

United States District Court,
S.D. Texas, Houston Division.

TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC,
Plaintiff.

v.

MAERSK CONTRACTORS USA INC., et al,
Defendants.

Oct. 22, 2008.

Charles Bruce Walker, Jr., Lucas Schuyler Osborn, Fulbright & Jaworski, Houston, TX, for Plaintiff.

Lee L. Kaplan, Jeffrey A. Potts, Smyser Kaplan & Veselka, Houston, TX, William H. Frankel, David P. Lindner, Glen P. Belvis, Kelly J. Eberspecher, Mark H. Remus, Brinks Hofer Gilson & Lione, Chicago, IL, for Defendants.

MEMORANDUM AND ORDER

KENNETH M. HOYT, District Judge.

I. INTRODUCTION

This is a patent infringement case where the plaintiff, Transocean Offshore Deepwater Drilling, Inc. ("Transocean") and the defendant, Maersk Contractors, U.S.A., Inc., ("Maersk") seek an examination and construction of certain terms and phrases associated with various claims found in Transocean's U.S. Patent Nos. 6,085,851 (the '851 Patent), 6,047,781 (the '781 Patent), 6,056,071 (the '071 Patent), and the 6,068,069 (the '069 Patent). It is Transocean's contention that Maersk infringes Transocean's several Patents by selling its deepwater drilling rig that contains Transocean's dual activity capacity. Maersk denies infringement and the matter is before the Court following a *Markman* hearing. *See* *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995).

II. THE SEVERAL PATENTS AND CLAIM LANGUAGE

-A-

The '851 Patent claims to invent a multi-activity drillings (assembly) method and apparatus that operates on a single derrick and providing multiple tubular activity stations where the primary drilling activity may be conducted simultaneously with auxiliary drilling activities for the purpose of reducing the length of time necessary to complete the primary drilling activity critical path. For purposes of this claim construction exercise, and as it applies to claim 10 of the '851 Patent, the meaning of the following terms are disputed: "drilling operations," "drilling assembly," "auxiliary drilling activity," "operations auxiliary to drilling operations," "an assembly for conducting operations on a single well," "means for advancing," "transferring tubular assemblies between stations," "means for transferring," "drilling superstructure," "operable/operably"

and "adjacent to".

A. *The '851 Patent Claims:*

10. A multi-activity drilling assembly operable to be supported from a position above the surface of a body of water for conducting drilling operations into the bed of the body of water, said multi-activity drilling assembly including:

a drilling superstructure operable to be mounted upon a drilling deck for simultaneously supporting drilling operations for a well and operations auxiliary to drilling operations for the well;

first means connected to said drilling superstructure for advancing tubular members into the bed of body of water;

second means connected to said drilling superstructure for advancing tubular members simultaneously with said first means into the body of water to the seabed, and

means positioned adjacent to said first and second means for advancing tubular members for transferring tubular assemblies between said first means for advancing tubular members and said second means for advancing tubular members to facilitate simultaneous drilling operations auxiliary to said drilling operations,

wherein drilling activity can be conducted for the well from said drilling superstructure by said first means for advancing tubular members and auxiliary drilling activity can be simultaneously conducted for the well from said drilling superstructure by said second means for advancing tubular members.

-B-

Similar to the '851 Patent, terms in the '781 Patent are disputed. As the '851 Patent, the terms "drilling operations," "drilling activity," "auxiliary drilling activity," "drilling operations auxiliary to said drilling operations," "operations auxiliary to drilling operations," "an assembly for conducting operations on a single well," and, "a method with operations on a single well" are disputed in all asserted claims. Apart from these terms, Maersk disputes the term "tubular handling system" in claim 13. With regard to claims 11 through 13, Maersk disputes terms "means for transferring", "drawworks.", "derrick", "operable/operably", "top drive station", "transferred/transferring", and "adjacent to." The same terms, "adjacent to" and "means for transferring" are also found in claim 30. Separately, and also in claim 30, Maersk disputes terms "means for advancing," "system for transferring," "drilling superstructure," and "means for hoisting."

