

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

RETROLED COMPONENTS, LLC,

Plaintiff / Counterclaim-Defendant,

v.

PRINCIPAL LIGHTING GROUP, LLC,

Defendant / Counterclaim-Plaintiff.

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Civil Case No.: 6:18-cv-55-ADA

PRINCIPAL LIGHTING GROUP’S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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EXHIBIT LIST

- Exhibit 1 Chart showing side-by-side comparison of original language of claim 1 with terms identified by RetroLED in bold compared with claim 1 language with RetroLED's proposed constructions applied in bold bracketing, attached to PLG's Opening Claim Construction Brief filed on June 19, 2016 (Dkt. 36-1)
- Exhibit 2 Screenshot from RetroLED's website located at <http://retroledcomponents.com/>, attached to PLG's Opening Claim Construction Brief filed on June 19, 2016 (Dkt. 36-2)
- Exhibit 3 Excerpt from IEEE Standard Dictionary of Electrical and Electronics Terms (1977) , attached to PLG's Opening Claim Construction Brief filed on June 19, 2016 (Dkt. 36-3)
- Exhibit 4 Screenshot showing International Electrotechnical Commission (IEC) definition of "low voltage" located at <https://www.scribd.com/presentation/387761434/High-Voltage-Technology-1>, attached to PLG's Opening Claim Construction Brief filed on June 19, 2016 (Dkt. 36-4)
- Exhibit 5 Screenshot from RetroLED's website located at <http://retroledcomponents.com/wp-content/uploads/2019/03/TRINITY-360-BROCHURE-1.pdf>
- Exhibit 6 Screenshot from RetroLED's website located at <http://retroledcomponents.com/wp-content/uploads/2019/03/TRINITY-360-BROCHURE-2.pdf>

I. INTRODUCTION

Contrary to RetroLED’s arguments downplaying the Federal Circuit’s principles for claim construction, “[t]he Federal Circuit has reaffirmed that a departure from the ordinary and customary meaning is the exception, not the rule.” *Meetrix IP, LLC v. Citrix Sys., Inc.*, No. 1:16-CV-1033-LY, 2017 WL 5986191, at *2 (W.D. Tex. Dec. 1, 2017). RetroLED has not – and cannot – establish any such exception for construing the numerous terms it seeks to have construed.¹ Indeed, RetroLED’s Opening Brief confirms what PLG anticipated in its own Opening Brief: each of RetroLED’s constructions is a litigation-driven attempt to set aside technical teachings, various legal presumptions, and the understanding a person of ordinary skill in the art would have of the ’835 Patent in order to create non-infringement positions. Despite its efforts, RetroLED should not be allowed to so easily set aside long-established, bedrock claim construction principles and presumptions. Further, and tellingly, RetroLED’s technical arguments for its constructions only serve to confirm that each of the disputed terms would be readily understood by a person of ordinary skill in the art and lay jurors alike. There is no reason why RetroLED’s understandable terms should be construed with lengthy circular language that unnecessarily and without legal basis imports limitations from the specification or other claims.

II. ARGUMENT

A. “Frictionally Engage [/Engaging]” (claims 1, 13, and 19)

PLG’s Construction	RetroLED’s Construction
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¹ In its Opening Brief, RetroLED without any prior notice to PLG withdrew and did not brief the claim term “resinous plastic extrusion” which RetroLED previously identified as needing construction.

No construction necessary	To engage by friction between the inwardly-facing side of an end cap and an end portion of the elongate support member/engaging by friction between the inwardly-facing side of an end cap and an end portion of the elongate support member.
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RetroLED does not even attempt to suggest that a person of ordinary skill in the art would fail to understand this term. Indeed, such an argument would not make sense in view that RetroLED seeks to define “frictionally engage” as “to engage by friction . . .” RetroLED’s construction actually supports PLG’s position that “frictionally engage” needs no specific construction. RetroLED has simply not made out any credible showing of confusion that otherwise warrants the Court construing of this already understandable term. *Pisony v. Commando Constr., Inc.*, No. W-17-CV-00055-ADA, 2019 WL 928406, at *5 (W.D. Tex. Jan. 23, 2019) (“The Court finds that this claim term should be given its Plain and Ordinary meaning. The Court finds that there is nothing about the claim term that is confusing; therefore, the term requires no construction.”).

