second clamp segments \*  
13 \* \* and form[ing] bends in said first and second clamp  
14 segments causing first and second clamp segments to  
15 partially surround the threaded hanger rod and conform to  
16 the shape of and engage a portion of the outer surface of  
17 said threaded hanger rod in opposition to said elongated  
18 stiffener member to urge the threaded hanger rod and said  
19 elongated stiffener member toward one another and into  
20 direct tight engagement \* \* \*

21 to resist sliding of the clamp on the threaded hanger  
22 rod, said deformation of said first and second clamp  
23 segments further resulting in said threaded hanger rod  
24 being brought into direct tight engagement with both said  
25 first clamp segment and said second segment to resist  
26 sliding of the clamp \* \* \*

27 and also resulting in deformation of said third clamp  
28 segment to cause said third clamp segment to conform to  
the shape of the elongated stiffener member with said  
third clamp segment in direct tight engagement with said  
elongated stiffener, at least one of said first, second  
and third clamp segments being in torqued condition  
resulting from deformation thereof with a clamp segment  
outer edge thereof biting into at least one of said  
elongated stiffener member and said threaded hanger rod  
to resist relative movement between the clamp and  
elongated stiffener member and said threaded hanger rod.

23 Doc #58, Exh A, '809 Patent at 6:6-8:12.

25 "Torqued condition"

26 The first claim of the '809 Patent states that "at least  
27 one of said first, second and third clamp segments being in torqued  
28 condition resulting from deformation thereof \* \* \* ." Doc #58, Exh

1 A, '809 Patent at 8:5-7. Plaintiff proposes that "torqued  
2 condition" be construed as "under the influence of forces that tend  
3 to cause rotation or twisting." Doc #57 at 13. Defendants'  
4 proposed construction is "twisted or rotated so that the inner  
5 surface of the clamp segment is no longer substantially parallel to  
6 the longitudinal axis of the hanger rod and stiffener member." Doc  
7 #59 at 4-5.

8           There are two differences between the parties' proposed  
9 constructions. The first is that while defendants propose to  
10 define "torqued condition" as "twisted or rotated," plaintiff's  
11 proposed definition defines the same term to mean "under the  
12 influence of forces that tend to cause rotation or twisting." As  
13 plaintiff conceded at the hearing, his definition is too broad.  
14 The claim language requires more than a condition of being "under  
15 the influence of forces that tend to cause rotation or twisting."  
16 The rotation or twisting must occur.

17           The '809 Patent specification supports this more narrow  
18 definition, stating: "It has been found that tightening of the nut  
19 38 causes torquing of one or more of the clamp segments, causing an  
20 edge or edges thereof to bite into either or both of the threaded  
21 hanger rod and conduit to further secure the components." Doc #58,  
22 Exh A, '809 Patent at 5:5-9. According to the specification, the  
23 torquing itself causes a clamp segment to bite into another part of  
24 the apparatus. This suggests that "torqued condition" refers to  
25 the state of being twisted or rotated rather than the force that in  
26 turn causes twisting or rotating. The dictionary definition to  
27 which plaintiff cites further confirms a narrower construction.  
28 Under one of the definitions provided by plaintiff, "torqued" means

1 "to twist." See Doc #57 at 14, citing The Oxford English  
2 Dictionary On Compact Disc (Oxford 2d ed). Accordingly, the court  
3 adopts "twisted or rotated" rather than "under the influences of  
4 forces that tend to cause rotation or twisting."

5 The remaining difference between the two constructions is  
6 that defendants include a further restriction: "twisted or rotated  
7 so that the inner surface of the clamp segment is no longer  
8 substantially parallel to the longitudinal axis of the hanger rod  
9 and stiffener member." This added restriction is not contemplated  
10 by the term it purports to construe. "In the absence of an express  
11 intent to impart a novel meaning to claim terms, an inventor's  
12 claim terms take on their ordinary meaning." Teleflex v Ficosa  
13 North America Corp, 299 F3d 1313, 1325 (Fed Cir 2002). The  
14 ordinary meaning of "torqued condition" does not encompass an  
15 altered orientation between two objects such that one is no longer  
16 parallel to the other. Moreover, the claim language does not  
17 mention that the clamp segment was at any time "substantially  
18 parallel to the longitudinal axis of the hanger rod and stiffening  
19 member," so there is no support for importing a limitation into  
20 "torqued condition" that implies an end to that relationship.

