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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

U.S.N.R. KOCKUMS CANCAR
COMPANY, a Canadian corporation,

Plaintiff,

v.

RAPTOR INTEGRATION
INCORPORATED, a Canadian
corporation; MACHINAGE PICHÉ, INC.,
a Canadian corporation; and TIMOTHY
MOSHER, a Canadian citizen,

Defendants.

CASE NO. C11-5935 RBL

ORDER CONSTRUING CLAIMS

This matter comes before the Court pursuant to *Markman v. Westview
Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995), to construe the undisputed and disputed
claim terms of United States Patent No. 5,911,302 (“the ‘302 Patent”). The Court has
reviewed each party’s opening and responsive brief, heard oral argument of counsel, and
considered the remainder of the file and hereby construes the claim terms at issue as
stated herein.

I. PROCEDURAL HISTORY

On November 14, 2011, Plaintiff U.S.N.R. Kockums Cancar Company (“USNR”) filed a complaint against Defendants Raptor Integration Incorporated (“Raptor”), Machinage Piché, Inc. (“Piché”), and Timothy Mosher (“Mosher”) alleging, among other claims, infringement of the ‘302 Patent. Dkt. 1. USNR asserted that the infringement claim was based on an alleged offer to sell an infringing product. *Id.* ¶ 37.

On August 17, 2012, USNR filed an amended complaint alleging patent infringement based on an allegation of at least one actual sale of an infringing product and an allegation of an offer to sell an infringing product. Dkt. 33, ¶¶ 38–40.

On March 8, 2013, the parties filed opening claim construction briefs. Dkts. 47, 49, & 50. On March 22, 2013, Defendants responded (Dkts. 52 & 53) and UNSR responded (Dkts. 54 & 55). On March 25, 2013, the parties filed an amended joint claim construction chart and prehearing statement. Dkt. 56.

II. PATENT

On June 15, 1999, the United States Patent and Trademark Office (“USPTO”) issued the ‘302 Patent titled “Circulating Paddle Board Positioning Apparatus.” ‘302 Patent at 1. The patent provides that the “invention relates to the field of sawmill machinery, and in particular to board positioning devices.” *Id.*, col. 1, ll. 6–7. The patent also states that

it is the object of the present invention to provide a board positioning device which can accurately position selected boards lengthwise, that is, transversely across the transfer deck and process the boards through the trimmer at a higher rate of speed than prior art devices and without substantial board slippage or bounce, or collapse of the board’s weak ends,

1 to thus provide an improvement in maintaining a consistently accurate and
2 optimally trimmed board.

3 *Id.*, col. 1, ll. 53–61.

4 **III. DISCUSSION**

5 **A. Legal Standard**

6 It is the obligation of the court to construe as a matter of law the meaning of
7 language used in a patent claim. *Markman*, 52 F.3d at 979. In construing a patent’s
8 claim terms, a court must consider the intrinsic evidence in the record. *See Phillips v.*
9 *AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Intrinsic evidence includes the
10 ordinary and customary meaning of the claim terms, the specification of the patent, and
11 the patent’s prosecution history. *Id.*

12 The ordinary and customary meaning of a term is defined by a person of ordinary
13 skill in the art at the time of the invention. *Id.* The context in which a term is used can be
14 “highly instructive” in resolving the meaning of the term. *Id.* at 1314. For example, if a
15 claim has the term “steel baffle,” it strongly implies that the term “baffle” does not
16 inherently include objects made of steel. *Id.* Other claims in a patent may also provide
17 valuable contextual cues for deciphering the meaning of a term. *Id.* If a limitation is
18 present in a dependent claim, then there is a presumption that the limitation is not present
19 in the parent claim. *Id.* at 1314–15.

20 The claims must also be read in light of the specification. *See Markman*, 52 F.3d
21 at 979. The specification is always highly relevant to the meaning of a claim term:
22 “Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.”

