

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CATHETER CONNECTIONS, INC.;  
CLINICAL TECHNOLOGY, INC.,  
  
Plaintiffs,  
  
vs.  
  
IVERA MEDICAL CORPORATION,  
  
Defendant.

Case Nos.:  
14-cv-2208-H-RBB  
14-cv-2966-H-RBB

**TENTATIVE CLAIM  
CONSTRUCTION ORDER**

IVERA MEDICAL CORPORATION,  
  
Plaintiff,  
  
vs.  
  
CATHETER CONNECTIONS, INC.;  
CLINICAL TECHNOLOGY, INC.,  
  
Defendants.

On September 16, 2014, Catheter Connections, Inc. and Clinical Technology, Inc. (collectively, “Catheter”) filed a complaint for declaratory judgment against Ivera Medical Corporation (“Ivera”) in this Court. (14-cv-2208-H-RBB Doc. No. 1 [“2208 case”].) On the same day, Ivera filed a complaint for patent infringement against Catheter in the United States District Court for the Northern District of Ohio. (14-cv-

1 2966-H-RBB Doc. No.1 [“2966 case” or “Ohio case”].) Both cases concern United  
2 States Patent No. 8,834,650 (“the ‘650 Patent”). On December 16, 2014, the Ohio case  
3 was transferred to this district. (2966 Doc. No. 52.) On December 17, 2014, the Ohio  
4 case was transferred to this Court and deemed related to the 2208 case. (Id. Doc. No.  
5 63.) On January 9, 2015, the Court consolidated these cases for pretrial purposes.  
6 (2208 Doc. No. 17.)<sup>1</sup>

7 On March 30, 2015, Ivera and Catheter filed a joint hearing statement identifying  
8 seven disputed claim terms from the ‘650 Patent. (Doc. No. 60.) On May 4, 2015, the  
9 parties filed their opening construction brief. ([Doc. Nos. 70-73.) On May 15, 2015,  
10 the parties filed their responsive claim construction brief. (Doc. Nos. 74-75.)

11 The Court will hold a claim construction hearing on May 29, 2015 at 9:00 a.m.  
12 Upon review of the parties’ claim construction briefs and accompanying materials, the  
13 Court tentatively construes the disputed claim terms.

#### 14 **Background**

15 The invention concerns devices for decontaminating medical implements, where  
16 the prototypical device is placed as a cap over the part of the medical implement (or  
17 “site”) to be cleaned, swabbing the site with a cleaning agent pre-loaded into the device  
18 and attached to a strip with a plurality of the devices. See, e.g. ‘650 Patent, Abstract.

19 The ‘650 Patent is a continuation application from the application that issued as  
20 U.S. Patent No. 8,206,514 (“the ‘514 Patent”). The ‘514 Patent issued from a  
21 continuation of the application that issued as U.S. Patent No. 7,985,302 (“the ‘302  
22 Patent”). The ‘302 Patent issued from a continuation application that issued as U.S.  
23 Patent No. 7,780,794 (“the ‘794 Patent”). On October 2, 2013, the Court issued a claim  
24 construction order for the ‘302 Patent, the ‘794 Patent, and the ‘514 Patent. (3:11-cv-  
25 1115-H-RBB Doc. No. 59.)

26 The ‘650 Patent discloses the same cap-based system for cleaning medical  
27

---

28 <sup>1</sup>All further docket references are to the 2208 docket, unless otherwise stated.

1 devices taught by the invalidated patents. See, e.g. '650 Patent, Abstract. It further  
2 teaches that the system can “include a strip of flexible material and a plurality of  
3 cleaning devices attached to the strip.” Id. The '650 Patent additionally teaches that  
4 the “cap can be selectively removable from the strip of flexible material and can have  
5 an inner cavity that is sealed when the cleaning device is attached to the strip and  
6 unsealed upon removal of the cleaning device from the strip.” Id.

7 In its action for declaratory judgment, Catheter asserts the '650 Patent is invalid  
8 due to anticipation and obviousness. (Doc. No. 1.) In the Ohio case, Ivera asserts that  
9 Catheter's products infringe claims 1, 2, 4, 5, 7, 8, 9, and 10 of the '650 Patent. (2966  
10 Doc. No. 1; 2208 Doc. No. 70 at 2.) The parties seek construction of seven terms from  
11 the '650 Patent. (Doc. No. 60.)