21 Accordingly, the court adopts the construction "twisted  
22 or rotated" for the term "torqued condition."

23  
24 "Biting into"

25 The first claim of the '809 Patent goes on to state:  
26 "with a clamp segment outer edge thereof biting into at least one  
27 of said elongated stiffener member and said threaded hanger rod to  
28 resist relative movement between the clamp and elongated stiffener

1 member and said threaded hanger rod." Doc #58, Exh A, '809 Patent  
2 at 8:7-12. Plaintiff proposes that "biting into" be construed as  
3 "an outer edge of a clamp segment (or portion thereof) penetrates  
4 the surface of the stiffener or hanger rod." Doc #59 at 11.  
5 Defendants' proposed construction is "the outer edge of the clamp  
6 segment penetrates and embeds in the surface of the stiffener or  
7 threaded hanger rod." Doc #57 at 15.

8 At the outset, the court notes that the proper  
9 construction of "biting into" need not specify which object is on  
10 the giving or receiving end of the bite, as both parties specify in  
11 their proposed constructions. The claim itself states that "a  
12 clamp segment outer edge" bites into one or both of the "elongated  
13 stiffener member" and the "threaded hanger rod." Accordingly, the  
14 court's construction will merely construe the term "biting into"  
15 and will not adopt plaintiff's proposed language for the thing  
16 doing the biting: "outer edge of a clamp segment (or portion  
17 thereof)."

18 Discarding the surplus language in plaintiff's and  
19 defendants' proposed constructions, both parties agree that "biting  
20 into" requires "penetrating the surface," but defendants add the  
21 further restriction of "embedding in the surface." Defendants  
22 contend that "[i]t cannot be disputed that the '809 Patent teaches  
23 that by 'biting into' the surface of the threaded hanger rod or  
24 stiffener, the outer of the edge of the clamp is able to provide  
25 further resistance to relative movement between the clamp and the  
26 hanger rod or stiffener." Doc #59 at 11. Defendants continue that  
27 in order for the apparatus to achieve this purpose, "biting into"  
28 must require both penetrating and embedding. Doc #59 at 11.



1 Penetrating alone, according to defendants, is insufficient to  
2 convey the meaning of an action that will provide resistance.

3           The court construes "biting into" as "penetrating the  
4 surface of." The ordinary meaning of "biting into" does not  
5 require "embedding in the surface." When one bites into an apple,  
6 one's teeth do not embed themselves into the peel; the teeth merely  
7 penetrate the peel. While defendants correctly posit that the  
8 "biting into" contemplated by this claim language must serve the  
9 purpose of providing further resistance to relative movement, that  
10 restriction is supplied not by the term "biting into," but by the  
11 claim language that follows that term. The claim language itself  
12 states that the "biting into" occurs "to resist relative movement  
13 between the clamp and said elongated stiffener member and said  
14 threaded hanger rod." Doc #58, Exh A, '809 Patent at 8:10-12.  
15 Thus, no further restriction need be imported into the term "biting  
16 into" to ensure that the purpose of the action is to resist  
17 relative movement.

18  
19 "Outer edge"

20           In the first claim, the thing "biting into at least one  
21 of said elongated stiffener member and said threaded hanger rod" is  
22 the "clamp segment outer edge." Doc #58, Exh A, '809 Patent at  
23 8:8-10. The analysis for "outer edge" is best read in conjunction  
24 with the visual images included by plaintiff and defendants in  
25 their joint claim construction statement (Doc #56 at 3), included  
26 here as attachment 2, figures 4 and 5.