As to the surplusage in RetroLED’s construction, it is apparent that RetroLED seeks to read limitations from the specification into the “frictionally engage [/engaging]” term. Otherwise, RetroLED would have simply proposed the term to mean “to engage by friction” which, albeit unnecessary, would have at least been relevant to the disputed term. By continuing beyond this language and “reading limitation[s] from the written description into the claims,” RetroLED commits “one of the cardinal sins of patent law.” *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1320 (Fed. Cir. 2005) (internal quotations omitted)). RetroLED attempts to justify its importation of specification limitations by cherry-picking from the “only portion of the specification that addresses the idea of frictional engagement.” *See* Dkt. 35 at 23-24. This

practice has been resoundingly rejected. *Hill-Rom Services, Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014) (“Even 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.’”). When reviewed in proper context however, these quoted portions of the specification do not provide any limiting definition to the term “frictionally engage,” and simply serve to outline *one* possible embodiment which is not even applicable in the context of RetroLED’s proposed construction. *See, e.g., id.* at 23 (“Web-engaging walls 30 b are spaced such that their outwardly facing surfaces (i.e., opposite the gap 31b) can frictionally engage the inner surfaces of the spaced plates.”) (quoting ’835 Patent, at col. 5, ll. 9-18) (emphasis added).

Setting aside the “cardinal sin” committed by its proposed construction, RetroLED’s proposal would also render the remainder of the claim language superfluous as demonstrated in the chart in PLG’s Opening Brief. *See* Dkt. 36 at 8-9; *see also Versata Software, Inc. v. Zoho Corp.*, 213 F. Supp. 3d 829, 837 (W.D. Tex. 2016) (“[I]nterpretations that render some portion of the claim language superfluous are disfavored.”). For at least these reasons, RetroLED’s proposal should be rejected.

B. “Elongate Support Member” (claims 1, 13, and 19)

PLG’s Construction	RetroLED’s Construction
No construction necessary	Subject to pre-AIA 35 U.S.C. § 112, ¶ 6. Function: to support a plurality of electrical lamps Structure: an I-beam structure

	Support: Figs. 4-6; Figs. 8-9; Figs. 21A & 21B; a portion of Fig. 24; col. 3, ll. 60-63; and col. 4, 35-60.
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RetroLED acknowledges that in this case there is a rebuttable presumption against RetroLED's attempt to invoke § 112, ¶ 6. See Dkt. 35 at 8. RetroLED has not – and cannot – demonstrate, by a preponderance of the evidence, that “the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function.” *Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1007 (Fed. Cir. 2018). In a strained attempt to overcome this presumption, RetroLED sets forth three flawed arguments which were previously addressed in PLG's Opening Brief.

First, RetroLED suggests that the phrase “member for” is a “non-structural generic placeholder.” See Dkt. 35 at 8. Setting aside the fact that RetroLED has asked the Court to construe the phrase “elongate support member,”² RetroLED's position has been routinely rejected by the Federal Circuit. See *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1023 (Fed. Cir. 2006) (“Here, the ‘compression member’ limitation does not use the term ‘means,’ and the presumption against means-plus-function treatment is not overcome. The claims and the specification unmistakably establish that ‘compression member’ refers to particular structure.”); *Bos. Sci. Corp. v. Cook Grp. Inc.*, No. CV 15-980-LPS-CJB, 2017 WL 1364205, at *4 (D. Del. Apr. 12, 2017) (“Thus, the claims, specification, and figures not only articulate where the ‘tension member’ is located and how it interacts with other parts of the

² This term appears in each independent claim of the '835 Patent. The term is not recited as “elongate support member for” in independent claim 13. Thus, at best RetroLED's argument would only apply to claims 1 and 19.

apparatus, but they do so in a way that provides insight into how the ‘tension member’ itself must be structured.”).