B. *The '791 Patent Claims*

10. A multi-activity drilling assembly operable to be mounted upon a drilling deck of a drillship, semi-submersible, tension leg platform, jack-up-platform, or offshore tower and positioned above the surface of a body of water for supporting drilling operations through the drilling deck, to the seabed and into the bed of the body of water, said multi-activity drilling assembly including:

a derrick operable to be positioned above a drilling deck and extending over an opening in the drilling deck for simultaneously supporting drilling operations and operations auxiliary to drilling operations through the drilling deck;

a first top drive positioned within the periphery of said derrick;

a first drawworks positioned adjacent to said derrick and operably connected to a first traveling block positioned within said derrick adjacent to said top drive for conducting drilling operations on a well through the drilling deck;

a second top drive positioned within the periphery of said derrick

a second drawworks positioned adjacent to said derrick and operably connected to a second traveling block positioned within said derrick adjacent to said second top drive for conducting drilling operations or operations auxiliary to said drilling operations extending to the seabed for the well; and

means positioned within said drilling derrick for transferring tubular assemblies between a first top drive station and a second top drive station to facilitate simultaneous drilling operations and operations to the seabed auxiliary to said drilling operations,

wherein drilling activity can be conducted within said derrick with said first or second top drive, said first or second drawworks and said first or second traveling

block and auxiliary drilling activity extending to the seabed can be simultaneously conducted within said derrick with the other of said first or second top drive, the other of said first or second drawworks and the other of said first or second traveling block.

11. A multi-activity drilling assembly as defined in claim 10 wherein said means for transferring includes:

a rail assembly operably extending between a position adjacent to said first top drive station and a position adjacent to said second top drive station;

a first tubular handling apparatus mounted to traverse upon said rail; and

a second tubular handling apparatus mounted to traverse upon said rail, wherein tubular assemblies may be operably transferred between said first top drive and said second top drive to facilitate simultaneous drilling operations and operations auxiliary to said drilling operations.

12. A multi-activity drilling assembly as defined in claim 11 and further including:

a first tubular setback envelope positioned adjacent to said first top drive station; and

a second tubular setback envelope positioned adjacent to said second top drive station.

13. A multi-activity drilling assembly as defined in claim 12 and further including:

a tubular handling system for transferring tubular assemblies between said first tubular setback envelope and said second tubular setback envelope and said first top drive station and said second top drive station.

30. A multi-activity drilling assembly operable to be supported from a position above the surface of a body of water for conducting drilling operations into the bed of the body of water, said multi-activity drilling assembly including:

a drilling superstructure operable to be mounted upon a drilling deck for simultaneously supporting drilling operations for a well and operations auxiliary to drilling operations for the well;

first means connected to said drilling superstructure for advancing tubular members into the bed of body of water, wherein said first means includes a first means for hoisting tubular members;

second means connected to said drilling superstructure for advancing

tubular members simultaneously with said first means into the body of water to the seabed, wherein said second means includes a second means for hoisting tubular members; and

Means positioned adjacent to said first and second means for advancing tubular members for transferring tubular assemblies between said first means for advancing tubular members and said second means for advancing tubular members to facilitate simultaneous drilling operations auxiliary to said drilling operations,

Wherein drilling activity can be conducted for the well from said drilling superstructure by said first means for advancing tubular members and auxiliary drilling activity can be simultaneously conducted for the well from said drilling superstructure by said second means for advancing tubular members.

-C-

Transocean's '071 Patent is also disputed in several but different respects. In particular, claim 23 is challenged in the following respects: the terms and phrases "station for advancing members" "running a blowout preventer and riser ... to a position in proximity to the at least a portion of the well hole," and "wherein the events of step (c) are performed ... during at least a portion of the same time period as the events of steps (a) and (b)."

C. The '071 Patent Claims:

23. A method for conducting offshore drilling operations into the bed of a body of water, for a single well from a drilling deck operable to be positioned above the surface of the body of water, said method being conducted, at least partially, from a first station for advancing tubular members and, at least partially, from a second station for advancing tubular members, the method including the steps of:
for advancing tubular members, the method including the steps of:

(a) drilling a well bore comprising at least a portion of a wellhole into the bed of the body of water from the first or second station for advancing tubular members;

(b) running at least one casing from the first or second station for advancing tubular members into the at least a portion of the wellhole; and

(c) simultaneously during at least a portion of the time period utilized for performing steps (a) and (b), running a blowout preventer and riser into the body of water from the other of said first or second station for advancing tubular members to a position in proximity to the at least a portion of the wellhole in the seabed for operation on said wellhole, wherein the events of step (c) are performed independently of and during at least a portion of the same time period as the events of steps (a) and (b) to reduce the overall time necessary to perform steps (a) through (c) for conducting offshore drilling operations from the drilling deck on a single well being drilled into the bed of the body of water.

Finally, with respect to Transocean's '069 Patent, the following additional terms are disputed with respect to the claims 10 and 17. As to claim 17, Maersk disputes the definition of the phrase "transferring tubular assemblies between stations." Concerning claim 9, Maersk disputes the meaning of the phrase "tubular station."

