

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Arctic Cat Inc.,

Case No. 16-cv-0010 (WMW/HB)

Plaintiff,

v.

**CLAIM CONSTRUCTION AND
SUMMARY JUDGMENT ORDER**

Polaris Industries Inc.,

Defendant.

Plaintiff Arctic Cat Inc. (Arctic Cat) commenced this patent-infringement action against Defendant Polaris Industries Inc. (Polaris) on January 4, 2016, alleging that certain Polaris products infringe claims in United States Patent No. 7,743,864 (the '864 Patent), which is titled "Tandem Four-Wheel Vehicle." This matter is before the Court to construe disputed claim terms in the '864 Patent. In addition, Polaris moves for summary judgment of invalidity. (Dkt. 111.) For the reasons addressed below, the Court denies Polaris's motion for summary judgment and resolves the claim-construction disputes as described herein.

BACKGROUND

Arctic Cat is a Minnesota corporation, with its principal place of business in Minneapolis, Minnesota. Polaris is a Delaware corporation, with its principal place of business in Medina, Minnesota. Both Arctic Cat and Polaris manufacture and sell off-road recreational vehicles, including all-terrain vehicles (ATVs). Arctic Cat owns, by assignment, the '864 Patent at issue here.

The '864 Patent generally embodies an invention related to a four-wheel vehicle with a straddle mount seat that accommodates two riders. The invention includes a frame, front and rear suspensions, front and rear wheels, handles for a driver and a passenger, front and rear footrests, and a straddle mount seat with positions for both a driver and a passenger. The passenger's seat position is raised above the driver's seat position.

The '864 Patent includes fourteen claims. Claims 1 and 9 are independent claims, and the twelve remaining claims depend from claims 1 and 9. The terms at issue here all appear in independent claims 1 and 9 and dependent claim 14. The relevant portions of these claims are reproduced below, with the disputed claim terms in bold:

1. A multi-purpose vehicle, comprising:

...

a straddle mount seat secured to the frame, the seat having seating positions for a driver and a passenger of the vehicle, the position for the passenger being located rearward and **significantly above the seating position for the driver**;

...

a cargo rack secured to the vehicle rearward of the seating position for the driver, **the cargo rack having left and right handles removably coupled to the vehicle**, the handles extending upwardly from a portion of a rack main deck below the passenger seating position and being positioned vertically adjacent to upwardly facing surfaces defining the substantially planar portions of rear wheel fenders and the handles being at least as far forward as the approximate longitudinal mid-region of the passenger seating position, each handle having a grippable portion positioned laterally adjacent to the seating position for the passenger and vertically above the seating position for the driver, substantially inboard of the outer sides of the rear wheel fenders, and

...

9. A multi-purpose vehicle, comprising:

...

a straddle mount seat secured to the frame, the seat having a driver seat and a passenger seat located rearward and raised **substantially above the driver seat so as to provide a passenger a view of oncoming terrain;**

...

14. The multi-purpose vehicle of claim **9**, wherein the respective grippable portions of the first and second handles include **end portions** that extend upward at an angle relative to the substantially planar portions of the rear wheel fenders.

Polaris asserts that the disputed terms “significantly above the seating position for the driver” and “substantially above the driver seat so as to provide a passenger a view of oncoming terrain” render the patent invalid as indefinite and, therefore, Polaris does not propose a construction for these terms. Arctic Cat counters that these claim terms do not render the patents indefinite and offers proposed constructions for each term. The parties also dispute the construction of three additional claim terms. The parties’ arguments are addressed in greater detail below.

ANALYSIS

I. Legal Standards

Whoever “without authority makes, uses, offers to sell, or sells any patented invention, within the United States . . . during the term of the patent,” infringes that patent. 35 U.S.C. § 271(a). A district court employs a two-step analysis when making a patent-infringement determination. *See Markman v. Westview Instruments, Inc.*, 52 F.3d

967, 976 (Fed. Cir. 1995). First, the district court construes the asserted claims of the patent to ascertain their meaning and scope. *Id.* Second, the fact finder compares the construed claims to the accused product. *Id.* Only claim construction, the first step of this analysis, is currently at issue.

