

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

**RETROLED COMPONENTS, LLC,  
Plaintiff,**

v.

**PRINCIPAL LIGHTING GROUP, LLC  
Defendant.**

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

**JURY TRIAL DEMANDED**

**RETROLED COMPONENTS, LLC'S  
RESPONSIVE CLAIM CONSTRUCTION BRIEF**

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## **I. Introduction**

Pursuant to the Court’s Joint Order Governing Proceedings, (Dkt. No. 34), Plaintiff RetroLED Components, LLC (“RetroLED”) respectfully provides this Brief responding to the positions taken by Principal Lighting Group, LLC (“Principal”) in its Opening Claim Construction Brief. (Dkt. No. 36.)

Principal continues to take the position that none of the terms proposed for construction by RetroLED require construction. Principal’s Opening Brief, however, simply confirms what RetroLED already knew: the terms need construction. This is particularly true for the two proposed means-plus-function terms. In its Opening Brief, Principal makes clear that it either misunderstands § 112, ¶ 6 and its application or is purposefully ignoring the law. With respect to the remaining terms, Principal’s Opening Brief recites a number of mistaken objections that are readily resolved by reference to the claim language, the specification or general-purpose dictionaries.

## **II. The Means-Plus-Function Terms**

Based upon Principal’s objections to RetroLED’s invocation of § 112, ¶ 6 for the terms “elongate support member” and “mechanical coupling element,” it is apparent that Principal does not understand 35 U.S.C. § 112, ¶ 6 and its application.

### **a. Elongate Support Member**

In its Opening Brief, Principal objects to RetroLED’s proposed construction for “elongate support member.” Principal offers four reasons for its objection. First, Principal argues RetroLED has failed to overcome the presumption against the application of § 112, ¶ 6 because there is a corresponding structure identified in the specification of the ’835 Patent. Second, Principal argues “member” is not a nonce word that invokes § 112, ¶ 6. Third, Principal argues the function for “elongate support member” proposed by RetroLED improperly repeats the claim language.

Finally, and fourth, Principal argues RetroLED’s proposed construction runs afoul of the doctrine of claim differentiation. Each of these objections is without merit and in total they illuminate Principal’s fundamental misunderstanding of Section 112, paragraph 6 of Title 35.

**i. Section 112, ¶ 6 applies**

In arguing that § 112, ¶ 6 does not apply, Principal states

RetroLED cannot credibly claim that the term ‘elongate support member’ fails to recite ‘sufficiently definite structure’ so as to overcome the presumption against § 112, ¶ 6 that exists where the term ‘means’ is not recited. Indeed, the claim language itself—***bolstered by the specification***—makes clear that the ‘elongate support member’ has a definite structure that extends the length of the internally-lit sign and replaces gas-discharge lamps by supporting various electrical lamp units (*e.g.*, LEDs).

(Dkt. No. 36 at 10 (emphasis added).)

Principal goes on to insist that because the “elongate support member” “is described in detail and illustrated in the specification including [Fig. 6],” § 112, ¶ 6 cannot apply. (Dkt. No. 36 at 15-16.)

Perhaps Principal does not understand RetroLED’s argument which—plainly put—is that because the recited claim term “elongate support member” does not itself recite sufficient structure; it *should* be construed to cover a corresponding structure described in the specification as directed by the statute. Putting aside for a moment whether—as Principal’s argument seems to suggest—the word “means” is required for construction in accordance with § 112, ¶ 6, Principal’s argument is clearly at odds with the plain language of the well-known statute itself.

If Principal were correct—that a detailed description of the structure in the specification prevents the invocation of § 112, ¶ 6—valid means-plus-function claims could not exist and the law would revert to its pre-Patent Act of 1952 guise when such claim language was dead on arrival under *Halliburton Oil Well Cementing Co. v. Walker*, 329 U.S. 1 (1946). The law is clear—and

has been clear for over 60 years—a valid means-plus-function claim requires a corresponding structure in the specification. This is made clear by the text of § 112, ¶ 6:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and ***such claim shall be construed to cover the corresponding structure***, material, or acts ***described in the specification and equivalents thereof***.

35 U.S.C. § 112, ¶ 6 (emphases added); *see also Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1352 (Fed. Cir. 2015) (“If the patentee fails to disclose adequate corresponding structure, the claim is indefinite.”).

Principal’s argument would effectively obliterate § 112, ¶ 6 for all valid claims that do not include the term “means” even if the claim term included nonce words and functional elements as “elongate support member” does.