D. The '069 Patent Claims:

9. A method for conducting offshore drilling operations into the bed of a body of water, for a single well, from a drilling deck operable to be positioned above the surface of the body of water, said method being conducted, at least partially, from a first station for advancing tubular members and, at least partially, from a second station for advancing tubular members, the method including the steps of:

(a) drilling a well bore comprising at least a portion of the wellhole into the bed of the body of water from the first or second station for advancing tubular members;

(b) running at least one casing from the first or second station for advancing tubular members into the at least a portion of the wellhole;

(c) simultaneously during at least a portion of the time period utilized for performing steps (a) and (b), running a blowout preventer and riser into the body of water from the other of said first or second station for advancing tubular members to a position in proximity to the at least a portion of the wellhole in the seabed, wherein the events of step (c) are performed independently of and during at least a portion of the same time period as the events of steps (a) and (b) to reduce the overall time necessary to perform steps (a) through (c) for conducting offshore drilling operations from the drilling deck on a single well being drilled into the bed of the body of water.

(d) laterally repositioning the drilling deck until the other of said first or second station for advancing tubular members and the blowout preventer and riser are positioned over the well bore comprising at least a portion of a wellhole; and,

(e) connecting the blowout preventer and the riser extending from the other of said first or second tubular onto the at least one casing in the well bore comprising at least a portion of a wellhole at a location in proximity to the seabed.

10. A method for conducting offshore drilling operations into the bed of a body of water, for a single well, from a drilling deck operable to be positioned above the surface of the body of water as defined in claim 9 and further comprising the steps of:

(f) making-up extended lengths of tubular members at the first or second station for advancing tubular members;

(g) transferring the extended lengths of tubular members made up at the first or second station for advancing tubular members to the other of said first or second station for advancing tubular members; and

(h) using the extended lengths of tubular members, made up at the first or second station for advancing tubular members, conducting drilling operations coaxially through the riser and into the single wellhole

from the other of said first or second station for advancing tubular members.

17. A multi-activity drilling assembly operable to be supported from a position above the surface of a body of water for conducting drilling operations to the seabed and into the bed of the body of water for conducting drilling operations to the seabed and into the bed of the body of water, said multi-activity drilling assembly including:

a drilling superstructure operable to be mounted upon a drilling deck for simultaneously supporting drilling operations for a well and operations auxiliary to drilling operations for the well;

a first tubular advancing station connected to said drilling superstructure for advancing tubular members to the seabed and into the bed of body of water;

a second tubular advancing station connected to said drilling superstructure for advancing tubular members simultaneously with said first tubular advancing station to the seabed and into the body of water to the seabed; and

an assembly positioned adjacent to said first and second tubular advancing stations operable to transfer tubular assemblies between said first tubular advancing station and said second tubular advancing station to facilitate simultaneous drilling operations auxiliary to said drilling operations,

wherein drilling activity can be conducted for the well from said drilling superstructure by said first or second tubular advancing stations and auxiliary drilling activity can be simultaneously conducted for the well from said drilling superstructure by the other of said first or second tubular advancing stations.

III. CLAIM CONSTRUCTION STANDARD

Claim construction requires that an examination of disputed claims begin with the intrinsic evidence. *Markman*, 52 F.3d at 979. The intrinsic evidence consists of the claims, specification and the prosecution history. *Id.* Hence, the examination begins with a construction of the language of the claim, focusing on the ordinary meaning of terms within the context of the patent. *Phillips v. Awh Corp.*, 415 F.3d 1303, 1314 (Fed.Cir.2005) (*en banc*). Ordinary meaning is to be understood as that shared by person skilled in the relevant art, unless the specification and prosecution history reveals that the inventor used them differently. *See Phillips*, 415 F.3d at 1316; *Gemstar-TV Guide Int'l, Inc. v. ITC*, 383 F.3d 1352, 1364 (Fed.Cir.2004).

When an ambiguity is asserted, the intrinsic evidence alone, may or may not be sufficient to resolve the dispute. Thus, the Court may, while keeping its focus on the claim language, examine extrinsic evidence when necessary. *See Markman*, 52 F.3d at 979. Extrinsic evidence is all evidence external to the patent and the prosecution history and may include expert and inventor testimony, dictionaries and learned treatises. *Phillips*, 415 F.3d at 1317.

From time to time a patent may express a limitation in a claim. Such limitations are expressed as a step or means by which a function may be performed. These limitations are referred to as "means-plus-function limitations." *See Valmont Indus., Inc., v. Reinke Mfg. Co., Inc.*, 983 F.2d 1039, 1042 (Fed.Cir.1993). First, the Court determines whether the claim language invokes 35 U.S.C. s. 112(6). And, if it does, the Court identifies the function and construes the limitation in light of the specification and equivalents. *See JVV Enter., Inc. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1330 (Fed.Cir.2005).