Next, RetroLED suggests that the term “elongate support member” fails to recite “sufficiently definite structure.” *See* Dkt. 35 at 9.³ Again, PLG already addressed this argument in its Opening Brief. *See* Dkt. 36 at 10-11. In particular, the “elongate support member” has a well-defined structure that extends the length of the internally-lit sign and replaces gas-discharge lamps by supporting various electrical lamp units (*e.g.*, LEDs). *See* ’835 Patent, col. 3, ll. 60-63; col. 4:35-60; Fig. 4.⁴ Moreover, the language of the asserted claims clearly describes the structure of the “elongate support member” as well as its relationship with the additional, recited claim limitations. For example, claim 1 begins by introducing “elongate support member” and then describing the relationship of this member to “a plurality of electric lamp units,” “opposite end portions,” “end cap[s],” and “mount[s].” Not only are these structural limitations clearly defined and explained in the claims themselves, they are described in the specification and depicted in the figures. *See Media Rights Techs., Inc. v. Capital One Fin. Corp.*, 800 F.3d 1366,

³ RetroLED did not make any allegations regarding § 112, ¶ 6 in its Complaint for Declaratory Judgment which sought a declaration of invalidity and non-infringement. Nevertheless, RetroLED was able to set forth its invalidity theory based on prior art references, including attempting to identify an “elongate support member” and “mechanical coupling element.” *See, e.g.*, Dkt. 1 at ¶¶ 34-37 (identifying “elongate support member” in one prior art reference); *id.* at ¶¶ 46-50 (same for “mechanical coupling element”). Thus, it appears that at least for purposes of its invalidity allegations, RetroLED was able to readily understand the structure for these elements (which it now claims is impossible).

⁴ RetroLED cites to a number of discrete dictionary definitions for “elongate,” “support,” and “member.” *See* Dkt. 35 at 9. However, these cherry-picked dictionary definitions only cement the fact that these terms – individually and collectively – have *easily* understandable definitions which would be understood by a person of ordinary skill in the art (or even a lay juror). In any event, RetroLED’s attempt to parse these terms into discrete disputes should be resoundingly rejected.

1372 (Fed. Cir. 2015) (noting that to determine whether § 112, ¶ 6 applies, “we ask if the claim language, read in light of the specification, recites sufficiently definite structure to avoid § 112, sixth paragraph.”).

Finally, RetroLED presents a convoluted argument – compounded by its importation of a dictionary definition for “elongate” as well as the separate claim limitation of having “opposite end portions” – which seems to suggest that the phrase “elongate support member” is undefined and lacks enablement. Setting aside that RetroLED has failed to properly address the issue of enablement under § 112, RetroLED once again neglects the dependent claims which *clearly* delineate how the “elongate support member” performs the recited function of “supporting a plurality of electrical lamp units.” *See, e.g.*, ’835 Patent at claim 11 (“wherein said elongate support member comprises an I-beam cross section having a web portion and spaced-apart flange portions on opposite ends of said web portion, and wherein said electric lamp units are coupled to said web portion and are positioned between said spaced-apart flange portion”). RetroLED’s continued disregard for the language of the dependent claims is telling about the weakness of its position.

Assuming *arguendo* that the Court decides to apply § 112, ¶ 6, RetroLED’s substantive proposals miss the mark. There is no purpose served by RetroLED’s proposed function which merely regurgitates the language of claims 1 and 19 – but not claim 13. At a minimum, this would render this language superfluous. *Power Mosfet Techs., L.L.C. v. Siemens AG*, 378 F.3d 1396, 1410 (Fed. Cir. 2004) (“[I]nterpretations that render some portion of the claim language superfluous are disfavored.”).

With respect to RetroLED’s proposed structure, its Opening Brief confirms PLG’s argument that RetroLED’s ploy is purely a litigation-driven attempt to import limitations from

the specification. *See* Dkt. 36 at 12-13. PLG does not dispute that the specification describes one exemplary embodiment of the “elongate support member” as having an “I-beam structure,” however that alone does not justify RetroLED’s unreasonably narrow construction. *See Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004) (“[T]his court has expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment.”); *see also Hill-Rom Services, Inc.*, 755 F.3d at 1371 (Fed. Cir. 2014) (“Even 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.’”); *Absolute Software, Inc. v. World Computer Sec. Corp.*, No. A-09-CV-142-LY, 2014 WL 496879, at *4 (W.D. Tex. Feb. 6, 2014) (“Defendants support their construction by citing the [] specification and its discussion of the [] process, but never point the court to any evidence that the patentee demonstrated a clear intention to limit the claim scope using words or expressions of manifest inclusion or restriction. . . . Defendants do not argue that any such clear intention exists, but appear to argue that the court should construe the claim to be limited to the specific embodiments from the specification to which Defendants point. As this is contrary to the law of claim construction, the court will decline to do so.”) (citation omitted).

