

United States District Court,
C.D. California.

FOREMOST IN PACKAGING SYSTEMS,
v.
COLD CHAIN TECHNOLOGIES.

No. SACV 05-24-JVS(MLGx)

Nov. 21, 2005.

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Proceedings: (In Chambers) Order re Claim Construction

JAMES V. SELNA, Judge.

Karla J. Tunis, Deputy Clerk.

The Court, having been informed by counsel for the parties that they submit on the Court's tentative ruling in regards to claim construction in the above referenced matter, hereby rules in accordance with the tentative ruling as follows:

I. BACKGROUND

U.S. Patent No. 5,924,302 ("the '302 patent") claims for "an improved insulated shipping container including an insulated body having a cavity for holding a product being shipped, and having one or more cavities for holding coolant in a predetermined relationship to the product." (Ex. 1, p. 3.) The improved insulated shipping container is used to ship temperature sensitive products that must be in a controlled refrigerated condition for a long period of time. "The container also includes an insulated cover adapted to sealably engage an open end of the insulated body after a product and coolant are received therein." (*Id.*) "The cover includes one or more blocks or prongs extending therefrom that are adapted to slidably engage the coolant cavities and/or the product cavity to substantially minimize air spaces in the cavities and/or seal them." (*Id.*) "The insulated body and cover preferably are formed from injection molded polyurethane, wrapped in a plastic film and inserted into a cardboard shipping carton." (*Id.*)

Plaintiff Foremost In Packaging Systems, Inc. *d/b/a* EnviroCooler ("EnviroCooler") claims that Defendant Cold Chain Technologies, Inc. ("Cold Chain") has infringed independent claims 9, 13, 16, 17, and 22, and dependent claims 10-12, 14, 21, and 23 of the '302 patent. (EnviroCooler Brief, p. 7.) There are sixteen disputed terms.

II. LEGAL STANDARD

It is well settled that claim construction is "exclusively within the province of the court." *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). Such construction "begins and ends" with the claim language itself, *Interactive Gift Express, Inc. v. CompuServe, Inc.*, 256 F.3d 1323, 1331 (Fed.Cir.2001), but extrinsic evidence may also be consulted "if needed to assist in determining the meaning or scope of technical terms in the claims." *Pall Corp. v. Micron Separations, Inc.*, 66 F.3d 1211, 1216 (Fed.Cir.1995).

In construing the claim language, the Court begins with the principle that "the words of a claim are generally given their ordinary and customary meaning." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed.Cir.2005) (internal quotation marks omitted). Further, this ordinary and customary meaning "is the meaning that the [claim] term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." (*Id.* at 1313.) "[T]he 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." (*Id.*)

"In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." (*Id.* at 1314.) "In such circumstances general purpose dictionaries may be helpful." (*Id.*) In other cases, "determining the ordinary and customary meaning of the claim requires examination of terms that have a particular meaning in a field of art." (*Id.*) In those cases, "the court looks to those sources available to the public that show what a person of skill in the art would have understood the disputed claim language to mean." (*Id.*) These sources include "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." (*Id.*; internal quotation marks omitted.)

The claim terms are not presumed to have the meaning that a person of ordinary skill in the relevant art would ordinarily attribute to them if (1) the patentee acts as his own lexicographer, or (2) the claim term is too vague for an accurate meaning to be ascertained from the language used. *Novartis Pharms. Corp. v. Abbott Labs.*, 375 F.3d 1328, 1334 (Fed.Cir.2004). All that is required for a patentee to act as his own lexicographer is that a different meaning is set out in the specification in a manner sufficient to provide notice of the meaning to a person of ordinary skill in the art. *In re Paulsen*. 30 F.3d 1475, 1480 (Fed.Cir.1994).

With these principles in mind, the Court now turns to the construction of the claim language at issue.

III. DISCUSSION

The main thrust of EnviroCooler's argument is that there is little if any need for claim interpretation in this case because "all of the terms used in the claims of the patent are common English words. The claims were not given any unusual meanings in the patent. The patent's prosecution history is brief, and all of the claims were allowed without any substantive amendment." (EnviroCooler Brief, p. 1.) EnviroCooler further argues that "Cold Chain's proposed interpretations are an attempt to re-write the claims to limit them to one of the patent's preferred embodiments, and thereby avoid infringement." (*Id.*)

Cold Chain, however, contends that while the disputed terms are "common English words," even common

terms can have more than one meaning. (Cold Chain Brief, p. 2.)

The Court finds that Cold Chain's position is driven by what the '302 patent *should* do, but not what the claim language itself states. Put another way, the Court finds that Cold Chain is attempting to construe the disputed terms to give effect to an ideal embodiment of the '302 patent, but it cannot do that to the detriment of the words in the claims.

Cold Chain additionally points out that despite the requirements of Patent L.R. 4-3(b), EnviroCooler did not provide proposed claim constructions prior to submission of its claim construction brief. (*Id.*, p. 2.) The Court notes that EnviroCooler contends that none of the terms require interpretation, and until submission of its claim construction brief, did not propose alternative definitions in case the Court finds that interpretation is appropriate. (*Id.*) Cold Chain states that "EnviroCooler's failure to provide [any extrinsic evidence to controvert the term construction proffered by Cold Chain] in pre-Markman proceedings" runs afoul of the Local Patent Rules. (*Id.*)

However, the Court finds that Cold Chain has had an opportunity to respond EnviroCooler's proposed alternative constructions, and has not otherwise been prejudiced by the timing of EnviroCooler's proposed alternative constructions.

A. " ADAPTED "

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
Adapted	No interpretation required, or "suited by nature, character, or design [to the specified purpose]"	"Fitted; made to fit"	No interpretation required

The term "adapted" is used or referenced in claims 9-14, 16-17, 21-23. FN1 The term "adapted" is used in claims 9 and 13 as follows, "the coolant cavity being **adapted** to securely receive a coolant therein; and an insulated cover **adapted** to sealably engage the open top of the insulated body ... the insulated block being **adapted** to slidably engage the coolant cavity...." (Ex. 1, p. 13.) "Adapted" is used in claims 16 and 17 as follows, "the plurality of walls being **adapted** to substantially engage a product in the product cavity ... one of the walls having a coolant cavity therein **adapted** to receive coolant therein...." (Ex. 1, p. 14.) "Adapted" is used in claim 22 as follows, "an insulated cover **adapted** to engaged the open end of the insulated body and having a configuration for minimizing air spaces within the cavities." (Ex. 1, p. 14.)

FN1. Unless otherwise noted, the Court has bolded the disputed terms at issue in the claim language.

EnviroCooler contends that "adapted" is used according to its ordinary and customary usage in each claim in which the word is used. (EnviroCooler Brief, p. 24.) EnviroCooler avers that no interpretation is needed, but if the Court should find that interpretation is appropriate, the construction for "adapted" should be: "suited by nature, character, or design [to the specified purpose]." (Ex. 10, Dictionary Definition, Webster's 3rd Int'l.)

Cold Chain's proposed construction of "adapted" is "fitted; made to fit." (Cold Chain Brief, p. 6.) Cold Chain refers to the Amendment of October 7, 1998, for support. There the applicant for the '302 patent argued in part, "Buss does not teach or suggest providing a plurality of walls adapted to substantially engage

a product in the product cavity, thereby substantially minimizing air spaces around the product. To the contrary, Buss simply discloses a rectangular cavity for receiving 'contents,' and does [not] teach or suggest that the cavity have any predetermined relationship with the contents being placed therein." (Schwartz Decl., Ex. A, p. 11.) The applicant further argued that, "Quigley does not teach or suggest a product cavity having a shape adapted to receive a product, nor a coolant cavity have a shape adapted to receive coolant therein ... Thus, the compartments of the Quigley container have no relationship to the objects placed in them and are completely indiscriminate with respect to their contents, which is directly contrary to an important feature of the present invention." (*Id.*, p. 15.) The Court finds that these two quotations from the prosecution history do not support Cold Chain's proposed construction.

EnviroCooler further contends that Cold Chain's proposed interpretation of the term "adapted" as "fitted made to fit," unnecessarily substitutes one word for the patentee's choice of word. (EnviroCooler Brief, p. 25.) The Court agrees.

Further, the Court notes that the '302 patent specification states "the coolant cavities have a shape adapted to receive a conventional coolant." (Ex. 1, Col.4:40-41), and that they have "a shape for receiving a conventional coolant." (Ex. 1, Col.2:61-2). The '302 patent specification further states that "the shape and size of the product may be adapted to accommodate a variety of products." (Ex. Col.7:15-16.)

Given the claim language and patent specifications, the Court agrees with EnviroCooler's position and holds that under *Phillips*, no interpretation is needed in order to divine the meaning of the term "adapted."

B. " ARRAY "

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
Array	No interpretation needed, or "a regular grouping or arrangement [or specified things.]"	"A number of arranged items"	No interpretation required

The term "array" is used or referenced in disputed claims 22-23. The term "array" is used in claim 22 as follows, "an **array** of coolant cavities in the insulated body accessible from the open end," and "when coolant is received in the **array** of coolant cavities...." (Ex. 1, p. 14.) "Array" is used in claim 23 as follows, "[t]he insulated shipping container of claim 22, wherein the **array** of coolant cavities comprises a pair of coolant cavities disposed opposite one another about the product cavity." (Ex. 1, p. 14.)

EnviroCooler contends that "array" is used in its customary meaning. EnviroCooler avers that "array" does not require interpretation, but if the Court finds that interpretation is appropriate, then "array" is a commonly understood word which means, "a regular grouping or arrangement [or specified things]," and should be constructed as such. (EnviroCooler Brief, p. 34; Ex. 16, Dictionary definitions, Webster's 3rd Int'l.)

EnviroCooler further claims that there is no need or reason to add the additional words proposed by Cold Chain. (EnviroCooler Brief, p. 34.)

The Court agrees and finds that pursuant to *Phillips*, no interpretation of the term "array" is required.

C. " CONFIGURATION "

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
Configuration	No interpretation required, or "relative disposition or arrangement of the parts or elements [of the specified thing]"	"Shape; construction"	No interpretation required

The term "configuration" is used or referenced in disputed claims 22-23. The term "configuration" is used in claim 22 as follows, "an insulated cover adapted to engage the open end of the insulated body and having a **configuration** for minimizing air spaces within the cavities." (Ex. 1, p. 14.)

The '302 patent describes the improved shipping container as having a cover including one or more insulated blocks extending from and integrally molded to the cover. (Ex. 1, Col.3:3-4.) The block(s) about the product and the coolant in their respective cavities and substantially seals the tops of the cavities and minimizes air spaces in them when the cover engages the open end of the body. (Ex. 1, Col. 3:2-14; Col. 4:65-5:24; Figs. 1,3.)

EnviroCooler contends that the ' "configurations' of the cover is a factor in the relative engagement of the parts of the cover with the body and the cavities, resulting in the sealing of the cavities and minimizing the air spaces in the cavities. It is more than just the 'shape' of the cover alone that is important." (EnviroCooler Brief, p. 34.)

EnviroCooler contends that "configuration is "a commonly understood word whose meaning is consistent with the disclosed cover and its relationship to the other parts of the insulated container." (*Id.*, p. 35.) According to EnviroCooler, "configuration" means "the relative disposition or arrangement of the parts of a thing." (Ex. 17, Dictionary definition, Webster's 3rd Int'l, 2a.) EnviroCooler hence contends that no interpretation of the term "configuration" is required, but if the Court finds it appropriate, then the construction for "configuration" should be: "relative disposition or arrangement of the parts or elements [of the specified thing.]" (EnviroCooler Brief, p. 35.)

EnviroCooler further contends that Cold Chain's interpretation does not include the "relational aspect of the cover's configuration to the desired result, which is inherent in the patentee's chosen claim term, 'configuration.' " (EnviroCooler Brief, p. 35.)

The Court agrees with EnviroCooler and finds that no interpretation of the term "configuration" is required under *Phillips*.

D. " COOLANT "

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
Coolant	No interpretation Required	"Material used to refrigerate a product"	No interpretation required

The term "coolant" is used or referred to in claims 9-14, 16-17, 21-23.

For instance, claims 9 and 13 state in part, "at least one the side walls including a coolant cavity therein, the coolant cavity being adapted to securely receive a **coolant** therein." (Ex. 1, p. 13.) The term is used in

substantially the same way in claims 16, 17, and 22.

The '302 patent discloses that coolant cavities receive a conventional 'coolant,' including packaged ice, gel packs, or blocks of dry ice. (Ex. 1, Col. 2:61-65; Col. 4:39-51.) Further, the "coolant" helps to maintain the product in a refrigerated condition during shipping. (Ex. 1, Col. 1: 5-9.)

EnviroCooler contends that the term "coolant", as used in the '302 patent, is something that cools, and does not require interpretation. (EnviroCooler Brief, p. 28.)

EnviroCooler further avers that there is "no reason or basis to change the patentee's choice of the word, 'coolant,' to words essentially meaning 'refrigerant.' Cold Chain's proposed construction would also improperly preclude coverage of one of the disclosed embodiments—that where a coolant such as dry ice does not just refrigerate the product, but maintains it in a frozen condition ." (EnviroCooler Brief, p. 28; Ex. 1, Col. 3:39-45, Col. 6:43-53.)

Cold Chain states that EnviroCooler's proposed definition would be appropriate as long as it is clear that "product" is construed in such a way as to be distinguished from "coolant." (Cold Chain Brief, p. 3.) However, the Court does not find that EnviroCooler has specifically proposed an alternative construction to the term "coolant." (EnviroCooler Brief, p. 28.)

The Court finds that there is no need to substitute the words "something that cools", presumably EnviroCooler's alleged alternative construction, for the patentee's choice of the word, coolant. Hence the Court finds that no interpretation of the term "coolant" is required.

E. " COOLANT CAVITY "

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
Coolant Cavity	No interpretation required	"A compartment that holds coolant"	No interpretation required

The term "coolant cavity" is used or referenced in claims 9-14, 16-17, and 21-23.

The term "coolant cavity" is used in claims 9 and 13 as follows, "at least one of the side walls including a **coolant cavity** therein, the **coolant cavity** being adapted to securely receive a **coolant** therein." (Ex. 1, p. 13.) "Coolant cavity" is additionally used in claim 9 additionally as follows, "the insulated block being adapted to slidably engage the **coolant cavity**, thereby the coolant and the insulated block together substantially filling the **coolant cavity**." (Ex. 1, p. 13.) Additionally, "coolant cavity" is used in claim 14 as follows, "[t]he insulated shipping container of claim 9, wherein the **coolant cavity** extends from the open top of the insulated body towards the bottom wall thereof substantially parallel to the product cavity, the **coolant cavity** being substantially isolated from the product cavity when the cover engages the open top of the insulated body." (Ex. 1, p. 14.) Claims 16 and 17 use the phrase in substantially the same way.

One or more of the side walls of the body of the improved shipping container includes a coolant cavity with an open top. (Ex. 1, Col.2:56-63, Col.4:35-43.) The "coolant cavities" shape is adapted to receive a conventional coolant, like package ice, gel packs, or blocks of dry ice. (Ex. 1, Col.4:39-51.)

EnviroCooler contends that the term "coolant cavity" as used in the '302 patent, is a cavity into which coolant is placed and that it does not require interpretation. (EnviroCooler Brief, p. 24.)

EnviroCooler avers that Cold Chain's interpretation unreasonably and unnecessarily adds further words to the claim. (EnviroCooler Brief, p. 24.) EnviroCooler additionally asserts that there is "no reason or basis to change the word 'cavity,' which is the patentee's choice of word, to Cold Chain's choice of word- 'compartment.' " (*Id.*)

Cold Chain states that EnviroCooler's proposed definition would be appropriate as long as it is clear that "product" is construed in such a way as to be distinguished from "coolant." (Cold Chain Brief, p. 3.) However, the Court does not find that EnviroCooler has specifically proposed an alternative construction to the term "coolant cavity." (EnviroCooler Brief, p. 24.)

The Court finds that there is no need to substitute the words "cavity into which coolant is placed," presumably EnviroCooler's alleged alternate construction, for the patentee's choice of the words, "coolant cavity."

F. " ISOLATED "

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
Isolated	No interpretation required	"Physically discrete and unconnected"	No interpretation required

The term "isolated" appears in claims 14 and 17. In claims 14 and 17 the term "isolated" is used as follows, "the coolant cavity being substantially **isolated** from the product cavity." (Ex. 1, p. 14.)

EnviroCooler contends that "isolated" is used in its customary meaning in the '302 patent, and that no interpretation is needed. (EnviroCooler Brief, p. 29.)

EnviroCooler further contends that Cold Chain's proposed construction of "isolated" as "physically discrete and unconnected" is an unnecessary substitution of words. (EnviroCooler Brief, p. 29.)

The Court agrees and finds that under *Phillips*, there is no need to interpret the term "isolated."

G. " MINIMIZING "

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
"Minimizing"	No interpretation required	"Reducing to the smallest possible amount"	No interpretation required

The term "minimizing" is used or referenced in claims 16-17 and 22-23.

The term "minimizing" is used in claims 16 and 17 as follows, "the plurality of walls being adapted to substantially engage a product cavity, thereby substantially **minimizing** air spaces around the product." (Ex. 1, p. 14.) In claims 22 and 23 use the word "minimizing" as follows, "**minimizing** air spaces within the

cavities." (Ex. 1, p. 14.) When the cover, which includes one or more insulated blocks extending from it, engages the open end of the body, the block(s) abut the product and coolant in their respective cavities and substantially seal the tops of the cavities and "minimize" air spaces in them. (Ex. 1, Col.3:2-14, Col.4:65-5:25, Figs.1, 3.)

EnviroCooler contends that "minimizing" is a commonly understood word, and is used in the '302 patent in its customary meaning, and hence no interpretation is required. (EnviroCooler Brief, p. 32.)

The '302 patent states that the product cavity preferably has a shape that permits a product to be placed in it and securely held during shipping, and substantially "minimizes" air spaces around the product. (Ex. 1, Col.4:29-34, Col.7:14-24.)

EnviroCooler avers that Cold Chain's interpretation is an unnecessary substitution of words which "puts a gloss on the term that is not contained in the patent disclosure. The patentee elected to use the commonly understood term 'minimizing,' not the different phrase urged by Cold Chain." (EnviroCooler Brief, p. 32.) Cold Chain's construction is tantamount to "eliminate airspace," which is more restrictive than the word used by the patentee.

The Court agrees with EnviroCooler and finds that no interpretation of the term "minimizing" is required.

H. " **PREDETERMINED** "

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
Predetermined	No interpretation required, or "decided beforehand."	"Decided in advance pursuant to an objective"	No interpretation required

The term "predetermined" is used or referenced in claims 16-17 and 22.

The term "predetermined" is used in claims 16 and 17 as follows, "[a]n insulated shipping container for maintaining a product at a **predetermined** refrigerated condition for an extended period of time." (Ex. 1, p. 14.) Claim 22 also references, "a **predetermined** refrigerated condition." (*Id.*) The ' 302 patent discloses the insulated shipping container can be used to keep the product at various refrigerated conditions, using conventional coolants. (Ex. 1, Col.3:30-32, Col.3:40-45, Col.6:36-53 .) The body side walls can have a variety of thicknesses to give a "predetermined" thermal insulation, and the walls between the product and the coolant cavities can be varied to adjust the temperature to which the product is exposed. (Ex. 1, Col.7:8-14.)

"Predetermined" is also used in claims 16 and 17 as follows, "the coolant cavity being spaced from and having a **predetermined** spatial relationship with the product cavity." (Ex. 1, p. 14.) "Predetermined" is used in claim 22 as follows, "a **predetermined** spatial relationship with the product cavity." (*Id.*)

The '302 patent discloses the body of the improved shipping container has coolant cavities placed in a "predetermined" relationship to the product cavity so that coolant is substantially held in a "predetermined" relationship to a product shipped in the container. (Ex. 1, Col.3:28-34, Col.3:51-53, Figs.1, 4.)

The term "predetermined" is also used in claims 16 and 17 as follows, Claim 22 states in part, "the product

cavity having a **predetermined** shape for securely receiving a similarly shaped product." (Ex., 1, p. 14.) Claims 16 and 17 also reference "a **predetermined** shape." (Ex. 1, p. 14.)

The '302 patent discloses that the product cavity shape allows a product to be placed in the body, and that its size and shape may be adapted to accommodate a variety of products. (Ex. 1, Col.4:24-32, Col.7:14-16.) The ' 302 patent discloses that, with respect to the coolant cavity, it has a shape adapted to receive a conventional coolant. (Ex. 1, Col.4:35-51.)

EnviroCooler asserts that the term "predetermined" is a commonly understood word which means "determined beforehand" or "decided beforehand." (Ex. 13, Dictionary definitions, Webster's 3rd Int'l, 1b, 1d.) EnviroCooler further avers that "predetermined" is used in the patent in this customary meaning, and therefore no interpretation is required. (EnviroCooler Brief, p. 32.) However, EnviroCooler states that if the Court finds that an interpretation is required, the interpretation should be "decided beforehand." (*Id.*)

EnviroCooler further avers that there is no basis for Cold Chain's proposed limitation of "pursuant to an objective." (EnviroCooler Brief, p. 32.) EnviroCooler contends that there may be a "predetermined shape" that is not "pursuant to an objective." (*Id.*) EnviroCooler states, "[t]he '302 patent does not discuss the predetermined shape of the cavities being 'pursuant to an objective,' except to meet the stated goal of allowing product or coolant to be inserted therein, and various of the claims already expressly state such requirements where appropriate." (*Id.*)

The Court finds that "predetermined" is a commonly understood word used in the patent consistent with its customary meaning, and hence no interpretation of the term is required.

I. " **PRODUCT** "

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
Product	No interpretation required	"A temperature sensitive material (as distinguished from coolant)."	No interpretation required

The term "product" is used or referenced in claims 9-14, 16-17, and 21-23.

The word "product" is used in claim 9 as follows, "[a]n insulated **shipping** container for transporting a temperature sensitive **product** for an extended period of time...." (Ex. 1, Col.8:28-30.) The term is used in the same way in claims 13 and 22, and is used in a similar way in claims 16 and 17.

The summary of the invention states that the "present invention is directed generally to an improved insulated shipping container for shipping a temperature sensitive product in a refrigerated condition for an extended period of time." (Ex. 1, Col.2:23-26.) "Pharmaceutical, biotechnology products, blood or issue, cryogenic products, frozen food, adhesives or sealants, and other similar products" are examples. (Ex. 1, Col.7:18-24.)

EnviroCooler contends that Cold Chains' proposed interpretation would result in redundancy in claims 9, 13, and 22, because those claims already specify "a temperature sensitive product." (EnviroCooler Brief, p. 20.) Claims 16 and 17 do not use the phrase "temperature sensitive product." EnviroCooler further avers that under *Phillips*, the differences among the claims are instructive, and argues against rewriting the term

"product" to "temperature sensitive material." (See 415 F.3d at 1314; EnviroCooler Brief, p. 20.) The Court agrees.

EnviroCooler further asserts that it would be improper to add the phrase "as distinguished from coolant" to the definition of product, because it is an attempt for Cold Chain to "preclude the claims from covering the patent embodiment where coolant, in addition to product, is placed in the product cavity." FN2 (EnviroCooler Brief, p. 20.) EnviroCooler additionally contends that because the patent claims use the transitional phrase "comprising," additional elements are permitted, and should be not precluded "under the guise of construing claims." (Id; Free Motion Fitness, Inc. v. Cybex Int'l, Inc., 423 F.3d 1343 at * *7-8 (Fed.Cir.2005.) The Court agrees.

FN2. Moreover, it is possible that some form of coolant might be the intended product.

For the foregoing reasons the Court finds that no interpretation of the term "product" is required.

J. " *PRODUCT CAVITY* "

Disputed Term	EnviroCooler's construction	Cold Chain's construction	The Court's construction
Product Cavity	No interpretation required	"The compartment that holds the product"	No interpretation required

The term "product cavity" is used or referenced in claims 9-14, 16-17, 21-23.

The term "product cavity" is used in claims 9 and 13 as follows, "a substantially rectangular body comprising four side walls and a bottom wall defining a **product cavity** therein," (Ex. 1, p. 13.)

The detailed description of the preferred embodiments states that "the product cavity preferably has a shape that allows a product ... to be placed in the body, the inner surfaces of the side walls preferably securely holding the product during shipping and/or handling, and substantially minimizing ai spaces around the product." (Ex. 1, Col.4:28-34.)

EnviroCooler argues that as used in the '302 patent and its claims, "product cavity" is a cavity into which product is placed, and does not required interpretation. (EnviroCooler Brief, p. 23.)

EnviroCooler further avers that there is no need or reason to add further terms to the claim, as Cold Chain suggests. (*Id.*) EnviroCooler contends that there is "no reason or basis to change the word 'cavity,' which is the patentee's choice of word, to Cold Chain's choice of word-'compartment.' " (*Id.*) The Court agrees and finds that the term compartment is not equivalent to the term cavity, because at least in some definitions "compartment" implies an enclosed space, a limitation not appearing in the patent. (Meriam-Webster On-line Dictionary, *available at www.m-w.com.*) An interpretation of the term "product cavity" is not required.

The Court notes that Cold Chain states that EnviroCooler's proposed definition would be appropriate. (Cold Chain Brief, p. 3.) However, the Court finds that EnviroCooler has not specifically proposed an alternative construction. (EnviroCooler Brief, p. 23.)

K. " RECEIVE "

Disputed Term	EnviroCooler's construction	Cold Chain's construction	The Court's construction
Receive	No interpretation required, or "to take in; to act as a receptacle or container for."	"Hold"	No interpretation required
Received	No interpretation required	"Held"	No interpretation required

The term "receive" is used or referenced in claims 9-14, 16-17, and 22. The term "received" is used or referenced in claims 17, 22-23.

The term "receive" is used in claims 9 and 13 as follows, "the coolant cavity being adapted to securely **receive** a coolant therein...." (Ex. 1, p. 14.) "Receive" is similarly used in claims 16, 17, and 22. Claim 22 further states, "the product cavity shape[d] for securely **receiving** a similarly shaped product," and "product **received** in the product cavity." (Ex. 1, p. 15.)

The detailed description of the preferred embodiments of the patent states that "[g]enerally, the inner surfaces of the coolant cavities have a shape adapted to receive a conventional coolant product ... preferably having a shape to securely hold the coolant in position and to minimize remaining air spaces around the coolant." (Ex. 1, Col.4:39-44.) The detailed description additionally states that "the product cavity preferably has a shape that allows a product ... to be placed in the body...." (Ex. 1, Col.4:29-32.) Further, the patent discloses that "a product and coolant are placed in their respective cavities...." (Ex. 1.Col.5:32-33.)

EnviroCooler contends that the words "receive," "received," and "receiving" are used in the patent and its claims in their customary meaning. (EnviroCooler Brief, p. 27.) EnviroCooler avers that "receive" is a commonly understood word meaning "to take in; to act as a receptacle or container for." (Ex. 11, Dictionary definitions, Webster's 3rd Int'l, 2a.) EnviroCooler claims that no interpretation of the terms "receive" and "received" is necessary in this case, but if the Court finds interpretation to be appropriate, EnviroCooler proposes the construction for "receive" be: "to take in; to act as a receptacle or container for." (EnviroCooler Brief, p. 27.)

EnviroCooler further avers that Cold Chain's proposed interpretation is an "unnecessary word substitution that is less precise than the word chosen by the patentees." (*Id.*) EnviroCooler contends that the word "hold" does not include the concept that product and coolant are "placed" into cavities, and then "held" there during shipping. (*Id.*) This product or coolant could be received without being held in the sense of being received.

The Court agrees with EnviroCooler and finds that an interpretation of the terms "receive" and "received" is not needed in this case.

L. " ENGAGE "/"SLIDABLY ENGAGE "/"SEALABLY ENGAGE "

Disputed Claim Term	EnviroCooler's Proposed Construction	Cold Chain's Proposed Construction	Court's Construction
Engage	No interpretation required, or "comes into contact or interlocks with"	" Fit together with; interlock with; mate with."	"Comes into contact or interlocks with"

Slidably Engage	No interpretation required, or "come into contact or interlock with by a sliding motion"	"Mating with an object by being inserted therein, thereby forming a seal therewith"	"Come into contact or interlock with by a sliding motion"
Sealably Engage	No interpretation required, or "come into contact or interlock and close to prevent access or leakage"	"Fit together with, interlock with or mate with in a tight or completely closed manner"	"Come into contact or interlock and close to prevent access or leakage"

.1. " Engage "

The term "engage" is used or referenced in claims 9, 13, 14, 16, 17, and 22.

The term "engage" is used in claim 14 as follows "the coolant cavity being substantially isolated from the product cavity when the cover **engages** the open top of the insulated body." (Ex. 1, p. 14.) The term "engage" is used in claim 22 as follows, "whereby a product received in the product cavity is subjected to a predetermined refrigerated condition when coolant is received in the array of coolant cavities and the insulated body substantially **engages** the open end of the insulated body." (Ex. 1, p. 14.)

The term "engage" is used in claims 16 and 17 as follows, "an insulated body having a plurality of walls defining a product cavity, the plurality of walls being adapted to substantially **engage** a product in the product cavity, thereby substantially minimizing air spaces around the product." (Ex. 1, p. 14.)

EnviroCooler contends that the word "engage" is a commonly understood word meaning "come into contact with or interlock with," and is used in this customary meaning. (Ex. 12, Dictionary definition, Webster's 3rd Int'l, 2e.) EnviroCooler avers that no interpretation of the term "engage" is required in this case, but if the court should find an interpretation appropriate, that interpretation should be, "come into contact or interlock with." (EnviroCooler Brief, p. 29.)

However, in its reply brief, EnviroCooler contends that if the Court finds that an interpretation is necessary, then that interpretation should be that "engage" means: "abut, contact, securely hold, or mesh or fit together with." (EnviroCooler Reply, p. 5.) The Court will not consider proposed constructions which are initially proposed in a reply brief. The Court finds that this would prejudice Cold Chain, because they do not have a opportunity to respond to the newly proposed constructions.

Cold Chain contends that the term "engaged" means "fit together with; interlock with; mate with." (Cold Chain Brief, p. 8.) Hence, as Cold Chain points out, the parties both appear to agree that "engage" means "interlock with," while disagreeing if "engage" also means "come into contact" as EnviroCooler proposes, or "fit together with or mate with," as Cold Chain proposes.

The Court finds that the phrase "mate with" improperly narrows the scope of the term "engage."

Further, the Court agrees with EnviroCooler that the term "engage" is used in the '302 patent specification to include things that "abut" or come into contract (as in Claims 9, 13, 14, 16, 17, and 22); things that securely hold something else (as used in Claims 16 and 17); and things that fit together or interlock like the tongue and groove engagement of the body and cover perimeters (as used in Claims 9, 13, 14, and 22). (See EnviroCooler Reply, p. 4.) Again, these meanings encompass more than Cold Chain's improperly narrow construction of the term "engage."

In light of the claim language itself, the Court interprets the term "engage" to mean "comes into contact or interlocks with."

2. " *Slidably Engage* "

The term "slidably engage" is used in terms 9-14, and 21. The word "slidably engage" is used in claims 9 and 13 as follows, "the insulated block being adapted to **slidably engage** the coolant cavity, thereby the coolant and the insulated block together substantially filling the coolant cavity." (Ex. 1, p. 13.)

EnviroCooler contends that the commonly understood meaning of "slidably engage" would be "to engage in a sliding motion." EnviroCooler avers that this term is used in the patent in its customary meaning, and that no interpretation is required. (EnviroCooler Brief, p. 28-9.) EnviroCooler states that if the Court finds interpretation appropriate, then the term should be interpreted to mean "come into contact or interlock with in a sliding motion." (EnviroCooler Brief, p. 29.)

Cold Chain avers that "slidably engage" means "mating with an object by being inserted therein, thereby forming a seal therewith." (Cold Chain Brief, p. 15.) Cold Chain contends that EnviroCooler's definition is too expansive. (*Id.*)

Cold Chain asserts that "the insulated blocks cannot slidably engage the coolant cavities without also being inserted into the coolant cavities." (*Id.*) Cold Chain cites the summary of the invention as support:

The cover also includes one or more insulated blocks extending from and preferably integrally molded to the cover. The blocks have a shape and location on the cover allowing them to be inserted into the coolant cavities when the cover is placed over the open end of the insulated body. Preferably, the blocks slidably engage the walls of the coolant cavities and abut the coolant placed therein, thereby substantially minimizing any remaining air spaces above the coolant and substantially sealing the cavities.

(Ex. 1, Col.3:2-11.) Cold Chain asserts that the above cited passage shows that because the transitional word "preferably" is used, that shows that "slidably engaging the coolant cavities with insulated blocks" is only one way of "inserting the insulated blocks into the coolant cavities." (Cold Chain Brief, p. 16.)

However, EnviroCooler states, and the Court agrees, that Cold Chain's proposed construction attempts to improperly limit the claims to one of the patent's preferred embodiments where insulated coolant blocks extending from the cover are inserted into the coolant cavities.

In light of the claim language, and the Court's construction of the term engage, the Court interprets the term "slidably engage" to mean "come into contact or interlock with by a sliding motion."

3. " *Sealably Engage* "

The term "sealably engage" is used or referenced in claims 9-14, and 21. The term "sealably engage" is used in claims 9 and 13 as follows, "an insulated cover adapted to **sealably engage** the open top of the insulated body...." (Ex. 1, p. 13.)

EnviroCooler contends that the term "slidably engage" is a commonly understood word meaning to "engage and seal, *i.e.*, close to prevent access or leakage." (EnviroCooler Brief, p. 28.) EnviroCooler avers that the term is used in the patent in its customary meaning, and that there is no need for interpretation.

(EnviroCooler Brief, p. 29.) EnviroCooler states that if the Court finds interpretation is appropriate, then the meaning of the term should be to "come into contact or interlock with and close to prevent access of leakage." (EnviroCooler, p. 29.)

However, in its reply brief EnviroCooler proposes a different alternative construction; "engage to close and minimize leakage from." (EnviroCooler Reply, p. 7.) The Court will not consider proposed constructions which are initially proposed in a reply brief. The Court finds that this would prejudice Cold Chain, because they do not have a opportunity to respond to the newly proposed constructions.

As support for its proposed construction, Cold Chain states that the patent discloses that "[t]he container also includes an insulated cover for closing and substantially sealing the open end of the insulated body, preferably by cooperating tongues and grooves integrally formed around the perimeter of the cover and the body." (Ex. 1, Col.2:66-3:2.) Further, the patent discloses that "[w]hen the cover is placed over the open end, the tongue and groove sealably engage one another, thereby substantially minimizing air leaking between the cavities and in the body and the exterior of the container." (Ex. 1, Col.4:52-64.)

Again, the Court finds that Cold Chain is driven by what the '302 patent's ideal embodiment is, and not what the claim language itself states.

In light of the claim language and the Court's construction of the terms "engage" and "slidably engage," the Court interprets the term "sealably engage" to mean "come into contact or interlock and close to prevent access or leakage."

M. " *SECURELY* "

Disputed Term	EnviroCooler's construction	Cold Chain's construction	The Court's construction
Securely	No interpretation required, or "in a manner to confine or hold fast."	"Tightly; stably"	No interpretation required

The term "securely" is used or referenced in claims 9-14, and 21-23.

The term "securely" is used in claims 9 and 13 as follows, "the coolant cavity being adapted to **securely** receive a coolant ." (Ex. 1, p. 13.) The term "securely" is used in claim 22 as follows, "the product cavity having a predetermined shape for **securely** receiving a similarly shaped product," and "each coolant cavity having a predetermined shape for substantially **securely** receiving a similarly shaped coolant therein." (Ex. 1, p. 14.)

EnviroCooler contends that the word "securely" is a commonly understood word meaning "in a manner to confine and hold fast." (Ex. 14, Dictionary definition, Webster's 3rd Int'l, 4a.) EnviroCooler contends that the term is used in its customary meaning in the '302 patent, and that no interpretation is required in this case. (EnviroCooler Brief, p. 26.) EnviroCooler claims that if the Court finds that interpretation is required, then "securely" should be interpreted to mean "in a manner to confine and hold fast ." (*Id.*)

Cold Chain contends that "securely" means "tightly; stably." (Cold Chain Brief, p. 11.) Cold Chain avers that EnviroCooler's proposed construction "does not take into account the tight dimensional relationship between the cavities and their respective contents...." (*Id.*) As support for its proposed construction, Cold

Chan points out that the '302 patent teaches that problem with insulated shipping containers is that the cavity sometimes includes air spaces around the product and the coolant, leading to convection. (Ex. 1, Col.1:52-60.) Therefore, one of the main purposes of the '302 patent is to make an improved shipping container in which such air spaces are minimized. (Ex. 1, Col.3:46-50.) Hence the product and coolant cavities are shaped to allow a product or coolant to be placed in its respective cavity, minimizing air spaces around the product or coolant. (Ex. 1, Col.4:29-34, Col.4:39-45.) Cold Chain additionally cites the applicant's argument in the '302 patent, and the amendment of October 7, 1998.

The Court disagrees and finds that Cold Chain is attempting to construe the disputed terms to give effect to an ideal embodiment of the '302, in contravention of the words themselves. As EnviroCooler states, "Cold Chain's reference to statements regarding the objective that the cavities have a shape for 'minimizing air spaces' does not support Cold Chain's proposed recision of the word 'securely' to 'tightly; stably.'" (EnviroCooler Reply, p. 11.)

Cold Chain additionally contends that EnviroCooler's proposed construction "effectively results in this term being stricken from the claims in which it appears." (Cold Chain Brief, p. 14.) Cold Chain states that, for example, Claim 9 already recites that the coolant cavity receives a coolant, "that the insulated cover sealably engages the open top of the insulated body and that the insulated cover includes an insulated block that slidably engages the coolant cavity such that the coolant and insulated block together substantially fill the coolant cavity." (*Id.*) Cold Chain contends that as such, the coolant is already "confined and held fast" in the coolant cavity. (*Id.*)

However, EnviroCooler avers that Cold Chain's proposed interpretation is an "improper attempt to substitute a more restrictive term of Cold Chain's choice for the language used in the patent and its claims. Items can be held 'securely,' such as in a bank vault, without being held in a manner that would be considered 'tightly.'" (EnviroCooler Brief, p. 26.) Further, as EnviroCooler contends, "[n]either a 'tight fit' nor a 'tight dimensional relationship' is anywhere mentioned in the patent or its prosecution history...." (EnviroCooler Reply, p. 11.)

The Court agrees with EnviroCooler and finds that interpretation of the term "securely" is not required in this case.

N. " SHIPPING "

Disputed Claim Term	EnviroCooler's Proposed Construction	Cold Chain's Proposed Construction	Court's Construction
Shipping	No interpretation required	Transporting; carrying from one place to another	No interpretation required

The term "shipping" is used or referenced in claims 9-14, 16-17, and 21-23.

The word "shipping" is used in claim 9 as follows, "an insulated **shipping** container for transporting temperature sensitive product for an extended period of time." (Ex. 1, Col.8:28-31.) The word is used in substantially the same way in claims 22 and 23. The word "shipping" is used in claims 16 and 17 as follows, "[a]n insulated **shipping** container for maintaining a product at a predetermined refrigerated condition for an extended period of time." (Ex. 1, Col.9:14-16, Col.9:28-30.) Further the summary of the invention reads in part, "an improved **shipping** container for **shipping** a temperature sensitive product in a refrigerated

condition for an extended period of time." (Ex. 1, Col .2:20-24.)

EnviroCooler contends that "shipping" is not used in any way that requires interpretation. (EnviroCooler Brief, p. 19.)

EnviroCooler further avers that Cold Chain's proposed interpretation of "shipping" substituting the word "transporting" for the word "shipping" would result in redundancy in its terms. (*Id.*)

The Court agrees with EnviroCooler's position and finds that interpretation of the term "shipping" is not required in this case.

O. " SIMILARLY SHAPED "

Disputed Claim Term	EnviroCooler's Proposed Construction	Cold Chain's Proposed Construction	Court's Construction
Similarly Shaped	No interpretation required	Matching or complementary in shape	No interpretation required

The term "similarly shaped" is used or referenced in claims 13, 21-23. Claims 13 and 21 state in part, "**similarly shaped** coolant cavity."

"Similarly shaped" is used in claim 13 as follows, "each of the four side walls includes a **similarly shaped** coolant cavity." (Ex. 1, p. 14.) "Similarly shaped" is used in claim 21 as follows, "two opposite side walls include a **similarly shaped** coolant cavity." (Ex. 1, p. 14.) Hence the coolant cavities are each similar in shape.

The term "similarly shaped" is used in claim 22 as follows, "each coolant cavity having a predetermined shape for substantially securely receiving a **similarly shaped** coolant therein;" and "a product cavity having a predetermined shape for securely receiving a **similarly shaped** product." (Ex. 1, p. 14.) Hence the product and coolant are each "similarly shaped" to their cavity so they can each fit into that cavity.

EnviroCooler contends that "similarly shaped" is a commonly understood phrase, meaning items that have a similar shape, and is used in this customary meaning in the patent. (EnviroCooler Brief, p. 30.)

EnviroCooler avers that no interpretation of the term "similarly shaped" is required in this case. (*Id.*)

EnviroCooler further avers that there is no basis for Cold Chain's "rewriting" of the claim term, because the '302 patent does not discuss "matching" or "complementary" shaped coolant or products. (*Id.*)

EnviroCooler further states that the words Cold Chain proposes have a different connotation than the word "similar." (*Id.*) EnviroCooler states, "Cold Chain's proposed construction is an improper attempt to substitute a more restrictive term for the words used in the patent." (*Id.*) There are more configurations than matched or complementary which can be similar.

The Court agrees with EnviroCooler and finds that no interpretation of the term "similarly shaped" is required in this case.

P. " SUBSTANTIALLY "

Disputed Claim Term	EnviroCooler's Proposed Construction	Cold Chain's Proposed Construction	Court's Construction
Substantially	No interpretation required, or "largely but not necessarily wholly [that which is specified]"	"Virtually entirely"	Largely but not necessarily wholly

The term "substantially" is used or referenced in claims 9-14, 16-17, and 21-23.

The term "substantially" is used in claims 9 and 13 as follows, "a **substantially** rectangular body [of the insulated container] comprising four side walls and a bottom wall defining a product cavity therein, and having an open top," and "thereby the coolant and the insulated block together **substantially** filling the coolant cavity." (Ex. 1, p. 13.) EnviroCooler avers that the use of "substantially" in the first context includes a body that is "generally, but not completely, rectangular in shape." (EnviroCooler Brief, p. 21.) EnviroCooler contends that the use of "substantially" in the second context means the coolant cavity is "largely, but not necessarily completely" filled by the combination of the coolant and the insulated block. (EnviroCooler Brief, p. 21.)

The term "substantially" modifies six additional phrases in the claims in the '302 patent. For instance, "**substantially** parallel to the product cavity," "**substantially** isolated from the product cavity," "**substantially** engage a product in the product cavity," "**substantially** minimizing air spaces around the product," "**substantially** securely receiving a similarly shaped coolant," and "**substantially** engages the open end of the body." (Ex. 1, p. 14.)

EnviroCooler contends that the term "substantially" is commonly understood to mean "largely but not necessarily wholly [that which is specified]," and that the term is used in the claim consistent with this commonly understood meaning. (EnviroCooler Brief, p. 21.) EnviroCooler claims that no interpretation of the word "substantially" is required in this case, but if the Court finds it appropriate, the term should be interpreted as "largely but not necessarily wholly [that which is specified]." (*Id.*)

Cold Chain's proposed construction of "substantially" is "virtually entirely." (Cold Chain Brief, p. 17.) Cold Chain states that "with respect to the 'thereby' phrase in claim 9 and 13, EnviroCooler's construction seems to permit more than a trivial amount of the coolant cavity not to be filled by coolant and insulated block." (*Id.*) Cold Chain avers that such a result is inconsistent with the one of the main purposes of the '302 patent, which is the importance of minimizing air spaces in the coolant cavities to avoid convection. (*Id.*) Cold Chain contends that the same is true with respect to the product cavity and the product.

Cold Chain further avers that "with respect to the 'whereby' clause of claim 22, it also does not make sense to state that the product is subjected to a predetermined refrigerated condition when the insulated cover 'largely but not necessarily wholly' engages the open end of the insulated body." (Cold Chain Brief, p. 18.)

The Court disagrees and finds that Cold Chain is again driven by what the '302 patent should do, and not by the claim language itself. The Court finds that "substantially" is in an ideal embodiment commonly understood to mean "virtually entirely," but actually means something less, like "largely but not necessarily wholly." Hence the Court agrees with EnviroCooler that Cold Chain's proposed construction is "an attempt to substitute a more limiting term for the term actually used in the patent and its claims." (*Id.*, p. 21) The Court finds that in view of the claim language itself, the proper construction of the term "substantially" is "largely but not necessarily wholly."

IV. CONCLUSION

The following summarizes the Court's constructions.

Disputed Term	EnviroCooler's Construction	Cold Chain's Construction	The Court's Construction
Adapted	No interpretation required, or "suited by nature, character, or design [to the specified purpose]"	"Fitted; made to fit"	No interpretation required
Array	No interpretation needed, or "a regular grouping or arrangement [or specified things.]"	"A number of arranged items"	No interpretation required
Configuration	No interpretation required, or "relative disposition or arrangement of the parts or elements [of the specified thing]"	"Shape; construction"	No interpretation required
Coolant	No interpretation Required	"Material used to refrigerate a product"	No interpretation required
Coolant Cavity	No interpretation required	"A compartment that holds coolant"	No interpretation required
Isolated	No interpretation required	"Physically discrete and unconnected"	No interpretation required
Predetermined	No interpretation required, or "decided beforehand."	"Decided in advance pursuant to an objective"	No interpretation required
Product	No interpretation required	"A temperature sensitive material (as distinguished from coolant)."	No interpretation required
Product Cavity	No interpretation required	"The compartment that holds the product"	No interpretation required
Receive	No interpretation required, or "to take in; to act as a receptacle or container for."	"Hold"	No interpretation required
Engage	No interpretation required, or "comes into contact or interlocks with"	"Fit together with; interlock with; mate with."	"Comes into contact or interlocks with"
Slidably Engage	No interpretation required, or "come into contact or interlock with by a sliding motion"	"Mating with an object by being inserted therein, thereby forming a seal therewith"	"Come into contact or interlock with by a sliding motion"
Sealably Engage	No interpretation required, or "come into contact or interlock and close to prevent access or leakage"	"Fit together with, interlock with or mate with in a tight or completely closed manner"	"Come into contact or interlock and close to prevent access or leakage"
Securely	No interpretation required, or "in a manner to confine or hold fast."	"Tightly; stably"	No interpretation required
Substantially	No interpretation required, or	"Virtually entirely"	Largely but not

"largely but not necessarily wholly
[that which is specified]"

necessarily wholly

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