IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VARIAN MEDICAL SYSTEMS, INC., Plaintiff, v. ELEKTA AB, ELEKTA HOLDINGS U.S., INC., ELEKTA INSTRUMENT AB, and ELEKTA INC., Defendants.	:	C.A. No. 15-871-LPS

ORDER

At Wilmington, this **19th** day of **February, 2017**:

For the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that the disputed claim terms of U.S. Patent No. 6,888,919 are construed as follows:

Claim Term	**Court's Construction**
gantry [claims 1-4, 9, 11, and 13]	structure that is designed to hold radiation source(s) and/or imager(s)
[gantry] that is rotatable [claims 1-4, 9, 11, and 13]	[gantry] that is configured to revolve on an axis
articulable end of the [second gantry] [claims 1-4, 9, 11, and 13]	the jointed end portion of the [second gantry]
wherein the first therapeutic radiation source to propagate therapeutic energy at a first energy level [claim 3]	wherein the first therapeutic radiation source is capable of propagating therapeutic energy at a first energy level

wherein at least one second radiation source to propagate diagnostic energy at a second energy level [claim 4]	wherein at least one second radiation source is capable of propagating diagnostic energy at a second energy level

HON. LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

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MEMORANDUM OPINION

February 16, 2017
Wilmington, Delaware

STARK, U.S. District Judge:

Varian Medical Systems, Inc. ("Varian") filed suit against Defendants Elekta AB, Elekta Holdings U.S., Inc., Elekta Instrument AB, and Elekta Inc. (collectively, "Elekta"), alleging that Elekta's Leksell Gamma Knife Icon product infringes Varian's U.S. Patent No. 6,888,919, which generally describes and claims a radiotherapy machine. (*See* D.I. 52 at ¶¶ 2-3, 32) Presently before the Court is the issue of claim construction. The parties submitted technology tutorials (*see* D.I. 69, 70) and briefs (*see* D.I. 71, 72, 76, 77). Both parties also submitted expert declarations (*see* D.I. 73, 76 Ex. C, 78), which the Court has considered. The Court held a claim construction hearing on December 19, 2016. (*See* D.I. 126 ("Tr.")

I. LEGAL STANDARDS

The ultimate question of the proper construction of a patent is a question of law. *See Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 837 (2015) (citing *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 388-91 (1996)). "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) (internal quotation marks omitted). "[T]here is no magic formula or catechism for conducting claim construction." *Id.* at 1324. Instead, the court is free to attach the appropriate weight to appropriate sources "in light of the statutes and policies that inform patent law." *Id.*

"[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 (internal citations and quotation marks omitted). "[T]he ordinary meaning of a

claim term is its meaning to the ordinary artisan after reading the entire patent." *Id.* at 1321 (internal quotation marks omitted). The patent specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

While "the claims themselves provide substantial guidance as to the meaning of particular claim terms," the context of the surrounding words of the claim also must be considered. *Phillips*, 415 F.3d at 1314. Furthermore, "[o]ther claims of the patent in question, both asserted and unasserted, can also be valuable sources of enlightenment . . . [b]ecause claim terms are normally used consistently throughout the patent . . . ." *Id.* (internal citation omitted).

It is likewise true that "[d]ifferences among claims can also be a useful guide . . . . For example, the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." *Id.* at 1314-15 (internal citation omitted). This "presumption is especially strong when the limitation in dispute is the only meaningful difference between an independent and dependent claim, and one party is urging that the limitation in the dependent claim should be read into the independent claim." *SunRace Roots Enter. Co., Ltd. v. SRAM Corp.*, 336 F.3d 1298, 1303 (Fed. Cir. 2003).

It is also possible that "the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs." *Phillips*, 415 F.3d at 1316. It bears emphasis that "[e]ven when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using words or expressions of manifest exclusion or restriction." *Hill-Rom Servs., Inc. v. Stryker*

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