IV. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56. A fact is "material" if its resolution in favor of one party might affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). "Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 248. An issue is "genuine" if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party. *Id.* If the evidence rebutting the motion for summary judgment is only colorable or not significantly probative, summary judgment should be granted. *Id.* at 249-50; *see also* *Shields v. Twiss*, 389 F.3d 142, 149-50 (5th Cir.2004).

Under Rule 56(c) of the Federal Rules of Civil Procedure, the moving party bears the initial burden of "informing the district court of the basis for its motion and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue for trial." *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Adams v. Travelers Indem. Co. of Connecticut*, 465 F.3d 156, 163 (5th Cir.2006). Where the moving party has met its Rule 56(c) burden, the nonmovant must come forward with "specific facts showing that there is a *genuine issue for trial.*" *Matsushita*, 475 U.S. at 586-87 (quoting Fed.R.Civ.P. 56(e)) (emphasis in original); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); and *Adams*, 465 F.3d at 164. To sustain the burden, the nonmoving party must produce evidence admissible at trial showing that reasonable minds could differ regarding a genuine issue of material fact. *Anderson*, 477 U.S. at 250-51, 255, ; *Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir.1998). In deciding a summary judgment motion, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255.

V. DISCUSSION AND ANALYSIS

1. Multi-Activity Drilling Assembly

The term "drilling assembly" is found in the '781, '069 and '851 Patents. We find the term in claim 10 of the '851 Patent, claims 10, 11, 12, 13 and 30 of the '781 Patent, and claim 17 of the '069 Patent. It is Transocean's position that the term requires no construction because the term does not amount to a limitation. Maersk proffers that the term should be construed to mean "a derrick that has within its structure two tubular stations for simultaneously supporting exploration and/or production drilling operations and tubular or other activity auxiliary to drilling operations through a drill floor."

The Court is of the opinion that the term "drilling assembly" requires no definition. Therefore, the Court rejects Maersk's proffered proposed construction. Maersk's construction brings into play other terms that it argues should be construed as limitations to claim 10. Specifically, Maersk argues that the term "assembly" appears in the preamble and its use there constitutes a limitation.

The preamble of a claim may serve as a separate limitation to a claim in one of two recognized instances. *See Symantic Corp. v. Computer Assocs. Int'l Inc.*, 522 F.3d 1279, 1288 (Fed.Cir.2008). Where a disputed term appears in the preamble to a claim it is a limitation "if it recites essential structure or steps, or if it is 'necessary to give life, meaning and validity' to the claim." *Id.* citing *Catalina Mktg. Int'l, Inc. v. CoolSavings.com, Inc.*, 289 F.3d 801, 808 (Fed.Cir.2002). On the other hand, a preamble is not limiting "where a patentee defines a structurally complete invention in the claim body and uses the preamble only to

state a purpose or intended use for the invention." *Id.* [Citations omitted]. Absence a clear reliance on the preamble in the prosecution history, the preamble generally is not limiting. *Id.*

A claim must be read in light of the specification of which it is a part. And, where no specific definition is revealed in the specification, courts must give the words of a claim their ordinary and customary meaning. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 and 1315. (Fed.Cir.2005) (*en banc*). That meaning is the meaning that one of ordinary skill in the art in question at the time of invention. *Id.* at 1313. In the claim at bar, there is no reason for the Court to give a construction beyond the ordinary meaning revealed.

2) Operable/Operably

The terms "operable/operably" are found in the '851, '781, '071, and '069 Patents. The terms are found in claim 10 of the '851 Patent, claims 10, 11, 12, 13 and 30 of the '781 Patent, claim 23 of the '071 Patent, and claims 9, 10 and 17 of the '069 Patent. Transocean asserts that the terms simply mean that the drilling deck is "designed" to be mounted. Maersk claims that the terms should be construed as "being installed so that it [drilling deck] is capable of performing the claimed function upon the operator's command, *i.e.*, it is ready for use, but for turning it on."

Again, from the Court's perspective it appears that Maersk reads into the terms a meaning that exceeds that necessary to understand the claim(s). A piece of equipment has a design component that has nothing to do with its installation component. Hence, the Court is of the opinion that the construction proffered by Maersk creates limitations that are not found in the specification or necessary to an understanding of the invention. 415 F.3d at 1315.

3) Drilling Operations

The term "drilling operations" is found in the '851, '781, '071 and '069 Patents. It is found in claim 10 of the '851 Patent, claims 10, 11, 12, 13 and 30 of the '781 Patent, claim 23 of the '071 Patent and claims 9, 10 and 17 of the '069 Patent. Transocean proffers the term meaning as: "operations required to construct a well." Maersk reads drilling operations to "include both (i) main drilling operations, and (ii) auxiliary drilling activity as set forth in Figure 23b and the accompanying specification."

