IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GEMAK TRUST,

        Plaintiff,

    v.

RECKITT BENCKISER LLC,

        Defendant.

Civil Action No. 18-1855-RGA

GEMAK TRUST,

        Plaintiff,

    v.

CHURCH & DWIGHT CO., INC.,

        Defendant.

Civil Action No. 18-1854-RGA

MEMORANDUM OPINION

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July 27, 2020

/s/ Richard G. Andrews
ANDREWS, UNITED STATES DISTRICT JUDGE:

Before the Court is the issue of claim construction of various terms in U.S. Patent Nos 6,787,514 ("the '514 patent") and 6,486,116 ("the '116 patent"). I have considered the parties' Joint Claim Construction Brief and two letters from the parties. (D.I. 51; D.I. 57; D.I. 58).[1] I heard oral argument on June 23, 2020.

I.   BACKGROUND

The '514 and '116 patents are directed to a product used in detergents. The invention claimed in the '514 patent "stabilize[s] percarbonate in water-soluble film packaging," and the '116 patent describes a phosphate-free formulation of the product. (D.I. 51 at 1; D.I. 44-2 ex. A; D.I. 44-3 ex. B).

II.   LEGAL STANDARDS

"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." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal quotation marks omitted). "'[T]here is no magic formula or catechism for conducting claim construction.' Instead, the court is free to attach the appropriate weight to appropriate sources 'in light of the statutes and policies that inform patent law.'" *SoftView LLC v. Apple Inc.*, 2013 WL 4758195, at *1 (D. Del. Sept. 4, 2013) (quoting *Phillips*, 415 F.3d at 1324) (alteration in original). When construing patent claims, a court considers the literal language of the claim, the patent specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977–80 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Of these sources, "the specification is always highly relevant to the claim construction

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[1] The Court will refer to docket items for Civil Action No. 18-1854-RGA without the corresponding docket item numbers for Civil Action No. 18-1855-RGA.

analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Phillips*, 415 F.3d at 1315 (internal quotation marks omitted).

"[T]he words of a claim are generally given their ordinary and customary meaning. . . . [Which 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." *Id*. at 1312–13 (citations and internal quotation marks omitted). "[T]he ordinary meaning of a claim term is its meaning to [an] ordinary artisan after reading the entire patent." *Id*. at 1321 (internal quotation marks omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id*. at 1314.

When a court relies solely upon the intrinsic evidence—the patent claims, the specification, and the prosecution history—the court's construction is a determination of law. *See Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015). The court may also make factual findings based upon consideration of extrinsic evidence, which "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Phillips*, 415 F.3d at 1317–19 (internal quotation marks omitted). Extrinsic evidence may assist the court in understanding the underlying technology, the meaning of terms to one skilled in the art, and how the invention works. (*Id*.). Extrinsic evidence, however, is less reliable and less useful in claim construction than the patent and its prosecution history. (*Id*.).

"A claim construction is persuasive, not because it follows a certain rule, but because it defines terms in the context of the whole patent." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998). It follows that "a claim interpretation that would exclude

the inventor's device is rarely the correct interpretation." *Osram GmbH v. Int'l Trade Comm'n*, 505 F.3d 1351, 1358 (Fed. Cir. 2007) (citation and internal quotation marks omitted).

III.   CONSTRUCTION OF UNDISPUTED TERMS

In their Joint Claim Construction Brief the parties agreed to construe "compressed into a tablet format" in claim 13 of the '116 patent as "compressed into solid briquettes." (D.I. 51 at 78-79). The parties affirmed this view during oral argument and the Court adopted this construction. (D.I. 59 at 107:18-25, 108:1-2).

IV.   CONSTRUCTION OF DISPUTED TERMS

During oral argument I adopted the following constructions:

Claim Term	Construction
"granulated percarbonate compound" ('514 patent claims 1, 8); "granulated percarbonate" ('116 patent claim 1)	Plain meaning.
"for use in detergent products storable in PVA film packaging" ('514 patent claim 1)	Preamble is limiting; plain meaning.
"is capable of being stored in a water-soluble PVA film packaging for at least nine months" ('116 patent claim 1)	Plain meaning.
"does not include a zeolite, a perborate or a phosphate" ('116 patent claim 1)	"does not include any zeolite, perborate, or phosphate"

I reserved judgment on the following terms: "a blend encapsulating the percarbonate" ('514 patent claims 1, 8); "a blend which encapsulates the percarbonate" ('116 patent claim 1); and "a phosphate" ('116 patent claim 1).

A.   "a blend encapsulating the percarbonate" ('514 patent claims 1, 8); "a blend which encapsulates the percarbonate" ('116 patent claim 1).

During oral argument Plaintiff and Defendants agreed to construe encapsulate as "enclosing and surrounding the percarbonate." (D.I. 59 at 34:14-18, 35:21-24, 36:2-4). The Court will adopt that construction. For the term "a blend" the Court will adopt the following

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construction: "one or more physically intermingled components." The reasoning for the Court's construction is detailed below. The Court adopts the following full construction for the claim terms:

Claim Term	Construction
"a blend encapsulating the percarbonate" ('514 patent claims 1, 8)	"physically intermingled components enclosing and surrounding the percarbonate"
"a blend which encapsulates the percarbonate" ('116 patent claim 1)	"physically intermingled components which enclose and surround the percarbonate"

1.   Background of the '514 and '116 patents.

Sodium percarbonate is a bleaching agent used in detergent products. (D.I. 44-2 ex. A 1:29-30; D.I. 44-3 ex. B 1:12-13, 1:22-23). Sodium percarbonate is unstable when "combined with components of a high moisture content." (D.I. 44-2 ex. A 1:30-32; D.I. 44-3 ex. B 1:22-25). The invention ensures the percarbonate is stable in a water-soluble film that can be stored for at least nine months. (D.I. 44-2 ex. A 4:45-48; D.I. 44-3 ex. B, 1:54-57). This "fully built detergent" system can then be used in commercial laundries, domestic dishwashers, and domestic washing machines. (D.I. 44-2 ex. A 1:26-27, 1:45-48; D.I. 44-3 ex. B 1:20; 1:44-45). The percarbonate is stabilized when surrounded by a blend of chemical components. (D.I. 44-2 ex. A 1:50-52, 2:17-19; D.I. 44-3 ex. B 1:47-50, 1:55-56).

In the specification of the '514 patent the inventor indicates the preferred embodiment of the chemical blend surrounding the percarbonate is sulphate, carboxymethyl cellulose and a nonionic surfactant. (D.I. 44-2 ex. A 1:53-54). The '116 patent describes the blend as a combination of sulphate, carboxymethyl cellulose, and a nonionic surfactant with the ideal embodiment consisting of sodium sulphate, carboxymethyl cellulose, and a nonionic surfactant. (D.I. 44-3 ex. B 1:49-51, 1:58-59). Both the '514 and '116 patents describe a "powder/liquid

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