Further, as noted in PLG’s Opening Brief, the language of certain dependent claims – *e.g.*, claims 2 and 11 – give rise to the presumption of claim differentiation. *See* Dkt. 36 at 12 (citing *Pisony v. Commando Constr., Inc.*, No. W-17-CV-00055-ADA, 2019 WL 928406, at *3 (W.D. Tex. Jan. 23, 2019)). RetroLED makes passing reference to two cases where the presumption of claim differentiation was overcome by means-plus-function limitations. *See* Dkt. 35 at 12, fn. 7. However, in those inapposite cases it was *undisputed* that § 112 applied because

the disputed terms included the phrase “means for.” Here, there is presumption *against* invoking § 112. As such, RetroLED is faced with not one, but (at least) two discrete presumptions against its proposed construction.

C. “Mechanical Coupling Element” (claims 1 and 19)

PLG’s Construction	RetroLED’s Construction
No construction necessary	<p>Subject to pre-AIA 35 U.S.C. § 112, ¶ 6.</p> <p>Function: to mechanically engage or be received in a single electromechanical mount for a gas-discharge lamp</p> <p>Structure: a base plate or flange and a male prong or projection extending outwardly from base plate, which in turn has a pair of opposite side walls spaced from each other and joined at their ends by rounded end walls to define an interior cavity, which includes a pair of recessed shoulders inside the cavity that project outwardly from base plate but not as far as do side walls and which form the outward extent of rounded end walls so that a gap is formed between end portions of the opposite side walls</p> <p>Support: Fig. 20; col. 3, l. 66 – col. 4, l. 6; col. 2, ll. 29-32; col. 5, ll. 19-31; col. 5, ll. 32-55</p>

RetroLED’s proposal is not just unnecessarily and confusingly “wordy” – as it admits in its Opening Brief – it is contrary to numerous legal presumptions, technical teachings, and RetroLED’s own proposed construction of the term “coupling.”⁵ As discussed above with

⁵ RetroLED suggests that its proposed construction is 92 words. Dkt. 35 at 13. This is wrong. In particular, RetroLED has also proposed an incompatible construction for the term “coupling” (addressed below) which is 11 words. Thus, not only would RetroLED’s entire construction for a three-word phrase span over 100 words, it would raise the wholly-unaddressed issue of how to

respect to the term “elongate support member,” RetroLED cannot pass the first step in this analysis – overcoming the presumption *against* invoking § 112, ¶ 6.

In particular, RetroLED suggests that use of the term “element” is merely a “generic placeholder” such that § 112, ¶ 6 still applies. Even if it were true that using “element” gives rise to § 112, ¶ 6 (which it does not), the remainder of the disputed term and asserted claims unquestionably provide sufficient structure for this term. In particular, at least one court has found that the term “coupling element” is not governed by § 112, ¶ 6. *Bausch & Lomb, Inc. v. Oasis Med., Inc.*, No. CV 00-11298 MRP, 2002 WL 34477128, at *8 (C.D. Cal. July 18, 2002) (“The word ‘means’ is not used to describe the coupling structures in the asserted claims, and [defendant] has not provided enough evidence to overcome the resulting presumption. Indeed, there is ample support for the proposition that ‘coupling element’ and ‘coupling member’ recite sufficient structure even in the absence of such a presumption.”). Further, RetroLED has – in this case – proposed a specific structural definition for the term “coupling.” *See* Dkt. 36 at 19-21 (addressing RetroLED’s proposal of “coupling” to mean a “[m]ount that supports the weight of a gas-discharge lamp or replacement”). How can the term “coupling” connote specific structure in one instance, but not in the phrase “mechanical coupling element”? These incompatible positions undermine RetroLED’s arguments.

Assuming *arguendo* that the Court applies § 112, ¶ 6, RetroLED’s proposed “function” improperly adds the phrase “mechanically engage.” RetroLED’s proposal would also omit at least the different types of “mounts” recited in claims 19 and 20. *Kaneka Corp. v. Xiamen*

apply a claim construction for one term within a phrase that has a separate construction (under § 112, ¶ 6 no less).

Kingdomway Grp. Co., 790 F.3d 1298, 1304 (Fed. Cir. 2015) (“A claim construction that excludes a [disclosed] embodiment is rarely, if ever, correct.”) (quotation omitted).

Similarly, RetroLED’s proposed “structure” is incomplete as it improperly excludes embodiments described in the specification as discussed in PLG’s Opening Brief. *See* Dkt. 35 at 14-15. RetroLED’s attempt to cherry pick certain disclosed embodiments over others should be altogether rejected.

D. “End Cap” (claims 1, 13, and 19)

PLG’s Construction	RetroLED’s Construction
No construction necessary	A fitting that encases an end of the elongate support member

Aside from being unnecessary, RetroLED’s proposed construction of the already understandable term “end cap” improperly injects undefined, unsupported, and functional limitations (*e.g.*, “a fitting” and “encases”) and excludes embodiments where the end cap does not “encase” the opposite end portions **14a**, **14b** of elongate support member **14**.

First, RetroLED makes no attempt to explain why construction of “end cap” is necessary. Thus, there is no basis to cast aside the general rule that the term be given its plain and ordinary meaning. *Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). As a practical matter, this is likely because the only conceivable purpose behind RetroLED’s position is to create non-infringement positions. This Court has denied these types of unsupported proposals. *See Pisony v. Commando Constr., Inc.*, No. W-17-CV-00055-ADA, 2019 WL 928406, at *5-*6 (W.D. Tex. Jan. 23, 2019). Notably, RetroLED itself refers to its products as “end caps” in its various technical and marketing materials. *See* Exhibit 5 hereto

(<http://retroledcomponents.com/wp-content/uploads/2019/03/TRINITY-360-BROCHURE-1.pdf>) (last visited July 15, 2019); Exhibit 6 hereto (<http://retroledcomponents.com/wp-content/uploads/2019/03/TRINITY-360-BROCHURE-2.pdf>) (last visited July 15, 2019).

Moreover, even in this case RetroLED has repeatedly identified “end caps” – both in the prior art and the current marketplace – when referencing the ’835 Patent and without the need to explain “end cap.” *See* Dkt. 1 at ¶ 18 (“As part of its Trinity-360 system, RetroLED uses a number of end caps in its systems, including TSLEC, REC, TOREC, TBEREC, SSLEC, SREC, EC-T-12 HO, EC-T-8 and EC-T-12 end caps. These end caps can be used in any number of applications, from new sign cabinets to retrofit cabinets. Further, the end caps come in rigid or fixed as well as spring-loaded varieties.”) (emphasis added).

Next, RetroLED suggests that adding the phrase “a fitting that encases” to RetroLED’s proposal is “not an importation from – but is supported by – the specification of the ’835 Patent.” Dkt. 35 at 21. PLG previously addressed why RetroLED’s substantive proposal should fail and excludes certain disclosed embodiments. *See* Dkt. 36 at 16-17. In any event, it is entirely unclear how two terms that appear nowhere in the language of the specification can be “supported” by the same language. Even if this were the case (which it is not), the effect is the same: RetroLED is reading limitations from outside the claims into the claim language. *See, e.g., Hill-Rom Services, Inc.*, 755 F.3d at 1371 (refusing to read only disclosed embodiment into claim language absent “a clear intention to limit the claim scope”); *Phillips*, 415 F.3d at 1320 (recognizing “reading a limitation from the written description into the claims” as “one of the cardinal sins of patent law”).

Finally, RetroLED’s Opening Brief tellingly does not address the fact that the claim language already explains the structure of the “end cap” and specifically its relationship with the

“elongate support member.”⁶ *See, e.g.*, ’835 Patent, claim 1 (“one and only one end cap at each of said opposite end portions of said elongate support member”). As explained in PLG’s Opening Brief, the fact that RetroLED’s proposal renders certain claim language superfluous cuts against RetroLED’s position. *Merck & Co. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”); *Power Mosfet Techs., L.L.C. v. Siemens AG*, 378 F.3d 1396, 1410 (Fed. Cir. 2004) (“[I]nterpretations that render some portion of the claim language superfluous are disfavored.”).

