

United States District Court,
S.D. Ohio, Western Division.

CROWN PACKAGING TECHNOLOGY, INC., et al,
Plaintiffs.

v.

BALL METAL BEVERAGE CONTAINER CORP,
Defendant.

No. 3:05cv281

April 21, 2008.

David Carr Greer, James H. Greer, Bieser, Greer & Landis, Dayton, OH, Chad Ziegler, Eric J. Schaal, Lynn Malinoski, Dale M. Heist, Woodcock Washburn LLP, Philadelphia, PA, for Plaintiffs.

OPINION CONSTRUING CLAIMS OF PATENTS IN SUIT; CONFERENCE CALL SET

WALTER HERBERT RICE, District Judge.

The Plaintiffs bring this litigation, alleging that the Defendant has infringed on two patents owned by Plaintiff Crown Packaging Technology, Inc., and licensed to Plaintiff Crown Cork & Seal, Inc., FN1 to wit: U.S. Patent Nos. 6,935,826 ("the '826 patent") and 6,848,875 ("the '875 patent"). These two patents relate to the ends of metal beverage cans used for beer and soft drinks and the method of securing the ends of the cans onto the bodies of the cans, FN2 which the parties and the patents refer to as seaming. In particular, the Plaintiffs have alleged that the Defendant is infringing on claim 14 of the ' 826 patent and claims 50, 52 and 61 of the ' 875 patent. According to the Plaintiffs, these patents allow a significant saving in the amount of metal necessary for can ends, without requiring an enormous outlay of capital, thus cutting costs for users. *See* Doc. # 23 at 2-3, 4. Plaintiffs state that the two patents accomplish that end by altering the geometry of the can end and modifying the seaming process. *Id.* at 4. Plaintiffs indicate that metal is saved, because the new geometry increases the strength of the can ends, permitting them to be thinner. *Id.* at 6.

FN1. This Court will refer to those two entities collectively as "Plaintiffs."

FN2. Colloquially, a can end is referred to as the top of a can.

The typical beverage can is constructed from two parts, a can end and a can body, each of which is manufactured separately. FN3 The can body is filled with beer or another type of carbonated beverage, and the can end is seamed onto the body. As shown by drawings of prior art and explanations on the two patents in suit, in conventional seaming operations, a chuck holds a can top on a can body against the support provided by a lifter plate. The can body and end are then rotated at high speed. While that rotation is

occurring, two seaming rolls are successively moved toward the chuck and can end. The seaming rolls form the seam by bending and compressing the uppermost portion of the can body and the outermost portion of the can end together. The finished seam, which is referred to as a "double seam," is comprised of five interlocking layers of metal, three from the can end and two from the can body. The ' 826 patent addresses can ends, while the ' 875 patent is directed at the seaming process. FN4

FN3. A can body includes the sides and bottom of a can, while its top is the can end.

FN4. The foregoing discussion of the conventional manner in which a can end is attached to a can body is described by drawings of prior art, Figs. 1, 2 and 3, of the '826 patent and the identical drawings, Figs. 1, 2 and 3, of the '875 patent.

Fig. 1 shows the assembly of the can body on the lifter plate, the can end on top of the can body, the chuck on top of the can end and one seaming roll at either side of the assembly. Fig. 2 shows in detail the can end and the chuck, while Fig. 3 illustrates a completed double seam.

As is the norm in patent litigation, the parties have not been able to agree about the meaning of portions of the claims 13 and 14 of the '826 patent and claim 50 of the '875 patent. FN5 On January 4, 2007, this Court conducted a *Markman* hearing, FN6 during which counsel presented about four hours of oral argument pertaining to the meaning of the disputed claims. Although the parties utilized a number of demonstrative exhibits during that hearing and have submitted excerpts from depositions, and reports and declarations of experts to support their positions on claim construction, no oral evidence was introduced during the *Markman* hearing. In addition, this matter has been extensively briefed both before and after the oral arguments. *See* Docs.23, 26, 28, 29, 30, 38, 39, 44, 45 and 47-49. This Court now rules on the meaning of the disputed terms, beginning its analysis by reviewing the standards that must be applied whenever it is called upon to decide the meaning of a patent. The Court will then address the parties' arguments concerning the disputed claims, in the above order. FN7

FN5. The Defendant is accused of infringing on claim 14 of the '826, rather than claim 13 of that patent. *See* Plaintiffs' Amended Complaint (Doc. # 7). However, the meaning of claim 13 is vital, because claim 14 is dependent upon claim 13. Consequently, claim 13 is incorporated into claim 14. In addition, it should be noted that the Defendant is alleged to be infringing upon claims 52 and 61 of the '875 patent. Both of those claims, however, are dependent upon claim 50 of that patent. Therefore, construction of claim 50 is vital to the Plaintiffs' allegation of infringement of the other two claims in the '875 patent.

FN6. *See* *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996).

FN7. In its initial brief on claim construction, Defendant asserts that Plaintiffs violated this Court's Stipulated Order of June 6, 2006 (Doc. # 19), under which Plaintiffs were required to provide a statement of their proposed claim construction by June 16, 2006, because they submitted additional definitions to disputed terms in the claims at issue with their letter under date of July 15, 2006. *See* Doc. # 30 at 3 fn. 3. Defendant contends that, as a result, this Court should decline to consider the proposals in Plaintiffs' July 15th letter. *Id.* Given that Defendant has not identified any prejudice that it has suffered as a result of Plaintiffs' untimely submissions, which it has had adequate opportunity to address before, during and after the *Markman* hearing, the Court will consider the proposals in Plaintiffs' letter as part of the claims

construction process, despite Defendant's request to the contrary.

In addition, the Court has considered fully the arguments and citations, set forth by Defendant in its Supplemental Notice of New Authority (Doc. # 50), as well as Plaintiffs' response thereto. *See* Doc. # 51. The Court has also considered the Plaintiff's Supplemental Response to Defendant's Supplemental Notice of New Authority, filed on April 17, 2008. *See* Doc. # 52.

I. Standards Applicable to Claim Construction

In *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), the United States Supreme Court held that the construction of the claims of a patent was solely within the province of a court, rather than being a question for a jury to resolve. In *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed.Cir.2005) (*en banc*), *cert. denied*, 546 U.S. 1170 (2006), the Federal Circuit restated the pertinent principles a court must apply when it engages in claim construction:

The first paragraph of section 112 of the Patent Act, 35 U.S.C. s. 112, states that the specification

shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains ... to make and use the same....

The second paragraph of section 112 provides that the specification

shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Those two paragraphs of section 112 frame the issue of claim interpretation for us. The second paragraph requires us to look to the language of the claims to determine what "the applicant regards as his invention." On the other hand, the first paragraph requires that the specification describe the invention set forth in the claims.

* * *

It is a "bedrock principle" of patent law that "the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*, 381 F.3d 1111, 1115 (Fed.Cir.2004)] ; *see also* *Vitronics [Corp. v. Conceptronc, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996)] ("we look to the words of the claims themselves ... to define the scope of the patented invention"); *Markman [v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed.Cir.1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996)] ("The written description part of the specification itself does not delimit the right to exclude. That is the function and purpose of claims."). That principle has been recognized since at least 1836, when Congress first required that the specification include a portion in which the inventor "shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery." Act of July 4, 1836, ch. 357, s. 6, 5 Stat. 117, 119. In the following years, the Supreme Court made clear that the claims are "of primary importance, in the effort to ascertain precisely what it is that is patented." *Merrill v. Yeomans*, 94 U.S. 568, 570 (1876). Because the patentee is required to "define precisely what his invention is," the Court explained, it is "unjust to the public, as well as an evasion of the law, to construe it in a manner different from the plain import of its terms." *White v. Dunbar*, 119 U.S. 47, 52 (1886); *see also* *Cont'l Paper Bag Co. v. E. Paper Bag Co.*, 210 U.S. 405, 419 (1908) ("the

claims measure the invention"); *McCarty v. Lehigh Valley R.R. Co.*, 160 U.S. 110, 116 (1895) ("if we once begin to include elements not mentioned in the claim, in order to limit such claim ..., we should never know where to stop"); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 365 U.S. 336, 339 (1961) ("the claims made in the patent are the sole measure of the grant").

We have frequently stated that the words of a claim "are generally given their ordinary and customary meaning." *Vitronics*, 90 F.3d at 1582; *see also* *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299 (Fed.Cir.1999); *Renishaw PLC v. Marposso Societa' per Azioni*, 158 F.3d 1243, 1249 (Fed.Cir.1998). We have made clear, moreover, that the ordinary and customary meaning of a claim term is the meaning that the 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. *See* *Innova*, 381 F.3d at 1116 ("A court construing a patent claim seeks to accord a claim the meaning it would have to a person of ordinary skill in the art at the time of the invention."); *Home Diagnostics, Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1358 (Fed.Cir.2004) ("customary meaning" refers to the "customary meaning in [the] art field"); *Ferguson Beau regard/ Log ic Controls v. Mega Sys., LLC*, 350 F.3d 1327, 1338 (Fed .Cir.2003) (claim terms "are examined through the viewing glass of a person skilled in the art"); *see also* *PC Connector Solutions LLC v. SmartDisk Corp.*, 406 F.3d 1359, 1363 (Fed.Cir.2005) (meaning of claim "must be interpreted as of [the] effective filing date" of the patent application); *Schering Corp. v. Amgen Inc.*, 222 F.3d 1347, 1353 (Fed.Cir.2000) (same).

The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation. *See* *Innova*, 381 F.3d at 1116. That starting point is based on the well-settled understanding that inventors are typically persons skilled in the field of the invention and that patents are addressed to and intended to be read by others of skill in the pertinent art. *See* *Verve, LLC v. Crane Cams, Inc.*, 311 F.3d 1116, 1119 (Fed.Cir.2002) (patent documents are meant to be "a concise statement for persons in the field"); *In re Nelson*, 47 C.C.P.A. 1031, 280 F.2d 172, 181 (1960) ("The descriptions in patents are not addressed to the public generally, to lawyers or to judges, but, as section 112 says, to those skilled in the art to which the invention pertains or with which it is most nearly connected.").

Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification. This court explained that point well in *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed.Cir.1998):

It is the person of ordinary skill in the field of the invention through whose eyes the claims are construed. Such person is deemed to read the words used in the patent documents with an understanding of their meaning in the field, and to have knowledge of any special meaning and usage in the field. The inventor's words that are used to describe the invention—the inventor's lexicography—must be understood and interpreted by the court as they would be understood and interpreted by a person in that field of technology. Thus the court starts the decisionmaking process by reviewing the same resources as would that person, viz., the patent specification and the prosecution history.

See also *Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed.Cir.2005) ("We cannot look at the ordinary meaning of the term ... in a vacuum. Rather, we must look at the ordinary meaning in the context of the written description and the prosecution history."); *V-Formation, Inc. v. Benetton Group SpA*, 401 F.3d 1307, 1310 (Fed.Cir.2005) (intrinsic record "usually provides the technological and temporal context to enable the court to ascertain the meaning of the claim to one of ordinary skill in the art at the time of the invention"); *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 375 F.3d 1341, 1351 (Fed.Cir.2004) (proper

definition is the "definition that one of ordinary skill in the art could ascertain from the intrinsic evidence in the record").

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. *See Brown v. 3M*, 265 F.3d 1349, 1352 (Fed.Cir.2001) (holding that the claims did "not require elaborate interpretation"). In such circumstances, general purpose dictionaries may be helpful. In many cases that give rise to litigation, however, determining the ordinary and customary meaning of the claim requires examination of terms that have a particular meaning in a field of art. Because the meaning of a claim term as understood by persons of skill in the art is often not immediately apparent, and because patentees frequently use terms idiosyncratically, the court looks to "those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean." *Innova*, 381 F.3d at 1116. Those 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.*; *see also Gemstar-TV Guide Int'l, Inc. v. Int'l Trade Comm'n*, 383 F.3d 1352, 1364 (Fed.Cir.2004); *Vitronics*, 90 F.3d at 1582-83; *Markman*, 52 F.3d at 979-80.

Id. at 1311-14.

Herein, the parties have submitted extensive, extrinsic evidence (i.e., evidence other than the claims, specification or prosecution history) in support of their proposed constructions of the claims at issue. In *Phillips*, the Federal Circuit also discussed the role of extrinsic evidence in claim construction:

Although we have emphasized the importance of intrinsic evidence in claim construction, we have also authorized district courts to rely on extrinsic evidence, which "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Markman*, 52 F.3d at 980, citing *Seymour v. Osborne*, 78 U.S. (11 Wall.) 516, 546 (1870); *see also Vitronics*, 90 F.3d at 1583. However, while extrinsic evidence "can shed useful light on the relevant art," we have explained that it is "less significant than the intrinsic record in determining 'the legally operative meaning of claim language.'" *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed.Cir.2004), quoting *Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311, 1318 (Fed.Cir.2004); *see also Astrazeneca AB v. Mutual Pharm. Co.*, 384 F.3d 1333, 1337 (Fed.Cir.2004).

Within the class of extrinsic evidence, the court has observed that dictionaries and treatises can be useful in claim construction. *See Renishaw*, 158 F.3d at 1250; *Rexnord [Corp. v. Laitram Corp.]*, 274 F.3d 1336, 1344 (Fed.Cir.2001)]. We have especially noted the help that technical dictionaries may provide to a court "to better understand the underlying technology" and the way in which one of skill in the art might use the claim terms. *Vitronics*, 90 F.3d at 1584 n. 6. Because dictionaries, and especially technical dictionaries, endeavor to collect the accepted meanings of terms used in various fields of science and technology, those resources have been properly recognized as among the many tools that can assist the court in determining the meaning of particular terminology to those of skill in the art of the invention. *See Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed.Cir.2002). Such evidence, we have held, may be considered if the court deems it helpful in determining "the true meaning of language used in the patent claims." *Markman*, 52 F.3d at 980.

We have also held that extrinsic evidence in the form of expert testimony can be useful to a court for a

variety of purposes, such as to provide background on the technology at issue, to explain how an invention works, to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field. *See* Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1308-09 (Fed.Cir.1999); Key Pharms. v. Hercon Labs. Corp., 161 F.3d 709, 716 (Fed.Cir.1998). However, conclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court. Similarly, a court should discount any expert testimony "that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the patent." Key Pharms., 161 F.3d at 716.

We have viewed extrinsic evidence in general as less reliable than the patent and its prosecution history in determining how to read claim terms, for several reasons. First, extrinsic evidence by definition is not part of the patent and does not have the specification's virtue of being created at the time of patent prosecution for the purpose of explaining the patent's scope and meaning. Second, while claims are construed as they would be understood by a hypothetical person of skill in the art, extrinsic publications may not be written by or for skilled artisans and therefore may not reflect the understanding of a skilled artisan in the field of the patent. Third, extrinsic evidence consisting of expert reports and testimony is generated at the time of and for the purpose of litigation and thus can suffer from bias that is not present in intrinsic evidence. The effect of that bias can be exacerbated if the expert is not one of skill in the relevant art or if the expert's opinion is offered in a form that is not subject to cross-examination. *See* Senmed, Inc. v. Richard-Allan Med. Indus., Inc., 888 F.2d 815, 819 n. 8 (Fed.Cir.1989). Fourth, there is a virtually unbounded universe of potential extrinsic evidence of some marginal relevance that could be brought to bear on any claim construction question. In the course of litigation, each party will naturally choose the pieces of extrinsic evidence most favorable to its cause, leaving the court with the considerable task of filtering the useful extrinsic evidence from the fluff. *See* Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 595 (1993) ("Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it."). Finally, undue reliance on extrinsic evidence poses the risk that it will be used to change the meaning of claims in derogation of the "indisputable public records consisting of the claims, the specification and the prosecution history," thereby undermining the public notice function of patents. *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1578 (Fed.Cir.1995)].

In sum, extrinsic evidence may be useful to the court, but it is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence. Nonetheless, because extrinsic evidence can help educate the court regarding the field of the invention and can help the court determine what a person of ordinary skill in the art would understand claim terms to mean, it is permissible for the district court in its sound discretion to admit and use such evidence. In exercising that discretion, and in weighing all the evidence bearing on claim construction, the court should keep in mind the flaws inherent in each type of evidence and assess that evidence accordingly.

Id. at 1317-19.

II. Construction of the Claims at Issue

As is indicated, the parties disagree about the meaning of a number of phrases in claims 13 and 14 of the '826 patent, and in claim 50 of the '875 patent. As a means of analysis, the Court will construe the disputed claims in the above Order. However, before engaging in that analysis, it bears noting that, since the '826 and the '875 patents derive from the same application and given that the patents use many of the same or similar

terms, this Court must construe them consistently. *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282, 1293 (Fed.Cir.2005), *cert. denied*, 546 U.S. 1157 (2006). *See also* *Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1350 (Fed.Cir.) (holding that statements made in prosecution of one patent are relevant to the scope of all sibling patents), *cert. denied*, 543 U.S. 821 (2004); *Laitram Corp. v. Morehouse Indus., Inc.*, 143 F.3d 1456, 1460 & n. 2 (Fed.Cir.1998) (noting that it was proper to consider the prosecution histories of two related re-examination patents originating from the same parent, to determine the meaning of a term used in both patents). Indeed, the parties are in agreement that the '826 and '875 patents must be construed consistently. *See* Plaintiffs' Opening Claim Construction Brief (Doc. # 23) at 22; Defendant's Opening Claim Construction Brief (Doc. # 30) at 7, n. 5.

A. Claim 13 of the '826 Patent

Claim 13 of the '826 patent provides:

13. A metal can end for use in packaging beverages under pressure and adapted to be joined to a can body by a seaming process so as to form a double seam therewith using a *rotatable chuck* comprising *first and second circumferentially extending walls*, said first and second chuck walls forming a *junction therebetween*, said can end comprising:

a peripheral cover hook, said peripheral cover hook comprising a seaming panel adapted to be formed into a portion of said double seam during said seaming operation;

a central panel;

a wall extending inwardly and downwardly from said cover hook, a first portion of *said wall* extending from said cover hook to *a first point on said wall*, said first wall portion adapted *to be deformed* during said seaming operation so as to *be bent upwardly around said juncture of said chuck walls* at said *first point* on said wall, *a second portion* of said wall extending from said first point to a second point *forming a lowermost end of said wall*, a line extending between said first and second points being inclined to an axis perpendicular to said central panel at an angle of between 30 (deg.) and 60 (deg.).