1 | *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). If the
2 | specification reveals a definition of a claim term that is different from how that term
3 | would otherwise be used, then “the inventor’s lexicography governs.” *See Phillips*, 415
4 | F.3d at 1316. Courts should take care, however, not to import limitations from the
5 | specification into the claims. *Id.* at 1323. For example, even if the specification
6 | describes very specific embodiments, the claim terms should not be confined to those
7 | embodiments. *Id.*

8 | The prosecution history of a patent is the last piece of intrinsic evidence that a
9 | court should consider when construing the claims of the patent. *Id.* at 1317. The
10 | prosecution history provides evidence of how the USPTO and the inventor understood
11 | the patent. *Id.* A court, however, should be aware that the prosecution history represents
12 | the ongoing negotiation between the USPTO and the applicant, rather than the final
13 | product. *Id.* As such, the prosecution history may lack the clarity of the specification
14 | and may not be as useful for claim construction purposes. *Id.* In certain instances,
15 | however, the prosecution history may provide guidance of an applicant’s intent to
16 | specifically limit the scope of a given claim term. *Id.*

17 | Extrinsic evidence is the last category of evidence a court may consider when
18 | construing patent claims. *Id.* Such extrinsic evidence includes expert and inventor
19 | testimony, dictionaries, and learned treatises. *Id.* On its own, extrinsic evidence is
20 | unlikely to be reliable in guiding the court’s claim construction. *Id.* at 1319. Instead,
21 | extrinsic evidence should be considered in the context of the intrinsic evidence. *Id.* A
22 |

1 court may also use extrinsic evidence to determine how a person of ordinary skill in the
2 art would understand the claimed invention. *Id.*

3 Although it is the court's duty to resolve fundamental disputes among the parties
4 as to the scope of a claim term, it is not the court's duty to construe every claim term, or
5 to repeat or restate every claim term. *See U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d
6 1554, 1568 (Fed. Cir. 1997); *02 Micro Int'l Ltd. v. Beyond Innovation Tech Corp.*, 521
7 F.3d 1351, 1362 (Fed. Cir. 2008).

8 Ultimately, the interpretation to be given a term can only be
9 determined and confirmed with a full understanding of what the inventors
10 actually invented and intended to envelop with the claim. The construction
11 that stays true to the claim language and most naturally aligns with the
12 patent's description of the invention will be, in the end, the correct
13 construction.

14 *Phillips*, 415 F. 3d at 1312 (citing *Renishaw PLC v. Marposs Societa' per Azioni*, 158
15 F.3d 1243, 1250 (Fed. Cir. 1998).

16 In the instant case, the parties agree that some claim elements should be construed
17 as means- or step-plus-function terms. 35 U.S.C. § 112, paragraph 6 provides that:

18 An element of a claim for a combination may be expressed as a
19 means or step for performing a specified function without the recital of
20 structure, material, or acts in support thereof, and such claim shall be
21 construed to cover the corresponding structure, material, or acts described
22 in the specification and equivalents thereof.

A "means-plus-function" claim term provides "purely functional limitations that do not
provide the structure that performs the recited function." *Phillips*, 415 F.3d at 1311. A
claim term is presumed to be means-plus-function when the word "means" appears in the
claim element. *Callicrate v. Wadsworth Mfg. Co.*, 427 F.3d 1361, 1368 (Fed. Cir. 2005).

1 The construction of a means-plus-function limitation requires two steps. First, the
2 claimed function is determined. *JVW Enters., Inc. v. Interact Accessories, Inc.*, 424 F.3d
3 1324, 1330 (Fed. Cir. 2005). Second, “the corresponding structure in the written
4 description that performs that function” is identified. *Id.* A court may not import
5 functional limitations that are not recited in the claim, or structural limitations from the
6 written description that are unnecessary to perform the claimed function. *Micro Chem.,
7 Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed. Cir. 1999).

8 With these standards and rules in mind, the Court turns to the undisputed and
9 disputed claim terms of the '302 Patent.

10 **B. Undisputed Terms**

11 The parties agree on and the Court adopts the constructions of the following terms:

12 “board ending means”	Construed under 35 USC §112, ¶6 as the ending rolls as shown in reference numeral 26 for urging lumber against board 13 positioners 28, and in particular, against positioner paddles 40.
14 “coupling means”	Construed under 35 USC §112, ¶6 to be a channel portion of the selectively actuatable guide member 30 that engages the guide 15 member engaging means.
16 “translation speed”	The velocity at which a board travels in the first direction, measured by reference to a fixed point

17
18 **C. Disputed Terms**

19 The parties dispute nine terms in the '302 Patent, and USNR requests that the
20 Court correct one typographical error in another term. As a threshold matter, USNR
21 argues that its request for the construction of certain terms “should not be construed as an
22 admission that such terms are required elements or limitations of the claimed invention.”