E. “Non-Electrically Engage” (claim 19)

PLG’s Construction	RetroLED’s Construction
No construction necessary	To engage a mechanical coupling element with a standard gas discharge lamp mount without creating a conductive path between the two

Once again, RetroLED does not make the slightest attempt to explain why the phrase “non-electrically engage” requires any construction over its plain and ordinary meaning. Without any requisite need to construe this readily understandable phrase, RetroLED is merely asking the

⁶ As a practical matter, RetroLED takes the position that the second half of its proposal – “an end of the elongate support member” – is not subject to any dispute. *See* Dkt. 35 at 21 (“The only portion of this construction with which issue could be taken are the words ‘a fitting that encases.’”). Presumably this is because RetroLED feels this second half merely recaptures existing claim language. As a preliminary matter, this is technically incorrect as the complete phrase after “end cap” is “at each of said *opposite end portions* of said elongate support member.” *See* claim 1. Even if RetroLED’s suggestion that this second half merely recaptures existing language were correct however, this is an admission that the second half is superfluous given the existing claim language. In either event, RetroLED’s proposed construction is flawed.

Court to engage in “an obligatory exercise in redundancy.” *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997).

Rather than providing any technical analysis whatsoever, RetroLED makes only passing reference to three sentences in the specification regarding “electrically coupl[ing]” and “electrical conductors.” *See* Dkt. 35 at 24-25. It is unclear why RetroLED believes these sentences somehow clarify any existing confusion. RetroLED is once again seeking to improperly and unnecessarily import limitations from the specification. However, for the reasons explained in PLG’s Opening Brief (Dkt. 36 at 18-19), RetroLED’s proposal only serves to add confusion where there is none by injecting terms found nowhere in the intrinsic record. RetroLED’s proposal also improperly excludes at least the embodiment recited in dependent claim 20. *Id.* at 19.

F. “Mount”/“Coupling” (claims 1, 8, 13, 14, 16, and 18-20)

PLG’s Construction	RetroLED’s Construction
No construction necessary	Mount that supports the weight of a gas-discharge lamp or replacement

In a strained attempt to inject uncertainty into the plainly understood terms “mount” and “coupling,” RetroLED completely ignores the context of the terms in the asserted claims. This is improper. *Advanced Electrolyte Techs. LLC v. Samsung SDI Co., Ltd*, No. A:17-CV-0030-LY, 2018 WL 2770648, at *2 (W.D. Tex. June 8, 2018) (“Claim language guides the court’s construction of claim terms. ‘The context in which a term is used in the asserted claim can be highly instructive.’”) (citing *Phillips*, 415 F.3d at 1312).

While the phrases “mount” and “coupling” might – in different contexts – be used as nouns or verbs, the asserted claims recite these *disputed* terms as structural features as evidenced by RetroLED’s (albeit incorrect) structural proposed constructions. Simply put, RetroLED’s entire argument about apparent confusion rests on the Court ignoring the claim language in an attempt to inject some uncertainty.

In any event, RetroLED makes only passing reference to yet another legal presumption against its proposal. As discussed in PLG’s Opening Brief, there is a strong presumption that different meanings attach to different words. *See* Dkt. 36 at 19-20 (addressing numerous Federal Circuit cases recognizing presumption against RetroLED’s proposed construction). RetroLED’s “technical analysis” comprises of two cherry-picked sentences from the specification. Aside from being incomplete, these statements are misleading and incorrect in light of the claim language. In particular and as shown in PLG’s Opening Brief, the language of independent claim 1 (as well as claim 19 which contains a similar limitation) makes clear that the “coupling” is *configured to engage* with the “mount.” per the plain language of claim 1. *See* Dkt. 36 at 20. This arrangement is confirmed and clarified by the specification and associated figures both of which were addressed in PLG’s Opening Brief. *Id.* at 20-21.

Finally, PLG’s Opening Brief addressed a number of practical concerns raised by RetroLED’s proposal (*e.g.*, identifying “mount” as “mount that . . .”, adding phrases found nowhere in the specification, and once again violating the principle of claim differentiation while also rendering dependent claims superfluous) which are addressed nowhere in RetroLED’s Opening Brief. *See* Dkt. 36 at 21. For at least these reasons, RetroLED’s unworkable and unnecessary proposal should be rejected.

G. “Low Voltage” (claims 16, 17, and 19)

PLG’s Construction	RetroLED’s Construction
No construction necessary	Voltages lower than 110

As anticipated in PLG’s Opening Brief, RetroLED’s argument for “low voltage” is merely an attempt to create non-infringement arguments for three of the ten asserted claims. As a practical matter, PLG must note that RetroLED is effectively asking the Court to exclude a large number of very common and commercially viable products with its proposed construction. Indeed, RetroLED’s website advertises that its products “enable [users] to *choose LEDs from any manufacturer* and build LED light sticks in your shop or on-site.” See Exhibit 6 hereto (emphasis added). Why would a patent directed at retrofitting fluorescent signs with LED lighting exclude some of the most common types of LED lighting products? See ’835 Patent at Abstract (“The assembly can be used as a drop-in replacement for high-voltage gas-discharge tube lamps such as high-output fluorescent lamps, and may be used to retrofit signs originally built for gas-discharge tube lamps with *low-voltage, high-efficiency lighting such as LED lighting.*”) (emphasis added). This demonstrates the unreasonable nature of RetroLED’s proposal.

In any event, RetroLED does not come close to providing the exacting “clear and unmistakable” evidence of disclaimer of the understood and recognized plain and ordinary meaning. *Microline, LLC v. Intel Corp.*, No. 2:07-CV-488, 2013 WL 2471551, at *8 (E.D. Tex. June 7, 2013) (citing *Elbex Video, Ltd. v. Sensormatic Electronics Corp.*, 508 F.3d 1366, 1371 (Fed. Cir. 2007)). In short, RetroLED’s argument boils down to an argument over the ranges which would be considered “low” and “high” voltage. Without any explanation or authority,

RetroLED states that because there is not a clear delineation of “what voltages would be ‘high’ or what voltages would be ‘low’ . . . [t]his demands construction.” *See* Dkt. 35 at 28. PLG disagrees. There is no cited authority for the proposition that without a recited range, the well-known term “low voltage” must be construed.

Remarkably, RetroLED begins its analysis by providing dictionary definitions which confirm the position in PLG’s Opening Brief that “low voltage” is understood in the art to be up to 1000 volts. *Compare* Dkt. 35 at 29 (providing definitions accounting for “low voltage” up to 1000 volts); *with* Dkt. 36 at 23 (same).⁷ At an absolute minimum, this demonstrates that RetroLED’s attempt to limit “low voltage” to under 110 volts is divorced from any “clear and unmistakable” disclaimer in the intrinsic record or understanding in the art. Indeed, even RetroLED’s other extrinsic evidence makes clear “that low voltage should be under 600V,⁸ but it is difficult to determine exactly where the cutoff for high/low voltage should be in light of the application found in the ’835 Patent.” *See* Dkt. 35 at 29. This is hardly sufficient support for RetroLED’s construction.

For at least these reasons, RetroLED’s proposal for “low voltage” should be rejected.

⁷ As noted in PLG’s Opening Brief, courts have found that “low voltage” includes “up to 1,000 volts” in the context of electrical equipment. *See Varentec, Inc. v. Gridco, Inc.*, No. CV 16-217-RGA, 2017 WL 3731243, at *4 (D. Del. Aug. 30, 2017).

⁸ PLG notes that RetroLED’s proposal could exclude the vast majority of the range identified by RetroLED’s own evidence. Once again, this is a purely litigation-driven attempt to exclude some of the most widely recognized ranges for LED lighting devices (*e.g.*, between 110-120 volts and 220-240 volts).

H. “Resinous Plastic Extrusion” (claim 12)

PLG’s Construction	RetroLED’s Construction
No construction necessary	No construction necessary

As noted above, PLG addressed the “resinous plastic extrusion” term in its Opening Brief because RetroLED previously identified it as requiring construction. But RetroLED unilaterally then dropped this term without notice in its Opening Brief.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2019, I electronically filed the foregoing and attached documents with the clerk of the court for the U.S. District Court, Western District of Texas, using the Court's electronic case filing system, and thus those documents have been electronically served on counsel of record.

/s/ Wasif H. Qureshi

Wasif H. Qureshi