## 12 **Discussion**

### 13 **I. Legal Standards for Claim Construction**

14 Claim construction is an issue of law for the court to decide. Markman v.  
15 Westview Instruments, Inc., 52 F.3d 967, 970-71 (Fed. Cir. 1995) (en banc), aff'd, 517  
16 U.S. 370 (1996). “The purpose of claim construction is to ‘determin[e] the meaning and  
17 scope of the patent claims asserted to be infringed.’” O2 Micro Int'l Ltd. v. Beyond  
18 Innovation Tech. Co., 521 F.3d 1351, 1360 (Fed. Cir. 2008). “It is a ‘bedrock principle’  
19 of patent law that the ‘claims of a patent define the invention to which the patentee is  
20 entitled the right to exclude.’” Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed. Cir.  
21 2005) (en banc).

22 Claim terms are generally given their ordinary and customary meaning. Vitronics  
23 Corp. v. Conceptoronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). In patent law, the  
24 ordinary and customary meaning of a claim term is the meaning that the term would  
25 have to a person having ordinary skill in the art (“PHOSITA”) at the time of the  
26 invention. Phillips, 415 F.3d at 1313. In determining the meaning of a term, the  
27 PHOSITA is deemed “to read the claim term not only in the context of the particular  
28 claim in which the disputed term appears, but in the context of the entire patent,

1 including the specification.” Id. This test provides an objective baseline from which  
2 to begin claim interpretation. Id.

3 “In some cases, the ordinary meaning of claim language as understood by a  
4 [PHOSITA] may be readily apparent even to lay judges, and claim construction in such  
5 cases involves little more than the application of the widely accepted meaning of  
6 commonly understood words.” Id. at 1314. “However, in many cases, the meaning of  
7 a claim term as understood by persons of skill in the art is not readily apparent.” O2  
8 Micro, 521 F.3d at 1360. If the meaning of the term is not readily apparent, the court  
9 must look to “those sources available to the public that show what a person of skill in  
10 the art would have understood disputed claim language to mean,” including intrinsic  
11 and extrinsic evidence. See Phillips, 415 F.3d at 1314. A court should begin with the  
12 intrinsic record, which consists of the language of the claims, the patent specification,  
13 and, if in evidence, the prosecution history of the asserted patent. Id.

14 In determining the proper construction of a claim, a court should first look to the  
15 language of the claims. See Vitronics, 90 F.3d at 1582; see also Comark Commc’ns v.  
16 Harris Corp., 156 F.3d 1182, 1186 (Fed. Cir. 1998) (“The appropriate starting point .  
17 . . is always with the language of the asserted claim itself.”). The context in which a  
18 disputed term is used in the asserted claim may provide substantial guidance as to the  
19 meaning of the term. See Phillips, 415 F.3d at 1314. In addition, the context in which  
20 the disputed term is used in other claims, both asserted and unasserted, may provide  
21 guidance because “the usage of a term in one claim can often illuminate the meaning  
22 of the same term in other claims.” Id. Furthermore, a disputed term must be construed  
23 “consistently with its appearance in other places in the same claim or in other claims of  
24 the same patent.” Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1342 (Fed. Cir.  
25 2001); see also Callicrate v. Wadsworth Mfg., Inc., 427 F.3d 1361, 1371 (Fed. Cir.  
26 2005) (“this court interprets claim terms consistently throughout various claims of the  
27 same patent”). Moreover, “[a] claim construction that gives meaning to all the terms  
28 of the claim is preferred over one that does not do so.” Merck & Co. v. TevaPharms.

1 USA, Inc., 395 F.3d 1364, 1372 (Fed. Cir. 2005).

2 A court must also read claims “in view of the specification, of which they are a  
3 part.” Markman, 52 F.3d at 979; see 35 U.S.C. § 112(b) (“The specification shall  
4 conclude with one or more claims particularly pointing out and distinctly claiming the  
5 subject matter which the inventor or a joint inventor regards as the invention.”). The  
6 specification “is the single best guide to the meaning of a disputed term,” and is usually  
7 dispositive of the term’s meaning. Vitronics, 90 F.3d at 1582. In addition, “a claim  
8 construction that excludes the preferred embodiment is rarely, if ever, correct and would  
9 require highly persuasive evidentiary support.” Adams Respiratory Therapeutics, Inc.  
10 v. Perrigo Co., 616 F.3d 1283, 1290 (Fed. Cir. 2010) (citations omitted). But “[t]he  
11 written description part of the specification does not delimit the right to exclude. That  
12 is the function and purpose of claims.” Markman, 52 F.3d at 980; Comark, 156 F.3d  
13 at 1186 (“[L]imitations from the specification are not to be read into the claims . . .”).

14 In construing the terms of a claim, even though claim terms are “understood  
15 in light of the specification, a claim construction must not import limitations from the  
16 specification into the claims.” Deere & Co. v. Bush Hog, LLC, 703 F.3d 1349, 1354  
17 (Fed. Cir. 2012). Moreover, “[e]ven when the specification describes only a single  
18 embodiment, the claims of the patent will not be read restrictively unless the patentee  
19 has demonstrated a clear intention to limit the claim scope using words or expressions  
20 of manifest exclusion or restriction.” Liebel Flarsheim Co. v. Medrad, Inc., 358 F.3d  
21 898, 906 (Fed. Cir. 2004).

22 In most situations, analysis of the intrinsic evidence will resolve claim  
23 construction disputes. See Vitronics, 90 F.3d at 1583. However, “because extrinsic  
24 evidence can help educate the court regarding the field of the invention and can help the  
25 court determine what a person of ordinary skill in the art would understand claim terms  
26 to mean, it is permissible for the district court in its sound discretion to admit and use  
27 such evidence.” Phillips, 415 F.3d at 1319. Extrinsic evidence “consists of all evidence  
28 external to the patent and prosecution history, including expert and inventor testimony,

1 dictionaries, and learned treatises.” Id. at 1317. A court evaluates all extrinsic evidence  
2 in light of the intrinsic evidence. Id. at 1319. A court should not rely on extrinsic  
3 evidence in construing claims to contradict the meaning of claims discernable from  
4 examination of the claims, the written description, and the prosecution history. See  
5 Dow Chem. Co. v. Sumitomo Chem. Co., Ltd., 257 F.3d 1364, 1373 (Fed. Cir. 2001);  
6 Vitronics, 90 F.3d at 1583. “In cases where those subsidiary facts are in dispute, courts  
7 will need to make subsidiary factual findings about that extrinsic evidence.” Teva  
8 Pharm. USA v. Sandoz, Inc., 135 S. Ct. 831, 841 (2015).

9       When a patent contains multiple claims, the doctrine of “claim differentiation”  
10 provides that “each claim in a patent is presumptively different in scope.” RF Del., Inc.  
11 v. Pac. Keystone Techs., Inc., 326 F.3d 1255, 1263 (Fed. Cir. 2003). The doctrine is  
12 based on a commonplace notion that patentees use different words or phrases in  
13 different claims to indicate that the claims have different meanings. Andersen Corp. v.  
14 Fiber Composites, LLC, 474 F.3d 1361, 1369 (Fed. Cir. 2007). When a limitation in  
15 dispute is the “only meaningful difference between an independent claim and dependent  
16 claim,” there is a strong presumption that the limitation from the dependent claim does  
17 not exist in the independent claim. Acumed LLC v. Stryker Corp., 483 F.3d 800, 806  
18 (Fed. Cir. 2007). “[T]he claim differentiation tool works best in the relationship  
19 between independent and dependent claims.” Curtiss Wright Flow Control Corp. v.  
20 Velan, Inc., 438 F.3d 1374, 1380 (Fed. Cir. 2006). Thus, “[i]n the most specific sense,  
21 ‘claim differentiation’ refers to the presumption that an independent claim should not  
22 be construed as requiring a limitation added by a dependent claim.” Id. In contrast, this  
23 “strong presumption” does not exist when two independent claims are at issue. See id.  
24 at 1380-81. In some situations, “two claims with different terminology can define the  
25 exact same subject matter.” Id. at 1380. Moreover, the doctrine creates only a  
26 “presumption that each claim in a patent has a different scope.” Id. In the context of  
27 independent claims, then, “(1) claim differentiation takes on relevance in the context  
28 of a claim construction that would render additional, or different, language in another

1 independent claim superfluous; and (2) claim differentiation can not broaden claims  
2 beyond their correct scope.” Id. at 1381 (internal quotations omitted).

3 Means-plus-function terms are “purely functional limitations that do not provide  
4 the structure that performs the recited function” and should be construed under 35  
5 U.S.C. § 112, ¶ 6. Depuy Spine, Inc. v. Medtronic Sofamor Sanek, Inc., 469 F.3d  
6 1005, 1023 (Fed. Cir. 2006). To determine whether a claim invokes section 112, the  
7 court “must determine if the claim limitation is drafted in means-plus-function format.  
8 As part of this step, [the court] must construe the claim limitation to decide if it  
9 connotes ‘sufficiently definite structure’ to a person of ordinary skill in the art . . . .”  
10 Apple Inc. v. Motorola, Inc., 757 F.3d 1286, 1296 (Fed. Cir. 2014). The court may  
11 consider both the prosecution history and relevant extrinsic evidence to inform its  
12 analysis. Id. at 1296-97. “A claim limitation that actually uses the word ‘means’ will  
13 invoke a rebuttable presumption that § 112 ¶ 6 applies. By contrast, a claim term that  
14 does not use ‘means’ will trigger the rebuttable presumption that § 112 ¶ 6 does not  
15 apply.” CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 1369 (Fed. Cir. 2002)  
16 (internal citation omitted). The Federal Circuit has “repeatedly characterized this  
17 presumption as ‘strong’ and ‘not readily overcome’ and, as such, ha[s] ‘seldom’ held  
18 that a limitation without recitation of ‘means’ is a means-plus-function limitation.”  
19 Apple, 757 F.3d at 1297. The party challenging the presumption “bears the burden of  
20 overcoming [it]. . . by a preponderance of the evidence.” Id. at 1298. “When the claim  
21 drafter has not signaled his intent to invoke § 112, ¶ 6 by using the term ‘means,’ [a  
22 court is] unwilling to apply that provision without a showing that the limitation  
23 essentially is devoid of anything that can be construed as structure.” Flo Healthcare  
24 Solutions, LLC v. Kappos, 697 F.3d 1367, 1374 (Fed. Cir. 2012).

25 “The correct inquiry, when ‘means’ is absent from a limitation, is whether the  
26 limitation read in light of the remaining claim language, specification, prosecution  
27 history, and relevant extrinsic evidence, has sufficiently definite structure to a person  
28 of ordinary skill in the art.” Apple, 757 F.3d at 1298. “A limitation has sufficient

1 structure when it recites a claim term with a structural definition that is either provided  
2 in the specification or generally known in the art.” Id. at 1299. “Even if a patentee  
3 elects to use a ‘generic’ claim term, such as ‘a nonce word or a verbal construct,’  
4 properly construing that term . . . may still provide sufficient structure such that the  
5 presumption against means-plus-function claiming remains intact.” Id. at 1299. “What  
6 is important is whether the term is one that is understood to describe structure, as  
7 opposed to a term that is simply a nonce word or a verbal construct that is not  
8 recognized as the name of structure and is simply a substitute for the term ‘means for.’”  
9 Lighting World, Inc. v. Birchwood Lighting, Inc., 382 F.3d 1354, 1360 (Fed. Cir.  
10 2004). “The correct inquiry is whether skilled artisans, after reading the patent, would  
11 conclude that a claim limitation is so devoid of structure that the drafter constructively  
12 engaged in means-plus-function claiming.” EnOcean GmbH v. Face Int’l Corp., 742  
13 F.3d 955, 958 (Fed. Cir. 2014) (quotations and citations omitted). Therefore, “if a  
14 limitation recites a term with a known structural meaning, or recites either a known or  
15 generic term with a sufficient description of its operation, the presumption against  
16 means-plus-function claiming remains intact.” Apple, 757 F.3d at 1300.

17 If the term is a means-plus-function term, construing the term consists of two  
18 distinct steps which must be performed in order. JVW Enters., Inc. v. Interact  
19 Accessories, Inc., 424 F.3d 1324, 1330 (Fed. Cir. 2005). First, the Court must  
20 identify the function associated with the claim language. Id. Second, the Court  
21 must identify the corresponding structure in the written description that performs the  
22 function. Id. A “structure disclosed in the specification is [a] ‘corresponding’  
23 structure only if the specification or prosecution history clearly links or associates  
24 that structure to the function recited in the claim.” B. Braun Medical, Inc. v. Abbott  
25 Labs., 124 F.3d 1419, 1424 (Fed. Cir. 1997). A proper construction should account  
26 for “all structures in the specification corresponding to the claimed function” and it  
27 would be error to limit the structure to be just the preferred embodiment. Callicrate  
28 v. Wadsworth Mfg., Inc., 427 F.3d 1361, 1369 (Fed. Cir. 2005).



1 “[D]istrict courts are not (and should not be) required to construe every limitation  
2 present in a patent’s asserted claims.” O2 Micro, 521 F.3d at 1362. In certain  
3 situations, it is appropriate for a court to determine that a claim term needs no  
4 construction and its plain and ordinary meaning applies. See id.; Phillips, 415 F.3d at  
5 1314. But “[a] determination that a claim term ‘needs no construction’ or has the ‘plain  
6 and ordinary meaning’ may be inadequate when a term has more than one ‘ordinary’  
7 meaning or when reliance on a term’s ‘ordinary’ meaning does not resolve the parties’  
8 dispute.” O2 Micro, 521 F.3d at 1361. If the parties dispute the scope of a certain  
9 claim term, it is the court’s duty to resolve the dispute. Id. at 1362.

## 10 **II. Analysis of the Disputed Terms**

### 11 1. “LAV”

12 The term “LAV” appears in asserted claims 1, 4, 5, and 10 of the ‘650 Patent.  
13 Ivera proposes that LAV should be construed as “luer activated valve.” (Doc. No. 60-2  
14 at at 1.) Catheter does not offer a construction. (Id.) The term appears in claim 1 as  
15 follows: “1. A system for cleaning a site of a luer activated valve (LAV), the system  
16 comprising: . . . .” (‘650 Patent, col. 9 ll. 58-59.) A patentee may act “as his own  
17 lexicographer and clearly set forth a definition of the disputed claim term in either the  
18 specification or prosecution history.” CCS Fitness, 288 F.3d at 1366. Here, Ivera  
19 proposes construction of LAV as defined by the patentee within the claim language.  
20 And Catheter neither disputes the construction nor offers an alternative. (See Doc. No.  
21 72 at 1 n.2.) Accordingly, the Court construes LAV as “luer activated valve.”

### 22 2. “strip of material”

23 The term “strip of material” appears in asserted claims 1, 4, and 7, and unasserted  
24 claims 3 and 6 of the ‘650 Patent. Ivera proposes the term be given its plain and  
25 ordinary meaning. (Doc. No. 60-2 at 1.) Catheter proposes “strip of material” be  
26 construed as “the seal.” (Id.) Ivera argues that Catheter’s proposal impermissibly reads  
27 in limitations to the claim and requires the “strip” to function as a “seal” when the  
28 claims do not so mandate. (Doc. No. 70 at 7-8.) Catheter argues that the strip must seal

1 the cleaning agent in the caps. (Doc. No. 72 at 7-11.) Because the parties dispute the  
2 construction of this term, the Court resolves the parties' dispute. O2 Micro, 521 F.3d  
3 at 1362.

4 The Court begins with the language of the claims. Comark Commc'ns, 156 F.3d  
5 at 1186. The claims containing the language "strip [of material]" do not define "strip  
6 [of material]" as the seal. To the contrary, considered in the context of the claim,  
7 Phillips, 415 F.3d at 1314, the claims differentiate between "strip" and "seal." For  
8 example, asserted claim 4 provides for the cap-based cleaning system to include "a strip  
9 of material attached to the plurality of cleaning devices, and from which the each of the  
10 plurality of cleaning devices can be individually removed, each of the plurality of  
11 cleaning devices being sealed prior to removal from the strip of material to seal the  
12 cleaning agent within the inner cavity." '650 patent, col. 10 ll. 46-51. Construing "strip  
13 of material" as "seal" would call for "each of the plurality of cleaning devices being  
14 sealed prior to removal from the seal to seal the cleaning agent within the inner cavity."  
15 Such construction would be nonsensical and impermissibly alter the claim limitations  
16 throughout the patent. See Callicrate, 427 F.3d at 1371 ("this court interprets claim  
17 terms consistently throughout various claims of the same patent").

18 Moreover, the doctrine of claim differentiation bars Catheter's proposed  
19 construction. Here, asserted claim 1 provides, in relevant part:

20 A system for cleaning a site of a luer activated valve (LAV), the system  
21 comprising:

22 a strip of material; and

23 a plurality of cleaning devices attached to the strip of material, each of the  
24 plurality of cleaning devices comprising:

25 a cap that is selectively removable from the strip of material, the  
26 cap having an inner cavity, the inner cavity being sealed when the  
27 cleaning device is attached to the strip of material and configured  
28 to be unsealed upon removal of the cleaning device from the strip  
of material, the inner cavity for receiving a site of the LAV;

one or more protrusions extending inwardly from the inner cavity,  
the one or more protrusions to engage corresponding protrusions on  
the site of the LAV to maintain the cap on the site of the LAV after  
the site of the LAV is received into the inner cavity of the cap;

1 a cleaning agent that occupies at least some of the inner cavity, the  
2 cleaning agent being formulated to clean the site of the LAV as the  
3 inner cavity of the cap receives the site of the medical implement  
4 and when the cap is maintained on the site of the LAV; and  
5 at least one aperture to the inner cavity when the site of the LAV is  
6 received into the inner cavity of the cap.

7 ‘650 patent, col. 9-10 ll. 58-16. Unasserted dependent claim 3 provides, in full:

8 The system in accordance with claim 1, wherein the inner cavity of the cap of  
9 each of the plurality of cleaning devices is sealed by the strip of material before  
10 the cleaning device is removed from the strip of material.

11 ‘650 patent, col. 10 ll. 23-26. Under the doctrine of claim differentiation, “each claim  
12 in a patent is presumptively different in scope.” RF Del, 326 F.3d at 1263. When a  
13 limitation in dispute is the “only meaningful difference between an independent claim  
14 and dependent claim,” there is a strong presumption that the limitation from the  
15 dependent claim does not exist in the independent claim. Acumed, 483 F.3d at 806.  
16 Where the claim differentiation tool is applied to the relationship between independent  
17 and dependent claims, “claim differentiation calls for a presumption that an independent  
18 claim should not be construed as requiring a limitation added by a dependent claim.”  
19 Id. (internal quotations omitted). Here, unasserted dependent claim 3 teaches an  
20 additional limitation, not appearing in independent claim 1, that the “inner cavity of the  
21 cap of each of the plurality of cleaning devices is sealed by the strip of material . . . .”  
22 ‘650 patent col. 10 ll. 24-25. “[T]he presence of a dependent claim that adds a  
23 particular limitation raises a presumption that the limitation in question is not found in  
24 the independent claim.” Hill-Rom Servs., Inc. v. Stryker Corp., 755 F.3d 1367, 1374  
25 (Fed. Cir.) cert. denied, 135 S. Ct. 719 (2014). Catheter’s construction of “strip of  
26 material” would render dependent claim 3 superfluous. Based on the claim language  
27 and the doctrine of claim differentiation, the Court rejects Catheter’s proposed  
28 construction.

29 Instead, the Court accords this term its plain and ordinary meaning. See  
30 Vitronics, 90 F.3d at 1582 (noting that claim terms are usually given their ordinary and  
31 customary meaning). A common sense reading of this term reveals that the claim

1 language is unambiguous in its reference to a strip of material. The claim is no more  
2 specific than its words. And those words need no construction.

3 3. “attached”

4 The term “attached” appears in asserted claims 1, 4, 7, and 9. Ivera proposes the  
5 term be given its plain and ordinary meaning. (Doc. No. 60-2 at 1.) Catheter proposes  
6 “attached” be construed as “attached in such a manner as to seal the inner cavity.” (Id.)  
7 Ivera argues, similar to its arguments regarding “strip,” that Catheter’s proposed  
8 construction of “attached” is narrower than its terms. (Doc. No. 70 at 7-8.) Catheter  
9 argues, similar to its arguments regarding the term “seal,” that the term “attach” requires  
10 attaching the caps to the strip in such a manner as to seal the caps. (Doc. No. 72 at 7-  
11 11.) For the same reasons that the Court rejects Catheter’s construction of “strip,” the  
12 Court rejects Catheter’s construction of “attach.”

13 The Court accords “attach” its plain and ordinary meaning. See Vitronics, 90  
14 F.3d at 1582 (noting that claim terms are usually given their ordinary and customary  
15 meaning). The term “attach” does not contain the limits Catheter purports to ascribe to  
16 it, and the Court will not alter the claim as Catheter requests. “Attach” needs no  
17 construction.

18 4. “protrusions”

19 The term “protrusions” appears in asserted claims 1, 2, 4, 7, 8, and 10 of the ’650  
20 Patent. Ivera proposes that the term be given its plain meaning, or in the alternative be  
21 construed the same as the Court’s prior claim construction order as “a thread, snap-fit  
22 mechanism, clamp, or anything else that extends outward from the inner surface of the  
23 inner cavity.” (Doc. No. 60-2 at 1-2.) In its opening claim construction brief, Ivera  
24 states that if the Court chooses to construe this term, the parties agree that the  
25 construction should be consistent with the prior cases. (Doc. No. 70 at 19.) Catheter  
26 proposes that the Court construe the term the same as the prior cases. (Doc. No. 60-2  
27 at 1-2; Doc. No. 72 at 7.) After reviewing the arguments and the prior claim  
28 construction order, the Court construes “protrusion” consistent with the prior cases as

1 “a thread, snap-fit mechanism, clamp, or anything else that extends outward from the  
2 inner surface of the inner cavity.”

3 5. “aperture”

4 The term “aperture” appears in asserted claims 1, 2, 4, 5, 7, 9, and 10 of the ‘650  
5 Patent. Ivera proposes that the term be given its plain meaning, or in the alternative be  
6 construed the same as the Court’s prior claim construction order as “a channel,  
7 pathway, hole, gap, or split.” (Doc. No. 60-2 at 2.) In the exhibits attached to the joint  
8 hearing statement, Catheter initially proposed the Court construe this term as “a  
9 channel, pathway, hole, gap, or split, not to include the inner cavity or protrusions.”  
10 (Id. at 2.) But in its opening claim construction brief, Catheter contends that the Court  
11 should construe this term the same as the prior cases, as a “channel, pathway, hole, gap,  
12 or split.” (Doc. No. 72 at 7.) The Court has reviewed the arguments and the prior claim  
13 construction. The Court accordingly construes “aperture” consistent with the prior  
14 cases as “a channel, pathway, hole, gap, or split.”

15 6. “aperture is further configured to allow evacuation of at least some of the  
16 cleaning agent from the inner cavity when the inner cavity of the cap  
17 receives the site”

18 This term appears in asserted claims 2 and 5 of the ‘650 Patent. Ivera contends  
19 that this is not a means-plus-function claim and that it should be given its plain and  
20 ordinary meaning. (Doc. No. 60-2 at 2-3.) Catheter contends that the term is a means-  
21 plus-function claim that should be construed as “(a) a threaded ring that fits into a  
22 groove that is formed in the inside edge surface of the cap near the opening, where the  
23 threaded ring includes or creates with the cap wall a small vent aperture or opening; (b)  
24 holes in the housing of the cap; and © permitted equivalents of (a) and (b).”<sup>2</sup> (Id. at 2-  
25 3.)

---

27 <sup>2</sup> Catheter’s proposed construction is identical to the construction the Court  
28 accorded “means for venting” in the prior cases. (11-cv-1115-H-RBB Doc. No. 59 at  
15.)

1 The term in dispute does not contain the word “means.” See ‘650 Patent col. 10  
2 ll. 17-20, 52-55. “[T]he term ‘means’ is central to the analysis.” Apex Inc. v. Raritan  
3 Computer, Inc., 325 F.3d 1364, 1372 (Fed. Cir. 2003). Its absence triggers a strong  
4 presumption that the term is not a means-plus-function claim. Apple, 757 F.3d at 1297.  
5 Catheter bears the burden of overcoming this presumption. Id. at 1298. Catheter must  
6 show that “the limitation essentially is devoid of anything that can be construed as  
7 structure.” Flo Healthcare Solutions, 697 F.3d at 1374.

8 To determine whether the disputed term is a means-plus-function claim  
9 limitation, the Court looks first to the claim language of the ‘650 Patent. Catheter  
10 argues that the term “the at least one aperture” is merely a placeholder or generic term  
11 for the word “means.” (Doc. No. 72 at 11-13.) But, as Ivera points out, “aperture” has  
12 been construed as “a channel, pathway, hole, gap, or split.” (Doc. No. 74 at 8.)  
13 Accordingly, “aperture” connotes a structure in and of itself and cannot be said to be  
14 “devoid of anything that can be construed as structure.” Flo Healthcare Solutions, 697  
15 F.3d at 1374.

16 Because the term lacks the word “means” and “aperture” has been construed as  
17 a structure, Catheter has failed to overcome the strong presumption that § 112, ¶ 6 does  
18 not apply to this limitation. Moreover, the term is unambiguous, is easily  
19 understandable by a jury, and requires no construction. Therefore, the Court rejects the  
20 Catheter’s proposed definition and affords the term its plain and ordinary meaning. See  
21 Finjan v. Secure Computing Corp., 626 F.3d 1197, 1206-07 (Fed. Cir. 2010) (a court  
22 may resolve a dispute regarding the scope of a term consistent with O2 Micro by  
23 rejecting one party’s proposed construction and ascribing the term its plain and ordinary  
24 meaning). Accordingly the term “aperture is further configured to allow evacuation of  
25 at least some of the cleaning agent from the inner cavity when the inner cavity of the  
26  
27  
28

1 cap receives the site” will be given its plain and ordinary meaning.<sup>3</sup>

2 7. “opening”

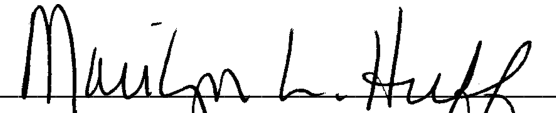
3 The term “opening” appears in asserted claim 9 of the ’650 Patent. Ivera  
4 proposes that the term be given its plain meaning, or in the alternative be construed the  
5 same as the Court’s prior claim construction order as “an entrance or exit to the inner  
6 cavity of the cap.” (Doc. No. 60-2 at 8.) Catheter proposes that the Court construe the  
7 term the same as the prior cases. (Doc. No. 60-2 at 8; Doc. No. 72 at 7.) The Court has  
8 reviewed the arguments and the prior claim construction. The Court accordingly  
9 construes “opening” as “an entrance or exit to the inner cavity of the cap.”

10 **Conclusion**

11 After considering the record and reviewing each party’s constructions in light  
12 of the applicable standards of law, the Court issues this tentative claim construction.

13 **IT IS SO ORDERED.**

14 DATED: May 22, 2015

15   
16 MARILYN L. HUFF, District Judge  
17 UNITED STATES DISTRICT COURT

18  
19  
20  
21  
22  
23  
24  
25  
26 <sup>3</sup> Catheter’s argument that the instant term should be construed the same as  
27 “means for venting” in the prior cases is belied by the fact that the latter contains the  
28 word “means” and thus is presumptively a means-plus-function term. See CSS Fitness,  
288 F.3d at 1369. Moreover, in the prior cases, the parties agreed that “means for  
venting” was a means-plus-function term.