

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

KIT CHECK, INC.,

Plaintiff,

v.

HEALTH CARE LOGISTICS, INC.,

Defendant.

**Case No. 2:17-cv-01041**

**Judge Algenon L. Marbley**

**Magistrate Judge Chelsey M. Vascura**

**PLAINTIFF KIT CHECK, INC.'S OPENING CLAIM CONSTRUCTION BRIEF**

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“[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.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (internal quotation marks omitted). The specification “is always highly relevant to the claim construction analysis” and serves as “the single best guide to the meaning of a disputed term.” *Vitronics Corp. v. Conceptor, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). However, “[e]ven when the specification describes only a single embodiment, the claims of the patent will not be read restrictively” as covering only that embodiment, unless there is “a clear intention to limit the claim scope using ‘words or expressions of manifest exclusion or restriction.’” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004) (citations omitted).

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A person of ordinary skill in the art at the time of the invention of the asserted patents would have had (1) a Bachelor’s Degree in Electrical Engineering or Computer Science and at least 3 years of industrial or academic experience in wireless communications technology and computer systems, including experience with RFID systems, or, equivalently, (2) a Bachelor’s Degree in Electrical Engineering or Computer Science, with a master’s degree in Electrical Engineering or Computer Science and at least 1 year of industrial or academic experience in wireless communications technology and computer systems, including experience with RFID systems.

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HCL has offered constructions for three terms in order to require that all medicine containers must have multiple doses—as opposed to single-dose containers. Nothing in the patents limits the claims to “multi-dose” medicines. HCL is simply making up a limitation out of whole cloth in order to create a non-infringement defense. HCL’s arguments rest on (a) omitting a key part of the claim terms, and (b) effectively changing the language of the omitted part of the term.

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2.	“the particular medicinal container is configured to store a particular medication of the plurality of medications” .....	10
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HCL’s proposed constructions of “pharmacy item” and “pharmacy kit” seek to improperly broaden the claims so that a kit can contain any “medical supply” instead of an item from a “pharmacy.” However, the claims plainly use the word “pharmacy” to limit the scope of the invention to pharmacy kits that contain pharmacy items. HCL’s constructions effectively delete the word “pharmacy” from the claims, and are inconsistent with the specification, which expressly distinguishes pharmacy kits from other types of medical kits.

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The patentee chose to include the term “segment” in some claims but not in others. HCL’s proposed constructions for “pharmacy kit template” and “template” improperly import the term “segment” into claims that lack that term. HCL’s proposed constructions therefore render the term “segment” superfluous and improperly limit the scope of the claims in violation of fundamental tenets of claim construction.

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The patentee expressly provided a special definition of the term “segment” in the specification. When the specification “reveal[s] a special definition given to a claim term by the patentee . . . the inventor’s lexicography governs.” *Phillips*, 415 F.3d at 1319-1320. KCI’s construction adopts the specification’s definition. HCL’s construction improperly attempts to narrow the scope of the term, in contradiction of the specification’s express definition.

E. “substitute first pharmacy item”/”substitute first medication” ..... 22

The parties are already construing the term “pharmacy item,” and “substitute” should be construed according to its plain and ordinary meaning. Further, HCL’s construction improperly attempts to require that the substitute be “identified by the template.” But that requirement is specified by a separate limitation in certain claims; for claims that lack this additional language, it would be improper to impose it through HCL’s strained construction.

F. “printable portion including an RFID device” or “printable portion” ..... 24

The claims and the specification make clear that the “printable portion” of the RFID tags is a portion that is capable of being printed with information. HCL’s construction tries to impermissibly limit the claims to an example from the specification, *i.e.*, the use of an RFID printer, where no such limitation exists in the claims.

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35 U.S.C. § 112, ¶ 6 states that “[a]n element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.” “Means-plus-function claiming occurs when a claim term is drafted in a manner that invokes 35 U.S.C. § 112, para. 6.” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1347 (Fed. Cir. 2015). In order to determine whether a claim limitation is a means-plus-function limitation, “[t]he standard is whether the words of the claim are understood by persons of ordinary skill in the art to have sufficiently definite meaning as the name for structure.” *Williamson*, 792 F.3d at 1349.

A. HCL’s Terms Fail To Properly Identify Both The Alleged Means And Function. .... 28

Most of the terms identified by HCL are not even arguably in means-plus-function form. They fail to identify the alleged means, fail to identify the alleged functions, and/or lump together multiple alleged means and functions in a single term. HCL improperly invites the Court to rule on a number of unidentified permutations. HCL’s lack of clarity in identifying its terms is fatal to its argument.

B. There Is A Presumption Against Construing The Terms As Means-Plus-Function Here Because None Of The Asserted Claims Make Use Of The Term “Means.” ..... 30

The Federal Circuit has consistently recognized that the failure to use the word “means” in the claims creates a rebuttable presumption that 35 U.S.C. § 112, ¶ 6 does not apply. *Williamson*, 792 F.3d at 1348. Here, none of the asserted terms include the term “means.” Accordingly, there is a presumption that the terms are not means-plus-function limitations.

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HCL cannot overcome the presumption that the limitations are not means-plus-function limitations. Numerous courts have already looked at the same, or similar, terms, finding that such terms are not means-plus-function. As explained by KCI’s expert, a person of ordinary skill in the art would understand the terms connote sufficiently definite meaning as the name for structure, in accordance with their standard dictionary definitions.

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