

United States District Court,
D. Massachusetts.

DEPUY ACROMED, INC. and Biedermann Motech GMBH,
Plaintiffs.

v.

MEDTRONIC SOFAMOR DANEK, INC., f/k/a Sofamor Danek Group, Inc., and Medtronic Sofamor Danek USA, Inc,
Defendants.

Civil Action No. 01-10165-EFH

Oct. 27, 2003.

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MEMORANDUM AND ORDER

HARRINGTON, S.D.J.

On May 4, 1993, the United States Patent and Trademark Office issued United States Patent No. 5,207,678 ("the '678 patent"), titled "Pedicule Screw and Receiver Member Therefore." Plaintiffs Depuy Acromed, Inc. and Biedermann Motech GMBH ("Acromed") are the exclusive licensee and assignee, respectively, of the '678 patent. On January 26, 2001, plaintiffs commenced an infringement action against Medtronic Sofamor Danek, Inc. and Medtronic Sofamor Danek USA, Inc. ("Medtronic") for the infringement of the '678 patent.

After this Court ruled on various summary judgment motions of the parties on April 14, 2003, Acromed moved for construction of three disputed terms in the claims of the '678 patent. These terms were briefed by the parties, and a *Markman* hearing was held on September 24, 2003. Having considered the written and oral arguments and evidence offered by the parties, the Court now construes three phrases from Claim 1 of the '678 patent.

I. BACKGROUND

The '678 patent discloses a pedicle screw and receiver member. Pedicle screws are implanted in human vertebra during surgery. The head of each pedicle screw is connected to a receiver member, and a threaded

rod then connects the receiver members of several screws. Surgeons use this network of screws, receiver members, and rods to stabilize spinal column segments. The invention disclosed in the '678 patent permits screws of various sizes to be used with a uniform receiver member. Thus, doctors do not need to stock unique receiver members for each size screw they might use, and stocking costs are consequently reduced.

Claim 1 is the only independent claim of the '678 patent. The parties ask the Court to construe terms relating to three aspects of the connection between the screw head and the receiver member. In pertinent part, and with the claims to be construed set forth in bold, Claim 1 discloses a

[d]evice for stabilizing spinal segments, comprising a pedicle screw (1) having a threaded shaft portion (3) and a spherically-shaped head (4) at the end of said threaded shaft portion, a receiver member (5) **flexibly connected** to said head (4), said receiver member being provided with ... an **inner hollow spherically-shaped portion (9)** for receiving the head (4) of said screw (1), an opening (10) being provided ... for inserting said screw (1), said device further comprising a **compression member (18)** for exerting a force onto said head (4) such that said head is pressed against **the hollow spherically-shaped portion (9)**.

II. ANALYSIS

Patent claims are to be construed by the Court as a matter of law. *Allen Engineering Corp. v. Bartell Industries, Inc.*, 299 F.3d 1336, 1344 (Fed.Cir.2002) (citing *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed.Cir.1995) (en banc), aff'd 517 U.S. 370 (1996)). In construing the claims, the Court looks first to the intrinsic evidence, which includes the language of the claims, the specification, and the prosecution history if it is in evidence. *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1375 (Fed.Cir.2003); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). If analysis of intrinsic evidence is sufficient to resolve ambiguities in the meaning of a disputed claim term, as it is here, reliance on extrinsic evidence is improper. *Vitronics*, 90 F.3d at 1583.

In considering the intrinsic evidence, the Court looks first to the language of the claim itself. Under the patent statute, the claims must "particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention." 35 U.S.C. s. 112 para. 2. Thus, in construing a claim, there is a "heavy presumption" that terms used "have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (2002) (citing cases). The Federal Circuit instructs that claim terms should be given their "full meaning" and notes that dictionaries, encyclopedias, and treatises are particularly useful because they are "objective resources ... not colored by the motives of the parties and not inspired by litigation." *Id.* at 1203.

A. Inner Hollow Spherically-Shaped Portion

Claim 1 of the '678 patent describes the receiver member as having an "inner hollow spherically-shaped portion for receiving the head" of the pedicle screw. Claim 1 describes the head of the pedicle screw as being "spherically-shaped." As the briefs and oral argument made clear, the principal dispute centers on the meaning of "spherically-shaped" as it relates to the hollow inner portion of the receiver member.