Figure 23b discloses a time-line for an "illustrative exploratory drilling operation wherein a critical path of activity for a conventional drilling activity in accordance with a method and apparatus of the subject invention." According to the drawings, Fig. 23b "discloses a dramatic increase(s) in exploration drilling efficiency." The Court reads this language and the Figure depicted as demonstrative. The point of the Figures, both Figure 23a and 23b, is to demonstrate improvement in efficiency in drilling operations. Simply disclosing, by illustration a time saving event, does not limit the scope of the patent claim(s). *See Aristocrat Techs. Australia v. Intern. Game Tech.*, 521 F.3d 1328, 1333 (Fed.Cir.2008). Therefore, the Court rejects Maersk's proffered construction as reading limitation(s) into the claim(s) contrary to the clear language.

4) Drilling Superstructure/Derrick

The terms "drilling superstructure" and "derrick" are contained in the '851, '781 and '069 Patents. Specifically, drilling superstructure is found in claim 10 of the '851 Patent, claim 30 of the '781 Patent, and claim 17 of the '069 Patent. The term "derrick" is found in claims 10, 11, 12 and 13 of the '781 Patent. Transocean asserts that the proper construction for both terms is the same. The terms refer to "a structure for supporting drilling operations through a drill deck."

Maersk offers separate and different constructions for the terms "derrick" and "drilling superstructure." It defines derrick as "a four sided structure that has four legs, which project upwardly over the drill floor to a top structure, and is strong enough to support heavy duty tubular hoisting within those sides." Concerning the term "drilling superstructure", Maersk would incorporate the definition of derrick and add that the "support structures must extend over the drill floor and must be rigid and strong enough to support heavy tubular hoisting."

While the terms "derrick" and "drilling superstructure" are different terms, they reference the same structure. An inventor may choose the term(s) that he desires to define his invention. Here, the choice of terms does not create confusion or indefiniteness in the terms uses. And, the figures chosen to depict a preferred embodiment do not automatically limit the claim. The Court is of the opinion that the use of interchangeable terms does not create an ambiguity. Moreover, the claim is understood as requiring a strong structure, yet not limiting the invention to the qualitative terms chosen by Maersk.

5) Means for Advancing/Mean for Hoisting

The term "means for advancing tubular members" is found in claim 10 of the '851 Patent and claim 30 of the '781 Patent. The term "means for hoisting tubular members" is found in claim 30 of the '781 Patent. The parties agree that the claimed terms are "means-plus-function" claims that bring into play 35 U.S.C. s. 112. Section 112 requires that the specification of a patent conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. *Halliburton Energy Services, Inc. v. M-I, LLC*, 514 F.3d 1244, 1249 (Fed.Cir.2008). Hence, the scope of a claim limitation is defined by the structure disclosed in the specification plus any equivalents of the structure. *See Aristocrat Techs. Australia*, 521 F.3d at 1331. (citations omitted).

(a) Concerning "means for advancing tubular members", Transocean argues that the phrase should be construed as "a function of advancing tubular members through a drilling deck into the water to/into the seabed with a structure for hoisting (drawworks, cable, sheaves, and a traveling block) for making-up and breaking down tubular (combination of an iron roughneck, pipe tong, spinning chain, a Kelly and/or rotary swivel) and optionally for rotating tubular strings (top drive or rotary machine, rotary drive, master bushings and slips) and equivalent structures."

Maersk proffers a more extensive yet limiting construction. It argues that the phrase should be construed as ... "the function of the first means for advancing is to advance tubular members into the bed of the body of water, and the function of the second means for advancing is to advance tubular members into a bed of water to the seabed-the corresponding structure is a drawworks 142, a cable 144 that extends upwardly from the drawworks over sheaves 146, 148, and motion compensated sheaves 150, and downward within the derrick to a traveling block 154, a rotary support table 162 in the drilling floor, rotary machine, rotary drive, master bushings, Kelly drive bushing and slips, iron roughneck, pipe tong, spinning chain, Kelly, and rotary swivel."

