IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TRU-FIRE CORPORATION,

OPINION AND ORDER

Plaintiff,

01-C-0619-C

v.

TOMORROW'S RESOURCES
UNLIMITED, INC.,

Defendant.

- -

This is a civil case in which plaintiff Tru-Fire Corporation contends that defendant Tomorrow's Resources Unlimited, Inc. has infringed plaintiff's U.S. Patent No. 5,357,939, which is directed to a "bow string release with continuous loop wrist strap and reversible trigger mechanism." A hearing on the construction of the disputed claims of the patent was held on April 18, 2002. From the evidence adduced at that hearing, I make the following findings of fact.

FACTS

The '939 patent relates to a bow string release used by archery enthusiasts to improve their accuracy and pulling ability. The mechanism works by grasping the bow string and applying a pulling force to it, allowing the archer to release it at the desired time. Typically, the release is either hand-held or strapped to the wrist and equipped with a trigger mechanism that permits the archer to activate a string retaining and releasing mechanism.

As described in the abstract of the '939 patent, the novelty of plaintiff's bow string release is a trigger mechanism that can be operated selectively in either a push to fire or a pull to fire manner. In addition, the patent claims sear elements that include an arcuate tab and mated receptacle that allows the jaws of the patented device to be manufactured as a unit, reducing the cost of manufacture and permitting the sear mechanism to pivot without the use of spherical bearing elements. (A "sear" is defined in the patent as a mechanism for "closing and opening string retaining notches." '939 patent, col. 2, lns. 19-20.) Prior art releases used a bearing element positioned between the jaws to assure smooth, low friction action of the jaws as they open and close. '939 patent, col. 2, lns. 21-25.

Fig. 4 from the '939 patent is reproduced below.

Fig. 4 shows the preferred embodiment of "the release mechanism **10** which includes a body **61** for housing a sear mechanism comprising a pair of jaws **63** and **65** controlled by the actuator trigger mechanism **62**." '939 pat., col. 8, lns. 7-9. In the preferred embodiment, "both jaws **63** and **65** are mounted for pivotal movement relative to the housing at pivot points **64** [not shown] and **65**," respectively. Id. at lns. 10-12.

Fig. 9 below shows the mated jaws, with the integral arcuate tab **91** provided on one of the jaws and a recessed, mate arcuate bearing seat **93** on the mated complementary jaw.

The patent consists of four independent claims. With only one exception, each of the four begins with the same preamble:

> A bow string release of the type having a body, a sear mounted in the body and having a string receptive notch for selectively receiving a bow string, the sear movable between a closed, string retaining position and an open, string releasing position, and a trigger mechanism associated with the sear and movable between a ready position for locking the sear in the closed, string retaining position and a fire position for opening the sear and releasing the string . . .

The exception is that the preamble for claim 1 ends with the words, "the trigger mechanism comprising:"; whereas the preamble for each of claims 11, 13 and 15 ends with the words, "the bow string release comprising:"

Elements a, b, c and d of claim 1 are directed toward "a trigger base pivotally mounted on the sear by a pivot . . ." (a); "a guide pin secured to the release . . ." (b); "a trigger level secured to the base and projecting outwardly from the release body (c); and "wherein the sear is in the open, string releasing position . . ." Claim 11 is directed to the outer ends of the sear elements "further including outer tips which are in non-abutting

relationship and forming substantially an open V when the sear is in the closed, string retaining position." Claim 13 is directed to "sear elements further including a resilient cushion disposed between said sear elements adjacent said inner ends for cushioning the engagement between the sear elements when the sear is moved from the string retaining position to the string releasing position."

Claim 15 is the disputed claim. It includes elements (a), (b) and (c).

> a. a pair of elongated sear elements mounted in the body, each having outer end extending beyond the body and having a string retaining notch adjacent thereto and an inner end within the body, at least one of said sear elements being mounted for pivotal movement in said body, whereby the outer ends of the sear elements may be moved between an abutting, string retaining relationship and a separated, string releasing relationship;
>
> b. a trigger associated with the sear elements adjacent the inner end and adapted for selectively engaging and locking the sear in the closed string retaining position and for unlocking and releasing the sear for releasing the bow string;
>
> c. at least one of the sear elements being mounted for pivotal movement in said body, intermediately of said inner and outer ends, the sear elements further including an arcuate tab positioned adjacent the pivot point of one sear element and projecting outwardly from said one sear element toward the other sear element, said other sear element including a mated receptacle for receiving said tab.

The application for the '939 patent was filed on November 20, 1992. As originally filed, the application included 46 claims (misnumbered as 45 and corrected by the examiner). The examiner approved claims 35-43 and 46 and rejected the remainder, with the exception of claim 33, which was objected to. (Claim 35 issued as claim 15, the claim

in dispute; claims 36-43 issued as dependent claims of claim 15 or of its dependents.). He rejected claim 32, as being anticipated by Peck, on the ground that the "outer tips of the release of Peck appear to be rounded and non-abutting." Prosecution History, Exh. A to Plt.'s Reply Br., dkt. #25, at Bates No. 10083. He rejected claim 20, which would have required a "trigger lever projecting outwardly from the release body and in engagement with the sear for selectively moving the sear between the closed string retaining position and the open, fire position, the trigger adapted for firing the release when moved either forward or rearward from the closed position." Id. at 10046-47. His reason was that "Peck shows a bowstring release with sears 24, 26 mounted in a body, which are pivotal in response to trigger mechanism 18 with lever 50. The trigger and sear jaws are closed in figure 1. As shown in figure 2, the trigger is moved rearward to open the jaws, which meets the claim that the trigger opens the jaws 'when moved either forward or rearward from the closed position." Id.

The examiner directed the applicants to elect between the wrist strap invention claimed in claims 1-19 and the bowstring release claimed in claims 20-46. The applicants chose the bowstring release.

In "remarks" responding to the examiner's action, the applicants wrote in part as follows.

The Examiner has substantively rejected claims 20, 32 and 44 under 35 U.S.C. §

102(e), as being anticipated by Peck. Peck discloses a bow string release which includes a body having a trigger and a head having a sear wherein a stiff trigger element is used to translate trigger motion to the sear. The Examiner states that the Peck trigger is moved rearward to open the jaws and therefore meets the claim of Applicant's invention that the trigger opens the jaws "when moved either forward or rearward from the closed position".

The subject invention is directed to a bow string release including a trigger lever which is directly connected to the sear and which allows the sear to be moved from the open position to the closed, string retaining position by moving the trigger lever in either a forward or rearward position. None of the prior art suggests such a feature.

For example, in use, the sear is initially in the open position and the trigger lever is in a center position when the string is inserted into the device. Once the string is inserted, the sear may be closed to retain the string by either pushing the trigger forward or pulling the trigger backward from the center position. Thus, the sear may be opened to fire the bow string release by either releasing the trigger, if the sear was closed by pulling the trigger backward, or pulling the trigger backward, as when firing a gun, if the sear was closed by pushing the trigger forward.

Peck does not disclose a bow string release whereby the string may be released and the arrow fired by moving the trigger in either a forward or rearward direction. In contrast, the sear of Peck can be opened to release the string by moving the trigger only in a rearward direction. The purpose of the stiff trigger element of Peck is to permit the user to reclose the sear to retain the string by pushing the trigger in a forward direction without having to manually return the sear to the closed position, not to release the string. The Peck patent is incapable of releasing the string by pushing the trigger in a forward manner.

Applicant's invention, as now claimed in amended claim 20, is directed to a bow string release which specifically provides for moving the sear from the retaining position to the released position by moving the trigger in either a forward or rearward direction. Applicant believes the invention to be the fact that the string can be loaded in the bow string release by moving the trigger either in a forward or rearward direction, thereby allowing the user to select between firing the release by either releasing the trigger in the manner a hand held string is released or by pulling it in a

> rearward direction as when squeezing the trigger of a firearm. Peck does not teach or remotely suggest Applicant's invention as more clearly pointed out and distinctly claimed in amended claim 20.
>
> Therefore, it is respectfully submitted that claim 20, as amended, is allowed over the prior art of record. Applicant respectfully requests that the Examiner withdraw the rejection of claim 20 under 35 U.S.C. § 102(e).
>
> With respect to the rejection of claims 32 and 44, claim 32 has been amended to incorporate the features of claim 33 which the Examiner has indicated would be allowable if amended to incorporate all the limitations of claim 32. Specifically, the Examiner has indicated that the prior art does not show the V-shaped notch at the outer tips of the sear elements. Pursuant to the Examiner's contents, Applicant has amended claim 32 to include the V-shape formed by the outer tips as described in claim 33, not canceled. Claim 44 depends from amended claim 32 and should be allowable for the reasons set forth by the Examiner regarding the base claim. Therefore, it is respectfully submitted that claim 32, as amended, and claim 44, depending therefrom, are allowable.

Prosecution Hist. at Bates No. 10094-95.

The examiner allowed claims 32 and 44, as amended to include the V-shape formed by the outer tips as described in claim 33, now cancelled. They issued as independent claim 11 and its dependent, claim 12. Claim 11 is identical to claim 15 except with respect to subparagraph c, which in claim 11 reads as follows:

> the outer ends of the sear elements further including outer tips which are in non-abutting relationship and forming substantially an open V when the sear is in the closed, string retaining position, a string retaining notch spaced inwardly from the spaced apart outer tips and an abutting portion between the notches and the outer ends.
>
> In addition, the examiner allowed claims 21-23, 25, 31, 34-43 and 45-46. The

applicant cancelled claim 20 after the examiner rejected it a second time both as anticipated by Peck and as indefinite for failing to particularly point out and distinctly claim the subject matter that the inventor regarded as the invention. The examiner found that the structure recited would be insufficient to allow the sear to be moved from the open position to the closed position when the trigger was moved in either a forward or reverse direction from the center position or to allow the sear to be moved to the open position when the trigger is returned to the center position.

At the claim construction hearing, defendant called Dr. Wayne D. Milestone as an expert witness. Milestone is a professor of mechanical engineering at the University of Wisconsin. He testified that he would interpret the disputed terms of claim 15 in the manner proposed by defendant, that is, that the term, "a trigger associated with the sear elements adjacent the inner end," means and requires that the trigger be connected directly to the sear element; the term, "adapted for selectively engaging and locking the sear" means and requires that the trigger be capable of being selectively locked in at least two ways and capable of releasing the bow string in at least two ways; and that "an arcuate tab positioned adjacent the pivot point of one sear element, etc." means and requires that the tab and receptacle function as mating bearing surfaces while one jaw rotates relative to the other jaw and at least one also rotates relative to the body. In reaching this conclusion, Milestone relied in part on the applicants' "remarks" to the examiner in response to the rejection of

certain claims in the original application.

OPINION

A. Principles of Claim Construction

The task of claim construction is to define the boundaries that mark a particular patent's claims, so as to determine where the owner's claim begins and ends. In doing this, courts must determine how persons of ordinary skill in the field of the invention would understand the boundary-defining words they are reading. See, e.g., Toro Co. v. White Consolidated Industries, Inc., 199 F.3d 1295, 1299 (Fed. Cir. 1999); Vitronics Corp. v. Conceptronics, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). The starting point is the claim language, the specifications of the patent and the prosecution history. Only if that "intrinsic" evidence does not reveal the meaning of the claim language should a court look to extrinsic sources such as expert testimony or dictionaries. Markman v. Westview Instruments, Inc., 52 F.3d 967, 980-81 (Fed. Cir. 1995) (en banc), aff'd, 517 U.S. 370 (1996); Vitronics Corp., 90 F.3d at 1583.

Courts are to give claim language its ordinary and customary meaning unless the specification shows that the inventor has given a special meaning to one or more terms, Vitronics Corp., 90 F.3d at 1583, and give the same meaning to claim terms wherever they appear "unless it is clear from the specification and prosecution history that the terms have

different meanings at different portions of the claims." Fin Control Systems Pty Ltd. v. OAM, Inc., 265 F.3d 1311, 1318 (Fed. Cir. 2001) (citing Phonometrics, Inc. v. Northern Telecom Inc., 133 F.3d 1459, 1465 (Fed. Cir. 1998)). If the applicant argues the meaning of a claim term during the prosecution of the patent, that argument is relevant to the interpretation of that term throughout the claims "in the absence of a clear indication to the contrary." Southwall Technology, Inc. v. Cardinal IG Co., 54 F.3d 1570, 1579 (Fed. Cir. 1995).

Courts are not to read limitations from the written descriptions into the claims, SciMed Life Systems, Inc. v. Advanced Cardiovascular Systems, Inc., 242 F.3d 1337, 1340, 1344-45 (Fed. Cir. 2001); Laitram Corp. v. SEC Corp., 163 F.3d 1342, 1347 (Fed. Cir. 1998), unless it is clear from the specification that the invention is limited to an embodiment incorporating a particular feature. SciMed Life Systems, Inc., 242 F.3d at 1342-43.

B. Disputed Terms

The parties' dispute focuses on three aspects of claim 15: (1) whether it is limited, as defendant contends, to a trigger connected directly to the sear; (2) whether it requires that the trigger be capable of selectively locking and releasing the sear in more than one manner; and (3) whether it is limited to sear elements having arcuate tabs and mated receptacles that

perform a bearing function.

1. Association or direct connection of trigger element with sear

Nothing in claim 15 requires that the trigger be connected directly to the sear elements in order to perform the locking and releasing functions. The claim refers only to a trigger "associated with the sear elements." Nevertheless, defendant contends, it is necessary to read it as requiring a direct connection because of the specification, which explains how the direct connection between the trigger and sear is essential if the release is to function properly; because of the absence of disclosure of any other way of maintaining the jaws in a closed, or cocked, position; because the dual-release function could never occur without direct engagement between the trigger and jaw and the guide post located on the sear element; and because the prosecution history shows that the applicant read it that way to distinguish it over the prior art.

a. Specification

As defendant notes, the specification describes a direct connection between the trigger and the sear. However, it does so only when describing the preferred embodiment, see, e.g., col. 8, lns. 6-9 ("With specific reference to FIG. 4, the release mechanism **10** includes a body **61** for housing a sear mechanism comprising a pair of jaws **63** and **65** controlled by the

actuator trigger mechanism **62**."); col. 9, lns. 43-52 (describing trigger as including a base member that is pivotally mounted on one of the jaws). The limitations of the preferred embodiment are not necessarily the limitations of the patented invention. "'[I]f structural claims were to be limited to devices operated precisely as a specification-described embodiment is operated, there would be no need for claims.'" Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1344 (Fed. Cir. 2001) (quoting SRI Int'l v. Matsushita Electric Corp. of America, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc)).

Moreover, claim 1 is directed to a trigger mechanism in which the trigger is connected directly to the sear elements. The inventors explain that the preferred embodiment "includes a plurality of unique features, which may be used either in combination with each other or independently with other bow string release mechanisms." '939 patent, col. 11, lns. 16-18.

b. Absence of disclosure

Patent applicants are not required to describe every possible future embodiment of their inventions. Rexnord Corp., 274 F.3d at 1344. They are required only to describe the "best mode" known to them at the time of making and using the invention. SRI Int'l, 775 at 1121; 35 U.S.C. § 112. In doing so, they do not give up other structures or forms the invention might take. SRI Int'l, 775 F.2d at 1122 (citing Smith v. Snow, 294 U.S. 1, 11 (1935)). Defendant does not quarrel with this proposition as a general rule but it argues

that this case differs from those in SRI Int'l and Rexnord, 274 F.3d 1336, because the specification makes obvious the critical nature of the direct connection between the trigger and the sear elements to the proper functioning of the release mechanism. Moreover, defendant argues, the specification gives no hint of any other means of maintaining the jaws in a closed or cocked position or, for that matter, of carrying out the dual-release function. In effect, defendant is arguing that a person skilled in the art could not read plaintiff's patent and understand that it claimed structures that did not have a direct connection between the trigger and the sear elements.

In support of its position, defendant cites Watts v. XL Systems, Inc., 232 F.3d 877, 883 (Fed. Cir. 2000) and Digital Biometrics, Inc. v. Identix, Inc., 149 F.3d 1335, 1347 (Fed. Cir. 1998). In Watts, the court held that the district court acted properly in reading into the claims a limitation expressly defined in the specification and prosecution history (using misaligned taper angles to effect a seal between sections of oil well pipe). Although the claim language did not use the words, "misaligned taper angles," it used language that was not clear on its face ("external threads [that are] dimensioned such that one such joint may be sealingly connected with another such joint"). The court found it necessary to look at the specification to define "dimensioned such that." It noted that the specification described only one method in which "tapered external threads [are] dimensioned" to achieve the sealing connection (misaligning the taper angles of the internal and external threads) and

that the specification limited the invention to structures that utilized such taper angles. Moreover, during the patent's prosecution, the inventor had distinguished his invention over the prior art because of the unusual sealing structure.

In Digital Biometrics, Inc., 149 F.3d 1335, the court found that a key term, "array," remained in doubt after the intrinsic evidence had been considered. Its response to this lack of clarity was to apply the rule of claim construction that penalizes the applicant who fails to shoulder his burden of particularly pointing out and distinctively claiming the subject matter of his invention. If, in such a circumstance, the claim is susceptible to a broader and a narrower meaning and "the narrower one is clearly supported by the intrinsic evidence while the broader one raises questions of enablement under [35 U.S.C.] § 112, ¶ 2," the court is to adopt the narrower one. Id. at 1344. Because the term "array" was used in the disputed claim to refer to two different data structures, the court chose an interpretation that encompassed both uses, in conformance with the canon that the same word appearing in the same or different claims should be interpreted consistently with its appearance elsewhere.

Defendant sees these cases as bolstering its argument that claim 15 must be read narrowly as limited to a trigger with a direct connection to the sear element. In fact, these cases make it plain that before a narrow reading of a claim term is required there must be a showing that the term in question is unclear, that the inventor has used it to refer to different things or that the inventor has given it a special meaning in the course of the patent

prosecution. Defendant has failed to show that the disputed term is unclear or that the inventors used it to refer to different things. Whether it has shown that they gave it a special meaning in the course of the patent prosecution remains to be decided.

Defendant argues that no person of ordinary skill reading element b of claim 15 would read it as not requiring a direct connection between the trigger and the sear elements, in light of the specification and drawings. The record contains no evidence to support such a conclusion. Defendant's expert witness explained how defendant's reading would be the most natural. He did not testify that no person of ordinary skill in the art would understand that claim 15 does not require a direct connection between the trigger and the sear elements. On the other hand, the record does contain evidence in the form of the patent to refute defendant's claim. A person of ordinary skill in the art is not going to read into claim 15 the specific elements of claim 1, given the structure of the patent and the delineation between claim 1, directed to the trigger mechanism, and claims 11, 13 and 15, directed to the bow string release, and given the general prohibition against reading limitations of one independent claim into another. Had the inventors intended claim 15 to require a direct connection between the trigger and the sear elements, they would have made the claim dependent from claim 1.

c. Dual release function

As another ground for arguing that paragraph b must be read as referring to a trigger connected directly to the sear, defendant asserts that it would be impossible to achieve the dual release function without the direct connection. However, claim 15 is not directed to the dual release function; claim 1 is. Therefore, it is irrelevant whether the direct connection is critical to this function.

d. Prosecution history

Defendant relies heavily on its next ground for interpreting claim 15 to include a direct connection between the trigger and the sear: the prosecution history quoted in the "Facts" section above. Plaintiff points out that the applicants' "remarks" referred not to claim 15, which was approved on the first review of the application (as claim 35), but to claims 20, 32 and 44. Defendant argues that this is irrelevant because claim 32 recites the same element b as claim 15 and because an applicant's explanation of a term during the course of the prosecution history applies to the same term used elsewhere in the application. Therefore, defendant concludes, claim 15 must be read in light of the arguments used to win allowance of claim 32. Plaintiff does not dispute defendant's argument as a general proposition but argues that the remarks show that the applicants were addressing only claim 20 when they were differentiating their invention over the prior art. This, it contends, is shown in the paragraph beginning, "Therefore, it is respectfully submitted that claim 20, as

amended, is allowable over the prior art of record" and in the following paragraph, which the applicants begin by saying, "[w]ith respect to the rejection of claims 32 and 44," indicating that they are ending the discussion of claim 20 and beginning the discussion of new claims (32 and 44).

The initial difficulty with plaintiff's argument is that the applicants began their discussion by noting that the examiner had rejected claims 20, 32 and 44 on the ground that they were anticipated by Peck and followed that immediately with an explanation of the difference between the "subject invention" and Peck's disclosure. Before making a specific reference to claim 20, the applicants argued that the "subject invention is directed to a bow string release including a trigger lever which is *directly connected* to the sear." (Emphasis added.). Two paragraphs later, they addressed claim 20 specifically for two paragraphs before moving on to claims 32 and 44. The structure of the argument is not helpful to plaintiff's position. However, two considerations persuade me that its position is correct. First is the wording of the paragraph with which they conclude the discussion of the differences over the prior art, saying, "Therefore, it is respectfully submitted that claim 20, as amended, is allowed over the prior art of record." This is a mild indication that the entirety of the preceding discussion has been directed to claim 20's alleged deficiencies. The second consideration has more force and derives from the examiner's statements about the problems he had identified in claims 20, 32 and 44 on his first review of the application.

His concern with claim 20 was with the relationship between the trigger mechanism and the sear elements; his concern with claim 32 was with the outer tips of the release. There was no reason for the applicants to have devoted any argument concerning claims 32 and 44 to the differences between the trigger mechanism in the '939 application when the examiner understood those claims as being directed to a different aspect of the invention altogether and had raised no concern about the trigger mechanism.

In sum, I conclude that defendant has failed to show that the term "a trigger associated with the sear elements adjacent the inner end" in element b of claim 15 must be read as meaning that the trigger is connected directly to the sear elements.

19. Selectively engaging and locking the sear"

Turning to the next disputed term in element b of claim 15, defendant argues that the phrase "selectively engaging and locking" must be read as referring to a release with at least two locking modes and at least two corresponding releasing modes from which an archer may choose. Defendant relies on the specification, which states that one of the objects and functions of the invention is to provide a bow string release with a trigger mechanism that can be operated either in a rearward or forward release motion, see, e.g., col. 5, lns 12-15; that an important feature of the invention is that the trigger mechanism is operable in both a forward and reverse motion, col. 9, lns 43-45; that there is a need for a

dual action trigger, col. 2, lns. 52-55; and that there are no known releases with dual reverse and forward motion triggers, col. 2, lns. 38-040. Plaintiff disputes this reading and argues that defendant's reading not only requires importing a limitation from the specification into the claim, which is improper, but requires importing a limitation from claim 1 into claim 15, in derogation of the doctrine of claim differentiation, under which "each claim in a patent is presumptively different in scope," Intermatic Inc. v. Lamson & Sessions Co., 273 F.3d 1355, 1364 (Fed. Cir. 2001) (citing Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1187 (Fed. Cir. 1998)). Plaintiff emphasizes the lack of any reference in claim 15 to the direction the trigger must be moved in order to engage and lock the sear and to unlock and release the sear.

A reading of claims 15 and 1 supports plaintiff's position. As I concluded in the previous discussion, claim 1 is directed to the trigger mechanism and claims both the direct connection of the trigger mechanism to the sear element and the selective locking capability.

Defendant cites Sage Products, Inc. v. Devon Industries, Inc., 126 F.3d 1420, 1429 (Fed. Cir. 1997), for the proposition that "[w]here a patent claim recites a specific function for an element of the claim and the written description reiterates the importance of that particular function, a patentee may not later argue, during the course of litigation, that an accused device lacking that functionality is equivalent." The case is not a close fit. This case is not one in which "a patent claim recites a specific function for an element of the claim."

Claim 15 does not recite the specific function of selecting either a forward or reverse motion in order to engage or release the bow string. This is in contrast to the patent claim in dispute in Sage Products, which specified the function of controlling access to a needle disposal receptacle. The description in the specification of the means for controlling access bolstered the conclusion that this particular function was a critical element of the claim that the factfinder could not ignore in determining infringement by equivalence.

Defendant contends that without the dual action reverse and forward motion triggers, claim 15 could not be differentiated from the prior art. This would be true only if the dual action capability were a part of claim 15, which it is not. Claim 15 is directed to the release mechanism. The examiner found that it was not anticipated by the prior art because"the art does not show engaging tabs between the jaws." Prosecution Hist., Exh. A to Plt.'s Reply Br. dkt. #25, at Bates No. 10085.

3. "Bearing" function of arcuate tab and mated receptacle

Plaintiff takes issue with defendant's reading of claim 15 as requiring the tab and mated receptacle to perform a bearing function, when nothing in claim 15 refers to a bearing function and the function is irrelevant to deciding the meaning of the terms tab and receptacle. Plaintiff cites Transmatic Inc. v. Gulton Industries, Inc., 53 F.3d 1270, 1278 (Fed. Cir. 1995), a case in which the court of appeals held that the method of attachment

to a wall was irrelevant to defining the housing for the light fixture at issue. Defendant argues in response that it is inherent in the patent that the arcuate tab and mated receptacle claimed in claim 15 perform a bearing function and that any person of ordinary skill in the art would read claim 15 as achieving a bearing function.

In the patent specification, the inventors refer to the prior art bow string releases that have a bearing element positioned between the two jaws of the release, col. 2, lns. 16-25. They tout the advantage of the subject invention, which eliminates the bearing element of the prior art and provides an "integral bearing surface . . . assuring a smooth action of the jaw without requiring a separate bearing element," col. 3, lns. 48-68, and they state in the specification that one object of the subject invention is to provide a reconfigured jaw construction, eliminating the need for independent bearing elements, col. 5, lns 16-19. Despite all these statements and representations, the applicants made no reference to a bearing function in claim 15. Their claim describes a structure and not a function. I see no reason or apparent justification for reading a function into the claim.

ORDER

IT IS ORDERED that claim 15 of plaintiff Tru-Fire Corporation's U.S. Patent 5,357,939 is construed as not limited to a trigger connected directly to the sear, as not requiring that the trigger be capable of selectively locking and releasing the sear in more than

one manner and as not limited to sear elements having arcuate tabs and mated receptacles that perform a bearing function.

Entered this 31st day of May, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge