

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

QXMédical, LLC,

Case No. 0:17-cv-01969 (PJS/TNL)

*Plaintiff and Counterclaim-
Defendant,*

**JOINT CLAIM CONSTRUCTION
STATEMENT**

v.

Vascular Solutions, Inc.,

*Defendant and Counterclaim-
Plaintiff.*

The Parties to this action, Plaintiff and Counterclaim-Defendant QXMédical, LLC (“QXMédical”) and Defendant and Counterclaim-Plaintiff Vascular Solutions LLC¹ (“VS”), hereby serve their Joint Claim Construction Statement. The Parties request that the Court schedule a claim construction hearing. Pursuant to the Pretrial Scheduling Order (Dkt. 20 at 4-5), set forth below are the claim terms (and their corresponding claims) that the Parties have identified as in dispute and which require construction by the Court, each Party’s proposed construction for the disputed claim terms, and an identification of intrinsic and extrinsic evidence known to the Party on which it intends to rely.

¹ VS was recently converted from a corporation to an LLC. VS’s motion to amend its pleadings to reflect this change is currently pending. *See* Dkt. 24.

I. CONSTRUCTIONS ON WHICH THE PARTIES AGREE

QXMédical and VS (collectively, the “Parties”) have agreed on the following constructions for the asserted patents²:

#	Claim Term	Agreed Construction
1.	“reinforced portion” (claim 1 of ’380 Patent)	“portion made stronger by additional material or support”
2.	“flexural modulus” (claim 52 of ’776 Patent)	“a numeric, dimension-independent material property that captures the tendency of a material to bend”
3.	“proximal” (throughout asserted claims)	“a position that is nearer to, or in a direction toward, the physician”
4.	“distal” (throughout asserted claims)	“a position that is more distant from, or in a direction away from, the physician”

II. THE PARTIES’ PROPOSED CONSTRUCTIONS OF DISPUTED CLAIM TERMS

The Parties’ proposed constructions and citations to extrinsic and intrinsic evidence are set forth in the table attached hereto as Exhibit 1.

III. WITNESS TESTIMONY

VS intends to rely on the attached disclosure of VS’s expert Howard Root. A summary of Mr. Root’s opinions is attached hereto as Exhibit 2. VS does not intend to provide live testimony from Mr. Root during a *Markman* hearing, unless the Court believes such testimony would be of assistance.

² The asserted patents are U.S. Reissued Patent Nos. RE45,380 (“’380 Patent”) claims 1, 3, 8; RE45,760 (“’760 Patent”) claims 25, 30, 31 32, 48; RE45,776 (“’776 Patent”) claims 25, 32, 36, 52, 53; and RE46,116 (“’116 Patent”) claims 25, 34, 53. Additionally, VS has moved the Court for leave to assert claims 3 and 8 of U.S. Patent No. 8,048,032 (“’032 Patent”) and claim 9 of U.S. Patent No. 8,142,413 (“’413 Patent”).

QXMédical contends that the disputed claim terms can be construed without expert testimony. If VS is permitted to offer expert testimony, then QXMédical will offer expert testimony from Brian J. Brown. A summary of Mr. Brown's opinions is set forth in attached Exhibit 3.

IV. TECHNOLOGY TUTORIAL

The parties believe the Court may benefit from a technology tutorial made in connection with the claim construction hearing. The parties propose presenting a technology tutorial through counsel as part of the claim construction hearing.

VS intends to present expert testimony concerning the technology and the claim construction issues through the disclosure of Howard Root, and will be prepared to present Mr. Root for live testimony at the hearing, if the Court would find live testimony helpful.

QXMédical believes that the claim terms can be construed without expert testimony. If the Court considers expert testimony, then QXMédical will offer expert testimony from Brian J. Brown. QXMédical is prepared to present Mr. Brown for live testimony at the claim construction hearing, if the Court would find live testimony helpful.

V. ACKNOWLEDGEMENT

Pursuant to the Pretrial Scheduling Order, the Parties hereby acknowledge that "the joint claim construction statement contained herein shall not be amended, modified, changed or the like without good cause shown."

DATED: January 10, 2018

BY:

s/ Courtland C. Merrill

COURTLAND C. MERRILL
Minn. ID # 311984
cmerrill@anthonyostlund.com

ANTHONY OSTLUND
BAER & LOUWAGIE P.A.
3600 Wells Fargo Center
90 South 7th Street
Minneapolis, MN 55402
Telephone: +1.612.349.6969
Facsimile: +1.612.349.6996

*Attorney for Plaintiff and
Counterclaim Defendant
QXMédical, LLC*

s/ J. Thomas Vitt

J. THOMAS VITT
Minn. ID # 0183817
tvitt@jonesday.com

JONES DAY
90 South 7th Street, Suite 4950
Minneapolis, MN 55402
Telephone: +1.612.217.8858
Facsimile: +1.844.345.3178

*Attorney for Defendant and Counterclaim
Plaintiff Vascular Solutions, Inc.*

Exhibit 1

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