Similar arguments have been rejected by other courts. For example, in *K2M, Inc. v. Orthopediatrics Corp.*, the plaintiff made a similar argument to the court. No. 17-61, 2018 WL 2426660, at \* 1, n. 2 (D. Del. May 30, 2018) (noting that plaintiff’s argument “conflates the standard used in *Williamson* to determine the applicability of § 112, ¶ 6 with the standard used to determine whether the specification points to sufficient corresponding structure after the determination that a claim is subject to § 112, ¶ 6”). The court rejected the argument finding

that Plaintiff incorrectly assumes that just because a claim term has a related structure in the specification then that means that the disputed term has a definitive meaning in the art for a structure that performs the claimed function. Such a standard would render every claim without the word “means” either outside the purview of § 112, ¶ 6 or indefinite.

*Id.* (internal record citations omitted).

The Court should likewise reject Principal’s argument here.

**ii. In the asserted claims, “member” is a generic placeholder**

Principal, relying on two cases, argues that the “Federal Circuit has rejected attempts to invoke § 112, ¶ 6 for terms including ‘member,’ particularly when the context of the claim and specification provide detailed structure.” (Dkt. No. 36 at 16 (citing *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1023 (Fed. Cir. 2006) & *Boston Scientific Corp. v. Cook Grp. Inc.*, No. CV-15-980, 2017 WL 1364205, at \*4 (D. Del. Apr. 12, 2017).) Each of the cases relied upon by Principal is inapposite or distinguishable.

*DePuy Spine* is inapposite for two reasons.

First, in *DePuy Spine*, the Federal Circuit relied on a now overruled characterization of the “strong” presumption against the invocation of § 112, ¶ 6 as one “that is not readily overcome.” *DePuy Spine*, 469 F.3d at 1023. This “strong” presumption against the invocation of § 112, ¶ 6 has been reconsidered and overruled by the Federal Circuit in favor of a presumption now more readily overcome. See *Williamson v. Citrix Online, LLC*, 792 F.3d at 1349 (concluding that the Federal Circuit should abandon “characterizing as ‘strong’ the presumption that a limitation lacking the word “means” is not subject to § 112, para. 6”).

Second, in *DePuy Spine*, the Federal Circuit noted that “dictionary definitions and experts on *both* sides confirm that ‘compression member’ is an expression that was understood by persons of ordinary skill in the art to describe a kind of structure.” *DePuy Spine*, 469 F.3d at 1023. Principal has provided no such expert or definitional evidence here. By contrast, RetroLED has demonstrated that, in the claim language before the Court, the adjectival modifiers of “member” are insufficient to confer sufficient structure to perform the claimed function. (Dkt. No. 35 at 8-10.)

*Boston Scientific* is distinguishable.

First, the court in *Boston Scientific* found that the claim language was sufficient to recite structure where the claim language itself

- articulated the “‘tension member’s’ function;”
- provided “insight into the physical structure of the ‘tension member’;” and
- required that the “‘tension member’ is of a size and shape such that: (1) it ‘fits inside the capsule’; (2) it can be ‘positioned between the clip arms’; and (3) it is able to exert a force on both the clip arms to ‘engage[ ] the clip arms [and] urge them radially outward.’”

*Boston Scientific*, 2017 WL 1364205 at \*3.

There is nothing remotely similar within the claimed language for “elongate support member” in the ’835 Patent. (See Dkt. No. 35 at 9-10 (discussing how the claimed structural limitation of “elongate support member” in the claims, *i.e.*, that it is long and has two ends, fail to provide how it performs its function, *i.e.*, to support a plurality of electric lamps).)

Second, in *Boston Scientific*, the court distinguished between the Manual of Patent Examining Procedure (MPEP) and *Mas-Hamilton Group v. LaGard, Inc.*, on the one hand, and the claim language before the court, on the other, because the claim language discussed in the MPEP and *Mas-Hamilton* included the word “for” while the claim language before the court did not. *Boston Scientific*, 2017 WL 1364205 at \* 4, n. 4 (discussing MPEP § 2181 and *Mas-Hamilton Grp. v. LaGard, Inc.*, 156 F.3d 1206, 1214-15 (Fed. Cir. 1998).) Unlike the language in the *Boston Scientific* claim, the claim language before this Court includes “for:” “an *elongate support member for* supporting a plurality of electric lamp units, said elongate support member having opposite



end portions.” (Dkt. No. 35-01, ’835 Patent, at cl. 1, col. 8, ll. 61-63 & cl. 19, col. 10, ll. 45-47 (emphasis added).)

