

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PATIENT TRANSFER SYSTEMS, INC.	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
PATIENT HANDLING SOLUTIONS, INC.	:	NO. 97-1568
and DAVID DAVIS	:	
Defendants	:	

**MEMORANDUM AND ORDER**

YOHN, J. June , 2000

Plaintiff Patient Transfer Systems, Inc. [“PTS”] has sued defendants Patient Handling Solutions, Inc. [“PHS”], D.T. Davis Enters., Ltd., David Davis, and Joann Davis for, among other things, infringing on patent number 5,561,873 [“’873 patent”], which is held by PTS. PTS manufactures and sells air inflatable mattress pads that are used to support and move patients in hospitals and other health care facilities. David Davis used to be employed by PTS, where he rose to the position of Vice President of Sales. In November 1994, David Davis left PTS and set up PHS, a business that competed with PTS as a manufacturer and seller of air inflatable mattress pads. This suit resulted.

Pending before the court is the plaintiff’s motion for construction of claims 1 and 16 of the ’873 patent (Doc. No. 106). At issue are the meanings of the third subset of limitations in claims 1 and 16 and the sixth subset of limitations in claim 1; the meanings of the other subsets of limitations in claims 1 and 16 are undisputed.

## I. Legal Standard

The court construes the meaning of language used in a patent claim as a matter of law. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (in banc), *aff'd*, 517 U.S. 370 (1996). In interpreting the language of a claim, “the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history.” *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). If the court’s “analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term . . . it is improper to rely on extrinsic evidence,” such as expert testimony. *Id.* at 1583. A court may, however, consider extrinsic evidence in order to educate itself on the meaning of technical terms and terms of art. *See Markman*, 52 F.3d at 980.

When construing the language of a claim, the words of the claim “are generally given their ordinary and customary meaning,” as that is understood by one skilled in the art. *Vitronics*, 90 F.3d at 1582. Indeed, “a court must presume that the terms in the claim mean what they say, and, unless otherwise compelled, give full effect to the ordinary and accustomed meaning of claim terms.” *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 989 (Fed. Cir. 1999).

A claim term’s ordinary meaning can be ignored in only two situations. The first situation is one in which a patentee “choose[s] to be his own lexicographer and use[s] terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history.” *Vitronics*, 90 F.3d at 1582; *see Zebco*, 175 F.3d at 990. The second situation is one in which “the term or terms chosen by the patentee so

deprive the claim of clarity that there is no means by which the scope of the claim may be ascertained from the language used.” *Zebco*, 175 F.3d at 990.

A patent’s specification should also be considered in interpreting disputed claim language. Although “the general rule . . . is that the claims of a patent are not limited to the preferred embodiment,” *Karlin Tech., Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968, 973 (Fed. Cir. 1999), “[c]laims must be read in view of the specification, of which they are a part.” *Markman*, 52 F.3d at 979.

If the prosecution history of a patent is in evidence, it should also be consulted by the court in construing disputed claim language. *See Markman*, 52 F.3d at 980. The prosecution history “is of primary significance in understanding the claims,” and “[t]he court has broad power to look as a matter of law to the prosecution history of the patent in order to ascertain the true meaning of language used in the patent claims.” *Id.* For example, the theory of “[p]rosecution history estoppel bars the patentee from recapturing subject matter that was surrendered by the patentee during prosecution in order to promote allowance of the claims.” *Insituform Techs., Inc. v. Cat Contracting, Inc.*, 99 F.3d 1098, 1107 (Fed. Cir. 1996).