Plaintiffs contend that the term "spherically-shaped" should be interpreted to mean "a concave, three-dimensional surface that could be shaped by a sphere or by a segment of a sphere, or by an object approximating either of those things." Pl. Op. Br. at 14. At oral argument, plaintiffs' counsel stated this definition more succinctly as "approximately spherical," noting that the *American Heritage Dictionary*, third edition, defines "spherical" as "[h]aving a shape approximating that of a sphere."

Defendants, on the other hand, urge that the term "spherically-shaped" requires that the inner hollow portion of the receiver member be "concave and shaped like a portion of a sphere." Defendants' Claim Construction Memorandum (Def.Cl. Const.Mem.) at 1. They observe that "spherically" is the adverb form of "sphere," which is defined by *Webster's New Twentieth Century Dictionary*, second edition, as "any round body or figure having the surface equally distant from the center at all points; a globe; a ball." FN1 Id. at 9. However, at oral argument and in memoranda to this Court, defendants "concede [] that a shape can still be described as 'spherical' even if it is not a perfect sphere." Def.'s Reply Mem. at 5.

FN1. Defendants also cite the more technical definition of a sphere found in the *McGraw-Hill Dictionary of Scientific and Technical Terms*, 4th. edition. Def. Cl. Const. Mem. at 9 n. 4.

Alternatively, defendants argue, if the term "spherically-shaped" does not require a perfect geometric sphere, it should be construed to require that the inner hollow portion be "sufficiently close so as to match or mate with the spherical screw head that is 'pressed against' it." Def. Cl. Const. Mem. at 1. At oral argument, counsel for defendants agreed that "approximately spherical" conveyed accurately the degree of precision required. Further, counsel for both parties agreed that providing an example such as a globe or basketball would help the jury understand the level of precision that this definition would require.

For reasons set forth below, consistent with the agreement of counsel, the Court construes "spherically-shaped" to mean "approximately spherical, such as a globe or basketball." Further, the Court rules that the inner hollow spherically-shaped portion may not be formed by the head of the pedicle screw; rather, the spherical shape must exist before the screw head is inserted into the receiver member.

The Court bases its ruling that "approximately spherical" is the correct construction of "spherically-shaped" on the language of the claim.FN2 Defendants cite a dictionary definition which requires a perfect sphere while plaintiffs cite a dictionary definition approving "approximately spherical." When claim terms have more than one dictionary definition, courts consult the intrinsic record to determine which definition "is most consistent with the use of the words by the inventor." *Texas Digital*, 308 F.3d at 1203. If more than one definition proves consistent with the use of the words in the intrinsic record, the claim term "may be construed to encompass all such consistent meanings." *Id.* Defendants have not cited any evidence from the intrinsic record to suggest that the broader definition, "approximately spherical," is not appropriate. At most, defendants point out that plaintiffs could have described the inner hollow space as "rounded" or "approximately spherical." Def. Cl. Const. Mem. at 9. However, plaintiffs correctly reply that there was no need to so qualify the term "spherical" when the *American Heritage Dictionary* definition cited above defines the term spherical as "[h]aving a shape approximating that of a sphere." FN3

FN2. The Court also finds support for its construction in the specification. The specification employs the term "spherical segment-shaped," which appears to convey a more precisely spherical shape than the claim term "spherically shaped." The Court will not restrict the meaning of the claim term by reading the "segment" limitation from the specification into the claim. *See Texas Digital*, 308 F.3d at 1205 (noting the Federal Circuit's prohibition on "reading limitations from the specification into the claims"); *Teleflex, Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1326 (Fed.Cir.2002) ("limitations from the specification are not to be read into the claims") (citing *Comark Communications, Inc. v. Harris Corp.*, 156 F.3d 1182, 1186 (Fed.Cir.1998)).

FN3. The Court has also considered formulations offered by the defendants in their briefs and at oral argument. The Court does not perceive a meaningful difference between "approximately spherical" and "sufficiently close so as to match or mate with the spherical screw head that is 'pressed against' it," or defendants' other formulations. Further, to the extent that this formulation conveys something closer to perfectly spherical than "approximately spherical," it improperly narrows the ordinary meaning of the claim term as found in the dictionary definition "approximately spherical ." Nonetheless, to make clear the shape and degree of precision contemplated by "approximately spherical," the Court includes the examples "globe" and "basketball" in its construction. Counsel for defendants suggested these terms at oral argument, and plaintiffs' counsel agreed that they would be helpful to the jury.