In light of these key differences, *Boston Scientific* is distinguishable, not instructive and should not be relied on by this Court.

This is particularly true as there are multiple cases where the word “member” is recognized to be a nonce word. For example, in *K2M* cited above, the claims at issue included the word “member.” *Id.* at \* 1, n.2. (construing the term “grasping member” as invoking § 112, ¶ 6). The court found that the term “grasping member” did not convey sufficient structure and interpreted the term under § 112, ¶ 6. *Id.* (noting that “recitation of some structure in a means-plus-function element does not preclude the applicability of § 112 (6)” (quoting *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1536 (Fed. Cir. 1991))). Thus, in light of the MPEP, *Mas-Hamilton* and *K2M*, this Court should find that “member” as used in the asserted claims is a generic placeholder that invokes § 112, ¶ 6.

**iii. The function of the “elongate support member” is “to support a plurality of electrical lamps”**

Principal also objects to RetroLED’s proposed function for “elongate support member,” because, according to Principal, “the proposed ‘function’ adds nothing beyond merely repeating part of the existing claim language.” (Dkt. No. 36 at 17.) Of course, Principal is correct that RetroLED’s proposed function repeats the claim language: that is how a term governed by § 112, ¶ 6 is to be construed. It is error to go beyond the claim language. As the Federal Circuit directs

The court must construe the function of a means-plus-function limitation to include the limitations contained in the claim language, and only those limitations. It is improper to narrow the scope of the function beyond the claim language. It is equally improper to broaden the scope of the claimed function by ignoring clear limitations in the claim language.

*Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1113 (Fed. Cir. 2002) (internal citations omitted); *see also Golight, Inc. v. Wal-Mart Stores, Inc.*, 355 F.3d 1327, 1333-34 (Fed. Cir. 2004) (construing “horizontal drive means for rotating said lamp unit in a horizontal direction” to have the function “rotating said lamp unit in a horizontal direction”).

RetroLED’s proposed function, “to support a plurality of electrical lamp units” is correct.

**iv. The judicially created doctrine of claim differentiation must give way to § 112, ¶ 6**

Principal finally objects to RetroLED’s proposed construction of “elongate support member” arguing that RetroLED’s construction violates the doctrine of claim differentiation. (Dkt. No. 36 at 13.) This objection was anticipated by RetroLED in its Opening Brief. (Dkt. No. 35 at 12, n. 7.) Principal’s position should be rejected. A judicially created doctrine—such as claim differentiation—must give way in light of the statutory mandate of § 112, ¶ 6. *See Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1538 (Fed. Cir. 1991) (“Simply stated, the judicially developed guide to claim interpretation known as ‘claim differentiation’ cannot override the statute. A means-plus-function limitation is not made open-ended by the presence of another claim specifically claiming the disclosed structure which underlies the means clause or an equivalent of that structure.”); *MonkeyMedia, Inc. v. Apple, Inc.*, No. A-10-CA-319, 2013 WL 12076550, at \*6-7 (W.D. Tex. Feb. 22, 2013) (quoting *Laitram*, 939 F.2d at 1538).

For all of the above reasons, the Court should adopt RetroLED’s proposed construction of “elongate support member” and find

- “elongate support member” is governed by § 112, ¶ 6,
- the function of the “elongate support member” is “to support a plurality of electrical lamp units” and

- the corresponding structure for the “elongate support member” is “an I-beam structure.”

#### **b. Mechanical Coupling Element**

Principal makes a number of objections to RetroLED’s proposed construction of the § 112, ¶ 6 term “mechanical coupling element.” Once again, Principal claims that because there is sufficient structure in the specification of the ’835 Patent, “mechanical coupling element” cannot invoke § 112, ¶ 6. This argument fails for the same reasons as it failed with respect to “elongate support member” and RetroLED incorporates by reference that argument here. Principal, however, also raises three additional arguments in opposition to RetroLED’s proposed construction.

First, Principal argues that because RetroLED has proposed a construction for the word “coupling,” it cannot claim that the phrase “mechanical coupling element” is governed by § 112, ¶ 6.

The term coupling, as a noun, is only found in the claimed language of claims 13, 14 and 15. For example, in claim 13, the term coupling is found in the following limitation

engaging each of the end caps in a non-conductive manner with a respective one and only one of the *gas-discharge couplings* or with a respective one and only one *replacement coupling* to thereby position the end caps, the elongate support member, and the electric lamp units between the *gas-discharge lamp couplings* or *replacement couplings* that are positioned directly opposite from one another.