The Court rejects Maersk's construction because it appears to simply summarize the specifications as it relates to Figures 5 and 7. Certainly, the specification details the structure required by the '851 and '781 Patents, setting out a step-by-step process for performing the function for advancing tubular members. Hence, the Court adopts the construction advanced by Transocean as a proper description of the structure that also allows for equivalent structures. *See Medical Instrumentation & Diagnostics Corp. v. Elekta AB*,

344 F.3d 1205, 1211 (Fed.Cir.2003); *see also* Biomedino, LLC v. Waters Techs. Corp., 490 F.3d 946, 948 (Fed.Cir.2007).

(b) Concerning the phrase "means for hoisting tubular members" found in claim 30 of the '781 Patent, the term requires the same treatment as "means for advancing tubular members." It too is a means-plus-function claim. Transocean's construction describes the function as "the function of hoisting tubular members with the corresponding structure of drawworks, cable, sheaves, traveling block, or equivalent structure." Maersk construction argues that " *the function* is hoisting tubular members. It argues, as well, that " *the only corresponding structure* is already part of the means for advancing, and there is no additional corresponding structure in the specification to correspond to this means clause, rendering the claim invalid." [Emphasis supplied].

Maersk's invalidity argument is without a basis. It appears to the Court that Transocean is merely indicating in the specification what structure constitutes the means. And, because there is no ambiguity in the specification, it is clear as to the structure that the patentee intends to be the corresponding structure. Aristocrat Techs. Australia, 521 F.3d at 1333 (citations omitted).

6) Tubular Station/Tubular Advancing Station/Station for Advancing Tubular Members

The terms "tubular station," "tubular advancing station," and "station for advancing tubular members" are found in the '071 and '069 Patents. Specifically, tubular station is found in claim 9 of the '069 Patent. Tubular advancing station is found in claim 17 of the '069 Patent. And, station for advancing tubular members is found in claim 23 of the '071 Patent and in claims 9 and 10 of the '069 Patent.

Transocean argues that terms "tubular station" and "tubular advancing station" refer to "an assembly of equipment capable of advancing tubular members to the seabed." In this regard, these terms should be construed like or in the same manner as "station for advancing tubular members."

Maersk argues that these three terms are means-plus-function terms and the Court should construe the terms according to the function and structure language in the specification used to describe "means for advancing tubular members." As such, Maersk argues that the function is to advance members into the seabed, and-the corresponding structure is the same as that for the means for advancing, as revealed in Figures 142, 144, 146, 148, 150, 154 and 162. Maersk admits that the term "means" is not used in claims 9, 10, 17 and 23 of the '069 and '071 Patents. Nevertheless, Maersk seeks to limit the scope of the claims to the equipment used in the Figures to show structure or embodiment.

The absence of the term "means" raises the presumption that the claim(s) are not means-plus-function claims. *See* Lighting World Inc. v. Birchwood Lighting Inc., 382 F.3d 1354 (Fed.Cir.2004). In order to overcome this presumption, Maersk must show by clear and convincing evidence that the claim terms fail to recite sufficiently definite structure or recites function without reciting sufficient structure for performing the function. *Id.* To a person of ordinary skill in the art, the terms are understood to refer to location, a specific area on the drilling rig where the equipment for the function for advancing occurs. Hence, no additional structure recitation is necessary. The Court's holding, concerning these claims, also applies to the parties' arguments concerning claim 13 of the '781 Patent and claim 17 of the '069 Patent.

The phrase under review in claim 13 of the '781 Patent and claim 17 of the '069 Patent is "tubular handling system for transferring," [claim 13], and "assembly to transfer tubular assemblies between," [claim 17]. In

both claims, the word "between" is used and, from Maersk's point of view, "between" triggers means-plus-function limitations. The Court disagrees and relies on its reasoning previously stated where the Court found that Maersk had failed to present clear and convincing evidence that overcame the presumption that means-plus-function did not apply. Otherwise the terms simply refer to the necessary equipment for moving tubular members from place-to-place within the derrick.

7) Means for Transferring Tubular Assemblies Between

The phrase "means for transferring tubular assemblies between" is found in claims 10, 11, 12, 13, and 30 of the '781 Patent and claim 10 of the '851 Patent. The parties agree that the phrase uses means-plus-function language and, therefore, the limitations of 35 U.S.C. s. 112(b) apply. The parties agree generally that the function is to transfer tubular assemblies between a first and second means for advancing. However, Maersk would limit the transfer to direct transfer without an intermediate structure and require that all transfers occur above the drill floor. This limitation is not supported by the claim language or the specification. Therefore, the Court rejects Maersk's construction because the structure for the function is adequately recited.

8) Drilling Operations/Operations Auxiliary to Drilling/Auxiliary Drilling Activity/Drilling Operations to Said Drilling

The phrases "drilling operations," "operations auxiliary to drilling," "auxiliary drilling activity" and "drilling operations auxiliary to said drilling" are found alternately and selectively in claims 10, 11, 12, 13 and 30 of the '781 Patent, claim 23 of the '071 Patent, claims 9, 10 and 17 of the '069 Patent and claim 10 of the '851 Patent. Transocean views these phrases as simply describing the operations that are required to construct or drill an oil well. In this regard, Transocean asserts that, in the industry, parties who drill oil wells in a body of water understand that there are operations necessary to the event of drilling and there are operations attendant (auxiliary) to the event of drilling. In this regard, the inventor chose to use the term "critical path" FN1 to define the events that occur along the drilling path and the term "auxiliary" to define operations attendant to and necessary to the "critical path" event.

FN1. While Maersk's expert [George Boyadjieff] testified that the term "critical path" was a confusing term, when asked about auxiliary operations being removed from the critical path, he answered "The patent says that." Hence, the Court is of the opinion that the term does not require further explanation.

It appears from Maersk's proposed construction that there is no difference between Transocean's and Maersk's understanding concerning the nature of the activities described by the specification. However, Maersk would limit the scope of the activities and the attendant equipment that revealed in Figure 23b.

Construed in the context of the claims', terms "auxiliary," "drilling" and "operations" have identical meaning. *See Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1120 (Fed.Cir.2004). A person of ordinary skill in the art understands that the terms refer to a drilling operation. [citations omitted]. And, the fact that multiple terms are used to describe the same operation or function does not render the claims invalid due to indefiniteness. 381 F.3d at 1120; *See also*, *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380 (Fed.Cir.2006). Finally, exemplary embodiments, such as Figure 23b, cannot define the limitations of the claims. *See Teleflex Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1326 (Fed.Cir.2002). Claims must be read in light of the specification and yet limitations not be read into the claims. *Id.* Because these terms and phrases are not means-plus-function terms or phrases, they are not

limited by Figure 23b. Therefore, to the extent that these terms need definition, and the Court is of the opinion that they do not, the Court adopts the definitions proffered by Transocean.

9) *Transfer/Transferring/Transferred/Transfer Tubular Assemblies*

The term "transfer," "transferring," "transferred" and "transfer tubular assemblies" are singularly or collectively found in claims 10, 11, 12, 13 and 30 of the '781 Patent and claim 10 of both the '069 and '851 Patents. Transocean proffers that the terms mean "between" and from "one station to another, either directly or indirectly." Maersk does not disagree but would further limit the meaning of the terms to the assembly defined as "a rail 168 and a pipe handling apparatus 166" with any transfer taking "place above the drill floor and without involving any intervening structure." Maersk also takes issue with Transocean's position that the transfer may be direct or indirect.

The Court resolved this dispute in a prior ruling. *See Transocean v. Global Santa Fe* [CV. H03-2910, Markman Opinion] (Construing, *inter alia*, claim 17 of the '069 Patent). The Court, therefore, is of the opinion that the construction proffered by Maersk violates the description in the specification, while also excluding the preferred embodiment described in the Patents.

10) *Top Drive Station*

The term "top drive station" is found in claims 10, 11, 12 and 13 of the '781 Patent. As used in the claim language, the terms "first top drive station" and "second top drive station" refer to the transfer of the tubular assemblies between one station and another. Transocean defines the terms as "an assembly of equipment capable of advancing tubular members to the seabed that includes a top drive." Hence, Transocean distinguishes between a piece of equipment, i.e., a "top drive" and a "top drive station." Maersk argues that top drive station is also "a piece of equipment other than and in addition to the top drive." Maersk then advances the argument that top drive station is a separate claim element not defined in the specification and, therefore, is indefinite rendering the claims invalid.

While the specification may not separately define the term "top drive station," it, nevertheless, the term describes a location where the top drive and other related equipment are positioned. There is nothing stated in the claim(s) from which a person skilled in the relevant art would conclude that the term "top drive station" has the same meaning as the term "top drive." In fact, the claim language teaches that within the top drive station are the top drive and other assembled equipment for advancing tubular members to the seabed. While Maersk argues that the specification does not indicate what equipment is included in the top drive station, it is clear that Maersk understands that the terms are not co-terminus and that other equipment, in addition to a top drive, are located at the station designated.

The Court is of the opinion that a person of ordinary skill in the relevant art would understand and appreciate that various equipment is assembled, perhaps of a different sort as the occasion dictates, for purposes of drilling a well. *See, Gemstar-TV Guide Int'l, Inc. v. ITC*, 383 F.3d 1352, 1364 (Fed.Cir.2004). The fact that the scope of the term appears to lend itself to an indefiniteness argument does not concern the Court because the scope of equipment is defined by the objective to be achieved. Hence, there is no ambiguity revealed. *See Markman*, 52 F.3d at 979.

11) *Single Well/A Wellhole/The Wellhole*

The terms "single well," "wellhole," and related terms are found in claims 10, 11, 12, 13 and 30 of the '751

Patent, claim 23 of the '071 Patent, claims 9, 10 and 17 of the '069 Patent and claim 10 of the of '851 Patent. Maersk argues that a proper construction means that "all activity or structure of the claim can be conducted on only one wellhole." However, the specification discloses an apparatus that is capable of working on multiple wells.

Previously, the Court construed one or more of the claims in a manner that did not limit the apparatus operations to one well, but recognized that the apparatus could actually conduct simultaneous operations on "one" well. *See* *Transocean v. Global Santa Fe*, *infra*. The Court now holds that by using the term "including a drilling superstructure," the claim(s) are not limited to the recited limitations. *See* *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313 (Fed.Cir.2003). Therefore, the Court determines that the apparatus must be capable of operations on "a" well and on other auxiliary operations related to the well-that could "include" one or more wells. *Dow Chem. Co. v. Sumitomo Chem. Co., Ltd.*, 257 F.3d 1364 (Fed.Cir.2001).

12) During ... A Portion of the Time ... Performing Steps (a) and (b)

In claim 23 of the '071 Patent and claims 9 and 10 of the '061 Patent, the parties dispute whether the "and" that joins steps (a) and (b) requires that step (c) be performed during a portion of the time that steps (a) and/or (b) are being performed or "at the same time that step (a) and step (b) are being performed. Maersk's expert argues the latter construction while *Transocean* asserts the former.

The Court is of the opinion that the operative words in the claim language are "time period." When one focuses on the overall timeframe for drilling a well, the meaning becomes clear. Hence, during the drilling of a well, where steps (a) and (b) are performed, step (c) is performed during a portion of the time that either or both steps (a) and (b) are being performed. A person of ordinary skill in the relevant art, after reviewing the claim(s) and the specification, would conclude that step (c) is to be performed at an appropriate time after step (a) is commenced and before step (b) is concluded.

13) Positioned Adjacent/Position in Proximity

The terms "positioned adjacent" is found in claims 10, 11, 12, 13 and 30 of the '781 Patent, claim 17 of the '069 Patent, and claim 10 of the '851 Patent. The term "position in proximity" is found in claim 23 of the '071 Patent and claims 9 and 10 of the '069 Patent. *Transocean* asserts that the proper interpretation of the term "adjacent" connotes "near enough to interact with." And, the term proximity as used means "near the wellbore." Maersk contends that adjacent means "located next to one another ... on the same floor ... [nothing] between." Regarding the term "proximity", Maersk argues that the proper construction is "at or near the wellhole and [] horizontally positioned"

Maersk also asserts that because the terms "means position" precedes the term "adjacent" in claims 10, 11, 12, 13 and 30 of the '781 Patent, claim 17 of the '069 Patent and claim 10 of the '851 Patent, the term "adjacent" should be limited to the corresponding structure described in the specification that performs the claimed function and equivalents.

The Court is of the opinion that the use of the term "means position" does not signal that a means-plus-function claim is presented. The Court addressed this issue earlier in this Memorandum, holding that "means for" is the operative language for a means-plus-function claim. Means position refers to location, therefore, 35 U.S.C. s. 112 does not come into play.

Maersk next contends that "adjacent to" FN2 should be interpreted from the drawings of the specification.

Specifically, Maersk refers to Figure 7, items 168, 160 and 162 of the '781 Patent. Maersk overlooks the fact that the term "adjacent to" is also used to describe positioning with regard to the term "draw works." Drawwork is described as adjacent to the tubular advancing stations; yet, there are other structures between the two points of location. Even in other claims where the term "adjacent to" is used, the disclosed embodiments reveal something other than "next to" and "same floor" as argued by Maersk. The Court, therefore, adopts the construction proffered by Transocean.

FN2. Maersk resorts to the Merriam-Webster dictionary arguing that "adjacent" means "not distant: *NEARBY*" (emphasis supplied). However, Webster's New International Dictionary, 2nd Ed. defines adjacent as: "close to each other, but not necessarily in actual contact."

Finally, there is the term "proximity." Without restating the positions of the parties, the Court rejects the narrow construction proffered by Maersk. As pointed out by Transocean, Figures 9 through 22 as discussed in the specification do not limit the lowering of the BOP to a horizontal position. To hold otherwise overlooks conditions in the water during any operation.

VI. CONCLUSION

It is the Court's intent to address terms and phrases that require construction. Where the Court has not addressed a particular term or phrase, the Court is of the opinion that no construction is necessary and the public may rely on the ordinary meaning of a term(s) to reach a proper construction.

SIGNED and ENTERED.

S.D.Tex.,2008.

Transocean Offshore Deepwater Drilling, Inc. v. Maersk Contractors USA Inc.

Produced by Sans Paper, LLC.