

1 \*\*E-Filed 9/16/2011\*\*

2

3

4

5

6

7

8 **IN THE UNITED STATES DISTRICT COURT**

9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 **SAN JOSE DIVISION**

11

12 TRENT WEST,

13 Plaintiff,

14 v.

15 QUALITY GOLD, INC.,

16 Defendant.

Case No. 5:10-cv-03124-JF (HRL)

ORDER<sup>1</sup> CONSTRUING CLAIMS OF  
UNITED STATES PATENT NOS.  
6,928,734 AND 7,032,314

17

18 On June 13, 2011, the Court held a hearing for the purpose of construing disputed terms in

19 the claims of United States Patent Nos. 6,928,734 (“the ‘734 patent”) and 7,032,314 (“the ‘314

20 patent”) (collectively, “the patents in suit”). After considering the arguments and evidence

21 presented by the parties and the relevant portions of the record, the Court construes the disputed

22 terms as set forth below.

23 **I. BACKGROUND**

24 Plaintiff Trent West (“West”) is listed as the inventor on both patents in suit, which

25 disclose methods for manufacturing durable jewelry. The patents’ specifications note that in the

26 past jewelry has been made of soft metals such as gold, silver or platinum, because such metals

27

28 <sup>1</sup>This disposition is not designated for publication in the official reports.



1 2005). The specification is the “single best guide to the meaning of a disputed term.” *Id.*, citing  
2 *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

### 3 III. DISCUSSION

#### 4 A. Effect Of Prior Claim Construction Orders

5 This Court’s prior claim construction orders are not dispositive of the issues presented in  
6 the instant proceeding. A determination of the scope of patent claims in an earlier suit may trigger  
7 application of the doctrine of collateral estoppel in a later suit. *Pfaff v. Wells Electronics, Inc.*, 5  
8 F.3d 514, 518 (Fed. Cir. 1993). “[T]he law of the regional circuit applies to the issue of collateral  
9 estoppel” in the patent context. *RF Delaware, Inc. v. Pacific Keystone Tech., Inc.*, 326 F.3d 1255,  
10 1261 (Fed. Cir. 2003). In the Ninth Circuit, collateral estoppel applies when it is established that:  
11 “(1) the issue necessarily decided at the previous proceeding is identical to the one which is  
12 sought to be relitigated; (2) the first proceeding ended with a final judgment on the merits; and (3)  
13 the party against whom collateral estoppel is asserted was a party or in privity with a party at the  
14 first proceeding.” *Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2000). Here, West  
15 seeks to assert certain aspects of the prior claim construction orders against QGI, which was not a  
16 party to the earlier suits. The doctrine of collateral estoppel does not apply.

17 Other district courts have entertained claim construction arguments after construing the  
18 same claim terms in previous litigation. *See, e.g., Alexsam, Inc. v. IDT Corp.*, Case No. 2-07-cv-  
19 420-TJW, 2010 WL 2639976, at \*6 (Fed Cir. June 29, 2010) (district court modified prior claim  
20 construction issued in earlier action in light of arguments made in later action addressing same  
21 claims). The Federal Circuit has held that in the preliminary injunction context, “[d]istrict courts  
22 may engage in a rolling claim construction, in which the court revisits and alters its interpretation  
23 of the claim terms as its understanding of the technology evolves.” *Jack Guttman, Inc. v.*  
24 *Kopykake Enterprises, Inc.*, 302 F.3d 1352, 1361 (Fed. Cir. 2002). Accordingly, the Court has  
25 considered carefully all of the evidence and arguments presented in connection with the June 13  
26 *Markman* hearing.

1 **B. Person Of Ordinary Skill In The Art**

2 As noted above, QGI contends that a number of the claims terms of the patents in suit are  
3 indefinite. “The test for definiteness asks whether one skilled in the art would understand the  
4 bounds of the claim when read in light of the specification.” *AllVoice Computing PLC v. Nuance*  
5 *Communs., Inc.*, 504 F.3d 1236, 1240 (Fed. Cir. 2007) (citing *Miles Labs., Inc. v. Shandon, Inc.*,  
6 997 F.2d 870, 875 (Fed. Cir. 1993)). The “proficiency of the hypothetical person of ordinary skill  
7 in the art . . . is essential to administering the definiteness test.” *Id.*

8 The parties disagree as to both the relevant art and the qualifications of an individual  
9 having ordinary skill in that art.

10 **1. The Art**

11 West asserts that the relevant art is “jewelry finger rings.” This Court adopted West’s  
12 definition in the July 2010 Claim Construction Order. QGI requests that the Court revisit the  
13 issue, asserting that the relevant art is “the art of making jewelry, medical, dental or industrial  
14 items having a hard wear-resistant material.”

15 “The claims in suit provide a convenient starting point for determining the relevant art.”  
16 *Orthopedic Equip. Co., Inc. v. United States*, 702 F.2d 1005, 1008 (Fed. Cir. 1983). Other factors  
17 bearing upon the determination of the relevant art include: (1) the type of skill necessary to  
18 understand the patent; (2) the type of art applied to the claims by the Patent and Trademark Office  
19 (“PTO”); and (3) “the nature of the problem confronting the inventor.” *Id.* at 1008-09.

20 While the claims of the ‘314 patent disclose a method of manufacturing “a jewelry ring,”  
21 ‘314 pat., col 9, ln. 29, the claims of the ‘734 patent disclose a method of manufacturing an  
22 “annular *jewelry article*,” ‘734 pat, col. 21, lns. 58-59 (emphasis added). The ‘734 patent  
23 originally was titled “Jewelry Ring And Method Of Manufacturing Same.” However, West  
24 requested and obtained a certificate of correction changing the title to “Method Of Making  
25 Annular, Tungsten-Carbide Jewelry Articles.” Curatolo Decl., Exh. 1. Thus it appears that at  
26 least with respect to the ‘734 patent the relevant art encompasses the manufacture of “jewelry”  
27 and not just “jewelry rings.” Moreover, the Court notes that the specification of the ‘314 patent  
28 states under the “Field Of Invention” heading that: “The present invention relates generally to

1 methods of making jewelry items such as finger rings, bracelets, earrings, body jewelry and the  
2 like . . . .” ‘314 pat., col. 1, lns. 20-22. Similarly, the “Summary Of The Invention” asserts that:  
3 “The invention relates to a jewelry article having an annular body formed of tungsten carbide.”  
4 ‘314 pat., col. 3, ll. 44-45. Thus the patent claims, as informed by the specifications, suggest a  
5 field of art broader than “jewelry finger rings.”

6 Both specifications discuss methods for manufacturing jewelry in rather technical terms.  
7 Accordingly, with respect to factor (1) above, it appears that substantial skill in the art of  
8 manufacturing jewelry is required to understand the patents. With respect to factor (2), it is  
9 undisputed that the PTO applied prior art relating to the manufacture of a variety of jewelry, such  
10 as rings, earrings, and bracelets. Finally, with respect to factor (3), the specifications state the  
11 inventions are intended to address problems arising from the fact that items of “jewelry” made  
12 from traditional metals are “subject to wear, scratching and other damage detracting from their  
13 longevity appearance and value, i.e., wearing down of edges to a smooth and rounded state.” ‘734  
14 pat., col. 1, ll. 27-29; ‘314 pat., col. 1, ll. 36-38. All of these factors suggest a field of art broader  
15 than “jewelry finger rings.”

16 The question is whether the relevant art is so broad as to encompass “making jewelry,  
17 medical, dental or industrial items having a hard wear-resistant material” as argued by QGI.  
18 While the specification of the ‘734 patent does state that the methods for manufacturing jewelry  
19 described therein could be applied to the medical, dental, industrial, and scientific fields, ‘734  
20 pat., col. 3, ll. 31-35, no details are provided with respect to such applications; to the contrary, all  
21 of the preferred embodiments and specific descriptive language address jewelry. The  
22 specification of the ‘314 patent does not refer to fields other than jewelry. QGI offers the  
23 declaration of its expert, Joseph Curatolo, in support of its proposed definition of the relevant art.  
24 Curatolo has expertise in manufacturing and marketing jewelry. Based upon this expertise, he  
25 offers his opinion that the patent disclosures suggest that the relevant art is “making jewelry,  
26 medical, dental or industrial items having a hard wear-resistant material.” Curatolo Decl. ¶ 10.  
27 West objects to Curatolo’s declaration, pointing out that Curatolo is not an expert in patent  
28 construction. The Court has considered Curatolo’s opinion as argument – in addition to the

1 argument presented by counsel – with respect to the scope of the relevant art. The Court  
2 concludes that QGI’s proposed definition is not supported by the patents or the prosecution  
3 history.

4 In light of all of the evidence and argument in the record, the Court concludes that the  
5 relevant art is “manufacturing jewelry.”

6 **2. Person Of Ordinary Skill**

7 Having determined that the relevant art is manufacturing jewelry, the Court next must  
8 determine the expertise of a person with ordinary skill in that art as of the time of the inventions,  
9 that is, as of the effective filing date of the patent applications. *See Phillips v. AWH Corp.*, 415  
10 F.3d 1303, 1312 (Fed. Cir. 2005) (“the ordinary and customary meaning of a claim term is the  
11 meaning that the term would have to a person of ordinary skill in the art in question at the time of  
12 the invention, i.e., as of the effective filing date of the patent application”). The ‘736 patent and  
13 the ‘314 patent are continuations-in-part of Application No. 149,796, filed on September 8, 1998,  
14 now U.S. Patent No. 6,062,045. West offers the declaration of his expert, Marc Kuppersmith, who  
15 has expertise in jewelry manufacturing. Kuppersmith states that in 1998 one of ordinary skill in  
16 the art of jewelry finger rings would require “approximately five years experience in and exposure  
17 to the making of jewelry rings.” Kuppersmith Decl. ¶ 13.

18 QGI offers the competing declaration of Curatolo, who opines that one of ordinary skill in  
19 the art would have “a higher or broader skill level” than the person described by Kuppersmith.  
20 Curatolo Decl. ¶ 30. Because Curatolo defines the relevant art to include “making jewelry,  
21 medical, dental or industrial items,” he understandably asserts that knowledge of jewelry rings  
22 would be inadequate. *Id.* He also seems to suggest that even if the relevant art were restricted to  
23 jewelry rings, a person of ordinary skill in the art in 1998 would have expertise in using hard,  
24 wear-resistant materials to manufacture such rings. *Id.* ¶¶ 31-37. In contrast, Kuppersmith  
25 assumes that one skilled in the art would have knowledge only of traditional methods of jewelry  
26 manufacture, and does not suggest that a person of ordinary skill in the art in 1998 would have  
27 expertise in using tungsten carbide or other hard materials to manufacture jewelry.

28 The Court will adopt West’s description of the qualifications of one of ordinary skill in the

1 art, as modified to reflect the Court’s determination that the relevant art is the manufacture of  
2 “jewelry” rather than “jewelry finger rings.” Accordingly, the Court concludes that a person of  
3 ordinary skill in the art of “jewelry manufacturing” at the time in question would have  
4 “approximately five years experience in and exposure to the manufacture of jewelry.” The Court  
5 declines to adopt QGI’s proposed requirement that the individual have expertise in working with  
6 hard, wear-resistant material. Because West’s patents disclose use of hard materials as an  
7 *innovation* in the manufacture of jewelry, it would be illogical to require that one of ordinary skill  
8 in the art have prior experience in making jewelry out of hard materials at the time in question.

9 Based upon their declarations, it appears that both parties’ experts, Koppersmith and  
10 Curatolo, are persons of ordinary skill in the art of manufacturing jewelry and are qualified to  
11 opine as to what a person of ordinary skill would understand from the patent language.

### 12 **C. Indefiniteness**

13 Pursuant to 35 U.S.C. § 112, ¶ 2, the specification of a patent must “conclude with one or  
14 more claims particularly pointing out and distinctly claiming the subject matter which the  
15 applicant regards as his invention.” *Halliburton Energy Services, Inc. v. M-I LLC*, 514 F.3d  
16 1244, 1249 (Fed. Cir. 2008) (quoting 35 U.S.C. § 112). “Because claims delineate the patentee’s  
17 right to exclude, the patent statute requires that the scope of the claims be sufficiently definite to  
18 inform the public of the bounds of the protected invention, i.e., what subject matter is covered by  
19 the exclusive rights of the patent.” *Id.* Absent such definiteness, competitors cannot avoid  
20 infringement. *Id.*

21 As noted above, “[t]he test for definiteness asks whether one skilled in the art would  
22 understand the bounds of the claim when read in light of the specification.” *AllVoice*, 504 F.3d at  
23 1240 (citation omitted). A claim may be held indefinite “only where a person of ordinary skill in  
24 the art could not determine the bounds of the claims, i.e., the claims were insolubly ambiguous.”  
25 *Halliburton*, 514 F.3d at 1249. The fact that a particular claim presents a “difficult” or  
26 “formidable” challenge is insufficient to demonstrate indefiniteness. *Id.* Proof of indefiniteness  
27 must be made by clear and convincing evidence. *Id.* “A determination of claim indefiniteness is a  
28 legal conclusion that is drawn from the court’s performance of its duty as the construer of patent

1 claims.” *Personalized Media Communications v. Int’l Trade Commission*, 161 F.3d 696, 705  
2 (Fed. Cir. 1998)

3 QGI contends that five of the fifteen claim terms disputed by the parties are indefinite  
4 under 35 U.S.C. § 112. Four of the terms appear in independent claim 1 of the ‘314 patent, set  
5 forth as follows; the other appears in claim 10 of the ‘314 patent, which is set forth in conjunction  
6 with the discussion of that term below.

7 1. A method of making a jewelry ring which comprises: providing an annular  
8 finger ring made of a hard material consisting essentially of tungsten carbide, with  
9 the annular ring having at least one external **facet** and defining an aperture  
10 configured and dimensioned to receive a person’s finger; and

11 grinding the at least one external **facet** to a predetermined shape to provide a  
12 **pleasing appearance** to the jewelry ring, with the hard material being long  
13 wearing and **virtually indestructible during use** of the jewelry ring.

14 **1. “facet”**

15 The term “facet” appears in claim 35 of the ‘734 patent, and in claims 1 and 22 of the ‘314  
16 patent. The parties propose the following constructions:

Term	West’s proposed construction	QGI’s proposed construction
“facet”	no construction necessary	indefinite under 35 U.S.C. § 112

18 West argues without citation to authority that the term “facet” is readily understood term  
19 of common usage meaning “a smooth flat surface.” The online Merriam-Webster dictionary  
20 defines “facet” as “a small plane surface (as on a cut gem).” Merriam-Webster Online Dictionary  
21 (2011), <http://www.merriam-webster.com/dictionary/facet>.

22 QGI contends that West’s proposed definition cannot be correct in light of the following  
23 language from the specification of the ‘314 patent: “[a]s used in this description, the term facet is  
24 intended to include both cylindrical and frusto-conical surfaces as well as planar or flat surfaces.”  
25 ‘314 pat., col. 9, ll. 16-18. When the specification reveals “a special definition given to a claim  
26 term by the patentee that differs from the meaning it would otherwise possess . . . the inventor’s  
27 lexicography governs.” *Phillips*, 415 F.3d at 1316. Because the specification defines the term  
28 “facet” explicitly, that definition applies, and the term is not indefinite.

1 QGI argues that the definition is nonsensical, because a facet cannot be both curved and  
2 flat. However, as used in the specification, the term “facet” refers to certain types of surfaces,  
3 *including* “cylindrical and frusto-conical surfaces as well as planar or flat surfaces.” The  
4 definition does not require that a surface be both curved and flat at the same time.

5 **2. “pleasing appearance”**

6 “Pleasing appearance” appears in claim 1 of the ‘314 patent. The parties propose the  
7 following constructions:

Term	West’s proposed construction	QGI’s proposed construction
“pleasing appearance”	not a claim limitation; alternatively, a facet having a surface angle of 1 to 40 degrees relative to the axis of symmetry of the body or a cylindrical or frusto-conical shape	indefinite under 35 U.S.C. § 112

13 QGI contends that the term “pleasing appearance” is completely dependent upon a  
14 person’s subjective opinion and thus is indefinite under 35 U.S.C. § 112. “The scope of claim  
15 language cannot depend solely on the unrestrained, subjective opinion of a particular individual  
16 purportedly practicing the invention.” *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342,  
17 1350 (Fed. Cir. 2005). “Some objective standard must be provided in order to allow the public to  
18 determine the scope of the claimed invention.” *Id.* “[W]hen faced with a purely subjective phrase  
19 like “aesthetically pleasing,” a court must determine whether the patent’s specification supplies  
20 some standard for measuring the scope of the phrase.” *Id.* at 1351.

21 West asserts that “pleasing appearance” is not a claim limitation, but simply describes the  
22 result of using the method recited in the claim. West relies heavily on *Syntex (U.S.A.) LLC v.*  
23 *Apotex, Inc.*, 407 F.3d 1371 (Fed Cir. 2005). In *Syntex*, the Federal Circuit concluded that the  
24 term “in a stabilizing amount” was not a claim limitation but “simply describe[d] the intended  
25 result of using the weight to volume ratios recited in the claims.” *Id.* at 1378.

26 This Court construed the term “pleasing appearance” in its July 2010 Claim Construction  
27 Order, adopting the following construction: “a facet having a surface angle of 1 to 40 degrees  
28

1 relative to the axis of symmetry of the body or a cylindrical or frusto-conical shape.” Upon  
 2 reflection, and after considering the arguments presented in this case, the Court concludes that its  
 3 prior construction was incorrect. The Court now is persuaded that the term “pleasing appearance”  
 4 is not a claim limitation but rather describes the result of “grinding the at least one external facet  
 5 to a predetermined shape.” The thrust of the patent is that beautiful, durable jewelry can be  
 6 created by using hard metal, and that if the inventor’s method is utilized, it will result in a piece of  
 7 jewelry that has a “pleasing appearance.”

8 **3. “substantially different visual effect to the jewelry ring”**

9 This term appears in claim 10 of the ‘314 patent, which reads as follows:

10 10. The method of claim 1, which further comprises providing a cavity in the  
 11 annular ring, the cavity having a predetermined size and shape that is configured to  
 12 receive an insert of a decoration component that provides a **substantially different  
 visual effect** to the jewelry ring.

13 The parties propose the following constructions:

Term	West’s proposed construction	QGI’s proposed construction
“substantially different visual effect to the jewelry ring”	visibly noticeable difference or contrast between the hard body of the ring or having a different color, texture, or finish from the hard body of the ring	indefinite under 35 U.S.C. § 112

19 QGI contends that the term “substantially different” is indefinite, because the term is  
 20 dependent upon the subjective opinion of a person of ordinary skill in the art. “When a word of  
 21 degree is used the district court must determine whether the patent’s specification provides some  
 22 standard for measuring that degree.” *Datamize*, 417 F.3d at 1351. West argues that the term is  
 23 not a claim limitation and thus that it does not require construction. Alternatively West requests  
 24 that the Court adopt its prior construction of the term: “visibly noticeable difference or contrast  
 25 between the hard body of the ring or having a different color, texture, or finish from the hard body  
 26 of the ring.” July 2010 Claim Construction Order at 13.

27 In reaching its prior construction, the Court relied upon Koppersmith’s declaration  
 28 statement that a person of ordinary skill in the art would understand the term to refer to a

1 noticeable contrast between the visual impression of the decoration component and of the hard  
 2 metal comprising the bulk of the ring. Curatolo now submits a competing declaration asserting  
 3 that a person of ordinary skill in the art would not understand how to measure the phrase  
 4 “substantially different.”

5 The Court concludes that the term is a limitation, and that its prior construction is correct.  
 6 One of ordinary skill in the art would understand the patent to require that the material in the  
 7 cavity look noticeably different from the hard metal comprising the ring.

8 **4. & 5. “virtually indestructible” and “virtually indestructible during use”**

9 The parties propose the following constructions:

10 Term	West’s proposed construction	QGI’s proposed construction
11 “virtually indestructible”	12 practically incapable of having its aesthetic appearance destroyed	indefinite under 35 U.S.C. § 112

14 Term	West’s proposed construction	QGI’s proposed construction
15 “virtually indestructible during use”	16 practically incapable of having its aesthetic appearance destroyed during employment and enjoyment in a normal daily jewelry wearing environment	17 indefinite under 35 U.S.C. § 112

18  
 19 The Court previously construed the claim term “virtually indestructible during use” in its  
 20 April 2008 Claim Construction Order. The Court adopted West’s proposed construction,  
 21 “practically incapable of having its aesthetic appearance destroyed during employment and  
 22 enjoyment in a normal daily jewelry wearing environment.” Applying this definition to the  
 23 shortened phrase “virtually indestructible,” the Court’s prior definition would be the one West  
 24 proposes: “practically incapable of having its aesthetic appearance destroyed.”

25 Having reexamined the ‘314 patent and considered the evidence and arguments presented  
 26 in this case, the Court concludes that its prior construction is correct and that the term is not  
 27 indefinite. The problem confronting the inventor was the fact that jewelry items made of soft  
 28 materials such as gold, silver, and platinum are “subject to wear, scratching and other damage

1 detracting from their longevity appearance and value, i.e., wearing down of edges to a smooth and  
 2 rounded state.” ’314 pat., col. 1, lns. 36-38. For example, the specification describes a design  
 3 made on a tungsten ring that was “not possible” using prior art “because if such configuration had  
 4 been made, the peaks 122 would have quickly been eroded, destroying the esthetic appearance of  
 5 the ring.” ’314 pat., col. 7 ll. 57-64. The specification emphasizes that using hard metal solves  
 6 this problem, because facet edges will not “wear off readily with normal everyday use.” ’314 pat.,  
 7 col. 9, ll. 1-3. Reading the patent as a whole, it appears that the limitation “virtually indestructible  
 8 during use” requires that the hard metal retain its aesthetic appearance during normal use.

9 QGI argues that the patent does not define “use” or “normal use,” and thus that the  
 10 limitation is indefinite. QGI poses the following inquiry: “For example, if a salt water  
 11 environment (or acidic or basic or abrasive, particle-laden, etc. environment) may affect either the  
 12 surface appearance of a ring, or contribute to its failure, is that now by definition an abnormal  
 13 use?” Resp. Claim Constr. Br. at 19. While it takes QGI’s point, the Court concludes that one of  
 14 ordinary skill in the art would know what standard wear and tear on jewelry looks like. The term  
 15 is not indefinite.

16 **D. Other Disputed Claim Terms**

17 The parties have identified ten additional disputed claim terms, addressed as follows:

18 **6. “annular article” or “annular jewelry article”**

19 The terms “annular article” and “annular jewelry article” appear in independent claim 16  
 20 of the ‘734 patent, and in dependent claims 29, 33, and 35. The parties propose the following  
 21 constructions:

Term	West’s proposed construction	QGI’s proposed construction
“annular article” or “annular jewelry article”	ring shaped jewelry article	a ring shaped article of personal adornment

25 The Court perceives no substantive difference between these definitions. At the hearing,  
 26 counsel for QGI agreed, stating that QGI offered its alternative construction merely so as to avoid  
 27 using a part of the claim term itself – “jewelry” – in the definition. QGI’s point is well-taken.  
 28 The Court will adopt QGI’s construction.

1           7.       **“defining an aperture configured and dimensioned to receive a person’s**  
2                   **finger”**

3           This term appears in independent claim 1 of the ‘314 patent, set forth again here for the  
4 sake of convenience:

5           1. A method of making a jewelry ring which comprises: providing an annular  
6 finger ring made of a hard material consisting essentially of tungsten carbide, with  
7 the annular ring having at least one external facet and **defining an aperture**  
8 **configured and dimensioned to receive a person’s finger**; and

9 grinding the at least one external facet to a predetermined shape to provide a  
10 pleasing appearance to the jewelry ring, with the hard material being long wearing  
11 and virtually indestructible during use of the jewelry ring.

12           The parties propose the following constructions:

Term	West’s proposed construction	QGI’s proposed construction
“defining an aperture configured and dimensioned to receive a person's finger”	no construction necessary	defining an opening that is formed and sized such that a human’s finger may fit there through

15           West asserts that all of the words in this phrase are plain and understandable and thus do  
16 not require any construction. The Court previously construed this phrase to mean: “defining an  
17 aperture fashioned to have a spatial extent to conform to a person’s finger.” July 2010 Claim  
18 Construction Order at 17. QGI points out that the Court’s definition relies to some extent upon  
19 the intent of the designer, a fact that the Court itself recognized was less than optimal. *See id.*  
20 QGI offers a construction that eliminates the intent aspect: “defining an opening that is formed  
21 and sized such that a human’s finger may fit there through.” West objects to QGI’s proposed  
22 construction as overly broad on the basis that a finger *may* fit through a napkin ring or a machine  
23 part.

24           Because its prior construction relies on the intent of the designer, the Court will take the  
25 instant opportunity to revise the construction. The Court has considered seriously whether any  
26 construction is necessary at all, as the claim language is fairly straightforward. However, it seems  
27 that some guidance is necessary. Accordingly, the Court will construe the term to mean “defining  
28 an aperture that is formed and sized such that it will fit around and conform to the shape of a

1 person's finger.”

2 **8. “jewelry ring”**

3 The term “jewelry ring” appears in claim 1 of the ‘314 patent. The parties propose the  
4 following constructions:

5 Term	West’s proposed construction	QGI’s proposed construction
6 “jewelry ring”	a ring intentionally designed 7 to be worn on person’s finger	an article of personal adornment having the form of a circular band

8  
9 QGI objects to the intent element of West’s proposed construction. The Court agrees that  
10 the intent element is problematic. However, QGI appears to be trying to expand the scope of the  
11 claim to cover ring-shaped jewelry that can be worn other than on a finger. The Court concludes  
12 that one of ordinary skill in the art would understand “jewelry ring” to mean “jewelry finger ring.”  
13 The Court hereby adopts the following construction: “an article of personal adornment having the  
14 form of a circular band and being sized to fit on a finger.”

15 **9. “tungsten carbide” or “tungsten-carbide”**

16 These claim terms appear in claim 18 of the ‘734 patent and claims 1 and 19 of the ‘314  
17 patent. The parties propose the following constructions:

18 Term	West’s proposed construction	QGI’s proposed construction
19 “tungsten carbide” or 20 “tungsten-carbide”	no construction necessary	an extremely hard, fine gray powder whose composition is WC, used in tools, dies, wear- resistant machine parts, and 21 abrasives

22  
23 The Court concludes that tungsten carbide is a term that readily would be understood by  
24 one of ordinary skill in the art, and that no construction is necessary.

25 **10. “visually different”**

26 The term “visually different” appears in claim 14 of the ‘314 patent. The parties propose  
27 the following constructions:

1	Term	West's proposed construction	QGI's proposed construction
2	"visually different"	no construction required	with a dissimilar appearance to the eye
3			

4 The Court concludes that no construction is necessary with respect to this term.

5 **11. "annular band"**

6 This term appears in claim 16 of the '734 patent. The parties propose the following  
7 constructions:

8	Term	West's proposed construction	QGI's proposed construction
9	"annular band"	a ring shaped band	an article having a circular form
10			

11  
12 "Annular" means "of, relating to, or forming a ring." Merriam-Webster Online Dictionary  
13 (2011), <http://www.merriam-webster.com/dictionary/annular>. This definition is reflected in  
14 West's proposed construction, which the Court adopts. QGI's proposed construction is overly  
15 broad, since "article" is much broader than "band."

16 **12. "annular finger ring" or "annular ring"**

17 These terms appear in claims 1, 10 and 14 of the '314 patent. The parties propose the  
18 following constructions:

19	Term	West's proposed construction	QGI's proposed construction
20	"annular finger ring" or "annular ring"	ring shaped finger ring	a ring worn on a finger
21			
22			

23 Again applying the definition of "annular" discussed above, the Court adopts West's  
24 proposed construction.

25 **13. "hard material"**

26 This term appears in claim 1 of the '314 patent. The parties propose the following  
27 constructions:

28

1	Term	West's proposed construction	QGI's proposed construction
2	"hard material"	no construction required	material having a density of at
3			least 13.3 g/cm <sup>3</sup>

4 The Court concludes that "hard material" is a term that readily would be understood by  
5 one of ordinary skill in the art, and that no construction is necessary. QGI does not dispute that  
6 hard material is a term of art that an applied material scientist would recognize, but it argues that  
7 one skilled in the art of manufacturing jewelry would not necessarily understand the term.  
8 However, as West points out, one skilled in the art at least would recognize that the term has a  
9 particular definition and easily would be able to access that definition. In effect, QGI requests that  
10 the Court import a claim limitation from the specification. The Court declines to do so.

11 **14. "non-polished portion"**

12 This term appears in claim 34 of the '734 patent. The parties propose the following  
13 constructions:

14	Term	West's proposed construction	QGI's proposed construction
15	"non-polished portion"	a portion that is not shiny or	an unfinished fractional
16		not smooth	component

17 QGI's proposed construction is vague and unlikely to be helpful to the trier of fact. The  
18 Court adopts West's construction.

19 **15. "precious metal"**

20 This claim term appears in claim 14 of the '314 patent. The parties propose the following  
21 constructions:

22	Term	West's proposed construction	QGI's proposed construction
23	"precious metal"	gold, silver, platinum or their	a great value substance which
24		alloys	is a good conductor of
25			electricity

26 Once again, QGI's proposed construction is vague and unlikely to be helpful to the trier of  
27 fact. The specification does not reference the conductivity of precious metals. The specification  
28 does use the phrase precious metal to mean "gold, silver, platinum and other soft metals." '314

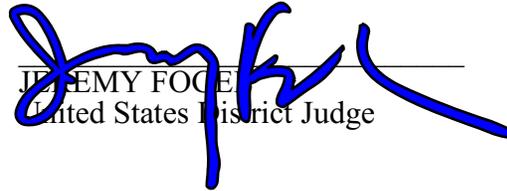
1 pat., col. 1, ll. 31-42. The Court adopts this definition.

2

3 IT IS SO ORDERED.

4

5 Dated: 9/16/2011

  
\_\_\_\_\_  
JEREMY FOCCELL  
United States District Judge

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28