27           Plaintiff's proposed definition is "the narrow surfaces  
28 of the clamp (or portions thereof) that run perpendicular to the

1 longitudinal axis of the hanger rod 10." Doc #57 at 7; see  
2 Attachment 1, Fig 4. Defendants, on the other hand, propose: "line  
3 where the wide outside surface of the clamp that runs parallel to  
4 the longitudinal axis of the hanger rod and stiffener meets the  
5 narrow surface of the clamp that runs perpendicular to the  
6 longitudinal axis of the hanger rod and stiffener." Doc #59 at 12-  
7 13; see Attachment 1, Fig 5.

8 Defendants' main argument in support of their  
9 construction is that if the word "outer" in the term "clamp segment  
10 outer edge" has any meaning, the clamp segment must also have an  
11 inner edge. Doc #59 at 12-13. Defendants' construction, as shown  
12 in attachment 2, figure 5, gives the word "outer" meaning by  
13 distinguishing between an outer edge and an inner edge. Defendants  
14 argue that the word "outer" is meaningless in plaintiff's proposed  
15 definition because there is no inner edge from which an outer edge  
16 must be distinguished. See Attachment 2, Fig 4.

17 The main argument against defendants' proposed  
18 construction is that it would render the patent inoperable. The  
19 claim calls for the "clamp segment outer edge" to bite into the  
20 hanging rod (10) or the stiffener member (18). See Attachment 1,  
21 Fig 3. The operation of the patent depicted in the accompanying  
22 figures and the claim language calls for tight engagement of the  
23 clamp segments and both the hanging rod and stiffener member, but  
24 at no time is defendants' version of the "outer edge" ever in  
25 contact with the hanging rod or stiffener member. See Attachment  
26 1, Fig 2, 3; Attachment 2, Fig 5.

27 Defendants do not dispute that their proposed  
28 construction would render the patent inoperable, but they contend

1 that such a consideration is irrelevant. Defendants cite to Chef  
2 America, Inc v Lamb-Weston, Inc, 358 F3d 1371 (Fed Cir 2004) for  
3 the proposition that "a nonsensical result does not require the  
4 court to redraft the claims of the patent. Rather, where \* \* \*  
5 claims are susceptible to only one reasonable interpretation and  
6 that interpretation results in a nonsensical construction of the  
7 claim as a whole, the claim must be invalidated." Chef America,  
8 358 F3d at 1374.

9           The problem with defendants' argument is that the term  
10 "outer edge" is not subject to only one reasonable interpretation.  
11 Dictionary definitions confirm that an "edge" can ordinarily refer  
12 to either a line between two surfaces, as defendants' submitted  
13 definition suggests, or a thin surface or side of an object,  
14 consistent with plaintiff's proposed construction. See The Concise  
15 Oxford Dictionary (Oxford 10th ed 2002): "edge \* \* \* 4 the line  
16 along which two surfaces of a solid meet." Doc #60, Exh 7 at 4;  
17 Webster's Third New International Dictionary (Merriam-Webster 1981)  
18 ("edge: \* \* \* 5 \* \* \* the relatively thin surface or side of any  
19 object bounded by plane surfaces.").

20           Thus, defendants' only remaining argument that  
21 plaintiff's proposed construction is unreasonable is that plaintiff  
22 does not account for an inner edge to justify the use of the word  
23 "outer." But nowhere in the patent is there any mention of an  
24 inner edge. Outer may reasonably refer to the outside boundary of  
25 the clamp segment, away from the center of the clamp segment.  
26 Defendants argue that such an explanation is faulty because the  
27 center of the clamp must be the inner surface, as if the clamp were  
28 a cross-section of a shopping bag where the inside is the center.

1 Defendants' argument fails, however, because the first claim refers  
2 not to the outer edge of the clamp, but to the outer edge of the  
3 clamp segment. Doc #58, Exh A, '809 Patent at 8:8-10. Each clamp  
4 segment is rectangular in shape, and so outer may reasonably be  
5 interpreted to explain that the referenced edge is the thin surface  
6 at the boundary and away from the center point of each rectangular  
7 clamp segment. Accordingly, both proposed constructions are  
8 consistent with the term "outer edge" itself.