A final dispute regarding the construction of "inner hollow spherically-shaped portion" remains. Plaintiffs' proposed construction describes "a concave, three-dimensional surface that *could be shaped by a sphere.*" Pl. Op. Br. at 14 (emphasis added). Defendants urge that the language of the claim does not allow "an area [to be] formed in the receiver chamber by ... deformation caused by the pressing of the [spherical] head of the screw against the receiver member." Def. Cl. Const. Mem. at 13. Put differently, defendants contend that the inner, hollow, spherically-shaped portion must exist before the screw is inserted into the receiver member. For reasons set forth below, the Court agrees.

The language of Claim 1 envisions a "receiver member (5) ... being provided with ... an inner hollow spherically-shaped portion (9) for receiving the head (4) of said screw (1)." '678 patent, col. 4, lns. 12-20. In the Court's view, in order for the inner hollow spherically-shaped portion to "receive" the head of the screw, it must be spherically-shaped before the screw head is inserted into it. Language later in the claim confirms this view; the claim also envisions a "compression member (18) for exerting a force onto said head (4) such that said head is pressed against *the hollow spherically-shaped portion (9).*" '678 patent, col. 4, lns. 22-24 (emphasis added). This description also implies that the spherically-shaped portion exists before the screw head is pressed into it.

The Court's conclusion that the spherically-shaped portion of the receiver member must exist before the screw head is pressed into it is reinforced by examining *Waner v. Ford Motor Co.*, 331 F.3d 851 (Fed.Cir.2003). The patent at issue in *Waner* claimed a fender liner to be used on a truck "comprising an elongated flat panel ... with an inboard side flange, said flat panel ... suited to be installed inside the fender." *Waner*, 331 F.3d at 853-54. The court held that this language required that the flange exist prior to installation, because the patent described "said flat panel [i.e., with a flange] ... suited to be installed." *Waner*, 331 F.3d at 855. The court further noted that "nothing in the specification or the drawings suggests the flange need not exist prior to installation." *Id.* Likewise, the language of the '678 patent contains a reference to "the hollow spherically-shaped portion (9)," against which the screw head is to be pressed. In addition, nothing in the specification or drawings of the '678 patent suggests that the spherically-shaped portion need not exist prior to installation. Plaintiffs contend that the patent at issue in *Waner* describes only the flat panel whereas the '678 patent describes a two-piece assembly (the screw head and the receiver member), but the Court does not find this difference to be significant. The court in *Waner* based its holding on the language of the patent, not on the fact that the device was intended to be installed into something else. Likewise, this Court bases its construction primarily on the language of the '678 patent.

B. Flexibly Connected

Claim 1 of the '678 patent describes the receiver member as "flexibly connected to said head (4)" (i.e., the spherically-shaped head of the pedicle screw). '678 patent, col. 4, lns. 12-13. Plaintiffs contend that this language refers to the polyaxial nature of the screw, that is, the ability of the screw to articulate or bend relative to the receiver member. Thus, plaintiffs request a claim construction which requires "that the screw head and receiver member [be] joined together in a flexible manner such that the screw assembly has the ability to bend at the connection between the screw head and the receiver." Pl. Op. Br. at 7. Defendants urge that the flexible connection refers to the ability of the sidewalls of the receiver member to bend slightly. Their proffered construction would require that "the sidewalls of the receiver member yield or bend inwardly to fasten and lock" the screw head within the receiver member. Def. Cl. Const. Mem. at 2. For reasons set forth below, the Court adopts plaintiffs' proposed construction.

Because the patentee has not acted as its own lexicographer and set forth a special definition of "flexibly connected," the "ordinary and customary meaning" of these words is presumed to apply. *See Vitronics*, 90 F.3d at 1582. The parties agree that *Webster's* suitably defines the terms "flexibly" and "connected." Def. Cl. Constr. Mem at 14; Pl. Op. Br. at 7-8. "Flexibly" is the adverb form of "flexible," and is thus defined as "in a flexible manner." *Webster's New Twentieth Century Dictionary*, second edition. "Flexible" is defined as "1. that may be bent; capable of being turned or forced from a straight line or form without breaking; pliant; yielding to pressure; not stiff." *Id.* "Connected" is defined as "joined together; fastened." *Id.* The present dispute is thus not so much about the ordinary and customary meanings of these words as it is about the meanings applied to the particular device disclosed in the '678 patent.