1 Dkt. 50 at 8. While USNR may reserve its position for a subsequent motion on the issue,
2 the Court will proceed on the theory that the terms of the claim are limitations because it
3 “is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to
4 which the patentee is entitled the right to exclude.’” *Phillips*, 415 F.3d at 1312 (quoting
5 *Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*, 381 F.3d 1111, 1115
6 (Fed. Cir. 2004)). With this is mind, the Court turns to the disputed terms.

7 **1. “Board positioning member”**

8 The parties request that the Court construe the term “board positioning member.”
9 Dkt. 56 at 3–4. This element of the invention makes contact with the board and moves
10 with the board from the position of first contact to the optimized board position. Raptor
11 proposes that the Court construe the term as a “generally telescoping device having a
12 sleeve receiving a shaft and a paddle which can cooperate with the selectively actuatable
13 guide member in the plane of the board translating device.” Dkt. 56 at 4. During oral
14 argument Raptor’s counsel conceded that “telescoping” could be an incorrect limitation
15 and offered the construction of “a generally linearly extensible device having a sleeve
16 receiving a shaft and a paddle” Piché agrees and requests that the Court adopt this
17 or a similar construction. Dkt. 49 at 10. The problem with these constructions, however,
18 is that they are based off the description of the preferred embodiment. *See Phillips*, 415
19 F.3d at 1323 (even if the specification describes very specific embodiments, the claim
20 terms should not be confined to those embodiments). Therefore, the Court declines to
21 adopt either of these constructions.

1 With regard to USNR’s proposed construction, the Court finds that it incorporates
2 almost all of the disclosed limitations, but lacks one important limitation. USNR
3 proposes that the Court construe the term as a “surface that is movably coupled to the
4 board positioning member translating means that can be selectively positioned in the
5 second direction¹ to place the board in an optimized board position.” Dkt. 56 at 4. In
6 other words, USNR is describing a paddle or similar structure (surface) that is somehow
7 coupled to the means of moving the board from the position of first contact to the
8 optimized position. Raptor contends, and Piché agrees, that such a construction ignores
9 the requirement that the board positioning member must interact with the selectively
10 actuatable guide member. Dkt. 52 at 7–8. The Court agrees. In the summary of the
11 invention, the specification provides that the “board positioning member has a guide
12 member engaging means for slideably coupling, by coupling means, the board
13 positioning member to the selectively actuatable guide member.” ‘302 Patent, col. 3, ll.
14 25–28. The preferred embodiment discloses that “Positioner guide rollers (or pins) 36 are
15 mounted to and protrude from positioner shafts 38 so as to slidingly engage guides 30.”
16 *Id.*, col. 4, ll. 50–53. Therefore, the Court declines to adopt USNR’s proposed
17 construction because it does not include the important cooperating limitation.

18 With regard to this missing limitation, Raptor provides an acceptable construction.
19 Raptor proposed a shaft and a paddle that “can cooperate with the selectively actuatable

21 ¹ The patent references a first direction and a second direction. The first direction is the
22 direction of movement toward the board trimmers whereas the second direction is a direction
perpendicular to the board trimmers that places a particular board in an optimized position to be
trimmed.

1 | guide member in the plane of the board translating device.” Dkt. 56 at 4. Adding this
2 | limitation to USNR’s construction, the Court construes the term “board positioning
3 | member” as

4 | a surface that is movably coupled to the board positioning member
5 | translating means and cooperates with the selectively actuable guide
6 | member in the board positioning direction so that the board may be
7 | selectively positioned in an optimized board position.

8 | **2. “Optimization means”**

9 | The parties request that the Court construe the term “optimization means”, and
10 | they agree that the term should be construed as a means-plus-function term. Dkt. 56 at 5.
11 | The Court agrees and must first determine the claimed function. *JVW Enters.*, 424 F.3d
12 | at 1330. The claim language describes a device to “selectively position said board in said
13 | second direction at an optimized board position predetermined by optimization means
14 | cooperating with said selectively actuable guide member.” ‘302 Patent, col. 6, ll. 53–56.
15 | USNR contends that the claimed function is to “predetermine the optimized board
16 | position of a board.” Dkt. 54 at 11. Although Raptor and Piché provide somewhat
17 | different functions, they “appear to agree” on the claimed function and the real dispute
18 | lies in determining the corresponding structure. Dkt. 52 at 8. Therefore, the Court finds
19 | that the claimed function of the “optimization means” is to “predetermine the optimized
20 | board position of a board.”

21 | The second step of construction requires the Court to identify the corresponding
22 | structure for performing that function. *JVW Enters.*, 424 F.3d at 1330. The specification
describes a “board optimizer” in the summary of the invention and an “optimizer” in the

1 detailed description of the preferred embodiment. First, the “board optimizer” is “an
2 optical scanner and its cooperatively associated optimization information processor and
3 controller, scanning and providing optimization and control information to the board
4 positioning device in relation to an optimized trimming solution for the board.” ‘302
5 Patent, col. 4, ll. 7–11. Second, the detailed description discloses

6 An electro-optical scanner (not shown) scans boards 24 and provides
7 shape and flow information to an optimizer such as a programmed
8 computer. The optimizer shown diagrammatically in FIG. 3, sends signals
9 to a computer logic controller for the corresponding board 24. The logic
10 controller activates and selectively actuates bi-directional positioning
11 cylinders 32 as board 24 is translated on transfer chain 14.

12 *Id.*, col. 5, ll. 10–17.

13 Raptor and Piché argue that the Court should determine that the required structure
14 is the structure that is disclosed in the summary of the invention. Dkt. 56 at 5. That
15 disclosure, however, is preceded by the qualifying language “[i]n a further aspect [of the
16 present invention]” and “board optimizer” is immediately followed by the term “such as”,
17 which is commonly understood as providing a specific example of the preceding element.
18 Therefore, the Court declines to construe the term as this specific structure and must
19 determine whether the preferred embodiment discloses a different corresponding
20 structure for performing the identified function.²

21 The inventor disclosed that, in the preferred embodiment, the optimizer was a
22 programmed computer that receives “shape and flow information.” ‘302 Patent, col. 5, ll.

² It is worth noting that neither Raptor nor Piché argue that the patent is invalid for
indefiniteness because they concede that the patent discloses at least one structure for performing
the identified function.

1 10–17. USNR contends that the programmed computer is a structure that performs the
2 identified function. Dkt. 56 at 6. Raptor and Piché disagree with this contention. Dkts.
3 52 at 8–9 & 53 at 8–9. During oral argument, Piché’s counsel argued that such a
4 construction would result in a “brain with no eyes.” However, sticking with this analogy,
5 the brain can receive input from four other senses and operate properly. As the Court
6 understands the invention and as USNR’s expert testified, how the optimizer receives
7 input is not important. What is important is that the optimizer predetermines the correct
8 cutting position of the board based on the information that it does receive. Therefore, the
9 Court adopts USNR’s proposed construction with an added “receiving” limitation and
10 construes the term “optimization means” as

11 either a programmed computer that receives shape and flow information or
12 an optical scanner and its cooperatively associated optimization information
processor and controller for calculating the optimized board position.

13 **3. “Board translating device”**

14 Raptor and USNR request that the Court construe the term “board translating
15 device.” Dkt. 56 at 3. In the preferred embodiment, this device transports the boards in
16 the first direction. Raptor proposes that the Court construe the term as a “generally
17 horizontal table having transfer chains or belts for transferring lumber in the plane of the
18 table.” Dkt. 56 at 3. USNR contends that, because this is not a mean-plus-function term,
19 it would be improper to incorporate the specific means of transport (the chains or belts)
20 into the claim. Dkt. 54 at 12–13. The Court agrees. Although chains and belts are
21 disclosed in the specification, the claim language is broadly written and it would be err to
22

1 limit this element to those specific disclosures. *Phillips*, 415 F.3d at 1323. Therefore, the
2 Court declines to adopt Raptor’s proposed construction.

3 USNR proposes that the Court construe the term as a “support frame for
4 transferring a board in a first direction.” Dkt. 56 at 3. The phrase “a support frame” is
5 overly broad and is not disclosed in any part of the patent. In the summary of the
6 invention, the patentee discloses a “transfer table” that “translate[s] the boards to
7 positioners and through a trimmer.” ‘302 Patent, col. 1, ll. 65–67. Therefore,
8 incorporating the actual disclosure, the Court construes the term “board translating
9 device” as

10 a transfer table for transferring a board in the first direction.

11 **4. “Board positioning member translating means”**

12 Both USNR and Piché agree that the Court should construe the term “board
13 positioning member translating means” as a means-plus-function term. Dkts. 49 at 6 &
14 50 at 19. The Court agrees and must first determine the claimed function. *JVW Enters.*,
15 424 F.3d at 1330. USNR contends that the function is set forth in the claim language:
16 “board positioning member translating means for translating said board positioning
17 member in said first direction at said translation speed in cooperative alignment with said
18 board” ‘302 Patent, col. 6, ll. 46–49. In plain English, the function is the
19 translation, or movement, of the board positioning members in the first direction at a
20 speed cooperative with the boards on the transfer table. Now that the function has been
21 determined, the Court must identify the corresponding structure for performing that
22 function. *JVW Enters.*, 424 F.3d at 1330.

1 The specification provides a general description of this device and a specific
2 structure in the preferred embodiment. First, the specification provides as follows:

3 The board positioning member translating means is a flexible
4 rotatable member, such as a chain or belt, rotating in a generally vertical
plane

5 The flexible rotatable member rotates in the vertical plane so as to
6 translate the board, in a first direction, positioning member substantially in
the horizontal plane when cooperatively aligned with the board, at the
translation speed

7 ‘302 Patent, col. 3, ll. 8–18. Second, the specific embodiment of this element is
8 described as follows:

9 The board positioners 28 are mounted on a set of positioned chains
10 (or belts) 42 that are, at one end, mounted on, and driven by, positioner
drive sprockets 44 on positioned drive shaft 46, and at their other end,
11 mounted on a pair of positioner idler sprockets 48 on a positioner idler shaft
50.

12 ‘302 Patent, col. 4, ll. 55–59.

13 Based on these disclosures, USNR proposes that the Court construe the term
14 “board positioning member translating means” as “a flexible rotatable member such as
15 the chain shown in reference numeral 42, or a belt, for moving one or more board
16 positioning members in the first direction.” Dkt. 46 at 4–5. Although this construction
17 recognizes the mounting structure, such as the chain or belt, this construction does not
18 account for the translating limitation or drive structure. The Federal Circuit has provided
19 as follows:

20 The court must construe the function of a means-plus-function
21 limitation to include the limitations contained in the claim language, and
only those limitations. It is improper to narrow the scope of the function
22 beyond the claim language. It is equally improper to broaden the scope of
the claimed function *by ignoring clear limitations in the claim language.*

1 *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1113 (Fed. Cir. 2002)
2 (citing *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 249 F.3d 1314, 1324 (Fed. Cir.
3 2001)) (emphasis added). USNR concedes that the function is to translate the positioning
4 member at a specific translation speed in cooperative alignment with the board to be
5 positioned. Construing this “translating means” to simply be a “flexible rotatable
6 member” such as a chain or a belt would improperly broaden the scope of the claimed
7 function by ignoring the clear limitation that the chain or belt must be driven by some
8 structure. Therefore, the Court declines to adopt USNR’s proposed construction.

9
10 Piché contends that the Court should adopt the structure identified in the specific
11 embodiment. Dkt. 56 at 4–5. The problem with this construction is that it allows for two
12 different rotating structures, a chain or a belt, and only one drive structure, a sprocket.
13 On this issue, USNR’s expert testified that one of ordinary skill in the art would
14 understand that a sprocket would not be the only structure capable of rotating a chain or
15 belt and that a chain or belt could be driven by a pulley, a V sheaves, or a drum. The
16 Court agrees with that assessment of what one of ordinary skill in the art would
17 understand. Therefore, the Court construes the term “board positioning member
18 translating means” as

19 a set of positioned chains (or belts) that are, at one end, mounted on, and
20 driven by, positioner drive sprockets (or similar drive structures) on
21 positioned drive shaft, and at their other end, mounted on a pair of
22 positioner idler sprockets (or similar structure) on a positioner idler shaft.

‘302 Patent, col. 4, ll. 55–59.

1 **5. “Selectively actuable guide member”**

2 Piché and USNR request that the Court construe the term “selectively actuable
3 guide member.” Dkt. 56 at 4. Piché proposes that the Court construe this term as a “set
4 of pivoting channels as show in reference numeral 30(a)-30(d).” *Id.* Although this
5 construction obviously imports limitations from the preferred embodiment into the
6 claims, Piché argues that such limitations are necessary because the element is disclosed
7 as “interacting with means-plus-function terms” Dkt. 49 at 8. Specifically, Piché
8 argues that, because the guide member engaging means claimed in claim two should be
9 construed to engage a channel entrance, the guide members disclosed in claim one should
10 be construed to be the channels of the preferred embodiment. *Id.* at 8–9. This
11 construction violates numerous cannons of claim construction, including the canon of
12 claim differentiation wherein it is presumed “that different words used in different claims
13 result in a difference in meaning and scope for each of the claims.” *Clearstream*
14 *Wastewater Systems, Inc. v. Hydro-Action, Inc.*, 206 F.3d 1440, 1446 (Fed. Cir. 2000).
15 Therefore, the Court declines to adopt Piché’s proposed construction.

16 USNR proposes that the Court construe the term as “positionable device(s) that
17 moves the board positioning member to the board optimizing position.” Dkt. 56 at 4.
18 The Court finds that this construction falls within the scope of the written description.
19 For example, the summary of the invention provides “a plurality of guides” that are
20 “independently selectively positionable to allow . . . independent optimized board
21 positioning of successive boards at high transfer chain speeds.” ‘302 Patent, col. 2, ll.
22 11–16. The specification also provides that board positioners “progressively slide . . . to

1 optimized positions for their corresponding boards” as a “result of the progressive
2 actuation of bi-directional selectively actuatable positioning cylinders 32 which move
3 position guides 30” *Id.*, col. 5, ll. 14–23. Therefore, the Court construes the term
4 “selectively actuatable guide member” as

5 positionable device(s) that moves the board positioning member to the
6 board optimizing position.

7 **6. “Board positioning member engaging position”**

8 Piché and USNR request that the Court construe the term “board positioning
9 member engaging position.” Dkt. 56 at 8. Claim 2 provides that the board

10 is urged in said second direction between a board positioning member
11 engaging position, wherein said board is urged against said board
12 positioning member when said board positioning member is in a first
13 contact position, and said optimized board position

14 ‘302 Patent, col. 7, ll. 6–10. Piché proposes that the Court should construe the engaging
15 position to be a “constant point of engagement between the board and the board
16 positioning member as they both move in the first direction at the translation speed.”

17 Dkt. 56 at 8. Piché argues that the engaging position must be interpreted as something
18 different from the “first contact position” otherwise one of the terms would be

19 superfluous. Dkt. 49 at 9–10. USNR, however, provides a reasonable explanation for the
20 two terms; “first contact position” refers to the position of the board positioning member
21 and “board positioning member engaging position” refers to the position of the board.

22 Dkt. 55 at 13–15. The Court agrees with USNR’s position on positions. First, a plain

reading of the claim shows that the patentee was referring to translating the board from
the initial position of the board to the final position of the board, which is the “optimized

1 board position.” Second, claim two also provides a “means for returning said board
2 positioning member from said board optimizing position to said first contact position . . .
3 .” ‘302 Patent, col. 7, l. 31 to col. 8, l. 1. Therefore, the Court adopts USNR’s proposed
4 construction and construes the term “board positioning member engaging position” as the
5 location of the board at which the board first contacts the board positioning
6 member.

7 **7. “Guide member engaging means”**

8 Piché and USNR request that the Court construe the term “guide member
9 engaging means”, and they agree that the term should be construed as a means-plus-
10 function term. Dkt. 56 at 11. The Court agrees and must first determine the claimed
11 function. *JVW Enters.*, 424 F.3d at 1330. Claim two provides that the board positioning
12 member must have a “guide member engaging means for slideably coupling, by coupling
13 means, said board positioning member to said selectively actuatable guide member” (‘302
14 Patent, col. 7, ll. 11–14), the member must be “disengageable from said coupling means”
15 (*id.*, ll. 25–30), and the member must be repositioned to “reengage said coupling means”
16 (*id.*, col. 8, ll. 3–6). Although the patent discloses the engaging-disengaging-reengaging
17 functions, Piché argues that the Court should only consider the engaging function. Dkt.
18 49 at 7. The Court declines to ignore the other disclosed functions of this member and
19 finds that the identified functions are the board positioning member engaging-
20 disengaging-reengaging the selectively actuatable guide member.

21 The second step of construction requires the Court to identify the corresponding
22 structure for performing those functions. *JVW Enters.*, 424 F.3d at 1330. If one

1 disregards Piché’s identified function analysis, then the parties generally agree on the
2 corresponding structure. *See* Dkt. 56 at 9. Therefore, the Court construes the term
3 “guide member engaging means” as

4 positioner guide rollers (36), or pins, that couple the board positioning
5 member to the selectively actuatable guide member.

6 **8. “Means for returning said board positioning member”**

7 Piché and USNR request that the Court construe the term “means for returning
8 said board positioning member”, and they agree that the term should be construed as a
9 means-plus-function term. Dkt. 56 at 12. The Court agrees and must first determine the
10 claimed function. *JVW Enters.*, 424 F.3d at 1330. The parties agree that the identified
11 function is to return the board positioning member from the optimized position to the
12 non-optimized, first contact position. Therefore, the Court adopts this identified function.

13 Next, the Court must identify the corresponding structure for performing that
14 function. *JVW Enters.*, 424 F.3d at 1330. The only disagreement between the parties is
15 whether the guide referenced as numeral 54 must be curved. Dkt. 56 at 12. The
16 invention summary discloses “a return guide that resets the board positioned to its first
17 contact position . . .” (‘302 Patent, col. 2, ll. 48–49) and the specific embodiment
18 discloses a “[c]urved positioned return guide . . .” (*id.*, col. 4, l. 63). The Court finds that
19 a person of ordinary skill in the art would understand the broader disclosed structure and
20 there is no need to include the limitation that the guide be curved. Therefore, the Court
21 adopts USNR’s proposed construction and construes the term “means for returning said
22 board positioning member” as

1 a guide as shown at reference numeral 54 that resets the board positioning
2 member.

3 **9. “Angled guide means”**

4 Piché and USNR request that the Court construe the term “angled guide means”,
5 and they agree that the term should be construed as a means-plus-function term. Dkt. 56
6 at 13. The Court agrees and must first determine the claimed function. *JVW Enters.*, 424
7 F.3d at 1330. Both parties agree that the identified function is to return the board
8 positioning member from the optimized position to the non-optimized, first contact
9 position. Therefore, the Court adopts this identified function.

10 Next, the Court must identify the corresponding structure for performing that
11 function. *JVW Enters.*, 424 F.3d at 1330. The only disagreement between the parties is
12 whether the guide referenced as numeral 54 must be curved. Dkt. 56 at 13. It’s
13 undisputed that “curved” and “angled” have two different meanings. For example, a
14 curved guide member could be or could not be placed at an angle and a guide member
15 that is placed at an angle could be or could not be curved. Moreover, because the
16 patentee disclosed a “[c]urved positioned return guide” and a “fixed, angled guide
17 means”, he is entitled to the presumption that he used different language to refer to two
18 different structures. Finding no evidence to the contrary, the Court declines to limit the
19 angled guide to the pictured curved guide. Therefore, the Court adopts USNR’s proposed
20 construction and construes “angled guide means” as

21 a guide that is not parallel to the first direction as shown at reference
22 numeral 54 that resets the board positioning member.

10. “Said coupling means in a channel along said channel member for

1 **slideably engaging therein said guide member engaging means”**

2 USNR requests that the Court correct what it claims is an error in the phrase “said
3 coupling means in a channel along said channel member for slideably engaging therein
4 said guide member engaging means.” Dkt. 50 at 27–28. USNR requests that the Court
5 change the word “in” to “is” so that the phrase is identical to the disclosure in the
6 summary of the invention. *Id.* at 28. The Federal Circuit has held that

7 A district court can correct a patent only if (1) the correction is not subject
8 to reasonable debate based on consideration of the claim language and the
9 specification and (2) the prosecution history does not suggest a different
10 interpretation of the claims.

11 *Novo Industries L.P. v. Micro Molds Corp.*, 350 F.3d 1348, 1357 (Fed. Cir. 2003).

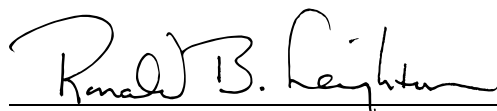
12 In this case, the Court will correct the ‘302 Patent. First, neither Piché nor Raptor
13 challenges the requested change. Second, the Court finds that the requested correction is
14 not subject to reasonable debate and the prosecution history does not suggest a different
15 interpretation. Therefore, the subject phrase shall be corrected to claim

16 said coupling means is a channel along said channel member for slideably
17 engaging therein said guide member engaging means.

18 **IV. ORDER**

19 Therefore, it is hereby **ORDERED** that the undisputed and disputed terms of the
20 ‘302 Patent shall be construed as set forth herein.

21 Dated this 18th day of April, 2013.

22 

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE