United States District Court,
S.D. Indiana, New Albany Division.

BRINLY-HARDY COMPANY,
Plaintiff.
v.
AGRI-FAB, INC,
Defendant.

No. 4:06-cv-148-SEB-WGH

April 28, 2008.

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ENTRY ON CLAIM CONSTRUCTION

SARAH EVANS BARKER**, District Judge.**

This matter comes before the Court to construe certain patent terms relevant to the underlying infringement action. Plaintiff, Brinly-Hardy Co. ("Brinly"), and Defendant, Agri-Fab, Inc. ("Agri-Fab"), have presented the Court with proposed constructions for the following terms: (1) "a plurality of foot members extending therefrom" as it is used in Claim 5 of U.S. Patent No. 6,640,532 (the "'532 Patent"); (2) "for storage of said lawn sweeper on said plurality of foot members" as it is used in Claim 5 of the '532 Patent; (3) "a pair [of] spacing members" as it is used in Claim 7 of the ' 532 Patent; and (4) "substantially C-shaped" as it is used in Claims 9 and 10 of the '532 Patent. Following the *Markman* hearing on February 26, 2008, we now enter the following factual and legal findings related to the construction of the disputed patent language.

Factual Background

Both Brinly and Agri-Fab design and market assorted lawn care equipment, including lawn sweepers, which are the devices at issue in this patent infringement case. Compl. para. 5, para. 10. The specific lawn sweepers at issue here are designed to be towed behind a riding lawn mower or tractor. Pl.'s Mem. at 1. When the lawn sweeper is rolled over outdoor terrain, a number of rotating brushes or blades located inside the device sweep lawn debris, such as leaves or grass clippings, into a collection hamper compartment. *Id.*

On November 4, 2003, Brinly was issued the '532 Patent for a "Lawn Sweeper Constructed for Upright

Storage and Having an Adjustable Hitch Clevis Assembly" by the United States Patent and Trademark Office ("PTO"). Id. para. 6. The "adjustable hitch clevis assembly" feature of this invention is not at issue in this case; instead, the litigation centers only on the "upright storage" feature. Brinly alleges that the lawn sweepers which it manufactures and sells within the scope of the '532 Patent have a novel space-saving storage capability. Id. para. 8. The lawn sweepers' hampers are collapsible and their frames can be manipulated into a position "substantially perpendicular to the ground, standing ... upright upon a plurality of tubular extensions referred to in the patent as 'foot members.' " Id. According to Brinly, it developed this feature in response to its customers' complaints regarding the difficulties they face in storing such a bulky device. Pl.'s Mem. at 1-2. The ability to stand the lawn sweeper upright reduces its storage footprint, which responds to customers' demand by allowing the lawn sweeper to be more easily stored in small spaces. Id. at 2.

The instant litigation arose from Brinly's claim that some models of lawn sweepers manufactured and sold by Agri-Fab also incorporate the design characteristic covered by the '532 Patent, which allows the allegedly infringing models of Agri-Fab lawn sweepers to stand mostly upright "upon a plurality of tubular extensions such as the foot members described in the ' 532 Patent." Compl. para. 11.

The Disputed Claims

The parties dispute the meanings of a number of terms contained in various claims of the '532 Patent. The claims, with the disputed terms emphasized in italics, are listed below: Claim 5, which recites:

A lawn sweeper, comprising:

a tow bar adapted to be connected to a draw bar of a lawn implement;

a brush housing operably secured to said tow bar and containing a plurality of brushes mounted for rotation with respect to said brush housing, and

a hamper assembly secured behind said brush housing such that rotation of the brushes contained within said brush housing sweeps debris into said hamper assembly, said hamper assembly including a frame and a fabric covering secured around and to said frame;

wherein said brush housing includes *a plurality of foot members extending therefrom* such that said hamper assembly can be disengaged from said brush housing and said tow bar can be manipulated from an orientation substantially parallel to an underlying ground surface to an orientation substantially perpendicular to the underlying ground surface *for storage of said lawn sweeper on said plurality of foot members*.

Claim 7, which recites:

A lawn sweeper as recited in claim 6, wherein the frame of said hamper assembly further includes *a pair [of] spacing members* that can be secured between the upper portion of said frame and the lower portion of said frame to maintain said frame in an open position.

Claim 9, which recites:

A lawn sweeper as recited in claim 6, wherein the upper portion of the frame of said hamper assembly is comprised of left and right upper side tubes and an upper rear tube, the upper rear tube being a *substantially C-shaped* member that is adapted to receive reduced diameter ends of the upper side tubes.

Claim 10, which recites:

A lawn sweeper as recited in claim 9, wherein the lower portion of the frame of said hamper assembly is comprised of left and right lower side tubes, a lower rear tube, and a front stop rod, the lower rear tube being a *substantially C-shaped* member that is adapted to receive reduced diameter ends of the lower side tubes.

Legal Analysis

Before deciding whether any claim of a patent covers the allegedly infringing item, a court must first determine, as a matter of law, how to construe the scope and meaning of each claim in issue. *See* Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). As the scope of the claim "is necessarily determined by the language of the claim, claim construction must begin with these words." Dow Agrosciences LLC v. Crompton Corp., 381 F.Supp.2d 826, 831 (S.D.Ind.2005) (Barker, J.). Absent an express intent otherwise, claim terms should be given "the ordinary and customary meaning ... that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." Phillips v. AWH Corp., 415 F.3d 1303, 1313 (Fed.Cir.2005). FN1 This creates an "objective baseline from which to begin claim interpretation." *Id.*

FN1. Decisions of the Federal Circuit regarding substantive matters of patent law are binding on federal district courts. *See* Murata Mfg. Co. v. Bel Fuse, Inc., 422 F.Supp.2d 934, 938 n. 4 (N.D.Ill.2006); *Midwest Industries, Inc. v. Karavan Trailers, Inc.,* 17 F.3d 1356, 1359 (Fed.Cir.1999).

However, the process of claim construction does not focus solely on the patent in isolation. For this reason, when courts undertake the task of interpreting an asserted claim, they must look first to the intrinsic evidence of record, including the patent itself, the specification, accompanying drawings, and the prosecution history, if in evidence. Dow Agrosciences, 381 F.Supp.2d at 831. Among all types of intrinsic evidence, courts have indicated that the specification "is the single best guide to the meaning of a disputed term." Vitronics, Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). In the specification, "the patentee must provide a written description of the invention that would allow a person of ordinary skill in the art to make and use the invention." Centillion Data Systems, LLC v. Convergys Corp., 2008 WL 90103, at (S.D.Ind. January 9, 2008) (citations omitted). Thus, to correctly construe disputed claim terms, the Court must refer first to the specification's description of the invention.

Although a claim must be read in light of its specification, particular formulations or preferred embodiments appearing in the specification may not be read to limit the claim. Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1186 (Fed.Cir .1998) (citations omitted). Therefore, "while an important guide, the specification is not a substitute for, nor can it be used to rewrite, the chosen claim language." Sud-Chemie, Inc. v. CSP Technologies, Inc., 2005 WL 645149, at (S.D.Ind.2005). In sum, as the Federal Circuit recently reiterated in *Phillips v. AWH Corp .:*

Ultimately, the interpretation to be given a term can only be determined and confirmed with a full

understanding of what the inventors actually invented and intended to envelop with the claim. The construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction.

415 F.3d at 1316 (quoting Renishaw PLC v. Marposs Societa' per Azioni, 158 F.3d 1243, 1250 (Fed.Cir.1998)).

Extrinsic evidence, such as dictionaries and treatises, may also be used to assist the court in construing the claim's meaning, but such evidence is afforded less legal significance than that from intrinsic sources. C.R. Bard, Inc. v. U.S. Surgical Corp., 388 F.3d 858, 862 (Fed.Cir.2004). Additionally, "if the meaning of the claim term is unambiguous, and the court can determine that meaning from the intrinsic evidence, it need not rely on extrinsic evidence in construing the claim." Dow Agrosciences, 381 F.Supp.2d at 832 (citing Vitronics Corp., 90 F.3d at 1583).

I. "A Plurality of Foot Members Extending Therefrom" and "For Storage of Said Lawn Sweeper on Said Plurality of Foot Members"

The main disagreement between the parties centers on the construction of two phrases in Claim 5 of the '532 Patent: (1) "a plurality of foot members extending therefrom"; and (2) "for storage of said lawn sweeper on said plurality of foot members." The parties separate the first phrase into its parts, each presenting its own definitions for the terms "a plurality," "foot members," and "extending therefrom." Thus, we shall approach the claim construction process in similar fashion, with one modification. Because the disputed terms must be construed in context with other relevant language in the claim, we address the construction of the disputed terms "foot members" and "for storage of said lawn sweeper on said plurality of foot members" together with reference to one another, rather than independently.

A. "A Plurality"

Brinly asserts that, because the term "a plurality" is a widely understood term, we should merely apply its common definition, which, in patent parlance, is: "two or more." *See, e.g.,* ResQNet.com, Inc. v. Lansa, Inc., 346 F.3d 1374, 1383 (Fed.Cir.2003) (construing "a plurality" as "at least two"); Trading Techs. Int'l, Inc. v. eSpeed, Inc., 2007 WL 611258, at (N.D.Ill. February 21, 2007) (recognizing that "the term 'plurality' has been previously construed in patents to mean 'more than one,' 'at least two,' and 'two or more,' and the ordinary meaning of plurality is '[t]he state or fact of being plural' ") (internal citations omitted).

Agri-Fab rejoins that Brinly is merely relying on extrinsic evidence, such as dictionary definitions, in support of its construction, rather than defining the term in light of the patent as a whole. Agri-Fab contends that Claim 5 teaches that the lawn sweeper is to stand in a perpendicular or close to perpendicular position on its foot members, which, according to Agri-Fab, "logically requires that those foot members provide at least three balance points in order to support the entire lawn sweeper." Def.'s Resp. at 11. Agri-Fab further argues that both the specification and the accompanying figures identify the balance points that support the entire lawn sweeper as both ends of the tow bar *plus* the stop bar. Thus, Agri-Fab contends that, for the purposes of the '532 Patent, "a plurality" means "no less than three."

While Brinly admits that, as Agri-Fab claims, an embodiment described in the ' 532 Patent utilizes three balance points, Brinly asserts that as there is no express declaration in the claims that limits the invention to an exemplary embodiment, the claim should not be construed to do so. It is true that "although the specifications may well indicate that certain embodiments are preferred, particular embodiments appearing

in a specification will not be read into the claims when the claim language is broader than such embodiments." Electro Medical Sys., S.A. v. Cooper Life Sciences, Inc., 34 F.3d 1048, 1054 (Fed.Cir.1994). However, though a district court should not import an additional limitation into the claim based on the specification, it is appropriate for the court to look to the specification to aid its interpretation of a term already in the claim. Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp., 93 F.3d 1572, 1579 (Fed.Cir.1996).

Although it is clear that the exemplary embodiment utilizes three balance points (the two ends of the tow bar and the stop bar), the patent language is broader and specifies no set number of foot members, providing only that, "[the] brush housing includes a plurality of foot members extending therefrom such that said hamper assembly can be disengaged from said brush housing and said tow bar can be manipulated from an orientation substantially parallel to an underlying ground surface to an orientation substantially perpendicular to the underlying ground surface for storage of said lawn sweeper on said plurality of foot members." '532 Patent 7:52-8:4. Therefore, we decline to read a limitation requiring at least three foot members into the claim language and construe "a plurality" to mean "two or more."

B. "Extending Therefrom"

Brinly contends that the term "extending therefrom" does not require detailed analysis because the ordinary meaning of the words applies. Thus, according to Brinly, the term should simply be construed to mean "extending from the housing." Agri-Fab rejoins that Claim 5 "expressly and unequivocally requires the foot members to extend from the brush housing, which means to protrude beyond or from the brush housing." Def.'s Resp. at 17. Thus, Agri-Fab asks us to construe the term as "protruding from the brush housing." Although the parties put forth in their briefs these differing definitions for the term "extending therefrom," neither party focused in any significant way during the *Markman* hearing on this disagreement. Because Agri-Fab did not present a compelling reason to deviate from the language in the claim, we hold that the correct construction of the term "extending therefrom" is "extending from the brush housing." In other words, we shall not add the phrase, "which means to protrude beyond or from the brush housing."

C. "Foot Members" and "Storage of Said Lawn Sweeper on Said Plurality of Foot Members"

Brinly requests that we construe the term "foot member" as "an object that contacts the ground and provides stability when the lawn sweeper is manipulated to stand in a position perpendicular to the ground." Brinly relies heavily upon a dictionary definition of the word "foot" FN2 in support of its preferred construction of the term "foot members," arguing that, just like the human foot, the foot members described in the ' 532 Patent contact the ground and provide stability when the lawn sweeper is in the upright position.

FN2. Brinly cites an excerpted portion of a dictionary definition of the word "foot," which provides that one meaning of "foot" is: "something resembling a foot in position or use: the lowest supporting or structural part; BASE." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED (Merriam-Webster 2002), *available at* http://unabridged.merriam-webster.com.

Agri-Fab rejoins that the concept of stability is nowhere mentioned in the dictionary definition that Brinly cites in support of its preferred construction, nor is there any part of the claim language or specification in the '532 Patent that reflects the limitation of "stability" with respect to the foot members. Instead, Agri-Fab requests that we construe the term "foot members" to mean objects that "when in contact with the underlying ground surface, ... are structurally capable of supporting the brush housing above the ground surface." In support of its construction, Agri-Fab asserts that, in order to correctly construe the term "foot

members," it must be read in context with the rest of Claim 5 of the '532 Patent, which describes a structure "for storage of said lawn sweeper *on* said plurality of foot members." '532 Patent 8:3-4 (emphasis added). Thus, Agri-Fab contends that "foot members" must be construed as that part of an object that holds up the rest of that object; i.e., something that is structurally capable of holding an object up above it. Agri-Fab claims that its construction is supported by the specification and the accompanying figures,FN3 which explain how to manipulate the lawn sweeper into an upright position and depict the lawn sweeper in an elevated position, fully supported solely by the foot members (i.e., the two tow tubes and the stop bar).

FN3. Agri-Fab also contends that its construction of Claim 5 must be adopted because Brinly's proposed construction, if adopted, would read directly on prior art, rendering Claim 5 invalid. However, as the Federal Circuit explains: "While we have acknowledged the maxim that claims should be construed to preserve their validity, we have not applied that principle broadly, and we have certainly not endorsed a regime in which validity analysis is a regular component of claim construction. Instead, we have limited the maxim to cases in which 'the court concludes, after applying all the available tools of claim construction, that the claim is still ambiguous.' " Phillips, 415 F.3d at 1327 (citations omitted). Because we find here that, in light of the intrinsic evidence, Claim 5 is unambiguous, it is unnecessary to make validity a consideration in our analysis.

Both parties agree that the foot members must contact the underlying ground surface when the sweeper is in a vertical or close to vertical position, but they disagree as to the function of the foot members. As discussed above, Brinly contends that the foot members need act only as a kind of brace for the device, stabilizing the lawn sweeper when it is a vertical or close to vertical position for upright storage. Agri-Fab, on the other hand, claims that the foot members are the structures on which the lawn sweeper stands fully supported. Although Brinly admits that Claim 5 references a lawn sweeper comprising a brush housing that may be manipulated for storage *on* the foot members, it contends that "because of the use of the term 'comprising' in the preamble, Claim 5 is not limited to lawn sweepers stored *only* on the foot members; other unrecited elements may cooperate with the foot members in performing this function." Pl.'s Reply at 3.

Brinly correctly notes that when the term "comprising" appears in the preamble of the claim, as it does here, "it is generally read to mean including, but not limited to, the following elements." Trading Techs. Int'l, 2007 WL 611258, at *4; *see also* Nazomi Communications, Inc. v. Arm Holdings, PLC, 403 F.3d 1364, 1370 (Fed.Cir.2005) (" 'Comprising' is often synonymous with 'including.' "); Crystal Semiconductor Corp. v. TriTech Microelectronics, Int'l, Inc., 246 F.3d 1336, 1348 (Fed.Cir.2001) ("In the parlance of patent law, the transition 'comprising' creates a presumption that the recited elements are only a part of the device, that the claim does not exclude additional, unrecited elements."). However, the mere inclusion of the word "comprising" in the preamble of a claim does not give a patentee limitless license to later expand the claim as broadly as he or she chooses. This Court still must construe the claim language with reference to the specification and other available intrinsic evidence to determine the proper construction of disputed terms. Here, the claim language, the specification, and the accompanying figures render Agri-Fab's proposed construction to be the most plausible.

Initially, we look to the actual language of the claim, as claim construction begins there. Dow Agrosciences, 381 F.Supp.2d at 831. The language in Claim 5 which references "foot members" describes a structure "for storage of said lawn sweeper *on* said plurality of foot members." '532 Patent 8:3-4 (emphasis added). In order to ascertain the proper scope and meaning of claim language, courts "have long emphasized the importance of the specification in claim construction." Phillips, 415 F.3d at 1315. The patent specification

"is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Id.* (quoting Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996)). Thus, to aid in our understanding of the claim language at hand, we turn to the specification of the '532 Patent, which explains that:

[A] user can thus grasp the tow bar and lift the combination tow bar and brush housing to an upright position.... As the combination tow bar and brush housing is lifted, it rotates about the wheels of the lawn sweeper until the stop bar contacts the underlying ground surface. Continued lifting of the combination tow bar and brush housing causes rotation about the stop bar until the portions of the tow tubes which extend just beyond the brush housing contact the underlying ground surface. At this point, the combination tow bar and brush housing is orientated in a substantially upright position, with the stop bar and portions of the tow tubes acting as foot members, as best shown in FIG. 4.

'532 Patent 6:29-44. This specification describes the tow bar and brush housing being lifted up from the ground surface and rotated about the stop bar until the stop bar and the portions of the tow tubes that extend beyond the brush housing (i.e., the foot members) are the structures contacting the ground, fully supporting the brush housing. The accompanying drawings depicting the end result (*see* Figures 4-5 below), which depict the lawn sweeper in an upright position, supported solely by the two ends of the tow bar (*see* 24a; (22a not pictured)) and the stop bar (15), acting as foot members, with the brush housing elevated above the ground surface, support this reading of the specification.

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In sum, as Agri-Fab contends, it is clear that the concept of stability appears nowhere in either the patent or the specification, and, consequently, we decline to read Brinly's requested limitation of stability into the construction of the term "foot members." Instead, as discussed above, our analysis of the claim language, as interpreted in light of the specification, reveals the more accurate construction to be that proposed by Agri-Fab. Thus, we construe "foot members" as: "structures ... that, when in contact with the underlying ground surface, are structurally capable of supporting the brush housing above the ground surface." Because the constructions of the terms "foot members" and "for storage of said lawn sweeper on said plurality of foot members" are largely dependent upon one another, the Court's chosen construction of "foot members" renders the proper construction of the disputed phrase "for storage of said lawn sweeper on said plurality of foot members" to be: "for storage of the entire lawn sweeper, including the hamper assembly, manipulated to stand in a vertical or close to vertical position above the ground surface, supported by the two or more structures extending from the brush housing."

II. "Pair [of] Spacing Members"

Next, we examine the meaning of the term "pair [of] spacing members." Brinly argues that the '532 Patent's specification explicitly addresses this phrase. According to the specification, the invention was designed to use two "spring rods" to act as spacing members and maintain the hamper frame in an open position, but the specification further notes that "various rods, bars or other spacing members could be used." '532 Patent at 5:50-60. Brinly contends that the proper claim construction should mirror the specification and thus proposes the following construction: "wherein the frame of said hamper assembly further includes two bars, rods, or other structures secured between the upper portion of said frame and the lower portion of said

frame to maintain said frame in an open position."

Agri-Fab rejoins that Brinly's proposed construction is too broad. Agri-Fab contends that because the specification limits the "spacing members" to rod-shaped or bar-shaped structures, the proper construction of the phrase should reflect that limitation. Additionally, Agri-Fab asserts that because the specification states that the spacing members are "used to maintain vertical distance" ('532 Patent at 5:58) between the upper and lower portion of the frame, that language should be included in the construction as well. Thus, Agri-Fab proposes that the phrase be construed as: "two bars, rods, or other like structures secured between the upper portion of said frame and the lower portion of said frame to maintain a vertical distance between the lower portion of the hamper frame and the upper portion of the hamper frame to maintain said frame in an open position."

In construing this phrase, we again turn first to the language of the claim, which teaches that the frame of the hamper compartment "includes a pair [of] spacing members, that can be secured between the upper portion of said frame and the lower portion of said frame to maintain said frame in an open position." '532 Patent at 8:12-15. It is clear that the claim language includes no limitation as to the shape of the spacing members, nor does it specify how far the spacing members are required to keep the frame open. However, as discussed above, the claim is not to be construed in isolation; we must read the patent in light of its specification. Thus, we turn next to the language of the specification.

As Brinly asserts, the specification mentions "spring rods" as its preferred embodiment, but goes on to state that "various rods, bars *or other spacing members* could be used to maintain *the vertical distance between* the lower rear tube and the upper rear tube without departing from the spirit and scope of the present invention." '532 Patent at 5:57-60 (emphasis added). Therefore, although the specification lists "rods" and "bars" as specific examples of alternative objects that could act as acceptable spacing members, it also leaves open the possibility that other objects, not limited to rod-like or bar-like shapes, could act as spacing members. Thus, as neither the specification nor the claim itself contains a limitation that the spacing members be bar or rod-shaped, we decline to read such a limitation into the construction of the term.

We now address the dispute between the parties regarding whether the concept of "vertical distance" should be included in the claim construction. While the claim states only that the spacing members are necessary in order to keep the frame of the hamper assembly in an open position, the specification elaborates further, using "vertical distance" to describe the open position of the frame. *See* '532 Patent 5:58-59 (explaining that spacing members are used "to maintain vertical distance between the lower rear tube and the upper rear tube...."). Thus, Agri-Fab requests that the construction further describe "open frame" with the inclusion of the "vertical distance" language. However, during the *Markman* hearing, Brinley's counsel contended that such an addition is unnecessary because the patent does not describe how open the frame is required to be, and consequently, the term needs no further explanation.

Here, we disagree with Brinley's argument. Reading the claim in light of the specification and the accompanying drawings, it is obvious that, for the frame to be in an open position, there must be at least some measure of vertical distance between the upper and lower rear tubes. Plaintiff's counsel's assertion that the patent does not specify how open the frame must be maintained is correct; however, incorporating "vertical distance" into the claim construction neither creates such a requirement nor puts a limitation on the claim language. It merely provides context to the claim and helps illuminate the meaning of the claim language.

For the foregoing reasons, the proper construction for "a pair [of] spacing members," is "two bars, rods, or other structures secured between the upper portion of said frame and the lower portion of said frame to maintain a vertical distance between the lower portion of the hamper frame and the upper portion of the hamper frame to maintain said frame in an open position."

III. "Substantially C-Shaped"

Brinly's final request of the Court is that we construe the phrase "substantially C-shaped," as it appears in Claims 9 and 10 of the '532 Patent, as "approximately C-shaped." Agri-Fab contends that the phrase should be construed as "the shape of the letter 'C' or very near the shape of the letter 'C.' "

The term "substantially" is used elsewhere in the '532 Patent and the parties have agreed to adopt the "X or very near X" construction that Agri-Fab suggests in those claims. Consequently, Agri-Fab argues that the same construction should be adopted in Claims 9 and 10, in line with the well-established principle that, "the same terms appearing in different portions of the claims should be given the same meaning unless it is clear from the specification and prosecution history that the terms have different meanings at different portions of the claims." Frank's Casing Crew & Rental Tools, Inc. v. Weatherford Int'l, Inc., 389 F.3d 1370, 1377 (Fed.Cir.2004) (quoting Fin Control Sys. Pty, Ltd. v. OAM, Inc., 265 F.3d 1311, 1318 (Fed.Cir.2001)).

Brinly rejoins that "substantially" was used elsewhere in the patent to modify the words "parallel" and "perpendicular," which describe positioning or a spatial relationship between two objects. In Claims 9 and 10, however, "substantially" is modifying the descriptive term "C-shaped." Brinly contends that while almost no one would disagree as to whether two objects were parallel or perpendicular to each other, people could disagree about whether an object is C-shaped. Therefore, it argues that Agri-Fab's definition of the term is too narrow.

Here, there has been no clear showing based on the specification or other intrinsic evidence that "substantially" was intended to have a different meaning in the '532 Patent depending upon the context in which it was used. Additionally, we are not persuaded that there is a significant or relevant difference between the two constructions. Thus, following the generally accepted rule that, unless there is a clear indication that the patentee intended otherwise, construction of the same term should be consistent throughout, we conclude that the proper construction of "substantially C-shaped" is "the shape of the letter 'C' or very near the shape of the letter 'C.' "

V. Conclusion

For the reasons detailed above, we conclude that the proper construction of the disputed terms of the '532 Patent is as follows:

Disputed Term	*Brinly's Proposed Construction*	*Agri-Fab's Proposed Construction*	*Court's Construction*
"a plurality of foot members extending therefrom"	"two or more structures extending from the housing that provide stability to the lawn sweeper when it is manipulated to stand upright for storage in a	"no less than three objects protruding from the brush housing such that, when in contact with the underlying ground surface, the no less than three objects are structurally capable of supporting the brush	"two or more structures extending from the brush housing that, when in contact with the underlying ground surface, are structurally capable of supporting the brush housing above the ground surface"

	vertical or close to vertical position"	housing above the ground surface"	
"for storage of said lawn sweeper on said plurality of foot members"	"for storage of the entire lawn sweeper, including the hamper assembly, manipulated to stand upright for storage in a stable vertical or close to vertical position"	"for storage of the brush housing and hamper in a position above the ground surface and supported by the no less than three objects protruding from the brush housing"	"for storage of the entire lawn sweeper, including the hamper assembly, manipulated to stand in a vertical or close to vertical position above the ground surface, supported by the two or more structures extending from the brush housing"
"a pair [of] spacing members"	"wherein the frame of said hamper assembly further includes two bars, rods, or other structures secured between the upper portion of said frame and the lower portion of said frame to maintain said frame in an open position"	"two bars, rods, or other like structures secured between the upper portion of said frame and the lower portion of said frame to maintain a vertical distance between the lower portion of the hamper frame and the upper portion of the hamper frame to maintain said frame in an open position"	"two bars, rods, or other structures secured between the upper portion of said frame and the lower portion of said frame to maintain a vertical distance between the lower portion of the hamper frame and the upper portion of the hamper frame to maintain said frame in an open position"
"substantially C-shaped"	"approximately the shape of the letter 'C' "	"the shape of the letter 'C' or very near the shape of the letter 'C' "	"the shape of the letter 'C' or very near the shape of the letter 'C' "

IT IS SO ORDERED.

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