At the claim-construction stage, it is the district court's duty to resolve any dispute about claim scope raised by the parties. *Eon Corp. IP Holdings LLC v. Silver Spring Networks, Inc.*, 815 F.3d 1314, 1319 (Fed. Cir. 2016). This duty resides with the court because "the ultimate question of construction [is] a legal question." *Id.* at 1318 (quoting *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 842 (2015)). A district court construes the disputed claims "independent of the accused product, in light of the specification, the prosecution history, and the prior art." *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000) (internal quotation marks omitted). Although a district court may consider the accused device when determining *which* aspects of the patent claim should be construed, the claim "is construed in . . . light of the claim language . . . *not* in light of the accused device." *Exigent Tech., Inc. v. Atrana Sols., Inc.*, 442 F.3d 1301, 1309 n.10 (Fed. Cir. 2006) (internal quotation marks omitted). Claim construction merely elaborates the typically terse claim language "to understand and explain, but not to change, the scope of the claims." *Embrex*, 216 F.3d at 1347 (internal quotation marks omitted).

To ascertain the meaning of disputed patent claim terms, a district court begins its analysis by focusing on the words of the claims. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). "It is a bedrock principle of patent law that the claims of a patent

define the invention to which the patentee is entitled the right to exclude.” *Id.* (internal quotation marks omitted). Courts generally give words in a patent claim their ordinary and customary meaning. *Id.* The ordinary and customary meaning of a claim term is the meaning that would be understood by a person of ordinary skill in the field of technology in question at the time of the invention.

Such person is deemed to read the words used in the patent documents with an understanding of their meaning in the field, and to have knowledge of any special meaning and usage in the field. The inventor’s words that are used to describe the invention—the inventor’s lexicography—must be understood and interpreted by the court as they would be understood and interpreted by a person in that field of technology.

Id. at 1313 (quoting *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998)).

The ordinary meaning of claim language, at times, “may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.” *Id.* at 1314. For this reason, a district court need not construe terms that have ordinary meanings, “lest trial courts be inundated with requests to parse the meaning of every word in the asserted claims.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008). Also, to be legally sound, a “claim construction need not . . . purge every shred of ambiguity.” *Acumed LLC v. Stryker Corp.*, 483 F.3d 800, 806 (Fed. Cir. 2007). “The resolution of some line-drawing problems—especially easy ones” is a determination that “is properly left to the trier of fact.” *Id.*

A district court begins the process of claim construction by reviewing the patent specification and the prosecution history. *Phillips*, 415 F.3d at 1313. The specification, which includes the written description of the invention, “is the single best guide to the meaning of a disputed term.” *Id.* at 1315 (internal quotation marks omitted). When the specification includes “a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess,” the lexicography of the inventor governs. *Id.* at 1316. But a district court may not import limitations from the written description into the claims. *Laitram Corp. v. NEC Corp.*, 163 F.3d 1342, 1347 (Fed. Cir. 1998). The disclosure of a particular embodiment of the claimed invention in the specification does not narrow the patent claims. *Id.* at 1347-49. Moreover, “[a] claim interpretation that excludes a preferred embodiment from the scope of the claim is rarely, if ever, correct.” *MBO Labs., Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1333 (Fed. Cir. 2007) (internal quotation marks omitted). Although the patent’s prosecution history may be used to understand the claim terms, it cannot enlarge, diminish, or vary the claim limitations. *Markman*, 52 F.3d at 980. Similarly, extrinsic evidence may be consulted when it is useful in determining the true meaning of disputed claim language, but it is less significant than the intrinsic record. *Phillips*, 415 F.3d at 1317; *Markman*, 52 F.3d at 980-81. It is error to use extrinsic evidence to vary or contradict the terms of the claims. *Markman*, 52 F.3d at 981.

Five disputed claim terms in the ’864 Patent have been identified by the parties. Polaris argues that two of these terms render the ’864 Patent invalid as indefinite and, therefore, moves for summary judgment of invalidity on this basis. In light of this

position, Polaris offers no proposed construction for these terms. Arctic Cat counters that these two claim terms do not render the patent indefinite and proposes constructions for each term. The parties also dispute the construction of three additional claim terms. The Court addresses each disputed claim term in turn, considering Polaris’s indefiniteness arguments in the context of the claim terms to which those arguments apply.

II. “multi-purpose vehicle” (Preambles to All Claims)

Arctic Cat’s Construction	Polaris’s Construction
“All-terrain vehicle (four wheeled straddle seat vehicle) that is designed to carry a driver and passenger.” This term is limiting.	No construction necessary; the preambles are not limiting.

The parties dispute whether the preambles to the asserted claims of the ’864 Patent must be construed as limitations on the scope of the claims. Arctic Cat contends that the preambles are limiting; Polaris contends they are not.

