

United States District Court,  
E.D. Michigan, Southern Division.

**SHOCK-TEK, LLC,**  
Plaintiff.

v.

**TREK BICYCLE CORP. and E-Trek, L.L.C., jointly and severally,**  
Defendants.

**Nov. 5, 2002.**

Barry C. Kane, Kane & Co., D. Andrew Portinga, Miller, Johnson, Grand Rapids, MI, Cindy R. Victor, Victor Firm, Sterling Heights, MI, for Plaintiff.

James F. Boyle, Boyle, Frederickson, Milwaukee, WI, Joseph G. Burgess, Burgess Law Office, Auburn Hills, MI, for Defendants.

## **PRELIMINARY MEMORANDUM ON CLAIM CONSTRUCTION**

**AVERN COHN, District Judge.**

This is a patent case. Now before the Court are the parties' competing positions on the proper construction of the ambiguous words and phrases of claim 17 of the '640 patent and claim 2 of the 751 patent. *See* Plaintiff's Designation of Patents-In-Suit And Claims Needing Construction filed November 30, 2001, Defendants, Trek Bicycle Corporation and e-Trek, L.L.C.'s Identification of Claim Language Requiring Construction filed December 11, 2001, and the Order Requiring Supplemental Papers On Claim Construction filed May 14, 2002.

The record is now complete. Attached as Exhibit A are the parties' proffered construction of the ambiguous words and phrases. The Court has read and considered the parties' supporting papers. Generally the Court is inclined to accept defendants' position. Several observations are in order which will better enable the parties to focus on the Court's concerns at oral argument. They follow.

### **A. The '640 patent:**

1. Defendants have not defined the function of the *support means* or *protection means*. 35 U.S.C. s. 1121 para. 6 reads:

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

2. *Support axis* does not appear to reference a structure or object. See col. 3, II. 21-23 and col. 4, II. 40-43.

Rather, it suggests the length of the cushion pad. Defendants' reference to the file history is too cursory to allow for consideration.

3. Defendants reference a *tool*, *tool handle*, and *cylindrical member or tool*. Are these one and the same or different objects?

4. The construction of the *remainder of said first side* [etc .] seems excessive. It should be limited to *the remainder* [etc.]

**B. The 751 patent:**

1. If *resilient protection means* is in a s. 112 para. 6 form, which is not clear, the proper construction appears to be a combination of plaintiff's and defendants' positions.

2. As to *resilient protection means* [etc.] plaintiff's construction appears to be more appropriate. It does not appear that the several pads must be individually placed as distinguished from simply being interrupted.

E.D.Mich.,2002.

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