The context of these words aids in their interpretation. The '678 patent discloses a "receiver member flexibly connected to said head." "Connected" is used as an adjective modifying "receiver member," and "flexibly" as an adverb modifying "connected." Thus, the receiver member must be connected or joined to the spherically-shaped head of the screw, and that connection must be "flexible," or able to bend. In the Court's view, this is the most natural reading of the language, the reading that a person of ordinary skill in the art would adopt. This reading comports with plaintiffs' view that the connection between screw and member must be flexible so that the screw head pivots within the receiver member. Defendants, on the other hand, contend that the receiver member itself must connect flexibly by having sidewalls which yield inwardly around the head of the screw. The Court believes that defendants' reading parses the connection between receiver and screw more finely than the language of the claim will allow. Further, if the Court were to accept defendants' construction, then no limitation in Claim 1 of the '678 patent would disclose that the screw was polyaxial in nature.

Reference to the specification and to Claim 2 of the '678 patent confirms the Court's view that plaintiffs have the better argument. The specification in its very first sentence echoes the language of the claim by describing a "receiver member ... for a hinged connection of a screw ... with a rod." FN4 '678 patent, col. 1, lns. 5-8. This language makes clear that the receiver member accomplishes a hinged connection which allows the screw to pivot into various positions, that is, to be polyaxial. Further, *Webster's* defines "hinged" as "attach[ed] by or furnished with hinges;" a "hinge" is defined as "a jointed or flexible device on which a door, lid, or other swinging part turns." Thus, in the Court's view, given that hinged and flexible are in some respects synonymous, it is appropriate to interpret the term "flexibly connected" in light of the term in the specification, "hingedly connected."

FN4. The abstract begins similarly: "A receiver member is provided for hingedly connecting a screw ... and a rod."

Defendants urge that the Court look to a different portion of the specification to illuminate "flexibly connected." The specification states that "[o]wing to the slits 17 and 23 [in the receiver member] the cylindrical wall of the housing 6 can slightly yield such that the clamping force acting onto the head is increased ." '678 patent, col. 3, lns. 53-56. Defendants urge that the word "yield," which appears in the *Webster's* definition of "flexible," provides a verbal link between that claim term and this statement in the specification. Def. Reply Mem. at 10. Thus, in the defendants' view, the receiver member itself is flexible in its connection to the head of the screw.

The Court does not make this link, however, for several reasons. First, the connection between the receiver member and the head of the screw must be flexible under the language of Claim 1; defendants' argument contemplates that the receiver member itself must be flexible. The sides of the receiver member may well yield, but once they do, the connection they form with the head of the pedicle screw is rigid, not flexible. The flexible connection is achieved between the receiver member and the screw by means of the spherically-shaped screw head fitting in to the inner, hollow spherically-shaped portion of the receiver member. Second, the Court believes that the term "hingedly connected" echoes the term "flexibly connected" more closely and thus, as set forth above, more clearly illuminates the nature of the connection between the receiver member and the head of the pedicle screw. Finally, the slits referred to (reference numbers 17 and 23) are not set forth at all in Claim 1. In fact, they appear only in Claim 2, which requires that there be "at least one slit (17)." '678 patent, col. 4, lns. 27-28. Claim 2 has not been asserted in this case. Further, the specification envisions that the inward yielding is to be accomplished by means of side-tightening locking nuts which again do not appear in Claim 1 and only appear in Claim 2. Thus, defendants appear to be asking the Court to interpret the words "flexibly connected," which are found in Claim 1, in light of the requirements of Claim 2, namely, slits marked 17 and 23 and locking nuts marked 24 and 25. The Court refuses the invitation to constrict the meaning of "flexibly connected" in this way.

Defendants also argue that the prosecution history of the '678 patent supports their view that "flexibly connected" refers to the inward yielding of the sides of the receiver member around the head of the pedicle screw. The plaintiffs' '678 patent application as originally filed "describ[es] a pedicle screw device where the screw head was 'jointly connected' to the receiver member." Def. Cl. Constr. Mem. at 16. This original application was denied as being anticipated by earlier patents. Appendix to Def. Cl. Constr. Mem., Tab 7, pages 3-4. Prior to the rejection, plaintiffs submitted a preliminary amendment, including claims employing the term "flexibly connected;" these claims were subsequently resubmitted and issued as the '678 patent. Pl. Op. Br. at 12.

Defendants derive great significance from the shift from the term "jointly connected" to the term "flexibly connected." They argue that the initial application was rejected because the term "jointly connected" refers to the polyaxial motion of the pedicle screw and thus was anticipated by a prior art device, patented in the European Union under EP 0 242 708. In their view, "flexibly connected" distinguishes the '678 patent as finally issued from the initial application (and thus also from the EP patent application) because "flexibly connected" refers not to the polyaxial nature of the screw, but to the inward yielding of the receiver member sidewalls, which defendants purport is the actual difference between the '678 device and the EP device.

However, the EP was not the only prior art device the patent examiner cited in rejecting the original '678 patent application. In fact, three prior art devices are cited in the examiner's rejection. Nor is there any indication in the record that the term "jointly connected" caused the patent examiner to reject the original '678 application. In fact, there are numerous changes in wording between the original '678 patent claims and

the claims that ultimately issued. Even if the Court were to agree that "flexibly connected" must be construed differently from "jointly connected," the Court has seen no evidence which would compel the conclusion that these two terms differ in the particular manner urged by defendants or that this difference caused the rejection of the initial application and the approval of the revised claims of the '678 patent.FN5

FN5. Defendants cite *CAE Screenplates, Inc. v. Henrich Fielder GMBH & Co.*, 224 F.3d 1308, 1317 (Fed.Cir.2000) for the proposition that "in the absence of any evidence to the contrary, [a court] should presume that the use of ... different terms in the claims connotes different meanings." Def. Cl. Constr. Mem. at 17. However, in *CAE Enterprises*, the court characterized the intrinsic evidence, including prosecution history, as "overwhelming[ly] clear;" there is no such clarity in the present case.

Thus, the Court construes "flexibly connected" to require that the screw head and receiver member [be] joined together in a flexible manner such that the screw assembly has the ability to bend at the connection between the screw head and the receiver.

C. Compression Member

Claim 1 of the '678 patent also discloses a "compression member (18) for exerting a force onto said head (4) such that said head is pressed against the hollow spherically-shaped portion." Defendants argue that this language should be construed as a "means plus function" limitation under 35 U.S.C. s. 112 para. 6. This construction would "limit this claim element to the single embodiment of the compression member disclosed in the specification and structural equivalents thereof." Def. Cl. Constr. Mem. at 2. More particularly, defendants would limit the meaning of "compression member" to "the unique type of cylindrical compression member having two offset yielding slits (23) and two slits for receiving a threaded rod (21, 23) disclosed in the figures and specifications of the '678 patent and structural equivalents thereof." *Id.* at 20. Plaintiffs, on the other hand, argue that "compression member" has a generally understood meaning to people of skill in the art and urge the Court to construe "compression member" as requiring only "an intermediate piece (or member) that applies a compression force to the head of the screw." Pl. Op. Br. at 19. For reasons set forth below, the Court adopts the plaintiffs' construction of the term "compression member."

The patent statute permits an element of a claim to be "expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof." 35 U.S.C. s. 112 para. 6. Claims expressed in this manner are commonly said to be written in a "means plus function" format. The statute specifies that claims written in means-plus-function format "shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof." *Id.* The question whether a claim is written in means-plus-function format is "a matter of claim construction and is thus a question of law." *Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 1360 (Fed.Cir.2000).

When a claim element actually uses the word "means," courts apply a rebuttable presumption that s. 112 para. 6 is invoked. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1369 (Fed.Cir.2002); *Personalized Media Communications, LLC v. Int'l Trade Comm'n* 161 F.3d 696, 703-04 (Fed.Cir.1998). Where, as here, the claim element does not use the word "means," courts presume that s. 112 para. 6 does not apply. *CCS Fitness*, 288 F.3d at 1369. These presumptions may be rebutted; in deciding whether they are, courts consider whether "the claim as properly construed recites sufficiently definite structure" and thus avoids the "means-plus-function" designation. *Personalized Media*, 161 F.3d at 704. Notably, the Federal Circuit has reminded courts that they need not find that a term conveys a "precise physical structure" to avoid the

means-plus-function designation. *Id.* at 705. A term discloses "sufficiently definite structure" if it "convey[s] to one knowledgeable in the art a variety of structures." *Id.*

Defendants acknowledge that the '678 patent does not use the term "means," and thus agree that the Court should presume that s. 112 para. 6 does not apply. Def. Cl. Constr. Mem. at 18. Nonetheless, defendants argue that the presumption is rebutted because the term "compression member ... does not recite any structure but merely recites its claimed function." *Id.* The Court disagrees, concluding that the term "compression member" when properly construed in context recites sufficient structure to escape the means-plus-function statutory scheme.

The Federal Circuit has construed the term "reciprocating member" in the context of a patent for an elliptical trainer as reciting sufficient structure to avoid the means-plus-function designation. *See CCS Fitness*, 288 F.3d at 1369-70. Because the context of stationary exercise devices is rather different from the context of pedicle screws, the specific result reached by the court in *CCS Fitness* is less helpful to the present case than is the court's method of analysis. The *CCS Fitness* court first considered what structures were revealed by technical and general dictionary definitions of "member," then the court considered what structure was suggested by the remaining claim limitations. *Id.* This Court follows that method in analyzing the present case.

First, dictionary definitions reveal that the term "compression member" has structural implications. *Webster's* defines "compression member" as "a structural member (as of a building or airplane) that is subjected to compressive stresses." *Webster's Third New International Dictionary*, 1986. Further, the *McGraw-Hill Dictionary of Scientific and Technical Terms*, 4th ed.1989, defines "compression member" as a "beam or other structural member which is subject to compressive stress." These definitions provide examples of the structures a compression member might take in the contexts of buildings and airplanes; the Court believes that one skilled in the art of pedicle screws would understand what the corresponding structure of a compression member should be.

Further, the remaining limitations of Claim 1 of the '678 patent clarify the structure of the compression member. The compression member is to be placed inside the receiver member, located above the spherically-shaped head of the pedicle screw. '678 patent, col. 4, lns. 22-23. It must both fit inside the receiver member in the precisely-described "receiver chamber" along with the head of the screw, and it must be of sufficient size to deliver force onto the head of the screw. These limitations would convey to one skilled in the art what structure the compression member might take.

Defendants rely on *Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206 (Fed.Cir.1998). In *Mas-Hamilton*, the Federal Circuit considered the term "movable link member," an element in a patent for a high security electronic dial combination lock. *Id.* at 1214. The court found that although there was a presumption that means-plus-function did not apply, this presumption was rebutted because the term was defined only by functional language and the remaining claim limitations did not "provide *any* structure." *Id.* at 1215 (emphasis added).FN6 However, the *Mas Hamilton* case does not control the outcome here. In *Mas Hamilton*, the court was faced with a functional definition and the absence of any structural language. Here, the term "compression member" is defined in the dictionary in terms that suggest structure, and the structure of the compression member is suggested by the requirements of the remaining claim limitations.

FN6. The court also considered the term "lever moving element" and reached the same conclusion on a similar rationale. *Id.* at 1213-14.

III. CONCLUSION

For the reasons set forth above, the Court construes "spherically-shaped" to mean "approximately spherical, such as a globe or basketball." The Court construes "flexibly connected" to require that the screw head and receiver member [be] joined together in a flexible manner such that the screw assembly has the ability to bend at the connection between the screw head and the receiver. Finally, the Court does not construe "compression member" as a means-plus-function claim limitation; instead, it construes "compression member" to require an intermediate piece (or member) that applies a compression force to the head of the screw.

SO ORDERED.

ORDER

The Court denies Defendant Medtronic's Renewed Post-Trial Motion for Judgment as a Matter of Law on the Subject of Lost Profits. On a motion for judgment as a matter of law, the Court must "determine whether, 'viewing the evidence in the light most favorable to the nonmoving party,' and giving the non-movant 'the benefit of all reasonable inferences,' there is sufficient evidence of record to support a jury verdict in favor of the non-movant." *Southwest Software, Inc. v. Harlequin Inc.*, 226 F.3d 1280, 1289 (Fed.Cir.2000) (quoting *Allied Colloids Inc. v. American Cyanamid Co.*, 64 F.3d 1570, 1573 (Fed.Cir.1995)). Here, the non-movants, Plaintiffs Depuy Spine, Inc. and Biedermann Motech GMBH, introduced extensive evidence that Depuy had an exclusive license to the patent in suit as of January 23, 1998. Viewing this evidence in the light most favorable to plaintiffs and drawing all reasonable inferences therefrom, the Court holds that the evidence of record was sufficient to support the jury's award of lost profits. Accordingly, defendants' motion is denied.

SO ORDERED.

D.Mass.,2003.

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