9           In the context of the rest of the claim language and the  
10 figures depicting the specification, however, a person with  
11 ordinary skill in the field would only interpret "outer edge" to  
12 refer to the part of the claim segment that can possibly bite into  
13 the hanging rod and stiffener member as the claim requires.  
14 Because defendants' version of "outer edge" would never come into  
15 contact with either the hanging rod or the stiffener member,  
16 defendants' proposed construction is inconsistent with the context  
17 of the term. Accordingly, the court construes "outer edge,"  
18 consistent with plaintiff's proposed construction, as "the narrow  
19 surfaces of the clamp segments that run perpendicular to the  
20 longitudinal axis of the hanger rod and define the outer boundaries  
21 of the clamp."

22  
23 "To resist sliding of the clamp" and "to resist relative movement  
24 between the clamp and said elongated stiffener member"

25           The term "resist" appears three times in the first claim  
26 of the '809 Patent. Doc #58, Exh A, '809 Patent at 7:8-9, 7:13-14,  
27 8:10. Defendants do not submit any proposed construction for  
28 "resist," but argue that the term as used in the '809 Patent is

1 "insolubly ambiguous" and that the claim is therefore invalid under  
2 35 USC § 112, ¶2. Doc #59 at 14. Plaintiff responds that the  
3 question whether a mechanical apparatus "resists sliding" or  
4 resists movement" is objectively determinable, and that the term  
5 "resist" has an ordinary meaning of "oppose, stop or hinder (in any  
6 amount)," which is not ambiguous. Doc #57 at 15-16.

7 A claim satisfies the definiteness requirement of 35 USC  
8 § 112 "[i]f one skilled in the art would understand the bounds of  
9 the claim when read in light of the specification." Exxon Research  
10 & Eng'g Co v United States, 265 F3d 1371, 1375 (Fed Cir 2001). "A  
11 claim will be found indefinite only if it 'is insolubly ambiguous,  
12 and no narrowing construction can properly be adopted \* \* \* .'"  
13 Praxair, Inc v ATMI, Inc, 543 F3d 1306, 1319 (Fed Cir 2008), citing  
14 Exxon Research & Eng'g Co, 265 F3d at 1371. A claim avoids  
15 invalidity on indefinite grounds "[i]f the meaning of the claim is  
16 discernible, even though the task may be formidable and the  
17 conclusion may be one over which reasonable persons will disagree."  
18 Exxon Research & Eng'g Co, 265 F3d at 1371.

19 Defendants rely on Halliburton Energy Services, Inc v M-I  
20 LLC, 514 F3d 1244 (Fed Cir 2008) in arguing that the term "resist"  
21 is ambiguous. In Halliburton, the Federal Circuit held that a  
22 claim term "fragile gel" in a patent relating to oil field drilling  
23 fluids was "insolubly ambiguous" because the term "fail[ed] to  
24 distinguish the fragileness of the drilling fluids of the invention  
25 from the close prior art." 514 F3d at 1253.

26 Halliburton is not on point here because the degree of  
27 fragility not properly articulated in the Halliburton patent was  
28 necessary to distinguish that patent from the prior art. As the

1 Halliburton court noted, “[d]uring prosecution, [the patentee]  
2 distinguished the claims of the [] patent from prior art fluids by  
3 stating that the claims were ‘limited to’ a ‘fragile gel’ drilling  
4 fluid or the method of using a ‘fragile gel’ drilling fluid.” 524  
5 F3d at 1246. The patentee of the ‘809 Patent, at issue here, did  
6 not attempt to distinguish the patent from prior art based on the  
7 amount of resistance against relative movement provided by the  
8 patented mechanism. Rather, the patent is distinguishable based on  
9 the mechanism itself.

10           The term “resist” has an ordinary meaning, “to oppose,  
11 stop or hinder,” and a person with ordinary skill in the art would  
12 interpret the claim to mean that the apparatus provides more than a  
13 de minimis amount of resistance to sliding of the clamp and to  
14 relative movement between the clamp and the elongated stiffener  
15 member. No construction is required and the claim is not invalid  
16 due to indefiniteness.

17  
18  
19           IT IS SO ORDERED.

20  
21 

22           VAUGHN R WALKER  
23           United States District Chief Judge

Attachment 1

Figure 1

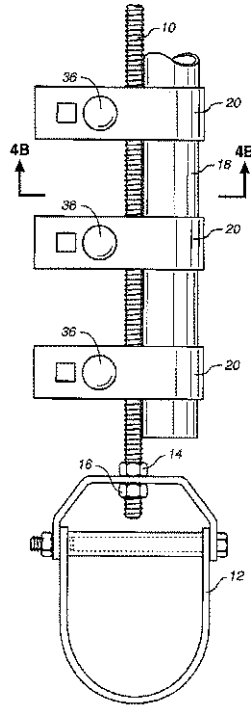


Figure 2

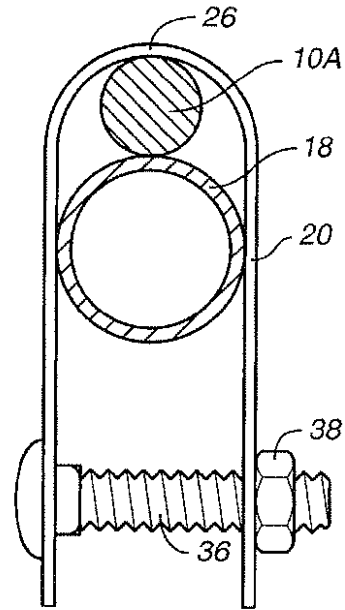
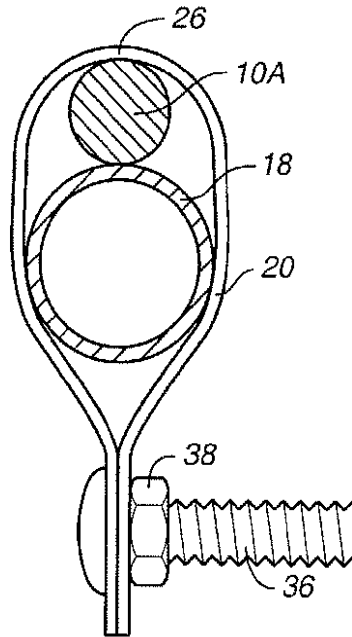


Figure 3

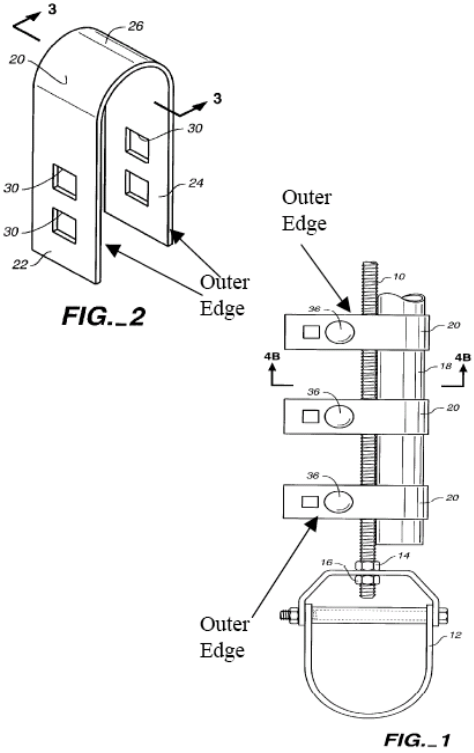


\*Images  
obtained from Doc #58 at 4-5, '809 Patent



**Attachment 2**

**Figure 4**  
**Plaintiff's Construction of "outer edge"**



**Figure 5**  
**Defendants' Construction of "outer edge"**

