

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN INK APPLICATION DEVICES AND
COMPONENTS THEREOF AND METHODS
OF USING THE SAME**

Inv. No. 337-TA-832

**ORDER 21: CONSTRUING THE TERMS OF THE ASSERTED CLAIMS OF
THE PATENT AT ISSUE**

(February 8, 2013)

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I. INTRODUCTION

This Investigation was instituted by the Commission on March 6, 2012 to determine whether certain ink application devices and components thereof infringe U.S. Patent No. 6,505,530 (the “’530 patent”).¹ See 77 Fed. Reg. 13,351 (Mar. 6, 2012). T-Tech Tattoo, Inc. (“T-Tech”) is the only respondent.²

Pursuant to Ground Rule 5A, a *Markman* hearing was held January 4, 2013 regarding the interpretation of claims 1–3, 7, 8, 19, and 20 of the ’530 patent.

Prior to the hearing, Complainants MT. Derm GmbH and Nouveau Cosmetique USA, Inc. (“Complainants”), T-Tech and the Commission Investigative Staff (“Staff”) met and conferred in an effort to reduce the number of disputed claim terms to a minimum. The parties also filed initial and reply claim construction briefs, wherein each party offered its construction for the claim terms in dispute, along with support for its proposed interpretation. After the hearing and pursuant to Order No. 9, the parties submitted an updated Joint Claim Construction Chart.³

¹ Complainants are the owner, by assignment, of the ’530 patent. (Compl. at ¶ 52; see also Compl. Exs. 5-6.)

² The other named respondents have all been found in default. (See Order No. 7 (May 31, 2012); Notice of Comm’n Determination To Review In Part An Initial Determination Finding All Respondents In Default (June 29, 2012) (“The Commission has determined not to review the subject ID findings that Yiwu and Guangzhou are in default.”).)

³ The claim terms discussed in detail in this Order were identified in the Updated Joint Proposed Claim Construction Chart as being agreed upon or remaining in dispute. For convenience, the briefs and chart submitted by the parties are referred to hereafter as:

CMIB	Complainants’ Initial <i>Markman</i> Brief
CMRB	Complainants’ Reply <i>Markman</i> Brief
RMIB	T-Tech’s Initial <i>Markman</i> Brief
RMRB	T-Tech’s Reply <i>Markman</i> Brief
SMIB	Staff’s Initial <i>Markman</i> Brief
SMRB	Staff’s Reply <i>Markman</i> Brief
JC	Updated Joint Proposed Claim Construction Chart

II. IN GENERAL

The claim terms construed in this Order are done so for the purposes of this Section 337 Investigation. Those terms not in dispute need not be construed. *See Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311, 1323 (Fed. Cir. 2004) (noting that the administrative law judge need only construe disputed claim terms).

Hereafter, discovery and briefing in this Investigation shall be governed by this construction of the claim terms. All other claim terms shall be deemed undisputed and shall be interpreted by the undersigned in accordance with “their ordinary meaning as viewed by one of ordinary skill in the art.” *Apex Inc. v. Raritan Computer, Inc.*, 325 F.3d 1364, 1371 (Fed. Cir. 2003), *cert. denied*, 540 U.S. 1073 (2003).

III. RELEVANT LAW

“An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*) (internal citations omitted), *aff'd*, 517 U.S. 370 (1996). Claim construction is a “matter of law exclusively for the court.” *Id.* at 970-71. “The construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims.” *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000).

Claim construction focuses on the intrinsic evidence, which consists of the claims themselves, the specification, and the prosecution history. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*); *see also Markman*, 52 F.3d at 979. As the Federal Circuit in *Phillips* explained, courts must analyze each of these components to determine the “ordinary

and customary meaning of a claim term” as understood by a person of ordinary skill in the art at the time of the invention. 415 F.3d at 1313. “Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language.” *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Grp., Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001).

“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*, 415 F.3d at 1312 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). “Quite apart from the written description and the prosecution history, the claims themselves provide substantial guidance as to the meaning of particular claims terms.” *Id.* at 1314; *see also Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001) (“In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to ‘particularly point[] out and distinctly claim[] the subject matter which the patentee regards as his invention.’”). The context in which a term is used in an asserted claim can be “highly instructive.” *Phillips*, 415 F.3d at 1314. Additionally, other claims in the same patent, asserted or unasserted, may also provide guidance as to the meaning of a claim term. *Id.*

The 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.” *Id.* at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). “[T]he 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.” *Id.* at 1316. “In other cases, the specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor.” *Id.* As a general rule, however, the particular examples or

embodiments discussed in the specification are not to be read into the claims as limitations. *Id.* at 1323. In the end, “[t]he construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be . . . the correct construction.” *Id.* at 1316 (quoting *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)).

In addition to the claims and the specification, the prosecution history should be examined, if in evidence. *Id.* at 1317; *see also Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004). The prosecution history can “often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Phillips*, 415 F.3d at 1317; *see also Chimie v. PPG Indus. Inc.*, 402 F.3d 1371, 1384 (Fed. Cir. 2005) (“The purpose of consulting the prosecution history in construing a claim is to ‘exclude any interpretation that was disclaimed during prosecution.’”).

When the intrinsic evidence does not establish the meaning of a claim, then extrinsic evidence (*i.e.*, all evidence external to the patent and the prosecution history, including dictionaries, inventor testimony, expert testimony, and learned treatises) may be considered. *Phillips*, 415 F.3d at 1317. Extrinsic evidence is generally viewed as less reliable than the patent itself and its prosecution history in determining how to define claim terms. *Id.* at 1317. “The court may receive extrinsic evidence to educate itself about the invention and the relevant technology, but the court may not use extrinsic evidence to arrive at a claim construction that is clearly at odds with the construction mandated by the intrinsic evidence.” *Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 977 (Fed. Cir. 1999).