“[U]se descriptions” in the preamble of a patent claim are “rarely treated as claim limitations.” *Marrin v. Griffin*, 599 F.3d 1290, 1294 (Fed. Cir. 2010) (explaining that “[p]reamble language that merely states the purpose or intended use of an invention is generally not treated as limiting the scope of the claim” (internal quotation marks omitted)). A preamble is not limiting “when the claim body describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention.” *Catalina Mktg. Int’l v. Coolsavings.com, Inc.*, 289 F.3d 801, 809 (Fed. Cir. 2002).

Arctic Cat argues that the preamble language “multi-purpose vehicle” defines the subject matter of the claimed invention. But a preamble does more than merely give a

name to the claimed invention only if it “describes a fundamental characteristic of the claimed invention that informs one of skill in the art as to the structure required by the claim.” *Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1358 (Fed. Cir. 2012) (internal quotation marks omitted). If the body of the claim describes a structurally complete invention, a preamble that merely names the invention, extols its features or benefits, or describes a use for the invention is not limiting. *Id.* Here, the bodies of the claims describe complete structures—namely, four-wheel straddle-mount vehicles and their component parts—without the need to reference the claims’ preambles. The preamble phrase “multi-purpose vehicle” merely provides a descriptive name or intended use for the invention. It does not describe a fundamental characteristic of the claimed invention.

Arctic Cat contends that the preamble must be limiting because it forms an antecedent basis for the use of the term “vehicle” in the claim limitations. But to be limiting on this basis, a preamble must be “necessary to understand positive limitations in the body of claims.” *Pacing Techs., LLC v. Garmin Int’l, Inc.*, 778 F.3d 1021, 1024 (Fed. Cir. 2015). For example, the preamble phrase in *Deere*, “rotary cutter deck,” provided both an antecedent basis for the claim term “said deck” and the context necessary to understand other claim limitations such as “torsional stiffness.” 703 F.3d at 1358 (explaining that the preamble “informs the meaning of the ‘torsional stiffness’ limitation—the claimed structure must possess sufficient stiffness to withstand the torsional loads imposed by the operation of a rotary cutter”). In *Deere*, the claim terms “said deck” and “torsional stiffness” could not be fully understood if detached from the preamble phrase “rotary cutter deck.” *Id.*

Here, by contrast, the only context added by the preambles in the '864 Patent is the “multi-purpose” modifier to the term “vehicle.” There are no claim limitations in the '864 Patent that cannot be fully understood absent the “multi-purpose” modifier. None of the '864 Patent’s claim limitations would have a different meaning if the limitations applied to a “vehicle,” as opposed to a “*multi-purpose* vehicle.” When preamble language is antecedent to language in the claim body but is not essential to understanding the claim term’s meaning, departing from the general presumption that the preamble is not limiting is not warranted. *See Am. Med. Sys., Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1359 (Fed. Cir. 2010) (concluding that “the generic term ‘tissue’ in the preamble” did not “provide any context essential to understand[ing] the meaning of ‘the tissue’ in the body of each claim” (internal quotation marks omitted)).

The '864 Patent’s specification also supports this conclusion. The patent is titled “Tandem Four-Wheel Vehicle,” and the specification states that the “present invention generally relates to four-wheel straddle mount vehicles.” Neither description uses the “multi-purpose” modifier. The specification states that “[o]ne *embodiment* of the invention is a multi-purpose vehicle,” and the detailed description of the preferred embodiment states that the “present invention is *applicable to* a multi-purpose vehicle.” (Emphasis added.) But nothing in the specification suggests that the invention is limited to “multi-purpose” vehicles or that the “multi-purpose” modifier is otherwise essential to the structure of the invention. To the contrary, although the preferred embodiment of the invention may be a multi-purpose vehicle, the specification contemplates broader applicability.

Arctic Cat contends that references to all-terrain vehicles in the prosecution history support its position that the preambles are limiting. Evidence from the prosecution history may indicate that a preamble is limiting only when the applicant demonstrated “clear reliance on the preamble during prosecution to distinguish the claimed invention from the prior art.” *Catalina Mktg.*, 289 F.3d at 808. Here, the prosecution history does not suggest that Arctic Cat attempted to distinguish the claimed invention from the prior art by limiting the claims to multi-purpose vehicles. Nor do the references to “all-terrain vehicles” in the prosecution history demonstrate that the invention necessarily is limited to “multi-purpose vehicles.”

Accordingly, the Court rejects Arctic Cat’s proposed construction and concludes that the preambles to the ’864 Patent’s claims are not limiting.

III. “significantly above the seating position for the driver” (Claim 1) / “substantially above the driver seat so as to provide a passenger a view of oncoming terrain” (Claim 9)

Polaris argues that the terms “significantly above the seating position for the driver” and “substantially above the driver seat so as to provide a passenger a view of oncoming terrain” render the ’864 Patent indefinite. Polaris seeks summary judgment of invalidity on this basis. In light of its position, Polaris offers no proposed construction for these terms. Arctic Cat counters that these terms do not render the ’864 Patent indefinite and offers proposed constructions. The Court begins its analysis by addressing the parties’ indefiniteness arguments.

A. Indefiniteness

Summary judgment is proper when the record before the district court establishes that there is “no genuine dispute as to any material fact” and the moving party is “entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine dispute as to a material fact exists when there is evidence that, if believed, would permit a reasonable jury to return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When considering a motion for summary judgment, a district court construes the evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in that party’s favor. *See Windstream Corp. v. Da Gragnano*, 757 F.3d 798, 802-03 (8th Cir. 2014). The party asserting that a fact is genuinely disputed must cite “particular parts of materials in the record” that support the assertion. Fed. R. Civ. P. 56(c)(1)(A); *accord Krenik v. Cty. of Le Sueur*, 47 F.3d 953, 957 (8th Cir. 1995). In doing so, the nonmoving party must demonstrate the existence of specific facts in the record that create a genuine issue for trial. *Krenik*, 47 F.3d at 957.

“[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014). This legal standard arises from the requirement of public notice. “[A] patent must be precise enough to afford clear notice of what is claimed, thereby appris[ing] the public of what is still open” to the public. *Id.* at 2129 (internal quotation marks omitted). Failure to do so would create a

“zone of uncertainty” that enterprise and experimentation would enter “at the risk of infringement claims.” *Id.* (internal quotation marks omitted).

Terms of degree are not “inherently indefinite.” *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1370 (Fed. Cir. 2014). “Claim language employing terms of degree has long been found definite where it provided enough certainty to one of skill in the art when read in the context of the invention.” *Id.* As the Supreme Court of the United States recognized in *Nautilus*, “absolute precision” in claim language is “unattainable.” 134 S. Ct. at 2129. “Although absolute or mathematical precision is not required,” the claims nonetheless must supply “objective boundaries for those of skill in the art” when read in light of the specification and the prosecution history. *Interval Licensing*, 766 F.3d at 1370-71. “Even if a claim term’s definition can be reduced to words, the claim is still indefinite if a person of ordinary skill in the art cannot translate the definition into meaningfully precise claim scope.” *Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1251 (Fed. Cir. 2008).

A recent example from the Federal Circuit is instructive. When determining that the claim term “visually negligible” was not indefinite, the Federal Circuit distinguished two of its prior decisions that found terms of degree to be indefinite:

Datamize and *Interval Licensing* involved terms that were subjective in the sense that they turned on a person’s tastes or opinion. “Aesthetically pleasing” implicates matters of taste or preference; whether something is aesthetically pleasing is a value judgment that inherently varies from person to person. “In an unobtrusive manner that does not distract” similarly implicates a person’s individual focus, concentration, attentiveness, or similar mental state at a given moment, or even opinions, affecting what is or is not distracting. The question whether something is “visually negligible” or whether it interferes with a user’s perception, however,

involves what can be seen by the normal human eye. This provides an objective baseline through which to interpret the claims. Thus, although the term may be a term of degree, it is not “purely subjective.”

Sonix Tech. Co. v. Publ’ns Int’l, Ltd., 844 F.3d 1370, 1378 (Fed. Cir. 2017) (internal citation omitted). As *Sonix* also observed, the specification in *Datamize* “did not contain any examples of an aesthetically pleasing interface, nor did it explain what factors a person should consider when selecting a feature to lead to an aesthetically pleasing result.” *Id.* at 1378-79 (internal quotation marks omitted). By contrast, the specification of the patent at issue in *Sonix* included “(1) a general exemplary design for a visually-negligible indicator . . . ; (2) requirements for the graphical indicators being negligible to human eyes . . . ; and (3) two specific examples of visually-negligible indicators.” *Id.* at 1379 (internal quotation marks omitted). According to the Federal Circuit, “[t]hese are statements that provide guidance on how to create visually-negligible indicators, and specific examples that provide points of comparison for the result.” *Id.*

Here, the disputed claim terms are “significantly above” and “substantially above.” These terms of degree are not purely subjective, as they do not implicate matters of individual taste or preference. Rather, “significantly above” and “substantially above” are measurable, even if they are not mathematically precise. Courts have construed the terms “significantly” and “substantially” in other contexts. *See, e.g., Enzo Biochem, Inc. v. Applera Corp.*, 599 F.3d 1325, 1335 (Fed. Cir. 2010) (concluding that “not interfering substantially” was sufficiently definite and did not require “a precise numerical measurement”); *Deering Precision Instruments, L.L.C. v. Vector Distrib. Sys., Inc.*, 347 F.3d 1314, 1322-23 (Fed. Cir. 2003) (construing “substantially” as a term of magnitude

and not indefinite); *Abbott Labs. v. Lupin Ltd.*, 753 F. Supp. 2d 382, 412-14 (D. Del. 2010) (construing claim term “significant increase in HDL cholesterol”); *Mallinckrodt, Inc. v. Masimo Corp.*, 254 F. Supp. 2d 1140, 1151 (C.D. Cal. 2003) (concluding that claim term “significant” was not indefinite and required no construction). In doing so, the Federal Circuit has observed that it is “often the case” that “the written description does not explicitly identify the meaning of the term.” *Deering*, 347 F.3d at 1323. Therefore, the Court must evaluate these terms in context.

The specification of the ’864 Patent explains that a “raised position or plane may provide the passenger with a better view for anticipation of terrain” and describes passenger footrests that “may extend in a plane vertically higher than [the driver’s] footrest.” These statements offer several contextual parameters. First, it is clear that the ’864 Patent uses “substantially” and “significantly” as terms of magnitude as opposed to terms of approximation. *See id.* (observing that term “substantially” can be “a term of approximation or a term of magnitude” and concluding that it was intended to be a term of magnitude in context of the patent at issue). Second, the passenger seat must be substantially or significantly “above” or “raised,” as opposed to below, behind, or to the side. Third, the degree of magnitude is relative to the driver’s seat, as opposed to some other object. Fourth, the difference in height must be sufficiently “substantial” or “significant” so as to permit the passenger to see over the driver, and this degree of difference might require raised footrests. Moreover, Figure 1 and Figure 5 in the specification depict examples of a passenger seat that is “significantly” or “substantially” above the driver’s seat. As in *Sonix*, the context here provides a person of skill in the

relevant art “guidance on how to create” a passenger seat that is substantially or significantly above the driver’s seat and “specific examples that provide points of comparison.” 844 F.3d at 1379.

For these reasons, the Court concludes that these claims are not indefinite and, therefore, denies Polaris’s motion for summary judgment of invalidity.

B. Claim Construction

The Court next considers what, if any, construction of these claim terms is required. Arctic Cat offers largely identical proposed constructions for the disputed claim 1 language and the disputed claim 9 language. Polaris offers no alternative constructions, but argues that Arctic Cat’s proposed constructions fail to provide any guidance as to what the claim terms mean. Because the claim 1 language differs from the claim 9 language, the Court addresses each in turn, beginning with claim 9.

1. “substantially above the driver seat so as to provide a passenger a view of oncoming terrain” (Claim 9)

Arctic Cat’s Construction	Polaris’s Construction
“Not substantially on the same level as the driver seat so as to provide a passenger a view of the oncoming terrain.”	Indefinite; Defendant offers no construction.

Arctic Cat argues that the claim 9 language “substantially above the driver seat so as to provide a passenger a view of oncoming terrain” means “[n]ot substantially on the same level as the driver seat so as to provide a passenger a view of the oncoming terrain.” A purported claim construction that merely rephrases or paraphrases the plain language of a commonplace claim term by substituting that term with a synonym typically is not a

genuine claim construction. *See C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 863 (Fed. Cir. 2004). Arctic Cat’s proposed construction largely restates the claim language and would not assist a juror to understand the meaning of claim 9.

There is only one material difference between the disputed claim 9 language and Arctic Cat’s proposed construction. Whereas the claim language requires the passenger seat to be “raised substantially above the driver seat,” Arctic Cat’s proposed construction requires the passenger seat to be “[n]ot substantially on the same level as the driver seat.” But being on a different “level” is not the same as being “raised . . . above.” Polaris argues, and the Court agrees, that Arctic Cat’s construction broadens the claim because the construction encompasses a passenger seat that is *below* the driver’s seat, which is a location that is contrary to the claim language and the specification. For these reasons, the Court rejects Arctic Cat’s proposed construction.

Polaris has proposed no alternative construction, and the Court concludes that none is necessary. As addressed above in Part III.A., the ’864 Patent provides sufficient context from which this claim language can be understood by a lay juror. The claim language uses commonly employed words that do not have a specialized or technical meaning in the relevant art. The Court concludes that the claim 9 language “substantially above the driver seat so as to provide a passenger a view of oncoming terrain” has its plain and ordinary meaning and requires no construction.

2. “significantly above the seating position for the driver” (Claim 1)

Arctic Cat’s Construction	Polaris’s Construction
“Not substantially on the same level as the driver seating position such that the passenger has a better view of the oncoming terrain.”	Indefinite; Defendant offers no construction.

Arctic Cat argues that the claim 1 language “significantly above the seating position for the driver” means “[n]ot substantially on the same level as the driver seating position such that the passenger has a better view of the oncoming terrain.” The portion of Arctic Cat’s proposed construction that states “[n]ot . . . on the same level as the driver seating position” suffers from the same flaw as Arctic Cat’s proposed construction for the disputed claim 9 language. Being on a different “level” is not the same as being “located . . . above.” Therefore, the Court rejects this aspect of Arctic Cat’s proposed construction for the same reasons addressed above in Part III.B.1.

In all other respects, Arctic Cat’s proposed construction for claim 1 largely conforms to the actual language of claim 9. In material part, Arctic Cat’s proposed construction for the disputed claim 1 language replaces “significantly” with “substantially” and adds the language “such that the passenger has a better view of the oncoming terrain.” Both of these proposed changes result in claim 1 effectively mirroring claim 9. Indeed, Arctic Cat argues that the disputed portions of claim 1 and claim 9 should be construed to have the same meaning. But because the claims use different terminology, Polaris counters that the Court may not construe the disputed portions of claim 1 and claim 9 to have the same meaning.

The doctrine of claim differentiation creates a presumption that the use of different terms in different patent claims indicates that those claims should be ascribed different scope or meaning. *See, e.g., Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1369 (Fed. Cir. 2007); *see also Chi. Bd. Options Exch., Inc. v. Int’l Sec. Exch., LLC*, 677 F.3d 1361, 1369 (Fed. Cir. 2012). This “presumption is especially strong when the limitation in dispute is the only meaningful difference between an independent and dependent claim, and one party is urging that the limitation in the dependent claim should be read into the independent claim.” *Acumed*, 483 F.3d at 806 (internal quotation marks omitted). The presumption has less force, however, when there are other differences between the claims. *See, e.g., SRAM Corp. v. AD-II Eng’g, Inc.*, 465 F.3d 1351, 1358 (Fed. Cir. 2006). And when two independent claims are at issue, the doctrine of claim differentiation generally is *not* applicable because patentees are free to use linguistic variations in multiple independent claims. *See, e.g., Andersen Corp.*, 474 F.3d at 1370 (declining to apply doctrine of claim differentiation to separate independent claim terms “pellets,” “linear extrudates,” and “composite compositions” when there were other differences between the claims); *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380-81 (Fed. Cir. 2006) (recognizing that “[c]laim drafters can also use different terms to define the exact same subject matter”); *Hormone Research Found. v. Genentech, Inc.*, 904 F.2d 1558, 1567 n.15 (Fed. Cir. 1990) (“It is not unusual that separate claims may define the invention using different terminology, especially where (as here) independent claims are involved.”). In addition, evidence from the specification

may “overcome any presumption arising from the doctrine of claim differentiation.” *Andersen Corp.*, 474 F.3d at 1370 (internal quotation marks omitted).

Claim 1 and claim 9 both are independent claims to which the doctrine of claim differentiation generally is inapplicable. The scope of these claims also differs in other respects unrelated to the position of the passenger seat. Although claim 9 uses the term “substantially” and claim 1 uses the term “significantly,” nothing in the ’864 Patent indicates that distinct meanings attach to these terms, which may be synonymous when used as terms of magnitude. *See Deering*, 347 F.3d at 1322-23 (observing that the term “ ‘substantially’ can mean ‘significantly’ ”). With respect to the “view of oncoming terrain” language, both the specification and the overall context of the ’864 Patent establish that the purpose of the raised seat is to provide a passenger a view of oncoming terrain, as addressed above. Nothing in the ’864 Patent suggests that this purpose applies *only* to the raised passenger seat described in claim 9, and *not* to the raised passenger seat described in claim 1. The Court concludes that applying the doctrine of claim differentiation is not warranted here and that the disputed portion of claim 1 has the same meaning as the disputed portion of claim 9.

Although Arctic Cat’s proposed construction for claim 1 is largely the same as claim 9, it deviates in two material ways. First, Arctic Cat’s proposed construction replaces “located . . . above” with “[n]ot . . . on the same level as.” The Court has addressed and rejected this aspect of Arctic Cat’s proposed construction in the analysis above. Second, the latter half of Arctic Cat’s proposed construction—“such that the passenger has a better view of the oncoming terrain”—largely mimics the claim 9

language, but modifies the term “view” with the adjective “better.” The specification observes that a “raised position or plane may provide the passenger with a better view for anticipation of terrain.” But this modifier, “better,” is implied by the context of the claim language. Adding this modifier to the claim construction would not assist a lay juror in understanding and applying the claim terms and, to the contrary, could introduce confusion by suggesting that there is a material difference between claim 1 and claim 9 that is not supported by the intrinsic evidence.

For these reasons, the Court rejects Arctic Cat’s proposed construction for this disputed claim 1 language and concludes that “significantly above the seating position for the driver” has the same meaning as the corresponding language in claim 9—namely, it means “substantially above the driver seat so as to provide a passenger a view of oncoming terrain.”

IV. “cargo rack having left and right handles removably coupled to the vehicle” (Claim 1)

Arctic Cat’s Construction	Polaris’s Construction
Plain and ordinary meaning.	“left and right handles are integral with the cargo rack, and the cargo rack is removably coupled to the vehicle”

The parties agree that this claim language requires that the “handles” be “coupled to” and removable from “the vehicle.” Central to the parties’ dispute is whether the handles *also* must be “integral with” the cargo rack and thus *not* removable from the cargo rack. The question then is whether the handles must be a permanent fixture of the

cargo rack such that the handles and the cargo rack collectively are removable from the vehicle.

The claim language “removably coupled *to the vehicle*” plainly requires that the handles be removable from the vehicle rather than permanent fixtures. In addition, the claim language “a *cargo rack having* left and right handles” requires these handles also to form a part of the cargo rack. But the claim language does not expressly require or preclude handles that detach from *both* the cargo rack *and* the vehicle.

Polaris argues that Arctic Cat disclaimed handles that are removable from the cargo rack during the prosecution of the '864 Patent. “It is well established that the prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution.” *Springs Window Fashions LP v. Novo Indus., L.P.*, 323 F.3d 989, 994 (Fed. Cir. 2003) (internal quotation marks omitted). When a patentee unequivocally has disavowed a particular meaning in order to obtain the patent, “the doctrine of prosecution disclaimer attaches and narrows the ordinary meaning of the claim congruent with the scope of the surrender.” *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003). Such a disclaimer must be made “with reasonable clarity and deliberateness.” *Springs Window*, 323 F.3d at 994 (internal quotation marks omitted). A patentee’s attempts to overcome a rejection based on a failure to comply with the written description requirement may form the basis for prosecution disclaimer. *See 01 Communique Lab., Inc. v. LogMeIn, Inc.*, 687 F.3d 1292, 1299 (Fed. Cir. 2012) (considering but rejecting a prosecution-disclaimer argument because the prosecution history did not demonstrate that the patentee’s reason for

cancelling a pending claim was to disclaim a limitation that failed to comply with the written-description requirement).

During prosecution of the '864 Patent, claim 1 originally stated, in relevant part: “the first and second rack members removable from the cargo rack.” The patent examiner rejected claim 1 of the '864 Patent for failure to comply with the written description requirement, explaining:

In claim 1, applicant recites “first and second rack members removable from the cargo rack.” Applicant’s original disclosure describes “handles” 126 that may be removable from a vehicle and that may be part of a rack or bumper, but it does not suggest that the handles are removable from the rack. In an embodiment where the handles form the rack or are part of the rack, the disclosure suggests away from removing the handles from the rack. Therefore, ***applicant’s claim of rack members removable from the rack is not supported by applicant’s original disclosure.***

(Emphasis added.) In response to this rejection, Arctic Cat amended claim 1, in relevant part, by replacing “rack members” with “handles” and changing “removable from the cargo rack” to “removable from the vehicle.” Arctic Cat explained this amendment:

The Examiner has rejected claims 1-10, 21-25, and 27 as failing to comply with the written description requirement. Specifically, the Examiner objects to the language “first and second rack members removable from the cargo rack.” Consistent with the Examiner’s suggestion, Applicant has removed reference to “first and second rack members.” Applicant has used the name “handles” consistent with the specification ***and not specifically setting forth that they are removable from the rack but rather removable from the vehicle*** as set forth in the specification on pages 6 and 7.

(Emphasis added.) This explanation is a clear and deliberate disclaimer of handles that are removable from the cargo rack, which warrants construing the claim language to be narrower than its plain and ordinary meaning.

Based on Arctic Cat’s prosecution disclaimer, Polaris proposes construing this claim language to mean “left and right handles are integral with the cargo rack, and the cargo rack is removably coupled to the vehicle.” Although this proposed construction is largely consistent with the claim language as narrowed by the prosecution disclaimer, it unnecessarily deviates from the claim language and may introduce confusion. Therefore, the Court construes the claim 1 language “cargo rack having left and right handles removably coupled to the vehicle” to mean a “cargo rack, having left and right handles, that is removably coupled to the vehicle.”

V. “end portions” (Claim 14)

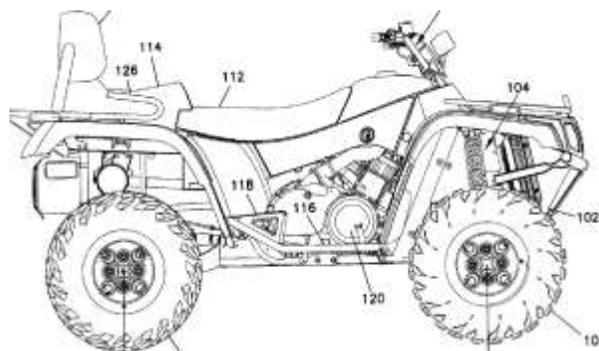
Arctic Cat’s Construction	Polaris’s Construction
Plain and ordinary meaning.	“a portion where the handle no longer continues which is not connected to the vehicle or the remainder of the handle”

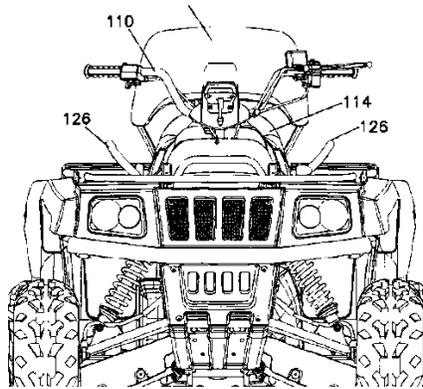
The parties dispute whether the phrase “end portions” in claim 14 of the ’864 Patent requires construction. Arctic Cat argues that plain and ordinary meaning should apply and no construction is necessary. Polaris argues that it is necessary for the Court to construe this claim language to distinguish “end portion” from “grippable portion” and thus give meaning to each part of claim 14.

Polaris relies in part on the accused products in support of its claim construction arguments. But consideration of an accused product during claim construction is improper because a district court must construe the claims “independent of the accused product, in light of the specification, the prosecution history, and the prior art.” *Embrex*, 216 F.3d at 1347 (internal quotation marks omitted). Disputed claim terms are

“construed in the light of the claim language . . . *not* in light of the accused device.” *Exigent Tech.*, 442 F.3d at 1309 n.10 (internal quotation marks omitted). Polaris similarly argues that the Court must construe this term, rather than adopt its plain and ordinary meaning, because the parties dispute whether this claim language “could be met by circular or ring-type handles.” In doing so, Polaris conflates claim construction, which is for the Court to decide, with infringement, which is for the fact finder to decide. At the claim-construction stage, the Court does not concern itself with whether a particular claim limitation could be met by a particular accused product.

Polaris concedes that “end portion” has no specialized meaning in the relevant art. Nor does the specification suggest a meaning that deviates from the plain and ordinary meaning of these commonly understood terms. The claim language states that “the respective grippable portions of the first and second handles include end portions that extend upward at an angle.” The specification, in turn, depicts a handle labeled “126” in Figure 1 and Figure 3, which are reproduced below:





The specification explains that “the grippable portions of handles **126** are laterally adjacent to the seating position” and “may extend partially in a horizontal direction and partially in a more vertical direction.” The specification later states, similarly, that the handle “includes a generally horizontal portion and an angled portion, but may, in other embodiments, include a variety of different shapes and sizes.”

In comparing Figure 1 and Figure 3, above, it appears that one portion of the handle extends in an upward and outward direction, and another portion of the handle bends so as to extend both backward and at an upward angle. This is consistent with the specification’s description of handles that extend partially in a horizontal direction and partially in a more vertical direction. It also is consistent with handles having “grippable portions” that include, but are not limited to, “end portions that extend upward at an angle.” Contrary to Polaris’s suggestion, the term “end portions” is not rendered synonymous with the term “grippable portions.” And nothing in the ’864 Patent suggests a meaning of “end portions” that deviates from the plain and ordinary, commonly understood meaning of these words that a lay juror could apply in light of the claims and the specification.

The Court rejects Polaris's proposed construction and concludes that "end portions" has its plain and ordinary meaning and requires no construction.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Defendant Polaris Industries Inc.'s motion for summary judgment, (Dkt. 111), is **DENIED** and the disputed claim terms of United States Patent No. 7,743,864 are construed as addressed herein.

Dated: December 20, 2017

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge