

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LIFEPORT SCIENCES LLC and
LIFESCREEN SCIENCES LLC,

Plaintiffs,

v.

COOK INCORPORATED and
COOK MEDICAL INCORPORATED,

Defendants.

Civil Action No. 13-362-GMS

ORDER

WHEREAS, presently before the court is the defendants' Motion for Reconsideration, concerning the court's claim construction of the "displacement member" term found in U.S. Patent No. 6,383,193 ("the '193 Patent");¹

The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). Accordingly, a court may alter or amend its judgment if the movant demonstrates at least one of the following: (1) a change in the controlling law; (2) availability of new evidence not available when the decision issued; or (3) a need to correct a clear error of law or fact or to prevent manifest injustice. *Id.*

With the understanding that "[m]otions for reargument [or reconsideration] shall be sparingly granted," the court is persuaded that the defendants are correct in this instance. *See* D. Del. LR 7.1.5. After explaining that the term "displacement member" itself had no structural

¹ The court issued its Claim Construction Order on July 1, 2015. (D.I. 92.) In the Order, the court construed the term "a displacement member attached to said tubular member for displacing the filter from said segment" to have its plain and ordinary meaning. (*Id.* at 8 & n.13.) In doing so, the court rejected the defendants' position that the term should be construed as a means-plus-function term.

meaning, the court reasoned that the “interaction of the displacement member with the other components of the delivery system . . . does serve to impart sufficiently definite structure.” (D.I. 92 at 8 n.13.) This explanation was mistaken; indeed, the plaintiffs did not even offer it as justification. The court, moreover, improperly dismissed the defendants’ arguments citing to the “control means” term, which—although it employed identical language to the displacement member term—the plaintiffs agreed failed to recite adequate structure. (*Id.* at 7, 8 & n.13.) The court finds that granting the motion for reconsideration is warranted, as the rationale for its construction was “outside the adversarial issues presented to the Court by the parties,” and “an error not of reasoning but of apprehension.” *See Schering Corp. v. Amgen, Inc.*, 25 F. Supp. 2d 293, 295 (D. Del. 1998).²

WHEREAS, the court having reviewed the parties’ contentions, the standard of review, and the applicable law;

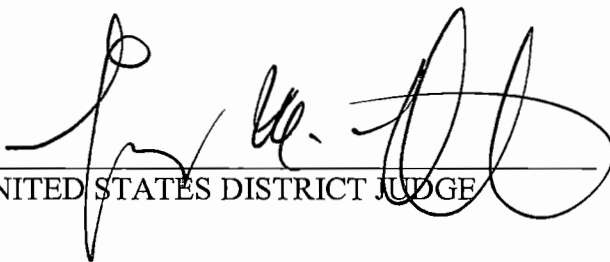
IT IS HEREBY ORDERED THAT:

1. The defendants’ Motion for Reconsideration (D.I. 96) is GRANTED;
2. In the context of ’193 Patent, the term “a displacement member attached to said tubular member for displacing the filter from said segment” is construed as a means-plus-function claim. The claimed function is: “to displace the filter from the segment.” The corresponding structure is: “outer tubular member, handle, inner member, and the slider.”³

² The court also agrees that it was improper to rely on the expert declaration of Steven Opolski for support in its Order, after indicating at the *Markman* hearing that extrinsic evidence would not be considered. (D.I. 80 at 120.) It would be patently unfair to accept the plaintiffs’ extrinsic evidence after preventing the defendants from presenting their own evidence or arguments in opposition.

³ The court’s construction mirrors that of the “control means” term. (D.I. 92 at 7 & n.12.) In light of the guidance found in *Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015), the court is satisfied that the defendants have rebutted the presumption against means-plus-function construction. The term is therefore subject to the provisions of 35 U.S.C. § 112(f). Further reasoning in support of the court’s construction is contained in the original Claim Construction Order. (D.I. 92 at 7 & n.12.)

Dated: August 20, 2015


UNITED STATES DISTRICT JUDGE