

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MAGNA-MUG, LLC,	:	Case No. 1:13-cv-304
	:	
Plaintiff/Counter Defendant,	:	Chief Judge Susan J. Dlott
	:	
v.	:	ORDER CONSTRUING CLAIMS
	:	
NOVELTY, INC., (d/b/a NOVELTY DISTRIBUTORS COMPANY)	:	
	:	
Defendant/Counter Claimant.	:	

This is a patent infringement case involving Magna-Mug LLC. (“Magna-Mug”) and Novelty, Inc. (“Novelty”). As part of the litigation, the parties requested that the Court construe various claim terms in the patent pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). The parties set forth the disputed claim terms in a joint prehearing statement (Doc. 22), and both parties filed opening and responsive claim construction briefs. (Docs. 23, 24, 30, and 31). The parties had the opportunity to further bolster their claim construction arguments during a *Markman* hearing conducted by the Court on July 24, 2014. Relying on the parties’ briefs, evidence and oral arguments, the Court now shall construe each of the disputed terms.

I. BACKGROUND

Given the procedural posture of this litigation, the Court need not describe the facts in great detail here. Relevant to the claim construction issue is the fact that Magna-Mug is the assignee of U.S. Patent No. 7,021,594 (“the ‘594 patent”), entitled “Folding Magnetic Holding

Wrap for Cups or Mugs.”¹ The ‘594 patent was issued by the United States Patent and Trademark Office on April 4, 2006. (Doc. 1-1, Page ID 9). The Abstract of the ‘594 patent describes the claimed invention as follows: “An improved holder for receiving a liquid-containing device and mounting it onto a magnetic accepting support or surface is provided having a foldable single unit wrap element with a magnetic means secured to the outer surface of the wrap element.” (*Id.*)

The ‘594 patent was designed to improve a conventional cup holder by giving it the capability to be supported by a vertical magnetic surface. In essence, the invention is an insulated beverage container holder with integrated magnets so that the beverage can be stuck to any magnetic surface, such as the side of a car or patio rails. By using the invention, “[t]he user avoids the hassle and strain of balancing a cup in situations where a metal support is nearby.” (*Id.* at Page ID 30.) By way of example, a beverage can placed in the cup holder described by patent ‘594 could be magnetically attached to the side or rear panel of a vehicle during a tailgating party, where horizontal surfaces are at a premium.²

On May 7, 2013, Magna-Mug filed suit against Novelty, seeking a judgment that Novelty is infringing the ‘594 patent and a related design patent, Patent No. D547,618. (Doc. 1). Novelty denies that it infringes any patent asserted in this action and further asserts in a counterclaim that Magna-Mug is equitably estopped from asserting the ‘594 patent against

¹ Novelty argues that Magna-Mug’s owner, Thomas Hundley, personally owns the ‘594 patent and therefore Magna-Mug has no standing to sue. That argument is the basis of a pending motion to dismiss, Doc. 25, which the Court shall resolve in a separate order.

² Tailgating is the term used for eating an informal meal served from the back of a parked vehicle, typically in the parking lot of a sports stadium.

Novelty. (Doc. 13.) At this juncture of the lawsuit, the parties' dispute focuses on the construction of seven terms contained in the '594 patent.

II. **MARKMAN HEARING STANDARDS**

The Federal Circuit has explained that “[i]t is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the patentee is entitled to the right to exclude.’”

Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)).

Consequently, the meaning and scope of a patent's claims lie at the heart of any patent dispute.

The purpose of a *Markman* hearing is to ascertain the meaning of the patent's claims so that it is clear precisely what has been patented and, by consequence, the protections the patent affords the patent holder. *Phillips*, 415 F.3d at 1312; *see also Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 978 (Fed. Cir. 1995) (“When a court construes the claims of the patent . . . the court is defining the federal legal rights created by the patent document.”), *aff'd*, 517 U.S. 370 (1996). There is no “rigid algorithm for claim construction.” *Phillips*, 415 F.3d at 1324. Rather, in construing the meaning of a patent's claims, the Court is guided by a set of principles that the Federal Circuit has described as follows:

The claim terms are generally given their ordinary and customary meaning. The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation. Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification. In examining the specification for proper context, however, this court will not at any time import limitations from the specification into the claims.

Varco, L.P. v. Pason Sys., USA Corp., 436 F.3d 1368, 1372–73 (Fed. Cir. 2006) (internal quotations and citations omitted). The starting point in claim construction therefore lies with the

language of the claims themselves. *Purdue Pharma L.P. v. Endo Pharm., Inc.*, 438 F.3d 1123, 1135–36 (Fed. Cir. 2006). In considering a patent’s language, a court should apply the plain meaning rule, presumptively giving claim terms their ordinary, plain meaning. *Innova*, 381 F.3d at 1115. A court may, however, depart from a term’s plain meaning if the patentee has acted as a lexicographer or otherwise limited the scope of the invention through a disclaimer or disavowal in the specification or prosecution history. *Phillips*, 415 F.3d at 1316.

Of considerable import to claim construction, then, is the intrinsic evidence—the claim language, the specification, and the prosecution history as applicable. *Vitrionics Corp. v. Conceptronic*, 90 F.3d 1576, 1582–83 (Fed. Cir. 1996). When this intrinsic evidence provides an unambiguous description of the scope of the invention, reliance on extrinsic evidence is generally improper. *Id.* Although less significant than intrinsic evidence, extrinsic evidence is still of value to claim construction when necessary. *Phillips*, 415 F.3d at 1317 (citing *Markman*, 52 F.3d at 980). This latter category encompasses such things as expert and inventor testimony, as well as texts such as treatises and dictionaries. *Id.*

Plaintiff Magna-Mug’s position is that none of the disputed claims require construction but should be given their ordinary meaning. Defendant Novelty proposes specific constructions of each of the disputed claim terms. Cognizant of the principles governing claim construction and having entertained argument, as well as having reviewed the scope of the prior art, the Court shall now address each claim construction issue in turn.

III. FIRST DISPUTED TERM

Claim	Disputed Claim Term	Magna-Mug's Proposed Construction	Novelty's Proposed Construction	Court's Ruling
<p>“[Claim 1.] An improved beverage container holder . . . comprising: a) a foldable single unit wrap element . . . and b) at least one magnetic means affixed to and secured to the integrated cylindrical portion of the wrap element. . . .”</p> <p>“[Claim 7.] An improved beverage container holder . . . comprising: a) a foldable, flexible single unit wrap element comprising an integrated cylindrical portion having a lower side length, and configured for encircling a lower portion of a beverage container, thereby exposing the upper exposed portion of the beverage container, the wrap element having a first surface and a second surface adapted to be in contact with the beverage container”</p> <p>“[Claim 8.] The improved beverage container holder of claim 7 further comprising a first attachable means on the first surface of the wrap element, and a second attachable means formed as a tab portion that can engage the first attachable means.”</p>	<p>Wrap element</p>	<p>No construction necessary; ordinary meaning. Alternatively, encircling piece.</p>	<p>A strip of material having two ends with a mating connector at each end of the strip that detachably engage with each other.</p>	<p>Encircling piece.</p>

The parties dispute whether the term “wrap element” describes any type of beverage container holder that wraps around the container or whether the claim term more narrowly describes “a strip of material having two ends with a mating connector at each end of the strip that detachably engage with each other.” Claim 1 describes a beverage container holder

comprising “a foldable single unit wrap element comprising an integrated cylindrical portion . . . and a bottom attached along the lower side length of the integrated cylindrical portion.” (Doc. 1-1, Page ID 32.) Similarly, claim 7 describes a beverage container holder comprising “a foldable, flexible single unit wrap element comprising an integrated cylindrical portion [and] a bottom portion attached along the lower side length of the cylindrical portion.” (*Id.*) Figures 9 through 10A of the ‘594 patent illustrate embodiments of the invention that are comprised of a wrap element with an integrated cylindrical portion and a bottom portion as described in claims 1 and 7. (*Id.* at Page ID 24–26). Nothing in claims 1 or 7 suggests that the wrap element must have ends that detachably engage each other (as in two ends of a belt) as opposed to being one continuous piece of material, and such an interpretation of the claim term would be inconsistent both with the claim language and intrinsic evidence in the nature of the preferred embodiments shown in figures 9 through 10A.

In contrast, claim 8, which is dependent upon claim 7, describes “[t]he improved beverage container holder of claim 7 *further comprising* a first attachable means on the first surface of the wrap element, and a second attachable means formed as a tab portion that can engage the first attachable means.” (*Id.* (emphasis added).) In other words, claim 8 describes a wrap element having the construction proposed by Novelty: “[a] strip of material having two ends with a mating connector at each end of the strip that detachably engage with each other.” Figures 1 through 8 and 12 of the patent portray embodiments of beverage container holders that are comprised of a strip of material with ends that attach. (*Id.* at Page ID 11–23, 28).

Ordinarily, a dependent claim has a narrower scope than the claim from which it depends. *Phillips*, 415 F.3d at 1325 (“[T]he presence of a dependent claim that adds a particular

limitation gives rise to a presumption that the limitation in question is not present in the independent claim.”); *see also Liebel-Flarsheim v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004) (same). This generalization is referred to as the doctrine of claim differentiation. *Innova*, 381 F.3d at 1123 (“The doctrine of claim differentiation ‘normally means that limitations stated in dependent claims are not to be read into the independent claim from which they depend.’” (quoting *Karlin Tech., Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968, 971–72 (Fed. Cir. 1999))).

The limitation in claim 8 that narrowly describes a wrap element using “attachable means” gives rise to a presumption that the limitation is not present in claims 1 and 7. For this reason, limiting “wrap element” to mean only “a strip of material having two ends with a mating connector at each end of the strip that detachably engage with each other” would violate the doctrine of claim differentiation.

However, contrary to Magna-Mug’s assertion, the term “wrap element” does not have inherent plain meaning. Magna-Mug’s alternative proposed construction gives specific meaning to the claim term. In light of the foregoing, the term “wrap element” is construed to mean “encircling piece.”

IV. SECOND DISPUTED TERM

Claim	Disputed Claim Term	Magna-Mug’s Proposed Construction	Novelty’s Proposed Construction	Court’s Ruling
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<p>“[Claim 1.] An improved beverage container holder . . . comprising: a) a foldable single unit wrap element comprising an integrated cylindrical portion made from a flexible material and having a lower side length, configured to encircle the bottom portion of a beverage container, and a bottom attached along the lower side length of the integrated cylindrical portion”</p> <p>“[Claim 7.] An improved beverage container holder . . . comprising: . . . b) a bottom portion attached along the lower side length of the integrated cylindrical portion;”</p> <p>“[Claim 15.] The beverage container holder according to claim 10 further comprising a neodymium magnet attached to the foldable bottom.”</p>	Attached	No construction necessary; ordinary meaning.	Two separate pieces are joined together.	Attached.
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Novelty proposes that the term “attach” means “two separate pieces are joined together,” whereas Magna-Mug contends that no construction is necessary. A comprehensive reading of the patent demonstrates that Novelty’s proposed construction unduly limits the meaning of the term “attached.” Novelty’s construction is supported to the extent that “attach” is used in claim 15 in a way that describes joining two obviously separate pieces, specifically, attaching a magnet to the foldable bottom of the invention. However, that is but one possible construction of “attach.” The word “attachable” is used in claim 8³ and in the “summary of the invention” to describe opposite ends of *the same piece*, as in a belt. (Doc.1-1, Page ID 29, col. 2 lines 44–54.)

³ “[Claim 8.] The improved beverage container holder of claim 7 further comprising a first **attachable** means on the first surface of the wrap element, and a second **attachable** means formed as a tab portion that can engage the first **attachable** means.”

The ordinary meaning of “attached” encompasses both these concepts: the joining together of separate pieces and the joining together of two ends of the same piece.

Furthermore, intrinsic evidence demonstrates that the word “attached” in claims 1 and 8, which describes the bottom portion vis-à-vis the cylindrical portion of the wrap element, is not intended to limit the invention to one in which the bottom portion is a separate piece from the wrap element. In particular, the “detailed description of the invention” explains that “[i]n a preferred embodiment, bottom portion 17 is comprised of *the same piece* of material as wrap element 11 to resemble a single unit and, may be cast from the same piece of material to form an integrated single unit.” (*Id.* at Page ID 31, col. 5 lines 64–67 to col. 6 line 1 (emphasis added).) In this embodiment, the bottom is “attached” to the wrap element because they are both part of the same piece of material. Novelty’s proposed construction of “attached” as meaning “two separate pieces are joined together” ignores this preferred embodiment. In short, neither the words of the claim nor its context limits “attached” to the joining of two separate pieces.

“[A] claim term should be construed consistently with its appearance in other places in the same claim or in other claims of the same patent.” *Rexnord v. Lautram*, 274 F.3d 1336, 1342 (Fed. Cir. 2001). Because the term “attach” is used in the claims and in the specification to mean something other than joining two separate pieces, “attach” cannot not be narrowly construed to mean joining two separate pieces.

The question, then, is whether “attach” requires any construction whatsoever or should be given its plain and ordinary meaning as Magna-Mug proposes. Reliance on the word’s ordinary meaning is sufficient to resolve this dispute: the meaning of the term simply is not as narrow as

what Novelty proposes. In light of the foregoing analysis, the term “attached” does not require any construction but shall be given its ordinary meaning.

V. THIRD DISPUTED TERM

Claim	Disputed Claim Term	Magna-Mug’s Proposed Construction	Novelty’s Proposed Construction	Court’s Ruling
<p>“[Claim 1.] An improved beverage container holder . . . comprising: . . . b) at least one magnetic means affixed to and secured to the integrated cylindrical portion of the wrap element. . . .”</p> <p>“[Claim 10.] A beverage container holder that can be magnetically mounted to a vertical magnetic-accepting surface to hold a beverage container received therein on the vertical surface, comprising: . . . b. a foldable bottom affixed to the cylindrical body along the lower edge. . . .”</p>	Affixed	No construction necessary; ordinary meaning.	Attached to a material with a substance that is interposed between the object and the material.	Two separate pieces joined together.

The term “affixed” appears only twice in the claims: once in reference to attaching a magnetic means to the wrap element (claim 1) and once in reference to attaching the bottom piece to the wrap element (claim 10). The specification makes greater use of the term “affixed,” employing it to describe various means of connecting or attaching two pieces together. For example, “[t]he magnetic means may consist of one or more magnets affixed to the first surface with adhesive” (Doc. 1-1, Page ID 29, col. 2 lines 25–26); “a patch such as a piece of cloth is affixed to the outside or second surface of the wrap element” (*id.* at Page ID 29–30, col. 2 line 67–col. 3 line 1); “[g]enerally the cloth and fastener items can be affixed to the neoprene using any convenient means, such as glue, paste, staples, pins, or stitches” (*id.* at Page ID 30, col. 3 lines 12–15); and “if separate, bottom portion 17 can be removably attached or partially or

entirely affixed to the length 14 or 15, by any mechanism that ensures its fit, including fasteners, stitches, snaps, zippers, etc.” (*id.* at Page ID 31, col. 6 lines 3–6). Thus, “affix” refers variously to attaching a magnet to the wrap element, a piece of cloth to the wrap element, and a bottom to the wrap element by means such as adhesive, staples, pins, stitches, snaps, and zippers.

Generally speaking, the terms “attached” and “affixed” both refer to joined or integrated components. However, different words in a patent ordinarily have different meanings. *See Innova*, 381 F.3d at 1119 (“[W]hen an applicant uses different terms in a claim it is permissible to infer that he intended his choice of different terms to reflect a differentiation in the meaning of those terms.”) Further, it is the job of the Court to adopt a construction that makes the claim term more certain. *Liquid Dynamics v. Vaughn*, 355 F.3d 1361, 1367 (Fed. Cir. 2004) (“Courts construe claims by considering evidence necessary to resolve disputes about claim terms and to assign a fixed, unambiguous, legally operative meaning to the claim.”).

Read as a whole, it is apparent that the patentee intended to distinguish “attached,” which can mean the joining of two separate pieces, joining of two parts of the same piece, or joined by virtue of being a single continuous piece; from “affixed,” which he intended to mean “two separate pieces joined together.” In other words, “affixed” in the claims means what Novelty advocated as the proper construction of “attached.”

Novelty’s proposed construction of “affixed” correctly proposes that the term means to attach two pieces together, but its additional requirement that the attachment occurs by way of a substance interposed between the two pieces is not supported by intrinsic evidence. In particular, the term “affixed” is used to describe one object being secured to another object by various attachment means including fasteners, snaps, stitches, and zippers. (Doc. 1-1, Page ID

31, col. 6 lines 3–7.) Defendant refers to these attachment means as “mechanisms” in its opposition brief (Doc. 30, Page ID 373), yet it proposes a construction of the term that limits the attachment means to a “substance.” While an adhesive is a “substance,” a zipper is not, and thus Defendant’s proposal is too narrow.

Because the attachment means described in the claims and in the specification to affix one piece to another are not limited to “a substance interposed between” two objects, Defendant’s proposed construction is too narrow to give proper effect to the claim term. However, some construction of “affixed” is necessary in order to distinguish it from “attached.” A construction of “affixed” as joining two separate pieces together makes both claim terms more certain. Accordingly, “affixed ” is construed as “two separate pieces joined together.”

VI. FOURTH DISPUTED TERM

Claim	Disputed Claim Term	Magna-Mug’s Proposed Construction	Novelty’s Proposed Construction	Court’s Ruling
<p>“[Claim 1.] An improved beverage container holder . . . comprising: . . . b) at least one magnetic means affixed to and secured to the integrated cylindrical portion of the wrap element. . . .”</p> <p>“[Claim 3.] The improved beverage container holder of claim 2 wherein the plurality of neodymium magnets are secured between an outer surface of the integrated cylindrical portion and the protective coating.”</p> <p>“[Claim 5.] The improved beverage container holder of claim 1 wherein the at least one magnetic means is secured with a protective coating.”</p> <p>“[Claim 6.] The improved</p>	Secured	No construction necessary; ordinary meaning.	Covered with a first piece of material that is attached to a second piece of material to hold the object between the first piece of material and the second piece of material.	Attached by means of layering.

<p>beverage container holder of claim 5 [w]herein the at least one magnetic means is secured between an outer surface of the cylindrical body and the protective coating.”</p> <p>“[Claim 17.] The improved beverage container holder of claim 10 wherein the at least one magnet is secured to the cylindrical body with a protective coating.”</p> <p>“[Claim 18.] The improved beverage container holder of claim 17 wherein the at least one magnet is secured between an outer surface of the cylindrical body and the protective coating.”</p>				
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Novelty proposes that “secured” be construed as “an object is covered with a first piece of material that is attached to a second piece of material to hold the object between the first piece of material and the second piece of material.” In other words, Novelty’s proposed construction would define “secured” as meaning an object that is embedded in or sandwiched between two layers.

Except for one instance, the word “secured” is used consistently throughout the specification and the claims to describe the manner in which a magnet is incorporated into the invention by sandwiching it between two layers. The one exception is in the “detailed description of the invention” (Doc. 1-1, Page ID 31, col. 5 line 61), which does not refer to the invention itself but rather the invention’s “grip” on a beverage container. Because the use of “secured” in that context is not referring to the invention itself, a contrary definition in that one instance does not disrupt a construction that would otherwise align with the purpose of the invention.

Additionally, with respect to the inclusion of magnets in the invention, the claims use the term “secured” to distinguish the application of a magnet by sandwiching it between two layers

versus merely “attaching” the magnet to the invention. *See* claim 15 (“magnet attached to the foldable bottom”) versus claim 16 (“The improved beverage container holder of claim 15 further comprising a protective coating that covers and secures the bottom magnet to the foldable bottom”).)

The intrinsic evidence demonstrates that the inventor intended the term “secured” to mean to attach the magnet by a specific means—that of layering the magnet between two surfaces. While Novelty’s proposed construction captures this concept, its use of the word “material” adds a new concept that is not clearly intended by the patentee nor is necessary to clarify the meaning of the term “secured.” The term “secured” is used in the claims in combination with words that describe the composition of the layering means. For example, claim 18 specifies that a magnet “is secured between an outer surface of the cylindrical body and the protective coating.” To construe the term “secured” as proposed by Novelty would result in redundancies, as underscored here in the context of claim 18: “The improved beverage container holder of claim 17 wherein the at least one magnet is covered with a first piece of material that is attached to a second piece of material to hold the object between the first piece of material and the second piece of material between an outer surface of the cylindrical body and the protective coating.” As this demonstrates, “material” becomes redundant with “outer surface of the cylindrical body” and “the protective coating.”

This redundancy is cured by construing the term “secured” as “attached by means of layering.” Such a construction specifies a particular means of attachment without unduly injecting additional terms into the claim language. For these reasons, “secured” is construed as “attached by means of layering.”

VII. FIFTH DISPUTED TERM

Claim	Disputed Claim Term	Magna-Mug’s Proposed Construction	Novelty’s Proposed Construction	Court’s Ruling
<p>“[Claim 1.] An improved beverage container holder . . . comprising: . . . b) at least one magnetic means affixed to and secured to the integrated cylindrical portion of the wrap element. . . .”</p>	<p>Affixed to and secured to</p>	<p>No construction necessary; ordinary meaning.</p>	<p>Both affixed to a first material by a substance interposed between the object and the first material <i>and</i> the object is secured to the first material by a second material that covers the object and is attached to the first material.</p>	<p>Two separate pieces joined together and attached by means of layering.</p>

This term is used only once in the entire patent and is used to describe the manner in which the magnet is included in the cylindrical portion of the invention. Magna-Mug says it requires no construction. Novelty states that the phrase is a combination of its proposed constructions of “affixed” and “secured.”

As discussed, “a claim term should be construed consistently with its appearance in other places in the same claim or in other claims of the same patent.” *Rexnord*, 274 F.3d at 1342. The Court has construed “affixed” and “secured.” Both “affixed” and “secured” have been construed above. There is no reason to construe these two terms together as meaning anything different than what they mean when used apart.

In light of the foregoing analysis, the term “affixed to and secured to” means “two separate pieces joined together and attached by means of layering.”

VIII. SIXTH DISPUTED TERM

Claim	Disputed Claim Term	Magna-Mug’s Proposed Construction	Novelty’s Proposed Construction	Court’s Ruling
<p>“[Claim 1.] An improved beverage container holder . . . comprising: a) a foldable single unit wrap element comprising an integrated cylindrical portion made from a flexible material and having a lower side length, configured to encircle the bottom portion of a beverage container, and a bottom attached along the lower side length of the integrated cylindrical portion, and b) at least one magnetic means affixed to and secured to the integrated cylindrical portion of the wrap element. . . .”</p> <p>“[Claim 3.] The improved beverage container holder of claim 2 wherein the plurality of neodymium magnets are secured between an outer surface of the integrated cylindrical portion and the protective coating.”</p> <p>“[Claim 7.] An improved beverage container holder . . . comprising: a) a foldable, flexible single unit wrap element comprising an integrated cylindrical portion having a lower side length . . . [and] b) a bottom portion attached along the lower side length of the integrated cylindrical portion. . . .”</p>	<p>Cylindrical portion</p>	<p>No construction necessary; ordinary meaning.</p>	<p>A piece of material having a cylindrical wall and a height that forms a cylinder, which is integrated with a wrap element.</p>	<p>Cylindrical portion.</p>

The term “cylindrical portion” is used six times in claims 1 through 7 of the patent.

Novelty proposes that the term be construed as “a piece of material having a circular wall and a height that forms a cylinder, which is integrated with a wrap element.” As with the other claim terms, Magna-Mug states that no construction is needed.

Neither party disputes that a portion is, by definition, a part of a whole.⁴ In claim 1, the “cylindrical portion” together with the “bottom” comprise the wrap element of the beverage container holder. In other words, the wrap element of claim 1 is comprised of two portions: the cylindrical portion and the bottom portion. There is nothing particularly complex or ambiguous about that notion. Regardless, Novelty proposes that “cylindrical portion” is a cylinder “which is integrated with a wrap element.” Such a construction, which uses the term “wrap element” to describe one of two portions of the wrap element, obfuscates rather than elucidates the meaning of the claim. This is evidenced by the following paragraph, in which the term “cylindrical portion” has been replaced with Novelty’s proposed construction:

[Claim 1.] An improved beverage container holder . . . comprising:
a) a foldable single unit wrap element comprising an integrated *[piece of material having a cylindrical wall and a height that forms a cylinder, which is integrated with a wrap element]* made from a flexible material and having a lower side length, configured to encircle the bottom portion of a beverage container, and a bottom attached along the lower side length of the integrated *[piece of material having a cylindrical wall and a height that forms a cylinder, which is integrated with a wrap element]*, and b) at least one magnetic means affixed to and secured to the integrated *[piece of material having a cylindrical wall and a height that forms a cylinder, which is integrated with a wrap element]* of the wrap element. . . .

It is thus apparent that construing “cylindrical portion” as a cylinder “integrated with a wrap element” would result in repeatedly describing “wrap element” with the term “wrap element,” a circular reading that makes the construction meaningless. There is nothing to overcome the

⁴ “Portion . . . 3a: a part of a whole.” Webster’s New International Dictionary (3d ed. 1993).

presumption that claim terms should be given their ordinary, plain meaning in this instance.

Accordingly, the term “cylindrical portion” shall be given its ordinary meaning.

IX. SEVENTH DISPUTED TERM

Claim	Disputed Claim Term	Magna-Mug’s Proposed Construction	Novelty’s Proposed Construction	Court’s Ruling
<p>“[Claim 1.] An improved beverage container holder . . . comprising: a) a foldable single unit wrap element comprising an integrated cylindrical portion made from a flexible material and having a lower side length, configured to encircle the bottom portion of a beverage container, and a bottom attached along the lower side length of the integrated cylindrical portion”</p> <p>“[Claim 7.] An improved beverage container holder . . . comprising: a) a foldable, flexible single unit wrap element comprising an integrated cylindrical portion having a lower side length . . . [and] b) a bottom portion attached along the lower side length of the integrated cylindrical portion. . . .”</p>	<p>Along the lower side</p>	<p>No construction necessary; ordinary meaning.</p>	<p>The entire circumference of a cylindrical portion attached to or incorporated in a wrap element.</p>	<p>Along the lower side.</p>

The term “along the lower side” occurs in claims 1 and 7 to describe the attachment of the “bottom” or “bottom portion” “along the lower side length of the integrated cylindrical portion.” Contrary to Novelty’s argument, there is nothing in the specification or the claims to suggest that the bottom must be attached along the entire circumference of the cylindrical portion. Rather, one could imagine a design where there is at least some cut-out between the cylindrical portion and the bottom and which still would fall within the parameters of the claim language. In light of the foregoing analysis, the term “along the lower side” does not require construction but shall be given its ordinary meaning.

X. CONCLUSION

The Court concludes that the foregoing claim constructions control. The parties shall therefore proceed in a manner consistent with the conclusions of this Order.

IT IS SO ORDERED.

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court