(Dkt. No. 35-01, ’835 Patent, at cl. 13, col. 10, ll. 9-17 (emphases added).)

This use of “gas-discharge coupling,” “replacement coupling,” “gas-discharge lamp couplings” and “replacement couplings” says nothing about the phrase “mechanical coupling element.” Further, the entire phrase “mechanical coupling element” or “mechanical coupling elements” are mentioned 13 times in the specification of the ’835 Patent. (*See generally* Dkt. No.

35-01, '835 Patent.) By contrast, the term “coupling” on its own does not appear in the specification.<sup>1</sup> (*See generally id.*)

In each of the references to the unitary phrase “mechanical coupling element” in the Description of the Preferred Embodiments of the '835 Patent, the phrase “mechanical coupling element” or “mechanical coupling elements” is assigned a reference numeral 18 or 118.<sup>2</sup> These mechanical support elements are described to include

a base plate or flange **18a** and a male prong or projection **18b** extending outwardly from base plate **18a** (FIGS. 4, 7, 10, 11, 13-15, 17, and 18). Male projection **18b** has a pair of opposite side walls **44** that are spaced from each other and joined at their ends by rounded end walls **46** to define an interior cavity **48** (FIGS. 11 and 13). Inside of cavity **48** is a pair of recessed shoulders **50** that project outwardly from base plate **18a**, but not as far as do side walls **44**, and which form the outward extent of rounded end walls **46** so that a gap **52** is formed between end portions of the opposite side walls **44** (FIGS. 11, 13, 15, 17, and 18). Unlike the conventional electro-mechanical end couplers **21** a of fluorescent tube lamp **21**, however, mechanical coupling elements **18** lack electrical conductors since they need not be used to conduct electricity to electric lamp units **28**. In all other respects, mechanical coupling elements **18** may be structurally very similar or even identical to the conventional electro-mechanical end couplers **21** a of high output fluorescent tube lamps **21**, which are configured to mechanically and electrically engage the standard electro-mechanical sockets or mounts **20a**, **20b** of sign **12** (FIG. 1). Mechanical coupling elements **18** may be made from injection-

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<sup>1</sup> The term “coupling” used in combination with “gas-discharge,” “gas-discharge lamp” or “replacement” in the claims themselves indicates a structure that is distinct from the “mechanical coupling element” as discussed more fully *infra*.

<sup>2</sup> There are three instances where the “mechanical coupling element 18” is referred to as “coupling element 18” or “coupling elements 18” but this appears to be a matter of abbreviation and, given the reference numerals, a shorthand to the previous reference of “mechanical coupling element 18.” (Dkt. No. 35-01, '835 Patent, at col. 5, 56-60 (“Optionally, it is envisioned that low-voltage wiring for lamp units 28 could be electrically coupled to electrical conductors mounted in the *coupling elements 18* of the end caps 16 (i.e., to make *coupling elements 18* substantially similar to the end couplers 21 a of fluorescent tube lamps 21).” (emphases added)) & col. 6, ll. 9-12 (“An outwardly-facing side 116 b of end cap 116 includes a *mechanical coupling element 118* (FIG. 20) that is substantially identical to *coupling element 18* of end cap 16, as described above.” (emphases added)). Given the presence of reference numerals, the use of these terms should be considered to be the same.

molded non-metal material, for example, such as a resinous plastic material or the like.

(Dkt. No. 35-01, '835 Patent, at col. 5, ll. 32-55.)

The use of the reference numeral, 18 or 118, does not necessarily limit the claim but it does provide some certainty that the use of the phrase “mechanical coupling element” in the claims is to have certain meaning as a complete phrase. *See Curry v. Union Elec. Welding Co.*, 230 F. 422, 426-27 (6th Cir. 1916) (“The name of a part, as an element of a claim, of necessity carries us to the specification to see what the part is, and the reference letter in connection with the part does not naturally do more.”); *see also Lydall Thermal/Acoustical, Inc. v. Fed. Mogul Corp.*, 566 F. Supp. 2d 602 (E.D. Mich. July 3, 2008) (“While there is authority indicating that reference numerals do not have an effect on the scope of a claim, *see* MPEP § 601.01(m), the reference numerals are consistent with the description of the [element] in the specification.”) Here, the reference numerals only act to limit the scope of the claim by virtue of § 112, ¶ 6—and the use of the individual word “coupling” elsewhere in the claims does nothing to disturb this outcome.