If, after a review of the intrinsic and extrinsic evidence, a claim term remains ambiguous, the claim should be construed so as to maintain its validity. *Phillips*, 415 F.3d at 1327. Claims, however, cannot be judicially rewritten in order to fulfill the axiom of preserving their validity. *See Rhine v. Casio, Inc.*, 183 F.3d 1342, 1345 (Fed. Cir. 1999). Thus, “if the only claim construction that is consistent with the claim’s language and the written description renders the claim invalid, then the axiom does not apply and the claim is simply invalid.” *Id.*

IV. LEVEL OF ORDINARY SKILL IN THE ART

Complainants submit that one of ordinary skill in the art at the time of the ’530 patent invention would be “a mechanical engineer or the like familiar with mechanism design and fluidic handling mechanisms, having a Bachelor’s degree in engineering or its equivalent and about two to four years experience.” (CMIB at 11 n.2 (citing Trumper Decl. at ¶ 18).) Staff concurs. (SMIB at 6 (“the Staff agrees that a person of ordinary skill in the relevant art would possess a Bachelor’s degree in mechanical engineering or a similar discipline and have at least two years of experience in the design of fluid-handling mechanisms.”).)

T-Tech did not address this issue in either its briefs or at the *Markman* hearing.

Accordingly, as to “one of ordinary skill in the art,” the undersigned finds that, with respect to the asserted patent, one of ordinary skill in the art would have a bachelor’s degree in mechanical engineering, or an equivalent field, with at least two years of experience in the design of fluid-handling mechanisms. In addition, one of ordinary skill in the art shall be commensurate with the time of the respective invention, *i.e.*, the effective filing date for the patent-in-suit.

V. THE '530 PATENT

A. Overview

The '530 patent is entitled "Ink Application Device For Tattooing Or For Making Permanent Make-Up." The '530 patent issued on January 14, 2003 to named inventors Frank Adler, Walter Lisec, and Gerhard Türk, and is assigned on its face to Medium-Tech Medizingeräte GmbH. The '530 patent is directed to "an ink application device for tattooing or for making permanent make-up." ('530 patent at 1:11-12.) The '530 patent has twenty claims of which claims 1-3, 7, 8, 19, and 20 are asserted against T-Tech. (Compl. at ¶¶ 55-65.) Claims 1 and 19 are independent claims. Claims 2, 3, and 7 depend from claim 1, claim 8 depends from claim 7, and claim 20 depends from claim 19. The asserted claims read as follows (with the first instance of the agreed-upon term highlighted in *italics* and the first instance of the disputed terms highlighted in **bold**):

1. An ink application device for tattooing or for making permanent make-up, comprising: a basic module having a handle and an **integrated needle drive**; and a disposable module including an outer housing substantially surrounding a needle which is supported at one end of the disposable module by a needle nozzle and which is supported at another end of the disposable module by a portion that can contact the integrated needle drive, the needle being movable relative to the outer housing, and an ink receiving portion disposed around the needle, and *means for allowing simultaneous removal of the entire disposable module from the basic module.*
2. An ink application device for tattooing or for making permanent make-up as claimed in claim 1, wherein the ink receiving portion has a volume sufficient for one application of ink.
3. An ink application device for tattooing or for making permanent make-up as claimed in claim 1, wherein the needle is disposed at least partially in said ink receiving portion so that during operation of the device, needle movement transports ink through the needle nozzle.
7. An ink application device for tattooing or for making permanent make-up as claimed in claim 1, wherein the portion that can contact the integrated needle drive is the needle shaft.

8. An ink application device for tattooing or for making permanent make-up as claimed in claim 7, wherein the needle shaft is cylindrical.
19. A method of using an ink application device for tattooing or for making permanent make-up, comprising the steps of: providing a basic module having a handle and an integrated needle drive; providing a disposable module including an outer housing substantially surrounding a needle which is supported at one end of the disposable module by a needle nozzle and which is supported at another end of the disposable module by a portion that can contact the integrated needle drive, an ink receiving portion disposed around the needle, applying ink to a surface; and **simultaneously removing the entire disposable module from the basic module** directly following an application of ink using the ink application device.
20. The method of using an ink application device for tattooing or for making permanent make-up defined in claim 19, further comprising the step of: replacing another disposable module on the basic module to allow another application of ink.

B. Agreed-Up and Disputed Claim Terms

1. Construction of Agreed-Up Claim Term

- a) **“means for allowing simultaneous removal of the entire disposable module from the basic module”**

The parties agree that the term “means for allowing simultaneous removal of the entire disposable module from the basic module,” which appears in claim 1 of the '530 patent, is subject to 35 U.S.C. § 112(6). (JC at 2.) The parties also agree that the claimed function is “allowing simultaneous removal of the entire disposable module from the basic module” and the corresponding structure is “(1) a rear housing part 1 of the disposable module that is connected to, and detachable from, the basic module, as shown in Figures 1 and 2 of the '530 patent; (2) an optional magnetic connection between elements 10 and 31, as shown in Figure 2 and discussed at col. 4, lines 26-34; and (3) an optional clamping device provided in the basic module to connect the needle.” (*Id.*)

Accordingly, the undersigned hereby adopts the parties' proposed construction and shall construe this term as:

Function: *allowing simultaneous removal of the entire disposable module from the basic module*

Structure: *(1) a rear housing part 1 of the disposable module that is connected to, and detachable from, the basic module, as shown in Figures 1 and 2 of the '530 patent; (2) an optional magnetic connection between elements 10 and 31, as shown in Figure 2 and discussed at col. 4, lines 26-34; and (3) an optional clamping device provided in the basic module to connect with the needle.*

2. Construction of Disputed Claim Terms

a) “integrated needle drive”

The term “integrated needle drive” appears in claims 1, 7, and 19 of the '530 patent. The parties disagree on the proper claim construction and have proposed the following constructions:

COMPLAINANTS	T-TECH	STAFF
Plain and ordinary meaning	a needle drive that consists of different parts for driving the needles, that are installed together by manufacturer	a unified structure comprising all of the components required to drive a needle

Complainants argue that nothing in the '530 patent's specification or prosecution history compels any meaning for this term other than its plain and ordinary meaning. (CMIB at 11; CMRB at 2.) According to Complainants, the specification broadly describes the needle drive and there is no evidence that the patentee intended to limit the term to specific structures. (CMIB at 12 (citing '530 patent at 2:25-32, 3:43-49).) Moreover, Complainants contend that “the specification places no restriction on the type of needle drive, the particular components that constitute a needle drive, or even how the needle drive must be ‘integrated’ into the basic module.” (*Id.*) Complainants therefore submit that the only limitation on the needle drive is that it is made a part of the basic module. (*Id.* (citing Complainants' Ex. A at ¶¶ 104-08).)

Complainants disagree with Staff's proposed construction because nothing in the specification or prosecution history requires limiting this term such that “all of the components”

that drive the needle must be comprised in a “unified structure” in the base module. (*Id.* at 13.) In fact, Complainants argue that the “integrated needle drive” is distinct from the base module. (*Id.* (citing the ’530 patent at 2:41-45).) Complainants also argue that “integrated” refers to the “drive” being included with the handle. (CMRB at 5-8 (citing ’530 patent at Abstract, 2:19-22).) Complainants also contend that Staff’s proposed construction is inconsistent with the commonly understood meaning of “integrated,” which broadly refers to making some component a part of a larger unit or joining a component with something else. (CMIB at 14 (citing Complainants’ Ex. F).) According to Complainants, one of ordinary skill in the art would understand “integrated” to mean some portion of one component being integrated with another and that complete integration is not required. (*Id.* (citing Complainants’ Ex. A at ¶¶ 102-03, 112).) Moreover, Complainants argue that Staff’s proposed construction creates ambiguity as to what components are “required to drive a needle.” (*Id.* at 15; CMRB at 9.)

With respect to T-Tech’s proposed construction, Complainants argue that it severely limits the claim scope and that nothing in the specification imposes any limitation on “who installs elements of the needle drive, when the elements are installed, how the elements are installed, or even that the needle drive must ‘consist of different parts.’” (CMIB at 16.) In fact, Complainants submit that the only reference in the ’530 patent to actions of a manufacturer refers to sterile packaging of the disposable module. (*Id.* (citing ’530 patent at 3:55-57).) Thus, Complainants contend that T-Tech’s proposed construction should be rejected as it is not supported by any intrinsic or extrinsic evidence. (*Id.*; CMRB at 3.)

In its initial *Markman* brief, T-Tech argues:

The Basics

The key distinction between a nonintegrated needle drive and an integrated needle drive is the physical nature of the hardware. A nonintegrated needle drive has one or more separate pieces of hardware

or unit, while an integrated needle drive has every part built into one unit by manufacturer.

Serviceability

Integrated needle drive does not provide a flexible solution for users who may want to upgrade their needle drive. An integrated needle drive cannot be modified or changed, and if one part fails, then the whole unit (all of the components) must be replaced. A nonintegrated needle drive, on the other hand, can be easily switched out for another if the user wishes to upgrade or replace its motor unit or the separate hardware.

More important, every tattoo machine has a motor part. The motor is an electronic part. It is not autoclavable. In an integrated needle drive, the part that is in contact to the needle is integrated with the motor together. It can not be removed from the motor. Therefore this part can not be autoclaved also. A nonintegrated needle drive system can make this part a separate part, therefore it is autoclavable.

Non-disposable hand piece/grip shall be scrubbed to remove any adherent matter and then cleaned in an ultrasonic cleaning device and then sterilized before use. This is required by Tattooing Regulations issued by Health Ministry of most of the states in United States. Any part that comes in contact to the needles should be ultrasonic cleaned and sterilized along with the hand piece.

“integrated” is a important feature. “integrated needle drive” is a important claim term here. It should be given a detailed construction.

(RMIB at 2-3.)

In its rebuttal *Markman* brief, T-Tech further argues:

Although MT.Derm’s stated construction of “integrated needle drive” as ordinary meaning – sounds superficially reasonable, it is a trap that, in combination with MT.Derm’s explanation of “drive” being referred to “motor”. MT.Derm’s technical expert opined that the plain and ordinary meaning of this term would “simply mean that the basic module includes some element that drives the needle.” *Id.*, Ex. A at ¶ 112. however, the claims expressly require that the basic module include an “**integrated** needle drive.” T-Tech’s proposed construction and The Staff’s proposed construction give meaning to all the words in the asserted claims. By contrast, in arguing that the phrase “integrated needle drive” merely refers to some element that drives a needle, Complainants appear to be attempting to eliminate “integrated” from the claims. Such a claim construction is rarely correct. See, e.g., *Innova/Pure Water*, 381 F.3d at 1119 (“While not an absolute rule, all claim terms are presumed to have meaning in a claim.”); *Cardiac Pacemakers*, 296 F.3d at 1115.

1. THE “**DRIVE**” IN THE TERM “INTEGRATED NEEDLE **DRIVE**”

Complainants explained that the term “drive” is the interpretation of the phrase “motor”

Complainants’ Initial Markman Brief recites “*The usage of the term “drive” in the tattoo machine art commonly is used to refer to far less than all the components that could potentially be “required to drive the needle.” In particular, “drive” often refers specifically to the motor of the device, while there are other separately identified structures that are connected between the motor and the needle itself that cause the needle to move. For instance, the Chou ‘449 Patent (U.S. Patent No. 5,472,449), which was cited in the prosecution of the ‘530 Patent, uses the term “drive” to refer to the motor, while additional components (e.g., the shaft 34, rocker assembly 40, and needle coupler 20) are connected to the “drive” to transfer motion to the needle*” (Complainants’ Initial Markman Brief P15). Complainants have failed to provide the true here.