'826 patent, Col. 10, lines 37-61. As it does for all of the claims in dispute, the Court has emphasized the phrases in that claim where the parties disagree about the meaning. The first three areas of dispute between the parties, which the Court has emphasized, relate to the chuck, while the remainder pertain to the can end. As a means of analysis, this Court will construe the meaning of the disputed phrases in the order in which they appear in claim 13. FN8

FN8. Without defining the contested terms, Plaintiffs describe claim 13 in the following manner:

The can end of claim[] 13 ..., therefore, is a "metal can end for use in packaging beverages under pressure" that is "adapted to be joined to a can body by a seaming process" using "a rotatable chuck." The chuck includes three components: (1) a "first ... circumferentially extending wall;" (2) a "second ... circumferentially extending wall;" and (3) a "junction" between them. The claimed can end further includes three general structures: (1) "a peripheral hook;" (2) "a central panel;" and (3) "a wall extending downwardly and inwardly from said cover hook." The recited downwardly and inwardly extending "wall" includes two portions: (1) "a first portion ... extending from [the] cover hook to a first point on the wall;" and (2) "a second portion ... extending from [the] first point to a second point." The claim provides that the first wall

portion is "adapted to be deformed" during the seaming "so as to be bent upwardly." It further provides that "a line extending between [the] first and second points" on the wall must be "inclined ... at an angle between 30 (deg.) and 60 (deg.)."

Doc. # 23 at 12 fn. 2 (citations omitted).

First, the first disputed phrase is "rotatable chuck" or "chuck." FN9 Plaintiffs argue that the phrase "rotatable chuck" means "rotatable attachment to a seamer used to hold the can end, and against which the double seam is formed." See Plaintiffs' Opening Brief in Support of Their Proposed Claim Construction (Doc. # 23) at Attachment A. The Defendant, in contrast, contends that the word "chuck" means "a part of a can seamer which drives a can end chuck wall."

FN9. In this particular lawsuit, the parties cannot agree as to what they disagree about.

As an initial matter, although the Plaintiffs have identified "rotatable" as a disputed term between the parties, the Defendant has not. Moreover, Plaintiffs have merely stated that "rotatable" means "rotatable." Given that neither party has provided a proposed definition of "rotatable" other than rotatable, and, further, since that word has a common meaning, capable of being rotated (see Webster's Third International Dictionary ("Webster's") at 1976),FN10 it is not necessary to construe that word.

FN10. The Defendant has objected to the use of general purpose (as opposed to technical) dictionaries, such as Webster's, during the claim construction process, although Defendant has also utilized such dictionaries. Simply stated, this Court cannot agree with the Defendant that the use of a general purpose dictionary is improper in the claim construction herein. As Defendant argues, the Federal Circuit has indicated that words in a claim are to be given their ordinary and customary meanings to one skilled at the relevant art at the time of the invention. See Phillips, 415 F.3d at 1312-13. However, when the ordinary and customary meaning of a claim, as understood by one skilled in the pertinent art, is readily apparent, even to lay judges, it is permissible for a court to rely on general purpose dictionaries. Id. at 1314. See also, Id. at 1322 (noting that dictionaries "are often useful to assist in understanding the commonly understood meaning of words). Thus, in Free Motion Fitness, Inc. v. Cybex International, Inc., 423 F.3d 1343, 1349 (Fed.Cir.2005), the Federal Circuit approved the use of Webster's in claim construction. Herein, this Court has utilized Webster's only when the parties have not cited intrinsic evidence, such as the specification, prosecution history or the language of the claims themselves, or extrinsic evidence that would cast doubt on whether Webster's definition of a particular word is that which would be utilized by one ordinarily skilled in the art of beverage cans and attaching the ends of such cans to their bodies.

However, that leaves the question of whether a "chuck" is an "attachment to a seamer used to hold the can end, and against which the double seam is formed," or "a part of a can seamer which drives a can end chuck wall." Briefly stated, this Court agrees with the Plaintiffs' proposed definition. The Defendant has not explained why it believes its proposed meaning is correct, nor has it explained what is improper about the Plaintiffs' proposed definition. The Court cannot conceive of a principled distinction between the introductory phrases of each parties' proposed definition (i.e., "attachment to a seamer" and "a part of a can seamer"). What the chuck does is described in a manner that will be clearer to a lay jury by the Plaintiffs' proposed language ("used to hold the can end, and against which the double seam is formed"), than by that advocated by the Defendant ("which drives a can end chuck wall").

Accordingly, this Court will inform the jury that a "rotatable chuck" is a "rotatable attachment to a seamer used to hold the can end, and against which the double seam is formed."

Second, the parties disagree, somewhat, about the meaning of "first and second circumferentially extending walls." FN11 According to the Plaintiffs, that term means "first and second walls encircling the chuck." Doc. # 23 at Ex. A. Defendant, in contrast, proposes argues that the Court construe the word "walls" in that phrase, as meaning "two distinct, discrete and discernibly separate side surfaces of the chuck with decidedly different geometrics and angles (which are flat in cross section)." Doc. # 30 at Ex. 6, p. 4.

FN11. In the specification for the '826 patent, the first wall is referred to as the "frustoconical drive surface" or "drive surface" and is identified on the drawings of that patent as 32. *See* '826 patent at Col. 4, lines 43-53. The second wall is referred to as the "substantially cylindrical surface" and is identified on the drawings of the '826 patent as 33. *Id.* at Col. 4, lines 53-55. The '875 patent uses the same language and numbers to identify the two walls of the chuck, as well as occasionally referring to the first wall as the "chuck drive wall." *See* '875 patent at Col. 4, lines 24-60.

As an initial matter, this Court agrees with Plaintiffs that the phrase "first and second circumferentially extending walls" means "first and second walls encircling the chuck." "Circumferentially" is utilized in the '826 patent only in the above quoted phrase from claim 13, and nothing in that patent's specification contradicts Plaintiffs' assertion that "circumferentially" means "encircling." In addition, the Defendant has neither objected to Plaintiffs' suggested definition of "circumferentially," nor proposed an alternative meaning. Moreover, the ordinary meaning of that word is "encircling." *See Webster's* at 409.

Of course, that "circumferentially" is defined in the manner advocated by the Plaintiffs does not resolve the area of dispute between the parties, i.e., the meaning of "walls." Plaintiffs have not suggested a meaning for that word, while Defendant contends that it means "two distinct, discrete and discernibly separate side surfaces of the chuck with decidedly different geometrics and angles (which are flat in cross section)." Plaintiffs, without suggesting an alternative meaning, argue that this Court should not adopt the Defendant's proposed construction of that term, because it is predicated solely upon embodiment of the claimed invention shown by Figs. 6 and 7 of the '826 patent. As the Plaintiffs point out, the Federal Circuit has stressed that a claim is not to be narrowly construed, in order to conform it to an embodiment. *See Phillips*, 415 F.3d at 1323 (noting that "although the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments"). The Plaintiffs contend that the word "walls" is a simple, understandable, ordinary term, for which no definition is necessary. This Court cannot agree with Plaintiffs in this regard. The claim describes "*first and second* walls." *See Phillips*, 415 F.3d at 1314 (noting that the language of the claims themselves "provides substantial guidance as to the meaning of particular claim terms"). Thus, while this Court agrees with Plaintiffs that one cannot construe "walls" solely in the manner shown in the embodiment of their invention described in the drawings of the '826 patent, it will inform the jury that "walls" are "distinct, discrete and discernibly separate side surfaces of the chuck." It is not possible to have a first *and* a second wall, without there being two distinct, discrete and discernibly separate side surfaces. A curving structure, without distinct, discrete and discernibly separate side surfaces, does not have two walls. Stated somewhat differently and hypothetically, if the chuck on Defendant's allegedly offending product has a convex shape, it would not have two walls.

The Court will not, however, adopt the remainder of the definition of "wall" proposed by the Defendant (*i.e.*, "with decidedly different geometrics and angles which are flat in cross section"). "Geometric" is most commonly used as an adjective meaning relating to or according to the methods and principles of geometry. Webster's at 949. The Defendant has transformed that readily understood adjective into a plural noun of unstated meaning.FN12 If this Court were to agree with Defendant that each wall of the chuck must have "decidedly different geometrics," it would be required to conduct a second *Markman* proceeding in order to ascertain the meaning of that phrase. As to other aspect of Defendant's proposed language (*i.e.*, "and angles which are flat in cross section"), the Court rejects that language, because it is predicated solely upon the drawings on the ' 826 patent, rather than being derived from the claim terms or the specification. As is indicted above, the Federal Circuit has repeatedly emphasized that it is improper to confine a claim to the embodiments disclosed by the patent. *See e.g.*, *Ormco Corp. v. Align Technology, Inc.*, 498 F.3d 1307, 1323 (Fed.Cir.2007); *Ventana Medical Systems, Inc. v. Biogenex Laboratories, Inc.*, 473 F.3d 1173, 1181 (Fed.Cir.2006) (noting that while "the fact that the disclosed embodiments are limited can assist in interpreting claim language ..., [it] does not in and of itself mean that the ... claims at issue are limited to the disclosed embodiments"); *Phillips*, 415 F.3d at 1323.

FN12. "Geometric" is also used as a noun meaning "something (as a textile or rug) characterized by a geometric design or decoration." Webster's at 949. This Court does not understand the Defendant to be arguing that the Court use "geometric" in this sense and, thus, inform the jury that the face of each wall of the chuck must have a decoration or design much like a Navaho rug.

Accordingly, this Court will inform the jury that the term "first and second circumferentially extending walls" means "first and second encircling distinct, discrete and discernibly separate side surfaces of the chuck."

Third, the parties have not been able to agree on the meaning of the phrase "juncture therebetween." According to the Plaintiffs, the Court should construe that phrase as meaning "place between two things at which they meet." *See* Doc. # 23 at 15. Defendant, in contrast, argues that this Court should inform the jury that "juncture" means "a fine, non-gradual, definable edge between the walls (which is a point in cross section)." Doc. # 30 at Ex. 6, p. 5. For reasons which follow, this Court adopts the construction proposed by the Defendant, as modified herein. It is axiomatic that the '826 patent must be construed in accordance with the '875 patent. *See NTP, Inc., supra*. The specification of the '875 patent provides that "[d]uring relative rotation as between the can end 22 and the first operation roll 34[,] the *edge* between the chuck drive wall 32 and the cylindrical wall 33 exerts a pinching force between chuck 30 and roll 34 to deform the chuck wall of the can end as shown." FN13 ' 875 patent at Col. 4, lines 55-59. Therefore, this Court agrees with the Defendant that the juncture between the walls forms an edge.

FN13. This portion of the specification of the '875 patent does not set forth a favored or possible embodiment of the invention; rather, it describes how the Plaintiffs' invention works.

Such a conclusion is entirely consistent with the Court's construction of the term "first and second circumferentially extending walls," as meaning "first and second encircling distinct, discrete and discernibly separate side surfaces of the chuck." A "juncture" is a junction, which is defined as "a place or point of union or meeting." Webster's at 1226. An edge is formed where two separate side surfaces meet. This Court rejects the Plaintiffs' proposed construction of "juncture therebetween," because it is predicated solely upon

the foregoing dictionary definitions. In accordance with Federal Circuit authority, this Court must give precedence to intrinsic evidence of the meaning of a claim, such as the patent's specification, rather than extrinsic evidence, such as a general reference dictionary.

The Court will not, however, adopt the first two adjectives in Defendant's proposed construction (*i.e.*, the edge be both "fine" and "non-gradual"), because they are based upon the drawings of the '826 patent, which merely set forth the preferred embodiment of the chuck.

Accordingly, the Court construes the phrase "juncture therebetween," as meaning "definable edge between the walls (which is a point in a cross section)." FN14 This Court will so instruct the jury during the trial.
FN15

FN14. In *Crown Packaging Technology v. Rexam Bev. Can Co.*, 486 F.Supp.2d 366 (D.Del.2007), a lawsuit against another alleged infringer of the '826 and '875 patents, the court construed "juncture therebetween" in essentially the manner proposed by Plaintiffs herein. *Id.* at 371-72. However, since the *Rexam* court did not discuss the specification of the '875 patent, which is quoted in the text above, this Court is not convinced by the reasoning therein.

Parenthetically, the Defendant has cited in its Supplemental Notice of New Authority (Doc. # 50), the decision of the District Court in *Rexam* entering summary judgment against the plaintiff. *Crown Packaging Technology v. Rexam Bev. Can Co.*, 531 F.Supp.2d 629 (D.Del.2008). Since this litigation comes before the Court for the purposes of claim construction, rather than for a ruling on a request for summary judgment, that decision does not lend insight on the meaning of the language disputed herein.

In its Supplemental Response to Defendant's Supplemental Notice of New Authority (Doc. # 52), Plaintiff argues that principles of collateral estoppel mandate that this Court construe the claim language in the same manner as the District Court in *Rexam*, since it (Plaintiff) did not appeal that construction. According to Plaintiff, an application of those principles mandate that the Court adopt its proposed construction of certain claim language. This Court cannot agree. In patent litigation, this Court must apply the federal law of collateral estoppel. *Blonder-Tongue Labs., Inc. v. University of Ill. Found.*, 402 U.S. 313 (1971). Under those principles, litigants who were not parties to the prior litigation cannot be collaterally estopped by the resolution of issues therein. *Id.* at 329. Therefore, since Defendant was not a party in *Rexam*, collateral estoppel does not prevent it from challenging Plaintiff's proposed claim construction.

FN15. It bears emphasis that this disputed language and the remainder of the parties' disputes concerning the construction of language in claim 13 relate to the can top, while the previous three disputes pertained to the chuck.

Fourth, the parties disagree on the meaning of the phrase "a wall extending inwardly and downwardly," as used in claim 13 of the '826 patent.FN16 The Plaintiffs argue that the Court should construe this phrase as meaning "can end wall extending inwardly and downwardly." Thus, Plaintiffs merely contend that this Court should substitute "can end wall" for "wall." The Defendant has not disputed that the word "wall," used in the phrase "wall extending inwardly and downwardly," refers to the "can end wall." Moreover, given that claim 13 refers to walls of both the chuck and the can end, this Court will utilize the phrase "can end wall."

FN16. In Exhibit 6 to its Opening Claim Construction Brief (Doc. # 30), the Defendant seemingly contends

that the parties are in dispute concerning the meaning of the phrase "peripheral cover hook," as used in claim 13 of the '826 patent. The Defendant has not, however, addressed that term therein, nor did it mention "peripheral cover hook" during the *Markman* hearing. On the contrary, Plaintiffs' counsel stated during that hearing, without contravention, that there was no dispute between parties concerning the meaning of "peripheral cover hook." *See* Doc. # 37 at 28.

Defendant argues that the phrase "a wall extending inwardly and downwardly from said cover hook" means "a single distinct surface which connects directly with the cover hook and which connects directly with the reinforcing bead at a 'second point.'" Doc. # 30 at 20. The Defendant has not, however, presented an argument, in its pre and post-hearing briefs on claim construction (Docs. 30 and 39), as to why this Court should adopt its proposed construction of the phrase "a wall extending inwardly and downwardly from said cover hook." In addition, Defendant did not present such an argument during the *Markman* hearing. In the absence of an argument as to why its proposed construction of the phrase in question is correct, this Court will not adopt same.

Accordingly, this Court adopts the construction of "a wall extending inwardly and downwardly" proposed by the Plaintiffs, and will inform the jury that this phrase means "a can end wall extending inwardly and downwardly." However, for reasons set forth below in the Court's construction of the phrase "a circumferentially extending wall" in claim 50 of the '875 patent, the Court will explain to the jury that the "can end wall" is a "single surface."

Fifth, according to the Plaintiffs, the parties dispute that the meaning of "said wall," which is used four times in claim 13 of the '826 patent, means "said can end wall." It could not be questioned that the term "said wall" is used to refer to the can end wall. Indeed, Defendant does not argue to the contrary. Therefore, given that claim 13 discusses both the chuck and can end walls, this Court adopts the construction of "said wall" proposed by Plaintiffs (*i.e.*, "said can end wall"), in order to avoid juror confusion.

Sixth, the parties have not agreed on the meaning of the term "first point," as used in claim 13 of the '826 patent. The Defendant has proposed that the Court construe that term as meaning "the first point at which the can end wall begins to move during the seaming operation." Doc. # 30 at 16. Believing that "first point" is sufficiently defined by claim 13 itself, Plaintiffs have not provided a proposed construction for this term, although it has opposed that which the Defendant has put forward. *See* Doc. # 26 at 18-19. "First point" is used in the following part of claim 13:

a wall extending inwardly and downwardly from said cover hook, a first portion of said wall extending from said cover hook to *a first point* on said wall, said first wall portion adapted to be deformed during said seaming operation so as to be bent upwardly around said juncture of said chuck walls at said *first point* on said wall, a second portion of said wall extending from said *first point* to a second point forming a lowermost end of said wall, a line extending between said first and second points being inclined to an axis perpendicular to said central panel at an angle of between 30 (deg.) and 60 (deg.).

'826 patent, Col. 10, lines 50-61. From the use of "first point" therein, it is apparent that the first point is where the can wall is bent upwardly at the juncture of the two chuck walls. In other words, the first point is where the can end wall is deformed during the seaming process. In *Phillips*, the Federal Circuit noted that the manner in which a term is used in a claim may provide "a firm basis for construing the claim." 415 F.3d at 1314. Moreover, the specification does not discuss, nor do the drawings show, that movement occurs at

the first point. Accordingly, this Court rejects the Defendant's proposed construction of "first point" and will not provide a definition of that term to the jury.FN17

FN17. The Defendant's proposed construction of and the parties arguments concerning "first point" are equally applicable to the term "first location," used in claim 50 of the '875 patent. Therefore, based the above reasoning, the Court rejects Defendant's proposed construction of "first location" and will not define that term for the jury.

Seventh, the parties have not been able to agree on the meaning of "be deformed." According to Plaintiffs, that phrase means "have its shape altered." *See* Doc. # 23 at 16. Defendant, in contrast, argues that the Court should construe "deformed" to mean "re-shaped significantly such that the resulting geometry radically differs from the original geometry." *See* Doc. # 30 at 8. Plaintiffs base their proposed construction upon the dictionary definition of deform, to wit: "to alter the form or shape of." Webster's at 593. Plaintiffs also argue that their proposed construction of "be deformed" is consistent with the specification of the '826 patent which states that the can end is deformed during the seaming process by being "bent." *See* '826 patent at Col. 2, lines 44-46. The Defendant argues that this Court must adopt its proposed construction of deformed, because the Plaintiffs disclaimed the broad meaning of that word during the prosecution of the '826 patent. As a means of analysis, the Court will initially discuss the legal principles which are applicable to the argument that a party has disclaimed a broad interpretation of a claim during the prosecution of a patent, following which it will turn to the parties' arguments in support of and in opposition to the Defendant's proposition that Plaintiffs did so with respect to the word "deformed."

In the course of setting forth general principles of claim construction, the Federal Circuit, in *Phillips, supra*, described the important role played by the prosecution history in that process:

In addition to consulting the specification, we have held that a court "should also consider the patent's prosecution history, if it is in evidence." *Markman*, 52 F.3d at 980; *see also* *Graham v. John Deere Co.*, 383 U.S. 1, 33 (1966) ("[A]n invention is construed not only in the light of the claims, but also with reference to the file wrapper or prosecution history in the Patent Office."). The prosecution history, which we have designated as part of the "intrinsic evidence," consists of the complete record of the proceedings before the PTO and includes the prior art cited during the examination of the patent. *Autogiro*, 384 F.2d at 399. Like the specification, the prosecution history provides evidence of how the PTO and the inventor understood the patent. *See* *Lemelson v. Gen. Mills, Inc.*, 968 F.2d 1202, 1206 (Fed.Cir.1992). Furthermore, like the specification, the prosecution history was created by the patentee in attempting to explain and obtain the patent. Yet because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes. *See* *Inverness Med. Switz. GmbH v. Warner Lambert Co.*, 309 F.3d 1373, 1380-82 (Fed.Cir.2002) (the ambiguity of the prosecution history made it less relevant to claim construction); *Athletic Alternatives, Inc. v. Prince Mfg., Inc.*, 73 F.3d 1573, 1580 (Fed.Cir.1996) (the ambiguity of the prosecution history made it "unhelpful as an interpretive resource" for claim construction). *Nonetheless, the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.* *Vitronics*, 90 F.3d at 1582-83; *see also* *Chimie v. PPG Indus., Inc.*, 402 F.3d 1371, 1384 (Fed.Cir.2005) ("*The purpose of consulting the prosecution history in construing a claim is to 'exclude any interpretation that was disclaimed during prosecution.'*"), quoting *ZMI Corp. v. Cardiac Resuscitator Corp.*, 844 F.2d 1576, 1580

(Fed.Cir.1988); Southwall Techs., Inc. v. Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.1995).

415 F.3d at 1317 (emphasis added).

In Rheox, Inc. v. Entact, Inc., 276 F.3d 1319 (Fed.Cir.2002), the plaintiff alleged that the defendant had infringed on its patented material, calcium orthophosphate, used to remediate environmentally contaminated soil. After construing that term to be limited to tricalcium orthophosphate, the District Court entered summary judgment in favor of the defendant, concluding that its product did not include tricalcium orthophosphate. The Federal Circuit affirmed, albeit on different grounds, writing:

Although the district court found that the term "calcium orthophosphate" as used in claim 1 of the '600 patent is limited to tricalcium orthophosphate, that determination is not necessary to resolve this case. We need only determine whether the term "calcium orthophosphate" in claim 1 of the '600 patent covers monocalcium orthophosphate or TSP. In regard to this limited question, we find that the term does not because those compounds were disclaimed during the prosecution of the patent application. We do not find it necessary to determine whether the term "calcium orthophosphate" is limited to tricalcium orthophosphate.

Arguments and amendments made during prosecution of a patent application must be examined to determine the meaning of terms in the claims. Southwall Techs., Inc. v. Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.1995). "The prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution." *Id.*, 54 F.3d 1570 (citations omitted); *see also* Spectrum Int'l, Inc. v. Sterilite Corp., 164 F.3d 1372, 1378 (Fed.Cir.1998) ("[E]xplicit statements made by a patent applicant during prosecution to distinguish a claimed invention over prior art may serve to narrow the scope of the claim."); Standard Oil Co. v. Am. Cyanamid Co., 774 F.2d 448, 452, (Fed.Cir.1985) ("[T]he prosecution history ... limits the interpretation of claims so as to exclude any interpretation that may have been disclaimed or disavowed during prosecution in order to obtain claim allowance."). Explicit arguments made during prosecution to overcome prior art can lead to narrow claim interpretations because "[t]he public has a right to rely on such definitive statements made during prosecution." Digital Biometrics, Inc. v. Identix, Inc., 149 F.3d 1335, 1347 (Fed.Cir.1998).

* * *

We assess whether a patentee relinquished a particular claim construction based on the totality of the prosecution history, which includes amendments to claims and arguments made to overcome or distinguish references. *Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 979 (Fed.Cir.1999) ("Because it is the totality of the prosecution history that must be assessed, not the individual segments of the presentation made to the Patent and Trademark Office by the applicant, it is irrelevant whether *Elkay* relinquished this potential claim construction in an amendment to the claim or in an argument to overcome or distinguish a reference.").

As originally filed, claim 2 of the 600 patent was specifically directed to TSP, and claim 18 was directed to a group that included TSP, phosphate rock, and hydroxyapatite. After an initial and final rejection and an interview with the examiner, Rheox cancelled claim 2, which was explicitly directed to TSP. With painstaking surgical precision, Rheox also deleted the single reference to TSP in claim 18. Rheox stated that it made the changes to "distinguish the invention from the water-soluble compounds and method of treatment taught by [the prior art]." It continued: "[A] central difference between the invention and the prior art is that the presently claimed compound (calcium orthophosphate) is substantially water-insoluble,

whereas the compounds utilized in the prior art processes are highly water-soluble." It then stated that "[i]n this regard, Applicants point out that the solubility of calcium orthophosphate is 0.002 g/100 [mL] [water]." Rheox finally stated that the "water-soluble phosphates disclosed by [the prior art] are believed to be thousands of times more water-soluble than Applicants' preferred (and presently claimed) calcium orthophosphate material."

Id. at 1325-26 (footnote omitted).

In *North American Container v. Plastipak Packaging, Inc.*, 415 F.3d 1335, 1345 (Fed.Cir.2005), FN18 the plaintiff accused the defendants of infringing upon its patented plastic bottle. The patent examiner had initially rejected the application for that patent, as being obvious in light of prior art. In response, the plaintiff had argued that the prior art showed a bottle wherein the inner wall was slightly concave, while its patent described a bottle the walls of which were "generally convex." During claim construction, the District Court concluded that, with respect to the inner wall of plaintiff's bottle, the phrase "generally convex" could not include any concave points. The District Court based that construction on the conclusion that the plaintiff had disclaimed an inner wall with concave points during the prosecution of the patent application, by distinguishing the prior art on the basis that the inner wall on that patent was slightly concave. Upon appeal, the Federal Circuit affirmed, writing:

FN18. During the *Markman* hearing, Plaintiffs' counsel cited *North American Container* and attributed certain language to that decision which does not appear therein. *See* Transcript of Markman Hearing (Doc. # 37) at 158. Plaintiffs' counsel is undoubtedly very familiar with this decision, given that he is listed as having represented one of the defendants therein. *See* 415 F.3d at 1337. Of course, in that litigation, counsel was taking the position that the patentee's statements to the patent examiner constituted a disclaimer, while he is taking the opposite position under the facts and circumstances of the Plaintiffs' prosecution of the patents herein.

We agree with the district court's conclusion that the applicant, through argument during the prosecution, disclaimed inner walls of the base portion having any concavity. Cognizant of the high standard required in order to show a prosecution disclaimer, *e.g.*, *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1325-26 (Fed.Cir.2003), we conclude that that standard has been met here. To overcome an obviousness rejection, the applicant distinguished his invention from the [prior art] on the basis of the latter disclosing inner walls that are "slightly concave." The inescapable consequence of such an argument is that the scope of applicant's claims cannot cover inner walls that are "slightly concave." Moreover, it logically follows, as the district court also concluded, that the scope of applicant's claims is also limited to inner walls of the base portion with no concavity.

Id. at 1345. *See also*, *Gillespie v. Dywidag Systems, International, USA*, 501 F.3d 1285, 1290 (Fed.Cir.2007) (noting that the "patentee is held to what he declares during the prosecution of his patent"); *Seachange Int'l, Inc. v. C-Cor Inc.*, 413 F.3d 1361, 1373 (Fed.Cir.2005) (noting that "[w]here an applicant argues that a claim possesses a feature in order to overcome a prior art rejection, the argument may serve to narrow the scope of otherwise broad claim language").

In *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314 (Fed.Cir.2003), which was cited in *North American Container*, the Federal Circuit reviewed a number of instances in which it has declined to conclude that a patentee disclaimed the full scope of its claim during the prosecution of the patent:

We have, however, declined to apply the doctrine of prosecution disclaimer where the alleged disavowal of

claim scope is ambiguous. For instance, in *Northern Telecom Ltd. v. Samsung Electronics Company*, 215 F.3d 1281, 1293-95 (Fed.Cir.2000), the accused infringer relied on remarks made by the inventors to overcome a rejection as the basis for narrowing the broad language of the claims. Having independently considered the prosecution history, we viewed the inventors' statements as amenable to multiple reasonable interpretations and deemed the remarks so ambiguous that, "[l]ike the district court, we simply cannot tell." *Id.* at 1294. Since the prosecution statements were "far too slender a reed to support the judicial narrowing of a clear claim term," we declined to apply the doctrine of prosecution disclaimer under those circumstances. *Id.*; *see also* *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1347 (Fed.Cir.2001) (refusing to limit the ordinary meaning of the claim because the alleged disclaimer in the file wrapper was at best "inconclusive"); *Pall Corp. v. PTI Techs. Inc.*, 259 F.3d 1383, 1393-94 (Fed.Cir.2001) (finding that the scope of disclaimer over the prior art reference was ambiguous and thus remanding for clarification), *vacated on other grounds*, 535 U.S. 1 109 (2002); *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1326-27 (Fed.Cir.2001) (refusing to rely on ambiguity surrounding examiner's silence or patentee's lack of argument during prosecution to construe claim term); *Vanguard Prods. Corp. v. Parker Hannifin Corp.*, 234 F.3d 1370, 1372 (Fed.Cir.2000) (refusing to narrow the asserted claim based on prosecution disclaimer because "the prosecution history does not support [the infringer]'s argument that the Vanguard inventors 'expressly disclaimed' claim scope beyond products made by co-extrusion"); *Serrano v. Telular Corp.*, 111 F.3d 1578, 1584 (Fed.Cir.1997); *cf.* *Spectrum Int'l, Inc. v. Sterilite Corp.*, 164 F.3d 1372, 1378 (Fed.Cir.1998) (noting that "explicit statements made by a patent applicant during prosecution to distinguish a claimed invention over prior art may serve to narrow the scope of a claim").

Id. at 1324. Therein, the court also indicated that "for prosecution disclaimer to attach, our precedent requires that the alleged disavowing actions or statements made during prosecution be both clear and unmistakable." *Id.* at 1325-26.

Herein, in support of its assertion that the Plaintiffs disclaimed a broad construction of "be deformed," the Defendant points out that the '875 patent was initially rejected on obviousness grounds, given that the process of double seaming can ends to can bodies was well known. Doc. # 30 at Ex. 7, p. 3. The patent examiner also concluded that inclining the wall of the can between 20 (deg.) and 70 (deg.), in order to reduce the volume of raw material used in can manufacturing, would have been obvious to one skilled in the art, given that an earlier Japanese patent application had disclosed the use of such an angle and that changing the inclination of the can end was easily accomplished by changing the chuck wall. *Id.* In response, Plaintiffs amended some of their rejected claims, withdrew others and added new claims. *See* Doc. # 30 at Ex. 8. In the accompanying explanation, the Plaintiffs argued that their invention could be distinguished from prior art, because, with their invention, the upper portion of the can end wall is deformed by the seaming rolls to become substantially cylindrical, while the lower portion of the can end wall remains at an angle of between 20 (deg.) and 60 (deg.). *See* *Id.* at Ex. 8, p. 22. After the patent application had been rejected again, the patent examiner conducted an interview with the Plaintiffs' representatives, during which the latter once again argued that Plaintiffs' invention could be distinguished from prior art, because, with that invention, the upper portion of the can end wall is deformed by the seaming rolls to become substantially cylindrical, while the lower portion of the can end wall remains at an angle of between 20 (deg.) and 60 (deg.). *Id.* at Ex. 9, p. 2. Within a week, Plaintiffs followed up the interview with a written communication, repeating the same argument. *Id.* at Ex. 10, p. 2-3.

This Court agrees with the Defendant that Plaintiffs clearly and unmistakably disclaimed their proposed construction of "be deformed" (*i.e.*, "have its shape altered"), as a result of their arguments before the patent examiner. As is indicated above, the Plaintiffs repeatedly told the patent examiner that their invention

differed from prior art, because the upper portion of the can end wall of their invention is deformed by the seaming rolls to become substantially cylindrical. It is unquestionable that the upper portion of the can end wall could "have its shape altered," without becoming substantially cylindrical. Moreover, the Plaintiffs submitted to the patent examiner the declaration of Martin Higham ("Higham"), an independent consultant in the beverage can industry, FN19 in support of the '826 patent. Therein, Higham stated, *inter alia*, that, before the Plaintiffs' invention, conventional thinking in the beverage can industry concluded that the upper portion of the can end wall should be "bent through an angle of no more than about 10E." *See* Doc. # 30 at Ex. 12, para. 51. Bending the upper portion of the can wall no more than about 10 (deg.), is nevertheless altering its shape. The Higham declaration clearly demonstrates that the Plaintiffs disclaimed that the upper portion of the can wall of their invention was altered in that manner.

FN19. Higham is a former employee of Plaintiffs' English subsidiary, where the invention that led to the '826 and '875 patents occurred.

This Court cannot, however, accept Defendant's position that "deformed" means "re-shaped significantly such that the resulting geometry radically differs from the original geometry." Although "geometry" appears in a number of places in the prosecution history cited by Defendant, and Higham referred to a radically different method of seaming, the Plaintiffs did not in the references cited by the Defendant describe upper portion of the can end wall in the manner which Defendant seeks to have to have the term defined. Plaintiffs did, however, consistently state that this portion of the can end wall becomes "substantially cylindrical" during the seaming process.

Accordingly, this Court will inform the jury that the term "to be deformed," as used in the phrase "first wall portion adapted to be deformed during said seaming operation," set forth in claim 13 of the '826 patent, means "to become substantially cylindrical." This construction is entirely consistent with the specification of the '826 patent which states that, during the seaming process, the upper portion of the can end wall is pinched against the upper portion of the upper portion of the chuck wall, resulting in the can body neck having a "substantially upright attitude." '826 patent at Col. 5, lines 20-27. The upper portion of the chuck wall is repeatedly described in the specification as being substantially cylindrical or cylindrical. *Id.* at Col. 4, lines 53 and 64; Col. 5, line 14.

Eighth, the parties disagree about the meaning of the phrase "bent upwardly around said juncture of said chuck walls." According to the Plaintiffs, that phrase means "turned upwardly around the juncture of the walls of the chuck and against the first chuck wall." *See* Doc. # 23 at 17. Plaintiffs contend that the phrase merely defines where the bending of the can end wall occurs (at the juncture of the chuck walls) and the direction in which the can end wall is bent (upwardly). The Defendant, in contrast, contends that "upwardly" means that "the can end reached a greater height during the seaming process." Doc. # 30 at Ex. 6, p. 6. In addition, Defendant argues that this Court should construe "around said juncture of said chuck walls," to mean that "during the seaming operation, the first portion is put into continuous contact along the chuck from the chuck wall below the chuck juncture to the chuck wall above the chuck juncture." *Id.*

This Court cannot accept Defendant's proposed construction of "upwardly." Upward is defined as toward a higher position and from a lower to a higher place. Webster's at 2519. That definition appears to be consistent with the Defendant's proposed construction (i.e., that upwardly means that "the can end reached a greater height during the seaming process"). In addition, it is supported by the drawings of the '826 patent, which show the can end wall moving upwardly during the seaming process. Nevertheless, other principles

of claim construction prevent this Court from adopting the construction "upwardly," as meaning that "the can end reached a greater height during the seaming process." The phrase "bent upwardly around said juncture of said chuck walls" appears in the claim 50 of the '875 patent, as well as in claim 13 of the '826 patent. Claim 61 of the '875 patent, which is dependent upon claim 50, provides:

The method according to claim 50, wherein the distance from a lowermost point on said annular bead to the uppermost point on said cover hook defines a height of said can end, and said seaming operation increases said height of said can end.

'875 patent, Co. 16, lines 28-31. Under Federal Circuit authority, "the presence of a limitation of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." Phillips, 415 F.3d at 1315. In *Free Motion Fitness, Inc. v. Cybex International, Inc.*, 423 F.3d 1343 (Fed.Cir.2005), the Federal Circuit applied that principle, concluding that the use of the term "cable" in an independent claim was not limited to a single cable, because a dependent claim added the single cable limitation. *Id.* at 1351. The *Free Motion Fitness* court noted that the dependent claim would be rendered superfluous, if the independent claim were construed to be limited to a single cable. *Id.* Similarly, herein, if this Court were to adopt Defendant's proposed construction, it would, in contravention of *Free Motion Fitness*, render dependent claim 61 of the '875 patent superfluous.

In addition, this Court cannot agree with Defendant that "bent upwardly around said juncture of said chuck walls" includes the requirement of continuous contact with the chuck. Defendant argues that the claim language must be construed in that manner, because the drawings of the '826 patent show such continuous contact. However, this Court declines to limit the claim language in that manner, because neither the claims as a whole nor the specification constitutes such a manifest restriction. *See Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*, 381 F.3d 1111, 1117 (Fed.Cir.2004) (noting that "even where a patent describes only a single embodiment, claims will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using words or expressions of manifest exclusion or restriction") (internal quotation marks and citations omitted).

Accordingly, this Court will instruct the jury that "bent upwardly around said juncture of said chuck walls" means "turned upwardly around the juncture of the walls of the chuck and against the first chuck wall."

Ninth, the parties do not agree about the meaning of the phrase "a second point forming a lowermost end of said wall." According to the Plaintiffs, that phrase means "a second point that marks the lowest end of said can end wall." Doc. # 23 at 18. Defendant, in contrast, contends that the Court should construe "lowermost end" as meaning "a sharp, distinct, definable, non-gradual end of the wall that appears as a sharp point in cross section below the central panel, and that at least occurs below the outer driving surface of the chuck." Doc. # 30 at Ex. 6, p. 7. As an initial matter, to be consistent with its above constructions of "wall," in the phrase "a wall extending inwardly and downwardly," and "said wall," this Court will substitute "can end wall" for "wall," if it adopts the Defendant's proposed construction, or "said can end wall," if it concurs with the Plaintiffs' proposed construction.

That said, this Court rejects the Defendant's proposed construction of this disputed term in claim 13. The specification does not define "lowermost end" in the manner proposed by the Defendant. To the extent that the Defendant's proposed construction is supported by the embodiment of the invention in the specification, the Federal Circuit has stressed that a claim is not to be narrowly construed, in order to conform it to an embodiment. *See Phillips*, 415 F.3d at 1323. Moreover, if, as Defendant argues, the construction of

"lowermost end," in the manner advocated by the Plaintiffs, makes claim 13 violate the requirement set forth in 35 U.S.C. s. 112, that "claims particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention," the remedy is a request for summary judgment, rather than construing the term in question in a manner that contravenes Federal Circuit authority.

Accordingly, this Court will inform the jury that the phrase "a second point forming a lowermost end of said wall" means "a second point that marks the lowest end of said can end wall." FN20

FN20. In *Rexam*, the District Court construed "a second point forming a lowermost end of said wall" in a manner different than this Court. 486 F.Supp.2d at 377. Indeed, the *Rexam* court rejected the construction which this Court has adopted herein, in favor of that proposed by the defendant therein. *Id.* Since the defendant in that litigation proposed a construction of "a second point forming a lowermost end of said wall" which is radically different than that proposed by the Defendant herein, this Court does not deem that decision to support the construction of "a second point forming a lowermost end of said wall" put forth by the Defendant in this litigation.

B. Claim 14 of the '826 Patent

Claim 14 of the '826 Patent provides:

14. The end according to claim 13, further comprising an *annular reinforcing bead* connected to said wall at said second point, said *annular reinforcing bead* connecting said wall to said central panel.

'826 patent, Col. 10, lines 62-65. The parties do not agree on the meaning of "annular reinforcing bead." According to Plaintiffs, that term means "ring-like stiffening channel." Doc. # 23 at 19. Defendant, in contrast, argues that "annular reinforcing bead" is "a symmetrical U-shaped[,] recessed portion located below the central panel and having parallel inner and outer walls connected by a single arcuate portion having a single radius, the annular reinforcing bead being clearly distinct from the wall and directly connecting to the wall a clear, distinct 'second point forming a lowermost end' of the wall, and directly connecting with the central panel." Doc. # 30 at Ex. 6, p. 7.

The Plaintiffs base their proposed construction of "annular reinforcing bead." on the plain meaning of the language used therein. "Annular" is defined as "of or relating to a ring." "Reinforce" is defined as "to strengthen ... to make stronger...." *Id.* at 1915. "Stiffen," in turn, is defined as "to make stronger or more resolute." *Id.* at 2242. A "bead" is "a groove ... on the surface of a metal can.. Metal closure to improve appearance and to stiffen." *Id.* at 190. "Groove" is defined as a "narrow hollow or channel made artificially on a surface." *Id.* at 1001. This Court agrees with Plaintiffs that the common meaning of "annular reinforcing bead" is "ring-like stiffening channel." Moreover, extrinsic evidence supporting the proposition that any of the foregoing terms has a different meaning to those skilled in the art of beverage cans has not been presented. Defendant, in contrast, argues that its proposed construction of "annular reinforcing bead" is mandated by the embodiment of the invention in the specification. This Court will decline to adopt the Defendant's proposed construction, given that a claim is not to be narrowly construed, in order to conform it to an embodiment. *See Phillips*, 415 F.3d at 1323. That said, however, based upon the reasoning of the *Rexam* court, this Court will add the phrase "outwardly concave, generally 'U' shaped." *See* 486 F.Supp.2d at 378-79.

Accordingly, this Court will instruct the jury that an "annular reinforcing bead" is an "outwardly concave, generally 'U' shaped, ring-like stiffening channel."

C. Claim 50 of the '875 Patent

The parties disagree about the meaning of claim 50 of the '875 patent, which provides:

50. A method of forming a double seam between a can body and a can end intended for use in packaging a carbonated beverage, said method comprising the steps of:

a) providing a can end having (i) a circumferentially extending peripheral cover hook, said peripheral cover hook comprising a seaming panel to be formed into a portion of said double seam during a seaming operation, (ii) *an annular reinforcing bead*, and (iii) *a circumferentially extending wall extending from said seaming panel to said reinforcing bead*, said wall and said *reinforcing bead* forming a *transition therebetween*;

b) placing said cover hook of said can end into contact with a circumferentially extending flange of a can body;

c) providing *a rotatable chuck* comprising *first and second circumferentially extending walls*, said second chuck wall depending from said first chuck wall so as to form a *junction therebetween*;

d) bringing said chuck into engagement with said can end; and

e) performing said seaming operation by placing one or more seaming rolls into contact with said peripheral cover hook of said can end while said can end rotates so as to *deform* said seaming panel of said cover hook and to *bend a portion of said can end wall upwardly around said juncture of said chuck walls* at a first location on said can end wall, a straight line extending from said first location on said can end wall to said *transition* between said can end wall and said reinforcing bead inclined between about 20 (deg.) and about 60 (deg.) with respect to said axial centerline both before and after said seaming operation.

'875 patent, Col. 15, lines 8-41.FN21 Once again, the Court has highlighted the areas of dispute between the parties. As an initial matter, the Court construes the terms "annular reinforcing bead" (and its derivative "reinforcing bead"), "rotatable chuck wall," "first and second circumferentially extending walls," "junction therebetween," and "deform," appearing in the '875 patent, in the same manner it has construed those terms in the '826 patent. As a result, three terms in claim 50 of the '875 patent remain to be construed, to wit: "a circumferentially extending wall extending from said seaming panel to said reinforcing bead," "a transition therebetween" and "bend a portion of said can end wall upwardly around said juncture of said chuck walls." As a means of analysis, the Court will resolve the parties' disagreements over the meaning of those terms in the above order.

FN21. Plaintiffs also contend that the Defendant is infringing upon claims 52 and 61 of the '875 patent. Since those claims are dependent on claim 50, the proper construction of claim 50 is necessary to the determination of whether the other claims have been infringed. However, given that the parties have not argued that any of the language unique to either claim 52 or claim 61 is in need of construction, this Court does not separately address those claims.

First, Plaintiffs address only the meaning of "a circumferentially extending wall," arguing that it means "a can end wall encircling the center of the can end." *See* Doc. # 23 at 23. The Plaintiffs base their proposed construction on the plain meaning of circumferentially, *i.e.*, "encircling." *See* Webster's at 409. In contrast, the Defendant contends that the phrase "a circumferentially extending wall extending from said seaming panel to said reinforcing bead" means "a single distinct surface which connects directly with the seaming panel and which connects with the reinforcing bead at a 'transition.'" Doc. # 30 at Ex. 6, p. 1. The Defendant bases its proposed construction in part on the premise that claim 50 of the '875 patent refers to the chuck as having two walls, which means that the patent clearly contemplates a single can end wall.

As an initial matter, this Court concludes that the parties do not dispute that "wall," as used in the phrase in question refers to the can end wall, rather than one or both of the chuck walls. That said, this Court agrees with Defendant that "a circumferentially extending wall" in claim 50 of the '875 patent must be construed in the singular. In *North American Vaccine, Inc. v. American Cyanamid*, 7 F.3d 1571, 1575-76 (Fed.Cir.1993), *cert. denied*, 511 U.S. 1069 (1994), the Federal Circuit explained when a court should construe language in a claim to be singular rather than plural:

In construing claims, we begin with the language of the claims themselves. *SmithKline Diagnostics, Inc. v. Helena Lab., Corp.*, 859 F.2d 878, 882 (Fed.Cir.1988) (citations omitted). Claim 11 specifically refers to "a terminal portion"; it does not refer to "any terminal portion" or to "all terminal portions." While it is generally accepted in patent parlance that "a" [is able to] mean one or more, *see* Robert C. Faber, *Landis on Mechanics of Patent Claim Drafting* 531 (3d ed. 1990) ("In a claim, the indefinite article A or AN connotes 'one or more.'"), there is no indication in the patent specification that the inventors here intended it to have other than its normal singular meaning.

Id. at 1575-76. Thus, in *Insituform Technologies, Inc. v. Cat Contracting, Inc.*, 99 F.3d 1098, 1105-06 (Fed.Cir.1996), *cert. denied*, 520 U.S. 1198 (1997) in which this court construed "a cup" and "the cup" as singular when a plural construction was inconsistent with the claim context and "neither the specification nor the drawings disclose[d] more than one cup." *Id.* at 1105-06. Similarly, herein, there is no indication or disclosure in the specification or in the drawings that the inventors intended "a circumferentially extending wall" to be have other than in its normal, singular meaning. Moreover, the inventors described the chuck with clarity, as having two walls. The Court will not use the word "distinct," as proposed by the Defendant, since it has not identified what the can end wall is distinct from. The two walls of the chuck are, by contrast, distinct from one another. Accordingly, the Court will inform the jury that the "wall" in the phrase "a circumferentially extending wall extending from said seaming panel to said reinforcing bead" is "a single surface." FN22

FN22. It bears emphasis that this particular part of claim 50 refers to the can end wall, before seaming. After that process, the can end wall would arguably no longer be a single surface.

This Court will not, however, inform the jury that "extending from said seaming panel to said reinforcing bead" means "which connects directly with the seaming panel and which connects with the reinforcing bead at a 'transition,'" as the Defendant proposes, since neither the language of the claims nor the specification requires that "extending from said seaming panel to said reinforcing bead" be construed in that manner.

Accordingly, this Court will instruct the jury that "a circumferentially extending wall extending from said

seaming panel to said reinforcing bead" means "a can end wall which is a single surface encircling the center of the can end extending from the seaming panel to the reinforcing bead."

Second, the parties have not been able to agree on the meaning of the term "transition therebetween," as used in the clause "(iii) a circumferentially extending wall extending from said seaming panel to said reinforcing bead, said wall and said reinforcing bead forming a transition therebetween." '875 patent, Col. 15, lines 15-19 (emphasis added). The Plaintiffs suggest that this Court construe the phrase "transition therebetween" to mean "a place between them at which one changes to the other." Doc. # 23 at 23. Plaintiffs base this proposed construction in part on the ordinary meaning of "transition" as "a passage or movement from one state, condition or place to another." Webster's at 2428. In addition, Plaintiffs argue that their proposed construction of "transition therebetween" is consistent with Figure 5 on the '875 patent, which shows can end wall changing to the annular reinforcing bead. Defendant, in contrast, contends that the Court must construe "transition" to mean "a sharp, distinct, definable, non-gradual borderline that appears as a sharp point in cross section below the central panel, and that at least occurs below the outer driving surface of the chuck." Doc. # 30 at Ex. 6, p. 2. Defendant argues that its proposed construction must be adopted, because claim 50 does not meaningfully explain where the wall of the can end stops and the reinforcing bead begins. Defendant also asserts that, in order to determine the meaning of "transition," the meanings of "wall" and "annular reinforcing bead" must be determined. This Court has construed those terms above and has not construed either of those terms in a manner which would lead to the conclusion that the "transition" referred to in claim 50 of the '875 patent is "a sharp, distinct, definable, non-gradual borderline that appears as a sharp point in cross section below the central panel, and that at least occurs below the outer driving surface of the chuck." Therefore, this Court rejects the Defendant's proposed construction of "transition." FN23 Rather, given that Plaintiffs' proposed construction is consistent with the plain meaning of the word "transition" and the drawings of the '875 patent, the Court will adopt same.

FN23. The Defendant contends that the term "second point" in claim 13 of the '826 patent must be construed in the manner in which it proposes "transition" in claim 50 of the '875 be construed. For the reasons it has rejected Defendant's proposed construction of "transition," the Court declines to construe "second point" in the manner put forward by the Defendant.

Accordingly, the Court will instruct the jury that "transition therebetween" means "a place between them at which one changes to the other."

Third, the parties have not been able to agree on the meaning of the phrase "bend a portion of said can end wall upwardly around said juncture of said chuck walls." To put this particular dispute in its proper context, it bears noting that the phrase in question comes from the following portion of claim 50 of the '875 patent:

e) performing said seaming operation by placing one or more seaming rolls into contact with said peripheral cover hook of said can end while said can end rotates so as to *deform* said seaming panel of said cover hook and to *bend a portion of said can end wall upwardly around said juncture of said chuck walls*

'875 patent, Col. 15, lines 30-35.

The Plaintiffs contend that this Court should construe this term to mean "turn a portion of the can wall upwardly around the juncture between the first and second chuck walls and against the first chuck wall." Doc. # 23 at 24. In order to be consistent, the Plaintiffs base their proposed construction of the foregoing

phrase from claim 50 on their proposed construction of "bent upwardly around said juncture of said can walls" in claim 13 of the '826 patent.

In contrast, Defendant argues that this Court should construe "bend a portion of said can wall" to mean "to deform an upper portion of the can end wall in a seaming operation that is radically different than conventional seaming, conventional seaming including all seaming in which the upper portion of the single can end wall is bent (that is, pressed) through an angle of no more than 10 degrees." Doc. # 30 at Ex. 6, p. 3. The Defendant contends that its proposed construction is mandated by the Plaintiffs' disclaimer of a broader interpretation of this term during the prosecution of the '875 patent.

Based upon the Court's discussion of the phrases "bent upwardly around said juncture of said can walls" and "be deformed" in claim 13 of the '826 patent, this Court will instruct the jury that "to bend a portion of said can end wall upwardly around said juncture of said chuck walls" means "to turn a portion of said can end wall upwardly around the juncture of the walls of the chuck and against the first chuck wall." In addition, this Court will add the phrase "to become substantially cylindrical" after "hook" in the phrase "so as to deform said seaming panel of said cover hook."

In sum, this Court has construed the disputed language contained in claim 13 of the '826 patent, in the following manner, to wit: 1) the phrase "rotatable chuck" means a "rotatable attachment to a seamer used to hold the can end, and against which the double seam is formed;" 2) the term "first and second circumferentially extending walls" means a "first and second encircling distinct, discrete and discernibly separate side surfaces of the chuck;" 3) the term "juncture therebetween," means a "definable edge between the walls (which is a point in a cross section);" 4) the phrase "a wall extending inwardly and downwardly" means "a can end wall extending inwardly and downwardly," with the term "can end wall" meaning a "single surface;" 5) the term "said wall" means "said can end wall;" 6) the term "to be deformed," as used in the phrase "first wall portion adapted to be deformed during said seaming operation," means "to become substantially cylindrical;" 7) the term "bent upwardly around said juncture of said chuck walls" means "turned upwardly around the juncture of the walls of the chuck and against the first chuck wall;" and 8) the phrase "a second point forming a lowermost end of said wall" means "a second point that marks the lowest end of said can end wall." FN24 In addition, the Court has construed the phrase "annular reinforcing bead," set forth in claim 14 of the '826 patent, as meaning an "outwardly concave, generally 'U' shaped, ring-like stiffening channel." The Court has also construed disputed language from claim 50 of the '875 patent in the following manner, to wit: 1) the phrase "a circumferentially extending wall extending from said seaming panel to said reinforcing bead" means "a can end wall which is a single surface encircling the center of the can end extending from the seaming panel to the reinforcing bead;" 2) the term "transition therebetween" means "a place between them at which one changes to the other;" and 3) the phrase "to deform said seaming panel of said cover hook and to bend a portion of said can end wall upwardly around said juncture of said chuck walls" means "to deform said seaming panel of said cover hook to become substantially cylindrical and to turn a portion of said can end wall upwardly around the juncture of the walls of the chuck and against the first chuck wall."

FN24. The Court has declined to adopt the Defendant's proposed construction of "first point," used in claim 13 of the '826 patent.

Counsel of record will take note that a telephone conference call will be convened between the Court and counsel at 8:30 a.m., on Thursday May 15, 2008, for the purpose of setting a trial date and other dates

leading to the resolution of this litigation. Not later than Monday, May 12, 2008, counsel must have conferred, jointly prepared and filed a Rule 26F report/case management plan with the Court which will comprise the agenda for the May 15th conference call.

S.D.Ohio,2008.

Crown Packaging Technology, Inc. v. Ball Metal Beverage Container Corp.

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