Second, Principal appears to argue that RetroLED “omits embodiments described in the specification.” (Dkt. No. 36 at 14.) Principal then cites to portions of the specification that are cited as corresponding structure by RetroLED. To the extent that the argument between the parties is that RetroLED has somehow omitted structure, RetroLED will consider proposed amendments to the structure as provided by Principal. But, given the nebulous statements from Principal in its Opening Brief, it is unclear exactly what amendments are justified.

Third, Principal contends that RetroLED misconstrues the function of the “mechanical coupling element” by adding the “unnecessary phrase ‘mechanically engage’ and omitting certain types of mounts in its proposed function. (Dkt. No. 36 at 15.) With respect to the mechanical modifier, this argument is another example of Principal’s fundamental misunderstanding of the

application of § 112, ¶ 6: it ignores the fact that “mechanical” is an adjectival modifier included in the term “*mechanical* coupling element.” Limiting the function of a “mechanical coupling element” to “mechanically engage” is directly in line with the claimed phrase. To the extent that Principal is claiming that RetroLED’s function is overly limited and should include “standard mounts,” RetroLED is happy to bifurcate the function as between claim 1 and claim 19 to reflect the functions specified in the claimed language. For claim 1, the function would be as stated in RetroLED’s opening brief: to mechanically engage or be received in a single electro-mechanical mount for a gas-discharge lamp. For claim 19, the function would be: to mechanically engage or be received in a standard mount for a gas-discharge lamp. This change should be sufficient because claim 20, merely claims the replacement of the “standard mounts” with “purely mechanical mounts” and, thus, the function supported by the language of claim 19 should be unaffected. (*See* Dkt. No. 35-01, ’835 Patent, at cl. 20, col. 10, ll. 63-66 (“The retrofit kit of claim 19, further comprising a pair of purely mechanical mounts for replacing the standard mounts in the sign.”).)

For the above reasons, the Court should adopt RetroLED’s proposed construction and find that “mechanical coupling element” invokes § 112, ¶ 6 has the function as set forth in RetroLED’s Opening Brief (with the possible amendments proposed above) and the corresponding structure is as set forth in RetroLED’s Opening Brief.

### **III. The remaining terms**

#### **a. End Cap**

As RetroLED predicted in its Opening Brief, Principal takes issue with RetroLED’s construction of the term “end cap” due to the presence of the phrase “a fitting that encases.” (*See* Dkt. No. 35 at 21 (“The only portion of this construction with which issue could be taken are the words ‘a fitting that encases.’); *see also* Dkt. No. 36 at 16 (“Not only does [RetroLED’s] proposal inject ambiguous terms used nowhere in the intrinsic record (*e.g.*, ‘a fitting’ and ‘encases’) . . .”).)

In this objection, Principal seems to posit that a claim construction must consist of terms found in the intrinsic record. (Dkt. No. 36 at 16 (noting injection of “ambiguous terms used nowhere in the intrinsic record”).) No such requirement exists. *See CAO Lighting, Inc. v. Light Efficient Design*, No. 17 C 7359, 2019 WL 1468139, at \* 2 (N.D. Ill. Apr. 3, 2019) (rejecting the argument that a construction was not supported by the intrinsic record because the term used in the construction did not appear in the claim or specification). Contrary to Principal’s contention, RetroLED’s construction of “end cap” is in accord with the language of the claims and specification as discussed in its opening brief. (Dkt. No. 35 at 21-22.) Further, although Principal objects to RetroLED’s inclusion of the word “encases” in its construction, this language is supported by the definition of “cap:” a “protective cover or seal, esp. one that closes off an end or a tip.” (*Compare* Ex. I, American Heritage College Dictionary, at 207 (3d ed. 1997) (defining “cap”) *with* Dkt. No. 36 at 16, n. 6 (providing the definition of “encase” to mean “to enclose in or as if in a case.”<sup>3</sup>)). Principal’s objections to RetroLED’s proposed construction should be rejected by the Court.

**b. Frictionally Engage/Engaging**

The arguments made in Principal’s Opening Brief as to the terms “frictionally engage” or “frictionally engaging” provide little that needs rebuttal. RetroLED believes that its proposed construction of these terms is correct, and its Opening Brief properly explains how these terms should be construed.