The truth is that ‘530 Patent, uses the term “drive” to refer to the motor **and** additional components that are connected with the motor to transfer motion to the needle.

Claim 1 of ‘530 Patent recites: *a **needle** which is supported at one end of the disposable module by a needle nozzle and which is supported at another end of the disposable module by a portion that can **contact** the integrated needle **drive**.* (‘530 Patent at 5:29-33.)

Claim 7 of ‘530 Patent recites: *An ink application device for tattooing or for making permanent make-up as claimed in claim 1, wherein the portion that can contact the integrated needle drive is the needle shaft.* (‘530 Patent at 5:61-64.)

‘530 Patent clearly states that the “drive” connects to the needle. Therefore, this “drive” includes the motor as well as all the structures that connects the motor to the needle. Also clame 1 states that the “drive” is integrated.

In particular, in the complainants language, the definition of the term “motor” from the ‘530 Patent product includes the structures that are installed between the motor and the needle. On the MT.Derm Cheyenne-Tattoo website and their distributor’s websites, the term “motor” is suggested to be structure that includes all parts that are connected between the motor and the needle. All their “motors” are integrated needle drives. The structures that are connected between the motor and the needle are not separate, they are integrated with the motors. This ‘530 Patent Needle Drive does not need to be disassembled and reassembled by the user. (Ex.1 webpages from MT.Derm’s website and distributor’s websites)

2. “INTEGRATED” IN THE TERM “INTEGRATED NEEDLE DRIVE”

T-Tech found the “integrated” meaning in the context of this patent.

‘530 Patent recites: “*Thus, it is common practice that certain parts of the PMU or tattoo device, such as needles, are disposable articles. Other parts can be used several times and thus **must be carefully cleaned and sterilized** after use. Before use, these parts must be taken out of the sterile packaging in which they are stored and then they are mounted in or at the PMU or manual tattoo device. This **requires** a substantial amount of **time and money** and further requires great care from the users to ensure that all parts are sterile when the device is used on customers.*” (‘530 Patent at 1:37-47 emphasis added)

*Due to these hygienic concerns, certain parts of the tattoo machine, including the needle, are removed and disposed after each use. Other parts that could potentially become contaminated must be disassembled in order to carefully clean and sterilize them before reassembling the components for another tattooing procedure. **This process of disassembling multiple components of the tattoo machine** after each use, cleaning and sterilizing the contaminated reusable parts, replacing the disposable needle, **and reassembling all the components** for use with another customer entailed a considerable amount of time, particularly when multiple tattoo procedures are performed during the course of a day. Also, the user was required to expend considerable effort to ensure that all the reusable parts were properly decontaminated and sanitized to ensure that subsequent customers were not exposed to contagions from another’s bodily fluids. (‘530 Patent at 1:37-67.) (Complainants’ Initial Markman Brief P3 emphasis added)*

Considering these problems with conventional tattoo machines, the ‘530 Patent discloses a modular or ink application device design in which a basic module comprises reusable components of the device, such as the handle and the components that drive the needle. In addition, a disposable module is provided that is removably attached to the basic module. The disposable module contains the components of the ink application device that are capable of being infected by bodily fluids during a tattoo procedure. After use, the contaminated disposable module is simply removed and discarded. Then, a new disposable module is attached to the basic module, ensuring the sterility of the device and ink for each customer. (‘530 Patent at 2:11-58.) (Complainants’ Initial Markman Brief P4 emphasis added)

An object of the invention is to eliminate the abovementioned disadvantages and ...” (‘530 Patent at 2:11-12.)

*A **sealing diaphragm** provided, according to the preferred embodiments, between the basic and disposable module ensures that no ink leaks from the ink tank of the disposable module and enters the basic module. This ensures that the reusable basic module is not exposed to bodily fluids and can be reused without having to be sterilized. In addition, the diaphragm also prevents the penetration of impurities, germs or bacteria which may adhere to the basic module, into the sterile disposable module.* ('530 Patent at 3:1-9. emphasis added)

In the context above, we can conclude,

The '530 patent tattoo machine has no ink leaks;

Therefore there are no contaminated reusable parts;

Therefore the '530 patent tattoo machine can be reused without having to be sterilized. This means that the '530 patent needle drive does not need to be disassembled in to multiple components after each use to be cleaned and sterilized. Also it does not need to be reassembled.

Therefore the '530 patent tattoo machine is made with an **integrated** needle drive, which does not need disassembling and reassembling.

WHO INTEGRATE THE NEEDLE DRIVE

'530 Patent recites "*An object of the invention is to eliminate the abovementioned disadvantages and ...*" ('530 Patent at 3:1-9.)

Disassembling and reassembling the reusable parts by the user is one of disadvantages mentioned above. (('530 Patent at 1:37-67.) and (Complainants' Initial Markman Brief P3)). '530 Patent eliminates this problem. '530 Patent integrated needle drive does not need disassembling and reassembling by the user, because it will be integrated by manufacturer. In the '530 Patent context, we can conclude,

Disassembling and reassembling requires a substantial amount of time.

'530 Patent eliminate this disadvantage mentioned above.

The integrated needle drive does not need disassembling and reassembling by the user

DT.Derm Cheyenne-Tattoo website and their distributor's websites, the term "motor" includes all structures that are connected between the motor and the needle. They integrated the electric motor, mechanical linkage that converts the rotatory motion of the motor into the reciprocating motion and a needle drive element that contacts and drives the needle together as one unit. This '530 Patent Needle Drive can not be disassembled and reassembled by the user. They are integrated by the manufacturer. (Ex.1 webpages from MT.Derm's website and distributor's websites)

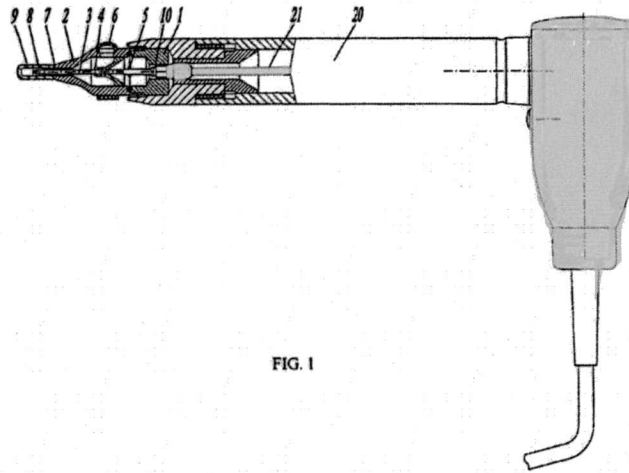


FIG. 1

FIG. 1 show an embodiment of a disposable or hygienic module formed according to the invention. A basic module 20 is formed as a conventional handle. The basic module 20 comprises a drive 21 for a needle 3, which is adapted in accordance with the constructive design of a needle shaft 13. ('530 Patent at 3:43- 48.)

In the FIG. 1, the drive structure as element 21 is given a name "drive 21" in '530 patent. This drive 21 is the portion of the integrated needle drive that contacts the needle claimed in the claim 1 and claim7. This "drive 21" is integrated with the electric motor together and it is not a separate part. (('530 Patent at 5:29-33.) and ('530 Patent at 5:61-64.))

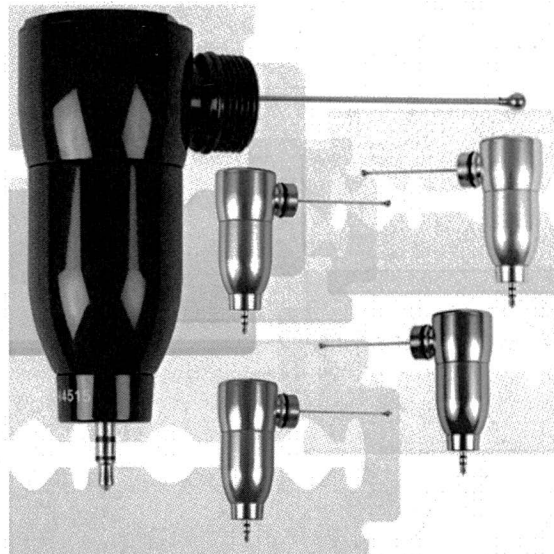


FIG.2

FIG. 2 shows different colors of '530 parent products for customer to choose. The "driver 21" is integrated with the electric motor together. This "integrated" feature can not be found in any other kind of tattoo machines.

MT.Derm understands their '530 Patent ink application is different with conventional tattoo machines. They recite: *"Considering these problems with conventional tattoo machines, the '530 Patent discloses a modular or ink application device design in which a basic module comprises reusable components of the device, such as the handle and the components that drive the needle..."* (Complainants' Initial Markman Brief P3). The components that drive the needle are integrated into a "integrated needle drive". '530 Patent ink application has several features that a conventional tattoo machine does not have, such as this "integrated needle drive". "Integrated needle drive" is not a common term in the tattoo industry. Someone with ordinary skill in the art may not understand the "plain and ordinary meaning". The "plain and ordinary meaning" for "integrated needle drive" does not resolve the parties' dispute in this Investigation over the scope of that claim term. As a result, the term "integrated needle drive" should be construed.

A claim term "needs no construction" or has the "plain and ordinary meaning" may be inadequate when a term has more than one "ordinary" meaning or when reliance on a term's "ordinary" meaning does not resolve the parties' dispute. . . . In this case, the "ordinary" meaning of a term does not resolve the parties' dispute, and claim construction requires the court to determine what claim scope is appropriate in the context of the patents-in-suit.

Staff's proposed construction, on the other hand, is a proper construction. In T-Tech's construction, the term "different parts for driving the needles" defines the electric motor and the mechanical linkage that converts the rotatory motion of the motor into the reciprocating motion needed to drive the needle. There are several different parts from the motor to the component that are connected to and drive the needle. In the staff's construction, they are defined as "all of the components required to drive a needle".

In Staff's construction, "A unified structure comprising all...." express the claim term "integrated". It is a proper construction. T-Tech's "that are installed together by manufacturer" express the claim term "integrated".

In the '530 Patent context, we can conclude,
Disassembling and reassembling requires a substantial amount of time.
'530 Patent eliminate this abovementioned disadvantage
The integrated needle drive does not need disassembling and reassembling by the user
Therefore, T-Tech defines "integrated" as "that are installed together by manufacturer"

T-Tech's construction or Staff's construction should be adopted.
MT.Derm' proposed construction should therefore be rejected.

(RMRB at 1-7.)

Staff submits that the language of asserted claims 1 and 19 indicates that the basic module must contain at least a handle and an "integrated needle drive." (SMIB at 7.) According to Staff, the adjective "integrated" modifies the noun "needle drive" and one of skill in the art would therefore understand "integrated needle drive" to be a unified structure comprising all of the components required to drive a needle. (*Id.* (citing Complainants' Ex. F at 706).) This is also, Staff argues, consistent with the specification, which states that "the drive" is located in the basic module and that the disposable module is connected to "the drive." (*Id.* (citing '530 patent at 2:26-32).) According to Staff, "[n]othing in the intrinsic record suggests that 'integrated' means something different than its ordinary meaning – including all of the required components." (SMRB at 2 (citing Complainants' Ex. F at 706).)

Staff disagrees with Complainants' proposed construction because it appears to eliminate "integrated" from the claims. (SMIB at 8.) Indeed, Staff contends that Complainants' expert opined that the plain and ordinary meaning of this term would "simply mean that the basic module includes some element that drives the needle." (*Id.* at 7 (citing Complainants' Ex. A at ¶ 112).) Staff also disagrees with Complainants' suggestion that the plain and ordinary meaning of this terms means that the "integrated needle drive" would be a needle drive integrated with the handle of the basic module. (SMRB at 3.) Staff contends that this is incorrect because while the basic module requires both a handle and a needle drive, the needle drive does not need to be integrated with the handle. (*Id.* at 4.)

Staff also disagrees with T-Tech's proposed construction because it is overbroad and it is not clear that all "integrated needle drives" would necessarily consist of different parts. (SMIB

at 8.) Additionally, Staff argues that “T-Tech has not identified any requirement in the specification that the components of the needle drive must be installed together by the manufacturer.” (*Id.*; SMRB at 4.)

Independent claim 1 of the ’530 patent recites “a basic module having a handle and an integrated needle drive.” (’530 patent at 5:26-27.) Similarly, independent claim 19 recites “providing a basic module having a handle and an integrated needle drive.” (*Id.* at 6:62-63.) According to the specification, the ink application device of the ’530 patent has a base/basic⁴ module with an integrated needle drive and the “basic module corresponds to the handle that includes the needle drive and is designed such that the hygienic module can be safely attached and connected to the integrated needle drive.” (*Id.* at Abstract, 2:20-22, 2:29-32.) The ’530 patent therefore makes clear that the needle drive is part of the reusable basic module, as opposed to the disposable or hygienic module. (*See id.*; *see also* Complainants’ Ex. A at ¶ 104; Complainants Ex. H at ¶¶ 10-11.) Thus, the undersigned agrees with Complainants’ expert that the word “integrated” is used to describe the relationship between the needle drive and the basic module. (*See, e.g.*, Complainants Ex. H at ¶ 15.) The undersigned, however, rejects Complainants’ proposed construction because construing this term according to its plain meaning would not resolve the parties’ dispute. *See, e.g., O2 Micro Intern. Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008). Indeed, as noted by T-Tech, the term “integrated needle drive” is not a common term in the tattoo industry. (*See* RMRB at 6.)

T-Tech’s proposed construction, on the other hand, is not supported by the intrinsic evidence. T-Tech proposes that the term should be construed as “a needle drive that consists of

⁴ The ’530 patent uses the terms “base module” and “basic module” interchangeably. (*See, e.g.*, ’530 patent at Abstract, 2:15-32; 3:44-49.)

different parts for driving the needles, that are installed together by manufacturer.” T-Tech has not identified any requirement in the patent, however, that parts must be installed together by the manufacturer. (*See generally* RMIB at 2-3, RMRB at 1-7.) In fact, the only time the ’530 patent refers to a manufacturer is in the context of sterile packaging, not installation of different parts for driving the needle. (*See* ’530 patent at 3:54-57 (“The manufacturer places the module in a sterile package, and it is suitable for long-term storage.”).)

Similarly, Staff’s proposed construction is not supported by the intrinsic evidence. Staff proposes that the term should be construed as “a unified structure comprising all of the components required to drive a needle.” However, there is no requirement in the specification that the needle drive have all of the components required to drive a needle. (*See generally* ’530 Patent; *see also* Complainants’ Ex. A at ¶ 113.) The undersigned also agrees with Complainants that such a construction would introduce ambiguity as it is unclear exactly which parts are required to drive a needle. (*Id.* at ¶ 114; Dzwonczyk, Tr. at 53:3-54:7.) Indeed, the ’530 patent does not specify what parts are required to drive a needle. (*See generally* ’530 patent.) Moreover, although Staff claims that its proposed construction is consistent with the understanding of one of ordinary skill in the art, Staff does not provide any evidence of the understanding of one of ordinary skill in the art beyond conclusory statements. In fact, Complainants’ expert specifically denies that one of ordinary skill in the art would understand the term “needle drive” as proposed by Staff. (Complainants’ Ex. A at ¶¶ 113-114; Complainants’ Ex. H at ¶¶ 10-21.)

Therefore, the undersigned finds that the ’530 patent makes clear that the needle drive is part of the basic module and that the word “integrated” is used to describe the relationship between the needle drive and the basic module. (*See* ’530 patent at Abstract, 2:20-22, 2:29-32.)

Accordingly, the undersigned hereby construes “integrated needle drive” as “*needle drive incorporated into the basic module.*”

b) “simultaneous removal of the entire disposable module from the basic module”

The term “simultaneous removal of the entire disposable module from the basic module” appears in claim 1 of the ’530 patent. The parties disagree on the claim construction of the term, and have proposed the following constructions:

COMPLAINANTS	T-TECH	STAFF
removal of the entire disposable module as a single piece from the basic module	every part of the disposable module that is in contact with the basic module is to be removed from the basic module simultaneously	removal of the entirety of the disposable module at the same time

Complainants assert that their construction is consistent with both the specification and the prosecution history. (CMIB at 17-20; CMRB at 10.) Complainants contend that the specification describes the modular construction of the ink application device in terms of the disposable module being removed from the basic module and disposed of after use. (CMIB at 17 (“Removal of the disposable module is simply the reverse of the installation procedure. This is accomplished by pulling the disposable module from the basic module in order to withdraw the disposable module from the cylindrical cavity in the basic module and to ultimately separate the two modules.” (internal citations omitted)).) Complainants therefore submit that properly construed, the term refers to “the components of the disposable module *relative to each other*, *i.e.*, housing, bearing, needle, ink tank. In this way, all parts that can become infected are simultaneously removed from the basic module (or manual device) so that it can be safely used with the next customer.” (*Id.* at 18 (citing ’530 patent at 2:33-48) (emphasis original).) In addition, Complainants claim that during prosecution, the Applicant explained that

“simultaneous removal” refers to the disposable module being removed as a single piece as opposed to the multi-piece removal required in U.S. Patent No. 5,472,4499 to Chou (“Chou”). (*Id.* at 18-20 (citing Complainants’ Ex. D, 9/9/02 Amendment, at 10).) Thus, the prosecution history, Complainants argue, confirms that the “simultaneous removal” language refers to the disposable module being removed as a single piece from the basic module. (*Id.*)

Complainants insist that T-Tech’s proposed construction improperly excludes the disclosed embodiments. (CMIB at 20-22 (“In these embodiments, removal of the disposable module from the basic module requires that this portion of the housing of the disposable module is withdrawn from the basic module. However, the portion of the disposable module within the basic module would not *instantaneously* be separated from the basic module in the manner that T-Tech’s construction would require. Rather, the illustrated embodiments of the basic module and disposable module would have the different ‘parts’ of the disposable module continually breaking contact with corresponding parts of the basic module until the disposable module is completely withdrawn.” (emphasis original)); CMRB at 10-11.) According to Complainants, nothing in the specification or the prosecution history requires that every part of the disposable module that is in contact with the basic module be removed from the basic module simultaneously. (CMIB at 22; CMRB at 11.) Such an interpretation would, Complainants argue, be “at odds with how the removal of the disposable module from the basic module is described in all the disclosed embodiments of the ’530 patent.” (CMRB at 11.)

Complainants also object to Staff’s construction on two grounds. First, Complainants believe that Staff’s substitution of a dictionary definition for “simultaneous” introduces ambiguity into the term for “something that occurs ‘simultaneously’ or ‘at the same time’ necessarily includes a temporal aspect that can have broadly different meanings in different

circumstances to one of ordinary skill in the relevant art.” (CMRB at 12.) Second, Complainants assert that Staff’s construction fails to take into account the Applicants’ explanation of “simultaneous removal” from the prosecution history. (CMIB at 22.)

In its initial *Markman* brief, T-Tech argues:

Claim 1 of the ’530 patent recites “and a disposable module including an outer housing substantially surrounding a needle.” This language says: the entire disposable module includes an outer housing and a needle.

Claim 1 of the ’530 patent recites “a needle which is supported at one end of the disposable module by a needle nozzle and which is supported at another end of the disposable module by a portion that can contact the integrated needle drive” This language says: the needle is in contact with the basic module during operation.

A rear housing part 1 of the disposable module that is connected to, and detachable from, the basic module, as shown in Figures 1 and 2 of the ’530 patent; this means the outer housing is in contact with the basic module during operation.

We know both the needle and the outer housing are in contact with the basic module during operation. Claim 1 of the ’530 patent recites “the needle being movable relative to the outer housing.” From this language we can conclude: the needle and the outer housing can be removed from the basic module at different times or at the same time.

“entire disposable module” including the outer housing and the needle. Both the outer housing and the needle are in contact with the basic module.

“simultaneous removal of from the basic module.” means: be removed from the basic module at same time.

“simultaneous removal of the entire disposable module from the basic module.” At least the outer housing and the needle are removed from the basic module simultaneously

T-Tech Proposed Construction: “every part of the disposable module that is in contact with the basic module is removed from the basic module simultaneously”

T-Tech’s construction should be adopted because it is consistent with the language of the claim

During removal of the disposable module from the basic module, the needle and the outer housing can be removed from the basic module at the same time or at different times. When the needle and the outer housing are removed at the same time, we can say: **simultaneous**

removal of the entire disposable module from the basic module. If the needle and the outer housing are removed at different times, we can not say: **simultaneous removal of the entire disposable module from the basic module**

Complaints Proposed Construction: “removal of the entire disposable module as a single piece from the basic module”. This construction does not track the language of the claim. This construction omits the claim term “**simultaneous**”. Complaints should define “simultaneous” clearly and in detail. Every word in a claim informs its meaning and scope; claims may not be construed in a manner that renders a claim term meaningless or superfluous. Further more, Complaints’ construction is ambiguous. “the needle being movable relative to the outer housing.” They can not be interpreted as a single piece.

(RMIB at 3-4.) In its rebuttal *Markman* brief, T-Tech further argues:

MT.Derm’s proposed construction essentially replaces “simultaneous” with “as a single piece.” See Compl. Opening Br. at 17-22, 26-27. However, “simultaneous” is a commonly used word, which one of skill in the art would understand to refer to **timing**.

MT.Derm recites: “*the “simultaneous removal of the entire disposable module” refers to the components of the disposable module relative to each other, i.e., housing, bearing, needle, ink tank. In this way, all parts that can become infected are simultaneously removed from the basic module (or manual device) so that it can be safely used with the next customer. (Col. 2, lines 33-48). The prosecution history of the ‘530 Patent confirms that the “simultaneous removal” language refers to the disposable module being removed as a single piece from the basic module.*” (Complainants’ Initial Markman Brief P18) MT.Derm asserts that T-Tech infringes claims 1-3, 7, 8, 19, and 20 of the ‘530 Patent. But we can not find the terms “bearing”, “ink tank” or “diaphragm” in the claims 1-3, 7, 8, 19 and 20. “Bearing”, “ink tank” and “diaphragm” are non-essential elements of these patent claims.

According to claims 1-3, 7, 8, 19 and 20, the disposable module could be just an outer housing and a needle. And the needle is movable relative to the outer housing. Someone of skill in the art would therefore not refer these two parts movable relative to each other as “a single piece”.

T-Tech’s construction or Staff’s construction should be adopted. MT.Derm’s proposed construction should therefore be rejected.

(RMRB at 7-8.)

Staff submits that its construction is consistent with the patent’s disclosure and is – of the three proposed constructions – the most true to the language of the claims for it gives “simultaneous” its plain and ordinary meaning (*i.e.*, “at the same time.”). (SMIB at 9-10; SMRB at 5 (“Construing this phrase . . . as proposed by the Staff, conveys that the *entire* disposable module is removed in a single step, that is, ‘simultaneously’.” (emphasis original).) In support thereof, Staff cites to the prosecution history and in particular, the portion wherein the applicants argued that purported advantage over the prior art is that a user can save time by removing the disposable module “in a single step” – or, at the same time. (SMIB at 9-10; SMRB at 6.)

Staff criticizes Complainants’ proposed construction for replacing “simultaneous” with “as a single piece.” (SMIB at 10.) There is, Staff argues, “no clear, unmistakable statement from the patentees that they were defining the word ‘simultaneous’ to mean ‘in a single piece,’ as opposed to its ordinary meaning.” (SMRB at 6.) Staff notes, however, that there is “little to no meaningful distinction” between Complainants’ and Staff’s constructions because if the entire disposable module is removed from the basic module at the same time, it would very likely be as a single piece. (SMRB at 6; *see also* SMIB at 10 (“In practice, there may not be much difference between ‘as a single piece’ and ‘at the same time,’ because if it is removed in one piece, it appears that all of the pieces will inherently be removed at the same time.”).)

As for T-Tech’s proposed construction, Staff finds it to be too limiting. (SMIB at 11.) T-Tech’s construction, Staff argues, would require only the parts of the disposable module that are in contact with the basic module to be removed simultaneously, despite the claim term expressly requiring removal of the entire disposable module. (*Id.* (citing RMIB at 4-6).)

While Complainants and Staff have proposed different constructions, both agree that this claim term refers to the removal of the disposable module in a single step. (*See* Dzwonczyk, Tr.

at 67:15-19 (“As it turns out, I think the Staff and the Complainants are pretty much in agreement with the basic concept of what these claim terms have to mean in that the ‘simultaneous removal’ refers to the removal of the disposable module in a single step.”); Bathon, Tr. at 74:17-25 (“But Complainants correctly note that, I think, in practice the two proposed constructions are fairly much the same, in that what is required for the simultaneous removal is removal of the entirety of the disposable module at the same time or in a single piece. And in practice, to the extent that if disposable module is removed in a single piece, it would necessarily be removed at the same time or in a single step.”).)

For the reasons set forth below, the undersigned agrees with Complainants and Staff that the “simultaneous removal” language in claim 1 refers to the disposable module being removed from the basic module in a single step. The ’530 patent describes an ink application device comprised of at least two modules: [1] a basic module; and [2] a disposable or hygienic module. (’530 patent at 2:25-32.) The disposable module is the only portion of the ink application device that comes into contact with a person’s bodily fluids. (*Id.* at 2:33-39.) The patent explains that “[t]he disposable module is removed from the basic module after the treatment and is disposed of in the usual manner. Then, it is necessary for the subsequent treatment to plug a new disposable module onto the basic module to make the device ready to operate for the next customer.” (*Id.* at 2:39-44.) In other words, the entirety of the disposable module (*i.e.*, the parts capable of being infected by bodily fluids) is removed from the basic module in a single step, thereby allowing the device to be safely used with the next customer. (*Id.*) The patent further states that “[t]he connection between the basic module and the disposable module can be established and released in a simple manner so that the device can also be simply and safely used even by less experienced users.” (*Id.* at 2:49-52.)

Furthermore, during prosecution of the '530 patent, certain of the pending claims, were rejected in view of Chou. In overcoming the §102(b) rejection, the applicants argued in part that “simultaneous removal” was not present in Chou “as his device comes apart in pieces and he does not have the ability to remove the entire disposable module simultaneously.”

(Complainants' Ex. E, 9/9/02 Amendment, at 10.) The applicants further explained:

Chou discloses a needle connectable to a coupling portion 50 (cfg. Figure 5 and the description in columns 4-5), a body portion 62 and a grip section 64 which are detachably attached to the body portion. The needle 50 and the grip section 64; however, need to be separately connected to and detached from the body portion 62. In contrast, the disposable module according to the present application including a needle and a needle nozzle is connectable to an integrated needle drive as one single unit.

Because of the option to replace all those potentially infected components in a single step by replacing the disposable module, the person using the ink application device saves time. In addition, from a hygienically point of view it is much safer to replace all the components potentially infected during treatment.

(*Id.* at 11 (emphasis added).)

Thus, it is the undersigned's opinion that construing “simultaneous removal of the entire disposable module from the basic module” as “removal of the entire disposable module ***in a single step***” (as opposed to Complainants' “as a single piece” or Staff's “at the same time” language) most clearly reflects the prosecution history, as well as Complainants' and Staff's agreement as to the basic concept of this term.

As to T-Tech's proposed construction, which is “every part of the disposable module that is in contact with the basic module is to be removed from the basic module simultaneously,” the undersigned finds such an interpretation to be too limiting since the term “expressly requires removal of the entire disposable module.” (SMIB at 11.) Moreover, T-Tech has not identified nor is there any requirement in the patent or the prosecution history that every part of the

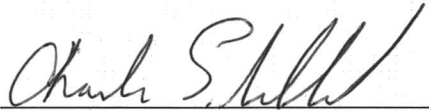
disposable module that is in contact with the basic module be removed from the basic module simultaneously.

Accordingly, the undersigned hereby construes “simultaneous removal of the entire disposable module from the basic module” as “*removal of the entire disposable module in a single step.*”

c) “simultaneously removing the entire disposable module from the basic module”

The term “simultaneously removing the entire disposable module from the basic module” appears in claim 19 of the ’530 patent. The parties agree that this term should be construed in the same fashion as the “simultaneous removal of the entire disposable module from the basic module” term. (JC at 2-3; 1/4/13 Tr. at 62:23-63:16.) Accordingly, for the reasons set forth in Section V.B.2.b., “simultaneously removing the entire disposable module from the basic module” shall be construed to mean “*removing the entire disposable module in a single step.*”

SO ORDERED.



Charles E. Bullock
Chief Administrative Law Judge

**CERTAIN INK APPLICATION DEVICES AND
COMPONENTS THEREOF AND METHODS OF USING THE
SAME**

337-TA-832

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER NO. 21** has been served by hand upon the Commission Investigative Attorney, Matthew Bathon, Esq., and the following parties as indicated, on

FEB - 8 2013



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