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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 NATIONAL PRODUCTS INC.,

8 Plaintiff,

9 v.

10 BELKIN INTERNATIONAL, INC.,

11 Defendant.

C16-402 TSZ

ORDER

12 THIS MATTER comes before the Court pursuant to Markman v. Westview  
13 Instruments, Inc., 52 F.3d 967 (Fed. Cir. 1995), to construe certain terms in United States  
14 Patent No. 8,505,861 B2 (“the ’861 Patent”), which discloses a suction cup mounting  
15 platform having a flexible base. Also before the Court is plaintiff’s motion for leave to  
16 amend its infringement contentions, docket no. 24. Being persuaded that neither an  
17 evidentiary hearing nor oral argument is necessary, see Ballard Med. Prods. v. Allegiance  
18 Healthcare Corp., 268 F.3d 1352, 1358 (Fed. Cir. 2001), and having reviewed the  
19 parties’ briefs, as well as all other papers filed in connection with claim construction and  
20 plaintiff’s motion, the Court enters the following order.

21 **Background**

22 For over a century, pneumatic disks or suction cups have been used to attach, hold,  
23 or mount items. See U.S. Patent No. 816,588 (1906) (disclosing a mirror that is retained

1 “firmly in place” on a window, wall, or door by “the well-known adhesive effect” of a  
2 “pneumatic disk”). To be effective, suction cups must be mounted to relatively smooth  
3 surfaces that are impervious to air. *See* U.S. Patent No. 2,968,460 (1961) (the “Van  
4 Dusen Patent”) at Col. 1, Lines 18-35 (observing that suction cup devices work on only  
5 “a narrow range of surface types” and that even an “extremely slow” diffusion of air  
6 through a surface defect or a porous material will ultimately destroy the vacuum and  
7 release the mechanism). One way to address the unsuitability of a surface for pneumatic  
8 action is to more permanently attach to the surface an intermediary, which itself has the  
9 requisite flat, impermeable structure for receiving a suction cup device. For example, the  
10 Van Dusen Patent discloses a membrane, which is typically circular, and which is coated  
11 on one side with a pressure sensitive adhesive; the coated side of the membrane is affixed  
12 to a surface by activating the pressure sensitive adhesive, and the other side of the  
13 membrane receives the working face of a vacuum cup and is capable of creating an  
14 airtight seal. *See id.* at Col. 4, Lines 45-50.

15         The invention at issue in this case, like the membrane disclosed in the Van Dusen  
16 Patent, serves as an intermediary; it is attached using a pressure sensitive adhesive to a  
17 surface otherwise incompatible with suction cup application. It is intended for use in  
18 motor vehicles, to permit the non-permanent attachment, via suction cups, of brackets or  
19 cradles for electronic devices, including smartphones, satellite radios, and personal digital  
20 assistants. *See* ’861 Patent at Col. 1, Lines 19-56, Ex. A to Polozola Decl. (docket  
21 no. 27-1 at 15). The base of the mounting platform disclosed in the ’861 Patent conforms  
22 to the various non-planar surfaces that might exist in the passenger compartment of a  
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1 motor vehicle, particularly along the dashboard and windshield, where device cradles  
2 would likely be located. See id. at Col. 1, Lines 60-63; see also id. at Col. 1, Lines 30-47.

3 The '861 Patent has sixteen claims, four of which (Claims 1, 6, 7, and 13) are  
4 independent. In its Disclosure of Asserted Claims and Preliminary Infringement  
5 Contentions, Ex. A to Tellekson Decl. (docket no. 25-1), plaintiff National Products Inc.  
6 ("NPI"), the assignee of the '861 Patent, alleged that the accused device, manufactured  
7 by defendant Belkin International, Inc. ("Belkin"), infringes Claims 1–9, 11, 12, and 16.  
8 After receiving NPI's infringement contentions, Belkin redesigned its product and  
9 removed the accused device from the market. See Polozola Letter, Ex. D to Tellekson  
10 Decl. (docket no. 25-4). Having now examined the redesigned product, NPI seeks to  
11 amend its infringement contentions and reduce to four the number of claims it alleges are  
12 infringed by both the accused device and the redesigned product, specifically Claims 1, 4,  
13 5, and 6. See Pla.'s Mot. to Amend at 2 (docket no. 24). Belkin opposes NPI's motion to  
14 amend its infringement contentions as being procedurally improper, untimely, and highly  
15 prejudicial.

16 NPI's motion to amend its infringement contentions noted for consideration after  
17 the parties' opening claim construction briefs were due and filed. In their opening claim  
18 construction briefs, the parties identified four terms that they wished the Court to  
19 construe, namely "rib" and "joined between," which both appear in independent Claims 1  
20 and 6, and "stand-off" and "spacer," which are separately used in claims other than those  
21 NPI would allege are infringed if it was allowed to amend its infringement contentions.  
22 NPI therefore asserts that the Court need not interpret the terms "stand-off" and "spacer,"  
23

1 but Belkin takes the position that “rib” must be construed with respect to, and as having a  
2 different meaning than, “stand-off” and “spacer,” and that NPI’s request to amend its  
3 infringement contentions constitutes an improper attempt to avoid an unfavorable claim  
4 interpretation.

## 5 **Discussion**

### 6 **A. Claim Construction Standards**

7 The Court has both the authority and the obligation to construe as a matter of law  
8 the meaning of language used in a patent claim. *Markman*, 52 F.3d at 979. In doing so,  
9 the Court must consider the intrinsic evidence in the record, meaning the claims, the  
10 specification, and the prosecution history. *Id.* The words of a claim are generally  
11 assigned their “ordinary and customary meaning.” *Phillips v. AWH Corp.*, 415 F.3d  
12 1303, 1312 (Fed. Cir. 2005). The ordinary and customary meaning of a claim term is the  
13 definition ascribed to it by “a person of ordinary skill in the art in question at the time of  
14 the invention.” *Id.* at 1313. The context in which a claim term is used may also be  
15 instructive. *Id.* at 1314. For example, if a claim refers to “steel baffles,” the language  
16 implies that baffles are not necessarily made of steel. *Id.* The other claims of a patent  
17 may also illuminate the meaning of a term, through *inter alia* consistent usage of the  
18 same term, or inclusion in a dependent claim of an additional term not present in the  
19 related independent claim. *Id.* at 1314-15.

20 Claims must also be read in light of the specification. *Markman*, 52 F.3d at 979.  
21 The specification is “the single best guide to the meaning of a disputed term.” *Phillips*,  
22 415 F.3d at 1315. If the specification reveals a definition given to a claim term that  
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1 differs from the meaning it would otherwise possess, the inventor’s lexicography trumps  
2 the ordinary and customary, or dictionary, construction. *Id.* at 1316. In considering the  
3 specification, however, the Court must take care not to import limitations from the  
4 specification into the claims. *See id.* at 1323. The Federal Circuit has “repeatedly  
5 warned” against confining the claims of a patent to the specific embodiments described in  
6 the specification. *Id.*

7         Similar to the specification, the prosecution history evidences how the inventor  
8 understood the terms used in the patent. *Id.* at 1317. Because the prosecution history,  
9 however, represents the “ongoing negotiation” between the United States Patent and  
10 Trademark Office and the applicant, it might suffer from a lack of clarity and is often less  
11 useful for claim construction purposes than the specification. *Id.* In addition, although  
12 the prosecution history “can and should be used to understand the language used in the  
13 claims,” it may not itself “enlarge, diminish, or vary” the limitations in the claims.  
14 *Markman*, 52 F.3d at 980.

15         The Court may, in its discretion, consider extrinsic evidence as an aid in deriving  
16 the “true meaning” of the language employed in the patent. *Id.* (quoting *Seymour v.*  
17 *Osborne*, 78 U.S. 516, 546 (1870)). Extrinsic evidence may include expert or inventor  
18 testimony, dictionaries, and learned treatises. *Id.* Extrinsic evidence is generally less  
19 reliable than intrinsic evidence in construing the claim terms, and the Court must assess  
20 such evidence accordingly, bearing in mind the flaws inherent in each type of extrinsic  
21 evidence. *See Phillips*, 415 F.3d at 1318-19. Moreover, extrinsic evidence may not be  
22 used to vary or contradict the terms of the claims in the patent. *Markman*, 52 F.3d at 981.

1 **B. Disputed Claim Terms**

2 **1. “Rib” and “Joined Between”**

3 The parties have separated the terms “rib” and “joined between” for purposes of  
4 making their claim construction arguments. The terms, however, appear together and  
5 in sequence in each of the claims at issue, namely independent Claims 1, 6, and 7, and  
6 their dependent claims. Claim 7, which includes a “spacer” limitation that is not set forth  
7 in Claims 1 and 6, is discussed in the next subsection.

8 Claim 1 discloses:

9 A suction cup mounting platform, the mounting platform  
10 comprising:

11 a substantially rigid plate having first and second opposing faces;

12 a suction cup mounting surface formed on the first face of the plate;

13 a skirt portion coupled to the second face of the plate;

14 a plurality of flexible legs coupled to the skirt portion and having a  
15 bonding surface facing away from the plate;

16 a ***rib joined between*** the second face of the plate and the skirt portion;  
17 and

18 a bonding agent adhered to the bonding surface of the plurality of  
19 flexible legs.

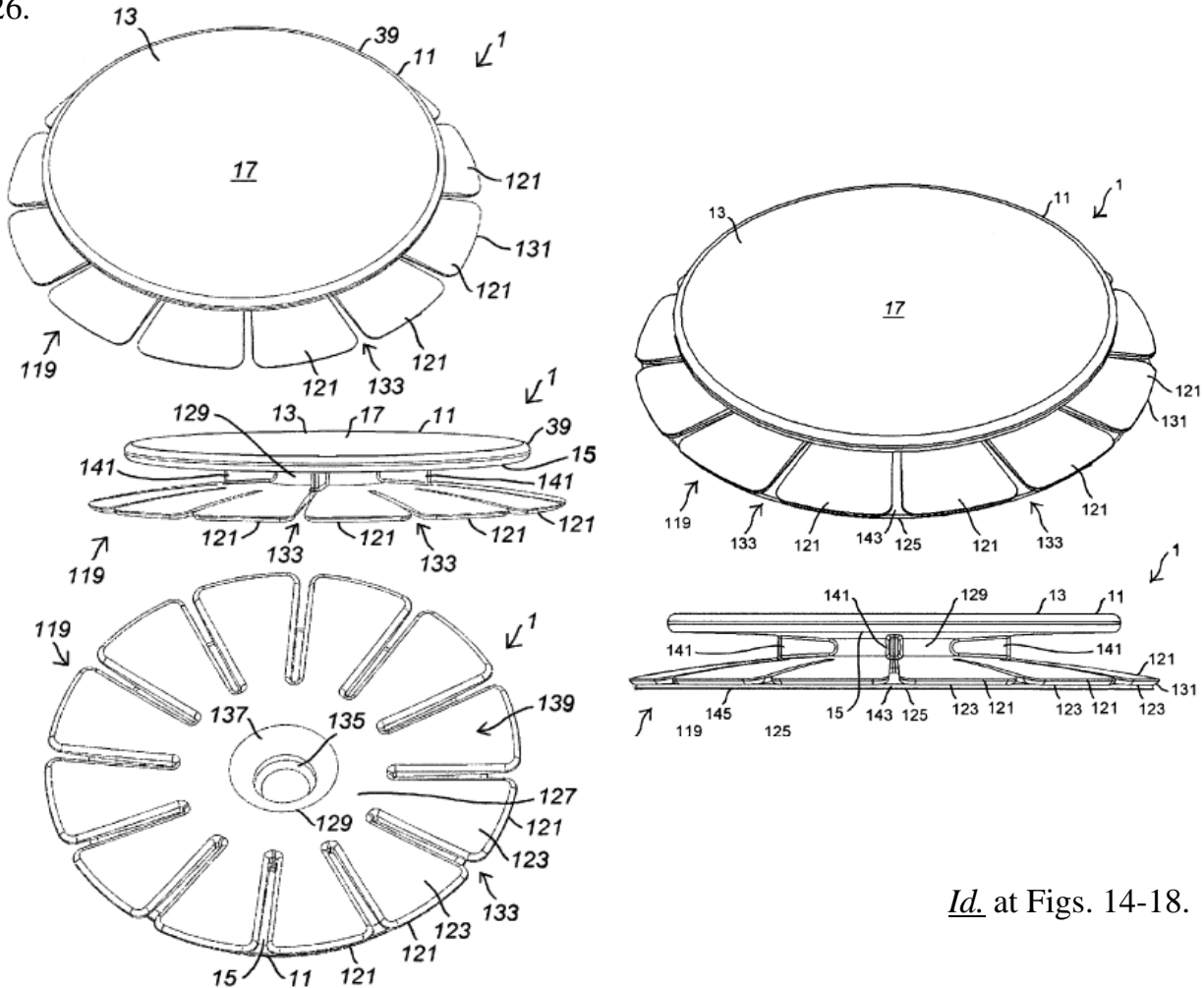
20 ’861 Patent at Col. 11, Lines 50-62 (docket no. 27-1) (emphasis added). Claim 6  
21 contains all of the language of Claim 1, and adds the following phrase:

22 wherein the skirt portion further comprises an opening between adjacent  
23 legs and communicating with a periphery of the skirt, the ***rib*** being  
***joined between*** the second face of the plate and the skirt portion  
adjacent to one of the openings.

*Id.* at Col. 12, Lines 27-31 (emphasis added).

1 The specification illustrates two alternative embodiments that are relevant in this  
 2 matter. Both embodiments contain a “substantially rigid plate” whose first (or top) face  
 3 (13) contains a “suction cup mounting surface” or a “substantially smooth and planar  
 4 surface” (17) and whose second (or bottom) face (15) is coupled to a skirt (137) that is  
 5 attached to numerous flexible legs (121). *See id.* at Figs. 14-16 & 17-18. Moreover, both  
 6 embodiments show “a plurality of gussets or ribs joined between the second [or bottom]  
 7 face **15** of the mounting plate **11** and the flared skirt portion **137** of the stem **129**.” *Id.* at  
 8 Col. 10, Lines 21-24. According to the specification, the gussets or ribs (141) serve the  
 9 purpose of stabilizing the mounting plate relative to the stem (or skirt) when the legs are  
 10 bonded to the target (for example, a dashboard or windshield). *Id.* at Col. 10, Lines 24-

11 26.



*Id.* at Figs. 14-18.

1 The parties ask the Court to construe the terms “rib” and “joined between” as  
2 follows:

| Term             | NPI’s Proposal   | Belkin’s Proposal   |
|------------------|--|---|
| “rib”            | “a structure that stabilizes or supports”  | plain and ordinary meaning, <sup>1</sup><br><i>i.e.</i> , “a narrow piece that protrudes from a center support” |
| “joined between” | plain and ordinary meaning, <sup>1</sup><br><i>i.e.</i> , “located between two other parts” and directly or indirectly connected to each of them | “touching both”   |

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8 Pla.’s Br. at 4 & 7 (docket no. 28); Def.’s Br. at 12, 15, & 16 (docket no. 26). Belkin  
9 further indicates that the term “rib” must be distinguished from the term “stand-off,”  
10 which appears in dependent Claims 2 and 3, and from the term “spacer,” which is used in  
11 Claim 7 and its dependent claims.

12 **2. “Stand-Off” and “Spacer”**

13 Claim 2 adds to the limitations of Claim 1 the following element:

14 a **stand-off** coupled to the second face of the plate adjacent to a center  
15 portion thereof, the **stand-off** further comprising the skirt portion  
adjacent to an end portion thereof distal from the plate; and

16 wherein the plurality of the legs is further projected substantially radially  
outwardly of the skirt portion of the **stand-off**.

17 *Id.* at Col. 11, Line 63 – Col. 12, Line 3 (emphasis added). Claim 3 references the  
18 mounting platform of Claim 2 and states:

19 wherein the **stand-off** further comprises a tube portion being  
20 substantially hollow at least adjacent to the skirt portion of the  
**stand-off**.

21  
22 <sup>1</sup> The Court assumes that the parties meant to refer to the “ordinary and customary” standard summarized  
23 in *Phillips*. *See* 415 F.3d at 1312-13.



1 *Id.* at Col. 12, Lines 4-6 (emphasis added). The term “stand-off” does not appear in the  
2 specification or anywhere else in the ’861 Patent other than in Claims 2 and 3.

3 Claim 7 discloses:

4 A suction cup mounting platform, the mounting platform  
5 comprising:

6 a substantially rigid monolithic plate having first and second opposing  
7 faces;

8 a substantially smooth and planar surface formed on the first face;

9 a plurality of radially extended and substantially flexible leg members  
10 spaced away from the plate at a central portion of the second face  
11 thereof, each of the leg members having a bonding surface facing  
12 away from the plate;

13 a substantially tubular spacer coupled between the leg members and the  
14 plate adjacent to the central portion of the second face thereof,  
15 wherein the spacer further comprises a terminal skirt portion distal  
16 from the second face of the plate and having the leg members  
17 extended therefrom;

18 a rib joined between<sup>2</sup> the plate at the second face thereof and the  
19 terminal skirt portion; and

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20 <sup>2</sup> Claims 12 and 16, each of which depend from Claim 7, incorporate the “spacer” limitation, but also  
21 speak in terms of a “plurality of ribs,” as follows:

22 12. The mounting platform of claim 7, wherein the skirt portion of the spacer further  
23 comprises substantially radially extended openings separating the leg members and  
communicating with a periphery of the skirt; and

further comprising a plurality of ribs joined between the plate at the second face  
thereof and the terminal skirt portion adjacent to different ones of the openings.

....

16. The mounting platform of claim 7 wherein the leg members are separated by  
openings extended therebetween and communicating with a periphery of the skirt; and

further comprising a plurality of ribs joined between the second face of the plate and  
the flared skirt portion adjacent to different ones of the openings extended between  
the leg members.

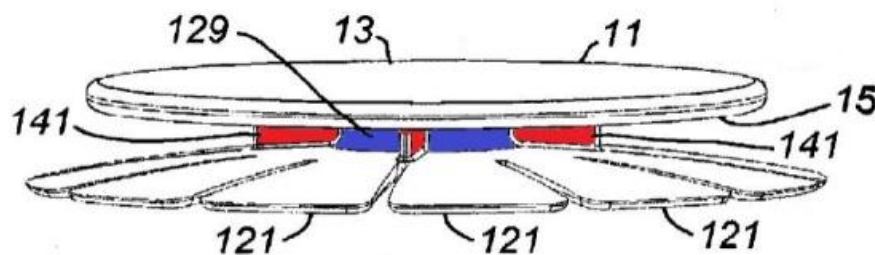
*Id.* at Col. 13, Lines 1-7 & Col. 14, Lines 13-19 (emphasis added).

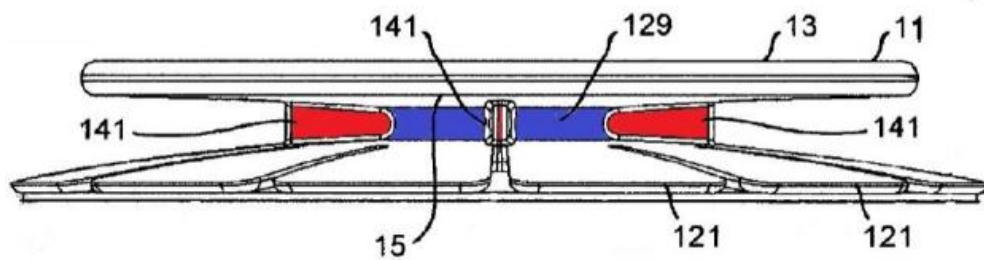
1 a pressure sensitive adhesive coupled to the bonding surface of each leg  
2 member.

3 Id. at Col. 12, Lines 32-52 (emphasis added). The only time the word “spacer” appears in  
4 the ’861 Patent, other than in the claim language, is in the summary, which describes the  
5 invention as having “flexible leg portions . . . spaced away from the mounting plate by a  
6 hollow tubular spacer formed with a skirt portion distal from the mounting plate and  
7 having the flexible leg portions radially extended therefrom.” Id. at Col. 2, Lines 12-16  
(emphasis added).

8 The specification does not use the terms “stand-off” and “spacer,” and instead  
9 employs the words “post” or “stem” when discussing the embodiments of the invention  
10 disclosed in the ’861 Patent. For example, with reference to Figures 14, 15, and 16, the  
11 specification indicates that “the leg portions **121** each extend substantially radially  
12 outwardly from a substantially disc-shaped base portion **127** of a post or stem 129  
13 projected substantially central of the second face **15** of the mounting plate **11**.” Id. at  
14 Col. 9, Lines 39-42 (emphasis added). The specification also explains that “the stem 129  
15 is optionally configured as having a thin-walled hollow substantially cylindrical tube  
16 portion **135** with a flared skirt portion **137** coupled into the leg portions **121**.” Id. at  
17 Col. 9, Lines 55-58 (emphasis added).

18 For ease in deciphering the drawings in the ’861 Patent, Belkin has provided  
19 colored or shaded versions of Figures 15 and 18, respectively:





Def.'s Br. at 3 (docket no. 26 at 6). In these figures, which have been simplified by eliminating some of the original labels, the vertical or tubular portion of the "post" or "stem" (129) is blue, while the gussets or ribs (141) are red. To be consistent with the claim language and the specification, the legs (121), which are part of the "stand-off," "spacer," "post," or "stem," should also be shaded in blue.

The parties agree that the terms "stand-off" and "spacer" are interchangeable, but they dispute how the terms should be construed. According to NPI, the terms "stand-off" and "spacer" mean "a piece of material used to create space between two things." Pla.'s Br. at 10 (docket no. 28). In contrast, Belkin argues that the terms "stand-off" and "spacer" are synonymous with the words "post" or "stem," which Belkin defines as a "spacer that projects substantially perpendicularly from the second face of the mounting plate and separates the mounting plate from the base." Def.'s Br. at 9 (docket no. 26).

### **3. Ordinary and Customary Meaning**

The parties do not contend that the inventor employed an unusual lexicon in setting forth the claims of the '861 Patent or that the terms "rib," "joined between," "stand-off," and/or "spacer" have any specialized meaning, and thus, "the ordinary [and customary] meaning of those words to those skilled in the art controls, unless the evidence indicates that the inventor used them differently." *See Karlin Tech. Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968, 971 (Fed. Cir. 1999). Because the terms "rib"

1 and “spacer” both appear in Claim 7, and because the term “rib” is used in a different  
2 manner than the terms “stand-off” and “spacer,” the term “rib” must be construed to  
3 identify a component distinct from a “stand-off” or “spacer.” See Becton, Dickinson &  
4 Co. v. Tyco Healthcare Group, LP, 616 F.3d 1249, 1254 (Fed. Cir. 2010) (“Where a  
5 claim lists elements separately, ‘the clear implication of the claim language’ is that those  
6 elements are ‘distinct component[s]’ of the patented invention.” (alteration in original,  
7 quoting Gaus v. Conair Corp., 363 F.3d 1284, 1288 (Fed. Cir. 2004))). Thus, to  
8 understand the term “rib,” the “stand-off” or “spacer” elements must first be defined.

9         A spacer is a “device for holding two members at a given distance from each  
10 other.” McGraw-Hill Dictionary of Scientific and Technical Terms 1984 (6th ed. 2003)  
11 [hereinafter “McGraw-Hill”]. The specification uses the words “post” and “stem” as  
12 synonyms for “spacer,” thereby describing a particular shape for the spacer, which is  
13 explicitly set forth in the claim language, namely “substantially tubular.” See ’861 Patent  
14 at Col. 12, Line 43; see also Playtex Prods., Inc. v. Procter & Gamble Co., 400 F.3d 901,  
15 907 (Fed. Cir. 2005) (“The term ‘substantial’ is a meaningful modifier implying  
16 ‘approximate,’ rather than ‘perfect.’” (quoting Liquid Dynamics Corp. v. Vaughan Co.,  
17 355 F.3d 1361, 1368 (Fed. Cir. 2004))); McGraw-Hill at 1645 (defining “post” as a  
18 “vertical support such as a pillar, upright, or fence stake”); Webster’s Third New Int’l  
19 Dictionary 2235 (1981) [hereinafter “Webster’s”] (defining “stem” as “something felt to  
20 resemble a plant stem,” listing as an example “a spindle or guide rod on a mechanical  
21 part”).

1           Having compared the specification’s descriptions of the embodiments with the  
2 claim language, the Court agrees with the parties that the terms “stand-off” and “spacer,”  
3 which have the same meaning as “post” or “stem,” are interchangeable. The Court,  
4 however, rejects Belkin’s proposal to construe “stand-off” and “spacer” to require that  
5 they project “substantially perpendicularly” from the bottom face of the mounting plate.  
6 Such language would improperly import another limitation into the claims at issue. A  
7 “substantially tubular spacer” could conceivably form an acute or obtuse angle (as  
8 opposed to a right angle) with the bottom face of the mounting plate and still meet the  
9 express limitations of Claim 7 and its dependent claims. The Court also declines to adopt  
10 Belkin’s suggestion that a stand-off or spacer “separates the mounting plate from the  
11 base.” Although the specification discusses a “base portion,” none of the claims use the  
12 terms “base” or “base portion,” and Belkin’s construction would render “stand-off” and  
13 “spacer” indefinite by referring to a non-existent element.

14           The Court also refuses to construe a stand-off or spacer as “a piece of material  
15 used to create space between two things,” as NPI requests. Claims 2 and 3 specify that  
16 the stand-off is comprised of a skirt portion with a plurality of legs projecting radially  
17 outwardly. Claim 7 indicates that the spacer has a skirt portion with leg members  
18 extending therefrom. The legs are essentially the “substantially disc-shaped base  
19 portion” to which the specification refers, *see* ’861 Patent at Col. 9, Lines 42-50, but they  
20 are part of the stand-off or spacer, not a different component. Thus, the stand-off or  
21 spacer does not create space between two other things, but rather is attached to the  
22 bottom face of the rigid (mounting) plate and then terminates in radially extended legs at  
23

1 some distance away from the plate. The Court construes the terms “stand-off” and  
2 “spacer” as they are defined in the claims at issue, namely as an element having a skirt  
3 portion with a plurality of radially extended legs, which are situated away (distal) from  
4 the mounting plate.

5 With the understanding that the “rib” component must be distinct from a “stand-  
6 off” or “spacer,” the Court also rejects the parties’ proposals concerning the meaning of  
7 the term “rib.” In ordinary parlance, a rib is “one of the paired curved bony or partly  
8 cartilaginous rods that stiffen the lateral walls of the body.” Webster’s at 1950. The  
9 word is used to identify a multitude of objects that are similar in shape, concept, or  
10 purpose, including the hinged rods of an umbrella, the members supporting a bridge, and  
11 the arched structures of a vault. *See id.* Any “ridge, fin, or wing . . . used to strengthen,  
12 stiffen, or dissipate heat” or “provide lateral, longitudinal, or horizontal support” can be  
13 considered a rib.<sup>3</sup> *See id.* Belkin cites no authority for its assertion that the ordinary and  
14 customary meaning of rib is “a narrow piece that protrudes from a center support,” and  
15 such definition would impose limitations that are unwarranted by the claim language.  
16 Belkin’s interpretation also unjustifiably eliminates a variety of elements that might  
17 qualify as a rib. In contrast, NPI’s suggestion that a rib is “a structure that stabilizes or

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20 <sup>3</sup> The specification analogizes a “rib” to a “gusset” and uses the terms interchangeably. A gusset,  
21 however, is commonly considered to be quite different from a rib; it is usually a “V-shaped or triangular  
22 insert (as in a sail or skirt)” or a plate that “joins the truss members in a truss joint or fits at a joint of a  
23 frame structure.” Webster’s at 1013. Only the term “rib” appears in the claims, and to the extent the  
specification’s reference to “gusset” is ambiguous or confusing, the Court has disregarded it. *See*  
*Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998) (“The construction  
that stays true to the claim language and most naturally aligns with the patent’s description of the  
invention will be, in the end, the correct construction.”).

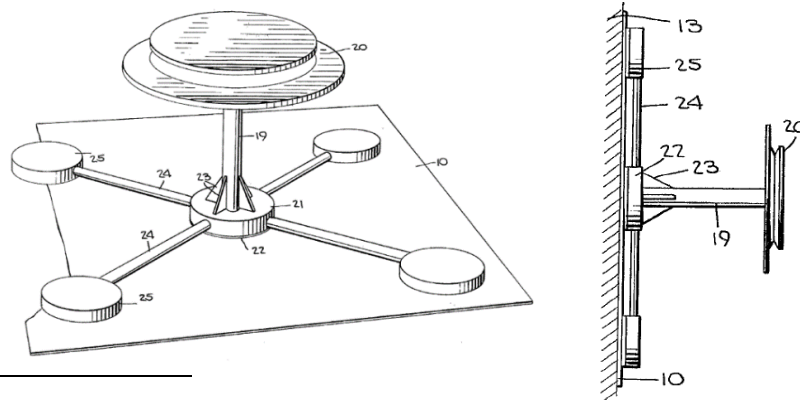
1 supports” is overly inclusive, sweeping in every manner of bracing and all foundation  
2 styles. The term “rib” is not as ubiquitous or indefinite as NPI contemplates.

3 Although the Federal Circuit has recognized that “[w]ords are symbols, linguistic  
4 embodiments of information sought to be communicated, and, as such, can be imperfect  
5 at representing their subject,” *Fenner Invs., Ltd. v. Cellco P’ship*, 778 F.3d 1320, 1323  
6 (Fed. Cir. 2015), the Court is satisfied that the word “rib” is sufficiently precise and  
7 requires no further interpretation. In this context, a rib can take a variety of forms, but it  
8 cannot be the tubular component having a skirt and radially projecting legs that is known  
9 alternatively as a stand-off, spacer, post, or stem. With this caveat in mind, whether a  
10 component is a “rib” is best answered by using either Justice Stewart’s famous “I know it  
11 when I see it” standard, *see Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J.,  
12 concurring), or something akin to the proverbial “duck test,” *i.e.*, if it looks, walks, and  
13 quacks like a duck, it’s a duck, *see S.I. Stud, Inc. v. United States*, 24 F.3d 1394, 1396  
14 (Fed. Cir. 1994) (Plager, C.J., dissenting) (disagreeing with the majority’s “determination  
15 that something that looks like a bolt, works like a bolt, and is sold for the purpose of  
16 bolting things together, is nevertheless not a bolt, but a stud,” referencing the “duck test”  
17 as the applicable standard). Using further verbiage to define the word “rib” simply risks  
18 incorporating limitations where none had been before.

19 The Court is likewise persuaded that the phrase “joined between” adequately says  
20 what it means. The word “join” means “to put or bring together and fasten, connect, or  
21 relate so as to form a single unit, a whole, or a continuity.” Webster’s at 1218. The word  
22 “between” describes “the space that separates” or “an intermediate position in relation to  
23

1 two other objects.” *Id.* at 209. Thus, the claim language “a rib joined between the  
2 second face of the plate and the skirt portion” is easily understood to connote a rib that is  
3 fastened or connected within the space that separates the bottom face of the mounting  
4 plate and the skirt portion, which for purposes of Claims 2, 3, and 7 (and its dependent  
5 claims) is part of the stand-off or spacer.

6 In suggesting that the words “touching both” be substituted for “joined between,”  
7 Belkin attempts to import a limitation that is unsupported by the ordinary and customary  
8 meaning of the term “joined between.” As evidenced by the prosecution history, neither  
9 the examiner nor the applicant interpreted the words “joined between” to require that the  
10 rib touch both the bottom of the mounting plate and the skirt portion. *See* Ex. B to  
11 Polozola Decl. (docket no. 27-2). In rejecting the original Claim 1,<sup>4</sup> the examiner cited  
12 United States Patent No. 4,309,011 (“Spector”), which discloses reinforcing fins (23),  
13 similar to ribs, that are attached to a form of post called a standard (19), but do not extend  
14 along the entire length of the standard or touch the underside of a pulley (20), which is  
15 analogous to the mounting plate of the ’861 invention. *See* Spector at Col. 4, Lines 39-55  
16 and Figs. 4 & 5, Ex. G to Hagan Decl. (docket no. 29-7):



22 <sup>4</sup> The original Claim 1 was later cancelled, and the original Claim 8 was rewritten to become Claim 1.  
23 *See* Resp. to Official Action at 6-7 (Feb. 27, 2012), Ex. B to Polozola Decl. (docket no. 27-2 at 73-74).



1 The examiner stated, in relevant part, that “Spector teaches . . . a rib (23) joined between  
2 the second face of the plate and the skirt portion.” Office Action at 3, Ex. B to Polozola  
3 Decl. (docket no. 27-2 at 95) (emphasis added). The inventor did not challenge this  
4 conclusion. See Ex. B to Polozola Decl. (docket no. 27-2).

5 Ultimately, the questions of whether a component is a “rib” and whether such  
6 element is “joined between” the bottom of the mounting plate and the skirt portion are  
7 not matters of claim construction, but rather issues of infringement that must be decided  
8 by the trier of fact. These claim terms are clear enough to permit the trier of fact to  
9 perform its work, and the Court therefore declines to rewrite or otherwise alter the  
10 language that received the United States Patent and Trademark Office’s imprimatur.  
11 See Ballard, 268 F.3d at 1358 (“Markman does not require a district court to follow any  
12 particular procedure in conducting claim construction. It merely holds that claim  
13 construction is the province of the court, not a jury. . . . As long as the trial court  
14 construes the claims to the extent necessary to determine whether the accused device  
15 infringes, the court may approach the task in any way that it deems best.” (emphasis  
16 added)); see also Static Control Components, Inc. v. Lexmark Int’l, Inc., 502 F. Supp. 2d  
17 568, 575-76 (E.D. Ky. 2007).<sup>5</sup>

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20 <sup>5</sup> In Static Control, the district court criticized one side’s “exhortation to attach a synonym to self-defined  
21 and simple words” because it invited “a meaningless result that mocks the notion of construction.” 502  
22 F. Supp. 2d at 576. The district court used as an example the term “dog,” which a party might argue, in  
23 light of intrinsic evidence, must be construed as weighing less than 50 pounds, and as a result, such  
party’s accused dog is non-infringing because it is too heavy. Id. at 575. Determining whether a “dog”  
has a maximum weight would be an exercise in claim construction, but deciding whether “dog” means  
“canine” is a pointless endeavor, prompting the query of how an accused “dog” would infringe but an  
accused “canine” would not. Id.

1 **C. Amendment of Infringement Contentions**

2 Belkin contends that NPI's motion to amend its infringement contentions is  
3 untimely and procedurally improper. The Local Patent Rules, however, envision that  
4 infringement contentions may be amended if the Court's claim construction is different  
5 from the interpretation proposed by the party seeking amendment. Local Patent Rule  
6 124. In light of the Court's rulings concerning the claim terms "rib," "joined between,"  
7 "stand-off," and "spacer," most of which varied from NPI's positions, NPI will be  
8 permitted to amend its infringement contentions. NPI shall serve and file its amended  
9 infringement contentions within twenty-eight (28) days of the date of this Order.

10 **Conclusion**

11 For the foregoing reasons, the Court ORDERS as follows:

12 (1) The terms "stand-off" and "spacer" have the same meaning, and are  
13 construed as an element having a skirt portion with a plurality of radially extended legs,  
14 which are situated away (distal) from the rigid (mounting) plate; the "stand-off" or  
15 "spacer" is distinct from any "rib" or "plurality of ribs";

16 (2) The terms "rib" and "joined between" are assigned their ordinary and  
17 customary meanings;

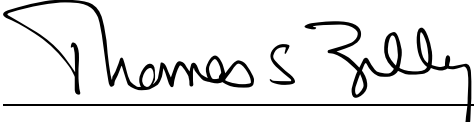
18 (3) Plaintiff's motion for leave to amend its infringement contentions, docket  
19 no. 24, is GRANTED; and

20 (4) The Clerk is DIRECTED to send a copy of this Order to all counsel of  
21 record.

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IT IS SO ORDERED.

Dated this 18th day of July, 2017.



Thomas S. Zilly  
United States District Judge