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<sup>3</sup> Later in its argument, Principal inserts the adverb “fully” to limit RetroLED’s proposed construction in an attempt to demonstrate that RetroLED’s construction excludes embodiments in the specification. (Dkt. No. 36 at 17 (“In particular, the specification does not require that end cap ‘encase’ or *otherwise fully enclose* the end portions of elongate support member.” (reference numerals omitted and emphasis added).) But, the word “encase” does not require that an item be “fully enclosed.” For example, my phone is encased with a protective covering, *i.e.*, a case, but that does not mean that my phone is fully enclosed by the case.

**c. Non-Electrically Engage**

The arguments made in Principal’s Opening Brief as to the term “non-electrically engage” provide little that needs rebuttal. RetroLED believes that its proposed construction of this term is correct, and its Opening Brief properly explains how these terms should be construed.

**d. Mount/Coupling**

Principal in its opposition to RetroLED’s proposed construction of “mount” and “coupling” relies on a conflation of the phrase “mechanical coupling element” and the stand-alone term “coupling.” (*See, e.g.*, Dkt. No. 36 at 20 (“In other words, the ‘coupling’ is *configured to engage* with the ‘mount’ per the plain language of claim 1 (as well as claim 19 which contains a similar limitation).”).) A proper reading of the specification makes clear, however, that the “mechanical coupling element” and the “coupling” as used in the claims are distinct. The specification further makes clear that “coupling” and “mount” are used synonymously.

For example, the relevant portion of claim 13 provides

A method of retrofitting an internally-lighted sign that is fitted with one or more gas-discharge lamps, said method comprising:

*removing the one or more gas-discharge lamps from between one or more respective pairs of gas-discharge lamp couplings positioned directly opposite from one another along an interior of the sign;*

\* \* \* \* \*

*engaging each of the end caps in a non-conductive manner with a respective one and only one of the gas-discharge couplings or with a respective one and only one replacement coupling to thereby position the end caps, the elongate support member, and the electric lamp units between the gas-discharge lamp couplings or replacement couplings that are positioned directly opposite from one another.*

(Ex. 35-01, ’835 Patent, at cl. 13, col. 9, l. 61 – col. 10, l. 17 (emphases added).)



As described in the specification the “mechanical coupling element” “is disposed along outwardly-facing side of [the] end cap . . . and is shaped to engage or be received in the conventional or standard electro-mechanical sockets or mounts.” (*Id.* at col. 5, ll. 19-25.) Thus, the “mechanical coupling element,” which is part of the end cap, is meant to engage or be received by the socket or mount. In claim 13, however, there is no discussion of sockets or mounts, the words of the claim instead refer to “gas-discharge *couplings*” or “replacement *coupling*.” (*Id.* at cl. 13, col. 9, l. 61 – col. 10, l. 17 (emphasis added).) According to the plain language of these claims it is the end cap—on which the mechanical coupling element is disposed—that is engaged with one of the couplings. For this reason and to simplify matters for the jury, RetroLED proposes that mount and coupling be construed as a “mount that supports the weight of a gas-discharge lamp or replacement.”

**e. Low Voltage**

Principal takes two inconsistent and irreconcilable positions when it comes to the construction of “low voltage.” First, Principal contends that RetroLED’s proposed construction of “voltages lower than 110V” would “exclude certain embodiments so as to shield itself from infringement.” (Dkt. No. 36 at 22.) Second, Principal—correctly—observes that there “is no mention whatsoever . . . regarding “low voltage” being within a certain voltage range, let alone excluding voltages above 110.” (*Id.*) It is impossible for embodiments to be excluded when none are provided.

Nevertheless, Principal seems to allow that an acceptable definition of low voltage should be under 1000V. (*Id.* at 23 (discussing the construction of low voltage in another case and technical sources)). With respect to the case relied on by Principal, that case deals with claims addressing “distribution power networks.” See *Varentec, Inc. v. Gridco, Inc.*, No. 16-217, 2017 WL 3731243, at \*2-3 (D. Del. Aug. 30, 2017) (reciting the claims at issue which comprise, *inter alia*, “a

distribution power network”). The claims in *Varentec* address a vastly different technology than the low voltage lighting systems at issue in this case and, therefore, provide limited or no guidance in the current case. *See Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1211 (Fed. Cir. 2002) (noting that, even where an inventor is shared between patent claims in closely related art, the use of a term in one patent “sheds no light” on the use of the term in an unrelated patent); *see also e.Digital Corp. v. Futurewei Techs., Inc.*, 772 F.3d 723, 727 (Fed. Cir. 2014) (noting the “well-understood notion that claims of unrelated patents must be construed separately).

With respect to the technical sources relied on by Principal, those sources provide a definition for “low voltage” as under 1000V. (*See* Dkt. No. 36-03 & 36-04.) RetroLED maintains that such a definition is absurd in light of the specification of the ’835 Patent and the relevant art. (*See, e.g.*, Ex. II, Keith L. Alexander and Lynh Bui, A Child Touched an Electrified Railing at MGM National Harbor Resort, and Lives Changed, Wash. Post, July 8, 2019 (describing how a railing carried 120 volts of electricity—“10 times what the lighting should have”—shocked a child and left her profoundly disabled), available at <https://wapo.st/2GioGQa> (last accessed July 17, 2019).).

Despite Principal’s numerous claims that RetroLED is construing claims to avoid infringement, RetroLED is not. The various uses of “low voltage” in a variety of fields require that some construction be made. Given the absence of guidance in the intrinsic evidence from the ’835 Patent and in light of the tremendous variance in the extrinsic evidence regarding the definition of low voltage, some construction for this term must be provided. RetroLED believes that its proposed construction of “voltages under 110V” is an appropriate construction in light of the specification and the relevant art. If the Court disagrees, however, RetroLED would not object to a construction of “low voltage” as “voltages under 1000V.”

#### IV. Other Issues

In addition to the specific construction issues discussed above, there are two other issues that deserve the Court's attention. First, Principal's improper use of materials relating to alleged infringement. Second, the misprinting of a number of figures in RetroLED's Opening Brief.

##### a. Principal's Injection of Infringement into Claim Construction

As noted above, Principal repeatedly protests that RetroLED injects non-infringement arguments into the claim construction briefing. (*See, e.g.*, Dkt. No. 36 at 1 (“RetroLED’s proposed constructions strain the claim in apparent attempt to inject non-infringement . . . defenses . . . .”) & 16 (“RetroLED’s overt attempts to inject non-infringement arguments should be rejected”).) This appears to be little more than projection on Principal's part. It is Principal that improperly raises infringement in its Opening Brief. (Dkt. No. 36 at 4 (“RetroLED has prepared and advertises a video demonstrating the process of creating these infringing products.”).) The Court should reject the evidence of alleged infringement cited by Principal when determining claim construction. *See NeoMagic Corp. v. Trident Microsystems, Inc.*, 287 F.3d 1062, 1074 (Fed. Cir. 2002) (“It is well settled that claims may not be construed by reference to the accused device.” (citing *SRI Int’l v. Matsushita Elec. Corp. of Am.*, 7875 F.2d 1107, 1118 (Fed. Cir. 1985) (en banc))),

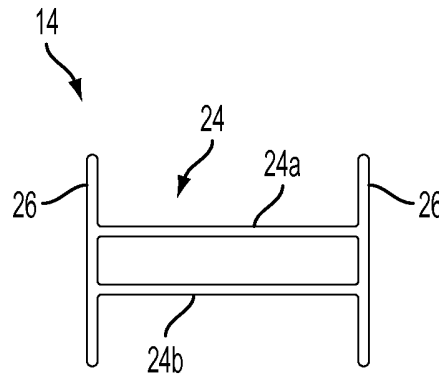
##### b. RetroLED's Figures

On review of RetroLED's Opening Brief, counsel for RetroLED noticed that a number of the included figures in its briefing were distorted or misprinted. For example, on page 3 of RetroLED's Opening Brief, only a portion of Figure 5 is displayed. (Dkt. No. 35 at 3.) Further, on page 13 of the opening brief, there is discussion of Figure 20 of the '835 Patent but the wrong figure is displayed. (*Id.* at 13.) Similarly, in what are labeled Figures B & C of RetroLED's Opening Brief, the wrong figures are displayed. (*Id.* at 19, Fig. B & 22, Fig. C.) Counsel for RetroLED has not definitively identified the cause for the discrepancy between what was intended

to be displayed and what is, in fact, displayed, but suspects that it was an error introduced as the file was transferred between different versions of the word processing software used in preparing the filing. Counsel for RetroLED apologizes for the error and any resulting inconvenience to the Court. The correct figures and surrounding text are reproduced below.

**On Page 3 of RetroLED's Opening Brief:**

double web portion is indicated by numeral 24 and the flange portions are indicated by numeral 26 in Figure 5, reproduced below.



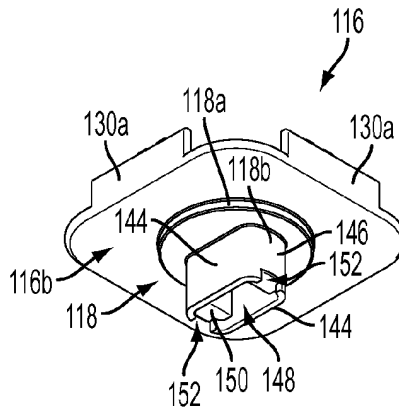
**FIG. 5**

(*Id.* at Fig. 5; *see also id.* at col. 4, ll. 35-40.)

In the double web embodiment of the invention, LED lamps are to be supported by one or both of the double web portions [24a & 24b] of the figure above. (*Id.* at col. 4, ll. 40-44.) Then,

**On Page 13 of RetroLED’s Opening Brief:**

situation, a picture is worth at least 90 words. A pictorial representation of the structure as construed by RetroLED is identified by the numeral 118 in Figure 20, reproduced below.

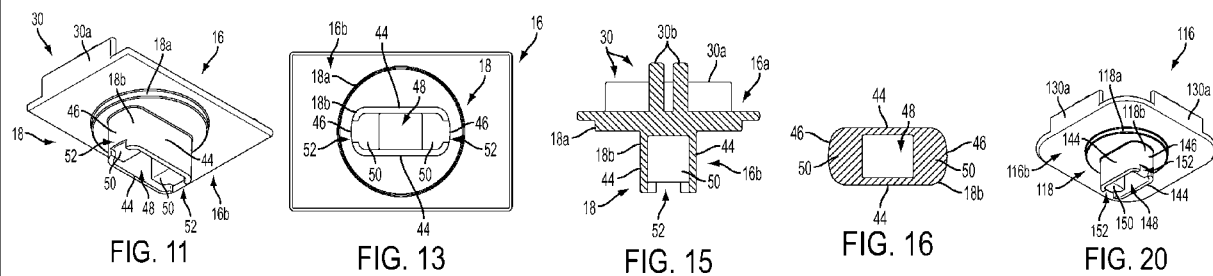


**FIG. 20**

(Ex. I, '835 Patent, at Fig. 20; *see also id.* at Figs. col. 4, 7, 11, 15, 16, 17 & 18; *id.* at col. 5, ll. 19-31.)

**Correct Figure B from RetroLED’s Opening Brief:**

the specification, including Figures 4, 7, 11, 15, 16, 17, 18 & 20, a selection of which are reproduced below

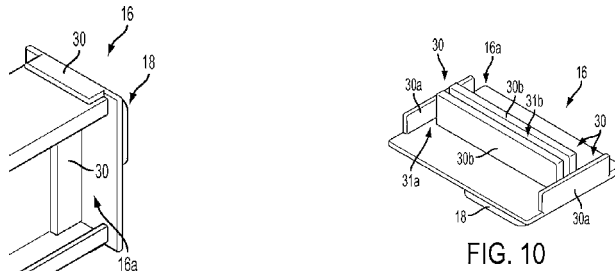


**Figure B. Select Figures from the '835 Patent.**

No other structure is provided in the specification for the “mechanical coupling element.”

**Correct Figure C from RetroLED's Opening Brief:**

The interaction of these various features with the end of the elongated support member is shown graphically in a detail of Figure 7 as well as Figure 10 of the '835 Patent, below.



**Figure C.** A detail of Figure 7 (*left*) shows the interaction of the end of the elongate support member with the inwardly-facing side of the end cap. Figure 10 (*right*) displays the relevant projections and gaps for engaging or receiving the end of the elongated support member.

An alternative to the projections or walls and gaps illustrated in Figure 10 is found in

**V. Conclusion**

As noted in RetroLED's Opening Brief, the jury should not be left to grope in the dark regarding the meaning of the terms of the '835 Patent as Principal contends. Instead, the Court should provide the jury with clear guidance regarding the scope of the Asserted Claims, allowing the jury to perform its critical fact-finding role of invalidity and non-infringement. Because the only constructions that provide such guidance are those proposed by RetroLED, the Court should adopt RetroLED's constructions.

Respectfully submitted,

Dated: July 17, 2019

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served on July 17, 2019 was filed with the clerk of Court via the CM/ECF system, which will notify all counsel of record including:

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