## **II. Discussion**

### **A. The Third Subset of Limitations in Claims 1 and 16**

The third subset of limitations in claims 1 and 16 reads as follows (with added emphasis on the disputed terms):

*a generally rectangular array of chambers* formed within the main cavity, the array including a plurality of side-by-side, laterally extending, elongated chambers formed by a plurality of spaced apart *partition members having*

*laterally extending portions and longitudinally extending portions* attached to the first (top) and second (bottom) sheets, the longitudinally extending portions being at opposed ends of the laterally extending chambers.<sup>1</sup>

Pl.’s Mem. on Construction of the Meaning & Scope of Claims 1 & 16 of Patent No. 5,561,873 (Doc. No. 106) Ex. 1 [“’873 Patent”] at 22:64-23:4. Three questions arise from the disputed language: (1) what is the meaning of “partition members having laterally extending portions and longitudinally extending portions”; (2) which partition members must have “laterally extending portions and longitudinally extending portions”; and (3) must the longitudinally extending portions of the “partition members having laterally extending portions and longitudinally extending portions” be perpendicular to the laterally extending portions of those partition members. ’873 Patent at 22:67-23:2.

**1. What Is the Meaning of “Partition Members Having Laterally Extending Portions and Longitudinally Extending Portions”**

The plaintiff urges the court to interpret the phrase “partition members having laterally extending portions and longitudinally extending portions” as describing three types of partition members: laterally extending partition members, longitudinally extending partition members, and partition members with both laterally extending portions and longitudinally extending portions. ’873 Patent at 22:67-23:2; *see* Pl.’s Mem. on Construction of the Meaning & Scope of Claims 1 & 16 of Patent No. 5,561,873 (Doc. No. 106) [“Pl.’s Mem.”] at 8. In contrast, the defendant argues that the phrase describes only partition members with both laterally extending portions

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<sup>1</sup>The third subset of limitations in claim 16 substitutes the words “top” and “bottom” for the words “first” and “second” in the third subset of limitations in claim 1. Throughout, citations will be made to only claim 1 unless the provisions of claim 16 are substantially different.

and longitudinally extending portions. *See* Defs.’ Mem. of Law Contra Pl.’s Mot. for the Construction of the Meaning & Scope of Claims 1 & 16 of Patent No. 5,561,873 (Doc. No. 109) [“Defs.’ Resp.”] at 8-9.

The parties essentially argue for different interpretations of the word “and” in the phrase “partition members having laterally extending portions *and* longitudinally extending portions.” ’873 Patent at 22:67-23:2 (emphasis added). The defendants contend that “and” should be understood in its conjunctive sense to mean as well as. Applying this interpretation, each partition member described in the third subset of limitations in claims 1 and 16 must have both a laterally extending portion and a longitudinally extending portion. On the other hand, the plaintiff advocates an interpretation of the word “and” that is conjunctive and disjunctive. In effect, the plaintiff argues that “and” should be read as and/or, so that the phrase in question would read “partition members having laterally extending portions *and/or* longitudinally extending portions.”<sup>2</sup>

In interpreting the word “and,” the court begins with the rule that words in a claim “are generally given their ordinary and customary meaning.” *Vitronics*, 90 F.3d at 1582. When the word is used as it is in the third subset of limitations in claims 1 and 16, the ordinary and customary meaning of the word “and” is “along with or together with.” *Webster’s Third New*

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<sup>2</sup>The court also notes that the word “portions” argues for the defendants’ interpretation of the phrase “partition members having laterally extending *portions* and longitudinally extending *portions*.” ’873 Patent at 22:67-23:2 (emphasis added). A portion is a part; it is not the whole. *See Webster’s Third New Int’l Dictionary* (1981) at 1768. Thus, a partition member that has a laterally extending part must have some other part that is not laterally extending (i.e., longitudinally extending).

*Int'l Dictionary* at 80. Nowhere does *Webster's Third New International Dictionary* offer and/or, or words to that effect, as an alternative definition for the word "and." *See id.*

Words in a claim can, however, be given their non-ordinary or non-customary meaning by a patentee if the special definition is "clearly stated in the patent specification or file history." *Vitronics*, 90 F.3d at 1582. Although the '873 patent patentee could have expressly disclaimed the ordinary and customary meaning of "and" by stating in the specification or file history that the word "and" would be taken to mean and/or, he did not. It is clear, however, from the specification and the other claims that in the third subset of limitations in claims 1 and 16, the patentee intended to describe partition members that extended only longitudinally, partition members that extended only laterally, and partition members with both lateral and longitudinal extensions. *See, e.g.*, '873 Patent at 13:60-62 (describing the lateral partitioning members in pallet 10 as being "separated from the longitudinal partitioning member"), 23:37-42 (further limiting the mattress defined in claim 1 to one in which the longitudinally extending partition members are "free of attachment with the laterally extending portions of the partition members"). This intent is not, however, reflected in the unambiguous language of claims 1 and 16.<sup>3</sup>

Despite the patentee's intent, the court may not give the word "and" one meaning in the third subset of limitations in claims 1 and 16 and a different meaning in the rest of the claims. A disputed claim term must be interpreted consistently in all claims. *See Southwall Techs., Inc. v.*

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<sup>3</sup>The court is not being asked to choose between two equally plausible definitions of an ambiguous term. In a situation like that, it is clear that the ambiguity gets resolved in light of the rest of the patent, which reflects the patentee's intent that individual partition members could be only laterally extending, only longitudinally extending, or both laterally extending and longitudinally extending. *See Vitronics*, 90 F.3d at 1582-83. The court is instead being asked to give a different meaning to an unambiguous word. The court is being asked to read "and" to mean and/or.

*Cardinal IG Co.*, 54 F.3d 1570, 1579 (Fed. Cir. 1995). Thus, the patentee’s consistent use of the word “and” in its conjunctive sense and not to mean and/or throughout the rest of the ’873 patent precludes the court from allowing the patentee to give the word “and” a non-ordinary and non-customary meaning in only the third subset of limitations in claims 1 and 16.

Words in a claim can also be given their non-ordinary or non-customary meaning when the ordinary meaning “so deprives the claim of clarity that there is no means by which the scope of the claim may be ascertained from the language used.” *Zebco*, 175 F.3d at 990. The court is not confronted with such a case in the instant dispute. Giving “and” its conjunctive meaning, as the defendants urge, does not deprive claims 1 and 16 of any clarity. On the contrary, the claims are very clear in their requirements: these partition members need to have both portions that extend laterally and portions that extend longitudinally.

Thus, because neither of the exceptions to the ordinary meaning rule applies, the court must give the word “and” its ordinary and customary conjunctive meaning in the third subset of limitations in claims 1 and 16. In an attempt to dissuade the court from this course, the plaintiff argues that such an interpretation would restrict the plaintiff to pallet 310, depicted in Figure 8 of the ’873 patent. *See* Pl.’s Mem. at 8. The plaintiff also cites *Modine Manufacturing Co. v. United States International Trade Commission*, 75 F.3d 1545 (Fed. Cir. 1996), for the proposition that interpreting a claim to “exclude[] a depicted embodiment from the patent’s coverage is rarely correct, and requires highly persuasive evidence from the specification or prosecution history.” Pl.’s Reply at 7. These arguments are unpersuasive.

In *Modine Manufacturing*, the Federal Circuit was commenting on an interpretation that excluded what was apparently the one and only embodiment of the patent at issue. *See id.*, 75

F.3d at 1549-1550. That is not the case with the '873 patent. The interpretation of “and” to mean as well as in the third subset of limitations in claims 1 and 16 will not limit the '873 patent's coverage to pallet 310. Although pallet 10 would seem to be excluded because it is described as having lateral partition members that “are separated from the longitudinal partitioning member,” the meat of the '873 patent—the innovations described in the specification—does not appear to be precluded by the requirement in the third subset of limitations in claims 1 and 16 that the partition members have both laterally extending portions and longitudinally extending portions. '873 Patent at 13:60-62. For example, the invention may still have air dispersion channels as long as the laterally extending portions of the partition members are in some small way connected to the longitudinally extending portions. *See id.* at 10:31-42 (describing the air dispersion channels). Thus, interpreting “and” to mean as well as in the third subset of limitations in claims 1 and 16 does not lead to consequences as dire as those alluded to by the plaintiff. Even if it had, the court is faced with highly persuasive evidence supporting the defendants' interpretation: the unambiguous language of the claim itself.

For the foregoing reasons, the court concludes that the phrase “partition members having laterally extending portions and longitudinally extending portions” in the third subset of limitations in claims 1 and 16 describes partition members that each have at least one laterally extending portion and at least one longitudinally extending portion. *Id.* at 22:67-23:2.

**2. Which Partition Members Must Have “Laterally Extending Portions and Longitudinally Extending Portions”**

The plaintiff argues that the partition members referred to in the phrase “partition members having laterally extending portions and longitudinally extending portions” need to be present only in the “side-by-side, laterally extending, elongated chambers” described in the third subset of limitations in claims 1 and 16 and that there are no restrictions on any other partition member in the invention. *See* PTS’s Mem. in Rebuttal to Def.’s Proposed Construction of the Meaning & Scope of Claims 1 & 16 of Patent No. 5,561,873 (Doc. No. 111) [“Pl.’s Reply”] at 4-5. The defendants appear to argue that every partition member in the invention is subject to the restriction of the third subset of limitations in claims 1 and 16 that “partition members [must] hav[e] laterally extending portions and longitudinally extending portions” ’873 Patent at 22:67-23:2; *see* Defs.’ Resp. at 8-9. The court disagrees with the defendants’ argument.

As the plaintiff points out, the claim language makes it clear that the partition members described by the third subset of limitations in claims 1 and 16 are only those that form the “plurality of side-by-side, laterally extending, elongated chambers.” ’873 Patent at 22:65-66; *see* Pl.’s Reply at 4-5. The Federal Circuit has recognized that the word “plurality” has a particular meaning when used in a patent: “requir[ing] only at least two.”<sup>4</sup> *York Prods., Inc. v. Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1575 (Fed. Cir. 1996). Thus, the partition members at issue must form at least two “side-by-side, laterally extending, elongated chambers,” but the third subset of limitations in claims 1 and 16 does not require these partition members to form any more than two of these chambers. ’873 Patent at 22:66.

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<sup>4</sup>At oral argument, the parties agreed that this definition is correct for claim language interpretation.

Moreover, these “side-by-side, laterally extending, elongated chambers” may be only one of the many types of chambers in the invention. *Id.* The third subset of limitations in claims 1 and 16 states only that the “generally rectangular array of chambers [must] includ[e] a plurality of side-by-side, laterally extending, elongated chambers.” *Id.* at 22:64-66. That one particular type of chamber must be present in the array of chambers does not mean that other types of chambers may not also be present in the array. Although the “generally rectangular array of chambers” could be made up only of these “side-by-side, laterally extending, elongated chambers,” the third subset of limitations in claims 1 and 16 allows for the array to be made up of an infinite variety of chambers as long as the combined shape of those chambers is “generally rectangular” and at least two of the “side-by-side, laterally extending, elongated chambers” are present. *Id.* at 22:64, 22:66.

For the foregoing reasons, the court concludes that the third subset of limitations in claims 1 and 16 places restrictions on the partition members that form the “side-by-side, laterally extending, elongated chambers” but on no other partition members in the invention. *Id.* at 22:66.

**3. Must the Longitudinally Extending Portions of the “Partition Members Having Laterally Extending Portions and Longitudinally Extending Portions” Be Perpendicular to the Laterally Extending Portions of Those Partition Members**

The defendants argue that the third subset of limitations of claims 1 and 16 requires the longitudinally extending portions of the “partition members having laterally extending portions and longitudinally extending portions” to be perpendicular to the laterally extending portions of those partition members. ’873 Patent at 22:67-23:2; *see Defs.’ Resp.* at 9-11. In contrast, the

plaintiff contends that the longitudinally extending portions of these partition members need to be only “angled toward the longitudinal direction.” Pl.’s Mem. at 9.

In support of their argument, the defendants identify language in the ’873 patent’s specification that either suggests or requires longitudinally extending partition members or portions of partition members to be perpendicular to laterally extending partition members or portions of partition members. *See* Defs.’ Resp. at 10-11 (referring to ’873 Patent at 10:15-20 (noting that the longitudinally extending partition members are joined to the top and bottom sheets “along lines substantially parallel to the longitudinal edges of the air pallet,” implying that these lines are substantially perpendicular to the lateral edges of the air pallet and any laterally extending partition members or portions of partition members), 14:41-43 (describing the laterally extending portions of the partition members in pallet 310 as extending across the center of the pallet and turning at each end to “continue[] in a perpendicular direction (longitudinally along the rectangular chamber)”). The defendants also point out that the figures accompanying the ’873 patent depict the longitudinally extending partition members and portions of partition members as being perpendicular to the laterally extending partition members and portions of partition members. *See* Defs.’ Resp. at 9.

A basic rule of claim construction “is that the claims of a patent are not limited to the preferred embodiment,” *Karlin Tech.*, 177 F.3d at 973. Thus, the patentee’s descriptions of particular embodiments in the specification, such as those descriptions pointed to by the defendants, will not generally be read to restrict the scope of broad claim language. This is particularly true when the specification itself warns repeatedly that “[t]he description is not intended in a limiting sense, and is made solely for the purpose of illustrating the general

principles of the invention.” ’873 Patent at 9:48-51; *see id.* at 22:45-53. Consequently, in the absence of any support in the claim language or prosecution history of the ’873 patent, it is unpersuasive that parts of the specification and the accompanying figures suggest a perpendicularity requirement.

Although the defendants do not point to any part of the prosecution history of the ’873 patent, they do identify claim language that they contend supports a perpendicularity requirement. The defendants interpret the phrase “a generally rectangular array of chambers within the main cavity” in the third subset of limitation of claims 1 and 16 to require the longitudinally extending portions of the partition members described therein to be perpendicular to the laterally extending portions of those partition members. ’873 Patent at 22:64-65; *see Defs.’ Resp.* at 11. The quoted language does not lend itself to such an interpretation. The claim provides for a generally rectangular array of chambers, not an array of generally rectangular chambers. Had it instead read “a generally rectangular array of *rectangular* chambers,” then the defendants’ interpretation would be correct. Instead, the quoted language requires only the array of chambers, not the chambers themselves, to be rectangular.<sup>5</sup> Thus, because there is no support for the defendant’s argument in the claim language, the court concludes that the third subset of limitations in claims 1 and 16 does not contain a perpendicularity requirement.

The plaintiff urges the court to interpret the third subset of limitations in claims 1 and 16 to require only that the longitudinally extending portions of the partition members described therein be “angled toward the longitudinal direction.” Pl.’s Mem. at 9. Although the court

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<sup>5</sup>Even the array of chambers need not be perfectly rectangular but only “generally rectangular.” ’873 Patent at 22:64. Variations from perfect perpendicularity are provided for in the claim language.

recognizes that the claim language of the '873 patent does not require the longitudinally extending portions of these partition members to be perfectly perpendicular to the laterally extending portions, the court declines to interpret the claim language as broadly as the plaintiff suggests.

The claim language provides for partition members with “longitudinally extending portions.” '873 Patent at 23:1-2. According to the plaintiff, any portion of a partition member that is not perfectly parallel to the laterally extending portion qualifies as a longitudinally extending portion as long as it “act[s] as a wall of the chamber in that direction.” Pl.’s Reply at 10. That interpretation is not supported by the claim language. The third subset of limitations in claims 1 and 16 provides for both “laterally extending portions and longitudinally extending portions.” '873 Patent at 23:1-2. In order to give the claim language meaning, a longitudinally extending portion cannot be the equivalent of a laterally extending portion. Consequently, a longitudinally extending portion must be more “angled toward the longitudinal direction” than the lateral direction. Pl.’s Mem. at 9.

For the foregoing reasons, the court concludes that the longitudinally extending portions of the “partition members having laterally extending portions and longitudinally extending portions” do not need to be perpendicular to the laterally extending portions of those partition members but that the longitudinally extending portions must extend more in the direction of the longitudinal axis described in the first subset of limitations in claims 1 and 16 than in the direction of the lateral or transverse axis described therein. '873 Patent at 22:67-23:2; *see id.* at 22:60-61, 24:49-50.

## **B. The Sixth Subset of Limitations in Claim 1**

The sixth subset of limitations in claim 1 reads as follows (with added emphasis on the disputed terms):

the laterally extending portions of the partition members have an edge attached to the first sheet and an opposite edge attached to the second sheet, *the attachments being offset so that when the pallet is inflated, the laterally extending portions of the partition members include an arcuate extension as each extends to a substantially taut vertical position between the sheets.*

'873 Patent at 23:14-20. The issue of interpretation that arises from the disputed language is whether the arcuate extension must be formed by the offset attachment of the laterally extending portions of the partition members or by some other means.

The plaintiff proposes that the sixth subset of limitations in claim 1 be construed to require the arcuate extension described therein to be formed by the offset attachment of the laterally extending portions of the partition members. *See* Pl.'s Reply at 11. The defendants argue that the court should construe the disputed claim language to mean that "[t]he arcuate extension is achieved by having the longitudinal partition members shorter in height than the lateral partition members."<sup>6</sup> *See* Def.'s Mem at 11-13.

In interpreting the disputed claim language, the court begins with the rule that words in a claim "are generally given their ordinary and customary meaning." *Vitronics*, 90 F.3d at 1582.

The ordinary and customary meaning of the disputed claim language is that the arcuate extension

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<sup>6</sup>Interestingly, by referring to "longitudinal partition members" and "lateral partition members" instead of longitudinally extending portions of partition members and laterally extending portions of partition members, the defendants appear to recognize that some partition members might extend only longitudinally or laterally and, thus, undermine their argument that all partition members must have both laterally extending portions and longitudinally extending portions. Defs.' Resp. at 13; *see supra* Part II.A.2.

is formed by the offset attachment of the laterally extending portions of partition members.

Claims may not, however, be construed in a vacuum. *See Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 621 (Fed. Cir. 1995) (stating that “it is legal error to construe a claim by considering it in isolation”).

Words in a claim can be given their non-ordinary or non-customary meaning by the patentee if the special definition is “clearly stated in the . . . file history.” *Vitronics*, 90 F.3d at 1582. Indeed, the Federal Circuit has made it clear that a patent’s prosecution history plays a very important role in claim construction. *See Markman*, 52 F.3d at 980 (stating that the prosecution history “is of primary significance in understanding the claims” and recognizing that “[t]he court has broad power to look as a matter of law to the prosecution history of the patent in order to ascertain the true meaning of language used in the patent claims.”). For example, the theory of “[p]rosecution history estoppel bars the patentee from recapturing subject matter that was surrendered by the patentee during prosecution in order to promote allowance of the claims.” *Insituform Techs.*, 99 F.3d at 1107.

A review of the prosecution history of the ’873 patent reveals that the U.S. Patent and Trademark Office [“PTO”] initially rejected the patentee’s first application for a patent. *See* Defs.’ Resp. Ex. 1 First Office Action at 1. One of the reasons for the rejection was that the invention was not adequately distinct from an existing patent. *See id.* at 4. In order to overcome this objection, distinguish the ’873 patent from the existing patent, and “promote allowance of the claim[,]” the patentee amended claim 1 to include the disputed claim language. *Insituform Techs.*, 99 F.3d at 1107; *see* Defs.’ Resp. Ex. 1 Resp. to First Office Action Pursuant to 37 C.F.R. § 1.115 [“Resp. to Office Action”] at 11. The amendment added to the invention a

“structure which is not shown or taught by [the earlier patent,] the structure being the vertically extending arcuate extensions.” Resp. to Office Action at 11. The patentee explained the meaning of the disputed claim language to the PTO by stating that the arcuate extension is caused “by making the longitudinal partition member slightly shorter in the vertical dimension than the lateral partition member,” not by the offset attachment as the claim language suggests.<sup>7</sup> Resp. to Office Action at 12. Although the meaning ascribed to the disputed claim language by the patentee is not the ordinary meaning, a patentee may “choose to be his own lexicographer and use terms in a manner other than their ordinary meaning” if the non-ordinary meaning is clear from the prosecution history. *Vitronics*, 90 F.3d at 1582. Thus, the court must give the disputed claim language the non-ordinary meaning chosen by the patentee. *See id.*

Even if the disputed claim language had not been given a non-ordinary meaning by the patentee, the court would nonetheless have to pay particular attention to the PTO’s understanding of the claim language at issue. *See Markman*, 52 F.3d at 980. To do otherwise would be to proceed without the benefit of the considered judgment of the PTO (i.e., if the PTO examined the application with the understanding that the arcuate extensions were formed by shortened longitudinal portions of partition members, then it never considered whether or not the ’873 patent would be valid if the arcuate extensions were formed in another way).

For the foregoing reasons, the court concludes that the sixth subset of limitations in claim 1 describes arcuate extensions formed by the longitudinally extending portions of partition

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<sup>7</sup>Interestingly, the patentee makes a similar statement in the specification of the ’873 patent: “[i]n order to accomplish the arcuate extension . . . the longitudinal partitioning member is of a slightly shorter dimension than the lateral partitioning member.” ’873 Patent at 14:6-11.

members being “slightly shorter in the vertical dimension than the” laterally extending portions of partition members. Resp. to Office Action at 12.

### **III. Conclusion**

Because the claim language is unambiguous in the third subset of limitations in claims 1 and 16, the court concludes that the phrase “partition members having laterally extending portions and longitudinally extending portions” describes partition members that each have at least one laterally extending portion and at least one longitudinally extending portion. ’873 Patent at 22:67-23:2. For the same reason, the court concludes that the third subset of limitations in claims 1 and 16 places restrictions on the partition members that form the “side-by-side, laterally extending, elongated chambers” but on no other partition members in the invention. *Id.* at 22:66. For the same reason, and additionally because restrictions from the specification will not generally be read into the broad language of a claim, the court concludes that the longitudinally extending portions of the “partition members having laterally extending portions and longitudinally extending portions” do not need to be perpendicular to the laterally extending portions of those partition members but that the longitudinally extending portions must extend more in the direction of the longitudinal axis described in the first subset of limitations in claims 1 and 16 than in the direction of the lateral or transverse axis described therein. ’873 Patent at 22:67-23:2. Because the patentee assigned a non-ordinary meaning to the disputed claim language in the sixth subset of limitations in claim 1, and because the PTO examined the ’873 patent’s application based on that non-ordinary meaning, the court concludes that the sixth subset of limitations in claim 1 describes arcuate extensions formed by the longitudinally extending

portions of partition members being “slightly shorter in the vertical dimension than the” laterally extending portions of partition members. Resp. to Office Action at 12. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PATIENT TRANSFER SYSTEMS, INC.	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
PATIENT HANDLING SOLUTIONS, INC.	:	NO. 97-1568
and DAVID DAVIS	:	
Defendants	:	

**ORDER**

YOHN, J.

AND NOW, this        day of June, 2000, upon consideration of the plaintiff's motion for construction of claims 1 and 16 of patent number 5,561,873 (Doc. No. 106), the defendants' response thereto (Doc. No. 109), and the plaintiff's reply thereto (Doc. No. 111), and after a hearing on the motion, IT IS HEREBY ORDERED and DECREED that:

1. The phrase "partition members having laterally extending portions and longitudinally extending portions" in the third subset of limitations in claims 1 and 16 of patent number 5,561,873 describes partition members that each have at least one laterally extending portion and at least one longitudinally extending portion;
2. The third subset of limitations in claims 1 and 16 of patent number 5,561,873 places restrictions on the partition members that form the "side-by-side, laterally extending, elongated chambers" described therein but on no other partition members in the invention;
3. The longitudinally extending portions of the "partition members having laterally extending portions and longitudinally extending portions" described in the third subset of

limitations in claims 1 and 16 of patent number 5,561,873 do not need to be perpendicular to the laterally extending portions of those partition members, but these longitudinally extending portions must extend more in the direction of the longitudinal axis described in the first subset of limitations in claims 1 and 16 of patent number 5,561,873 than in the direction of the lateral or transverse axis described therein; and

4. The arcuate extensions described in the sixth subset of limitations in claim 1 of patent number 5,561,873 must be formed by the longitudinally extending portions of partition members being “slightly shorter in the vertical dimension than the” laterally extending portions of partition members.

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William H. Yohn, Jr.