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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KONINKLIJKE PHILIPS
ELECTRONICS NV, et al.,

Plaintiffs,

v.

DEFIBTECH LLC, et al.,

Defendants.

CASE NO. C03-1322JLR

ORDER

I. INTRODUCTION

This matter comes before the court on the parties' request for construction of disputed claim terms. At the court's direction, the parties selected ten claim terms for a "first round" of claim construction. After an October 11, 2005 Markman hearing, the court construed the first round of terms in an October 25 order (Dkt. # 119). The court directed the parties to narrow their disputes in light of the October 25 order, but they were largely unable to do so. The court held a second Markman hearing on all remaining terms on December 8, 2005, and now construes those terms.

II. BACKGROUND & ANALYSIS

This order should be read in conjunction with the court's October 25 order. That order contained an introduction to the technology and patents at issue as well as an

1 overview of the law of claim construction. The court will not repeat that discussion
2 here.

3 The remaining terms raise only one legal issue that did not arise in the October 25
4 order: the construction of means-plus-function claims. Section 112 of the Patent Act
5 permits an inventor to draft claims in means-plus-function format. 35 U.S.C. § 112;
6 Micro Chem., Inc. v. Great Plains Chem. Co., 194 F.3d 1250, 1257-58 (Fed. Cir. 1999).
7 Once a court has identified a means-plus-function claim, it must clarify what the recited
8 function is, and then must hunt in the specification for “structure” that fulfills the stated
9 function. Id. at 1258. A court must interpret a means-plus-function claim to encompass
10 “all structure in the specification corresponding to that element and equivalent
11 structures.” Id.

12
13 For each of the asserted means-plus-function terms in this action, the parties have
14 agreed that the terms are in means-plus-function format, and have agreed on the recited
15 function. The court’s task in construing the terms is therefore limited to identifying
16 corresponding structure in the specification. The court will address more particularized
17 legal issues regarding the interpretation of means-plus-function claims as they arise.

18
19 The court now turns to the construction of the remaining terms. As in the
20 October 25 order, it will begin with terms from the shock delivery patents and conclude
21 with terms from the self-test patents.

22 **A. Construing Terms in the Shock Delivery Patents**

23 **1. Terms appearing solely in the ‘212 Patent**

24 **a. “Timer” and “timing signal corresponding to the application of**
25 **electrical energy”**

26 At oral argument, the court proposed definitions for “timer,” which appears in
27 Claims 1 and 9, and “timing signal,” which appears only in Claim 1. The court proposed
28

1 that a “timer” is a “device or component capable of measuring time and capable of
2 producing output corresponding to its time measurements,” and that a “timing signal
3 corresponding to the application of electrical energy” is a “signal that the timer produces
4 corresponding to the elapsed time of a defibrillator shock pulse or phase of a pulse.”
5 These definitions are derived from the three paragraphs in the specification that discuss
6 the timer. ‘212 Patent at 7:3-31. The parties seemed to accept these definitions when
7 the court proposed them. In any event, they offer no compelling evidence in support of
8 different definitions.
9

10 The court notes that the specification describes the timer as capable of cutting off
11 a defibrillator pulse when it receives information from another device indicating that the
12 pulse voltage or current has dropped below a threshold value. ‘212 Patent at 7:12-15,
13 7:29-31. Defibtech suggested at oral argument that the “timer” of Claims 1 and 9
14 requires such a capability, but the court finds no indication that the inventors intended
15 such a limitation on the claimed timer.
16

17 **b. “Plurality of electronic switches” and “means for selectively**
18 **connecting the energy source to the electrodes in a first polarity**
and a second polarity”

19 The “plurality of electronic switches” of Claim 8 and the “means for selectively
20 connecting the energy source to the electrodes in a first polarity and a second polarity” of
21 Claim 1 refer to the same element of the defibrillator. This element is generally
22 described as a “connecting mechanism” or “connector” that connects the defibrillator’s
23 energy source to the electrodes for shock delivery. ‘212 Patent at 6:44-50 & Fig. 10,
24 element no. 34. Subsequently, the patent describes the connector in substantially greater
25 detail as a specific five-switch configuration. ‘212 Patent at 6:61-7:52 & Fig. 11. The
26 dispute over these terms is whether, as Defibtech contends, Claims 1 and 8 require this
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1 five-switch configuration. Philips contends that any of numerous configurations of two
2 or more switches known to persons of skill in the art would satisfy Claims 1 and 8.

3 The means-plus-function term in Claim 1 presents the easier interpretation issue.
4 Philips points to the general disclosure of a “connecting mechanism” as sufficient
5 disclosure of the structure corresponding to the claimed function. The court disagrees.
6 The patent’s discussion of a “connecting mechanism” discloses no structure at all. As
7 Defibtech noted in oral argument, the “connecting mechanism” corresponds to no more
8 than a two-dimensional box in Figure 10 of the ‘212 Patent. This is insufficient, as a
9 matter of law, to fulfill the inventors’ duty to pinpoint a structure that corresponds to the
10 function cited in a means-plus-function term. See Med. Instrumentation & Diagnostics
11 Corp. v. Elekta AB, 344 F.3d 1205, 1211 (Fed. Cir. 2003).¹ The court cannot designate
12 the “connector” in Figure 10 and the written description of a “connecting mechanism” as
13 corresponding structure, because they serve merely as an introduction to the five-switch
14 configuration in Figure 11 and the accompanying disclosure of actual structure. See
15 Tex. Digital Sys., Inc. v. Telegenix, Inc., 308 F.3d 1193, 1212 (Fed. Cir. 2002).
16 Moreover, Philips cannot cure the lack of structure other than the five-switch
17 configuration by noting that “[o]ther switches and switch configurations may be used, of
18 course, without departing from the scope of the invention.” ‘212 Patent at 7:48-49. An
19 inventor cannot meet his obligation to disclose structure corresponding to a means-plus-
20 function term merely by stating that the structure will be obvious to those of skill in the
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25 ¹Med. Instrumentation and other Federal Circuit precedent focus on an inventor’s duty
26 to “clearly link[]” structure in the specification to a means-plus-function term. 344 F.3d at
27 1211. Philips did not fail to “clearly link” the “connecting mechanism” to its means-plus-
28 function term; it failed instead to pinpoint any structure for the connecting mechanism other
than the five-switch configuration.

1 art. Med. Instrumentation, 344 F.3d at 1212 (“It is important to determine whether one
2 of skill in the art would understand the specification itself to disclose the structure, not
3 simply whether that person would be capable of implementing that structure.”). Claim 1
4 sends the public on a search for structure corresponding to a “means for selectively
5 connecting.” It would be incongruous to conclude that the inventors satisfied their
6 obligation to reward that search by disclosing nothing more than a “connecting
7 mechanism.” The only disclosure of structure corresponding to the “means for
8 selectively connecting . . .” is the five-switch configuration noted above, and the court
9 interprets the means-plus-function claim accordingly.²

11 The “plurality of electronic switches” in Claim 8 presents a closer question.
12 Freed from the strictures of means-plus-function format, the inventors arguably signaled
13 their intent to permit other switch configurations by noting that such configurations
14 would be apparent to those of skill in the art. ‘212 Patent at 7:48-49. In addition,
15 because Claim 11 depends from Claim 8 and discloses the five-switch configuration
16 explicitly, claim differentiation requires the court to presume that Claim 8 encompasses
17 other configurations.

19 Defibtech insists that Philips disavowed all but the five-switch configuration as a
20 “plurality of switches” in the prosecution of the patent. Defibtech points to an office
21 action in which the examiner rejected Claims 1 and 8 as obvious in light of the Swanson
22

23 ²The court notes that Claim 7, which depends from Claim 1, discloses the five-switch
24 configuration. Claim differentiation compels the presumption that the terms have different
25 scope. In this case, however, because the “means for selectively connecting” has no
26 corresponding structure other than the five-switch configuration, Defibtech has overcome the
27 presumption. Laitram Corp. v. Rexnord, Inc., 939 F.2d 1533, 1538 (Fed. Cir. 1991) (“A
28 means-plus-function limitation is not made open-ended by the presence of another claim
specifically claiming the disclosed structure which underlies the means clause or an equivalent
of that structure.”).

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