

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN VEHICLE SPACE GUARDS

INV. NO. 337-TA-1509

ORDER NO. 11:

**FINAL INITIAL DETERMINATION GRANTING
RESPONDENTS' MOTION FOR SUMMARY
DETERMINATION OF NO VIOLATION**

(September 30, 2026)

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I. INTRODUCTION

On August 24, 2026, respondents Drop Stop, LLC; The Container Store Inc.; and 232 Technologies, Inc. (“the Moving Respondents”) moved for summary determination of no violation based on non-infringement of all asserted claims of U.S. Patent No. 7,527,314 (“the ’314 patent”), the only patent in this investigation.¹ Motion Docket No. 1509-004 (“Mot.”). The motion is accompanied by a memorandum in support (“Mem.”) and a Statement of Material Facts (“SMF”). *Id.* On September 1, 2026, the Commission Investigative Staff (“Staff”) filed a response in support of the motion. EDIS Doc. ID No. 893551 (“Staff Resp.”). On September 3, 2026, respondent Walmart, Inc., filed a response in support of the motion and in support of Staff’s response. EDIS Doc. ID No. 893922. On September 8, 2026, complainant Jonathan Black Kotyk (“Complainant”) filed an opposition to the motion. EDIS Doc ID No. 894169 (“Opp.”). The opposition is accompanied by a response to the Statement of Material Facts (“RSMF”). *Id.*

On September 15, 2026, the Moving Respondents filed an unopposed motion for leave to file a reply in support of the motion, accompanied by the proposed reply. Motion Docket No.1509-005 (“Reply”). The unopposed motion for leave is granted. The Reply is deemed filed and has been considered in rendering this initial determination.

On September 18, 2026, Complainant filed an unopposed motion for leave to file a sur-reply, accompanied by the proposed sur-reply. Motion Docket No. 1509-006 (“Sur-reply”). The unopposed motion for leave is granted. The Sur-reply is deemed filed and has been considered in rendering this initial determination.

¹ Claims 1–4, 6, 8–12, 14–16, and 18–19 of the ’314 patent are asserted in this investigation. *See* 91 Fed. Reg. 41657 (July 7, 2026).

II. SUMMARY OF THE DISPUTE

The '314 patent, which is titled “Vehicle Gap Guard,” is directed to a device that prevents dropped items from falling beneath a vehicle seat by filling the gap between the seat and another structure like a center console. '314 patent at 1:54–2:30. All asserted claims of the '314 patent claims require “a contoured vehicle space guard . . . whereby the contour is shaped to fit the contour of an existing vehicle seat.” *Id.* at 7:29–35, 8:24–29.

The Moving Respondents contend the accused Drop Stop product is not “contoured” and “shaped to fit the contour of an existing vehicle seat” in the manner required by all asserted claims of the '314 patent. Mem. at 16. In particular, the Moving Respondents assert that the patent applicant disclaimed during prosecution a contour achieved only by deforming the guard to fit the space between the vehicle seat and the door or center console. *Id.* at 19–21. The Moving Respondents contend that the only evidence of infringement proffered by Complainant is the very type of contour that was disclaimed. *Id.* at 20.

The Complainant contests the scope of the disclaimer made during prosecution and contends that there is a dispute of fact as to whether the Drop Stop product meets the claim language requiring that the device be “contoured” and “shaped to fit the contour of an existing vehicle seat.” Opp. at 27–32.

III. LEGAL STANDARDS

A. Summary Determination

Summary determination is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a determination as a matter of law. *See* 19 C.F.R. § 210.18. In determining whether there is a genuine issue of material fact, “the evidence must be viewed in the light most favorable to the party opposing the motion with doubts resolved in favor of the non-

movant.” *Crown Operations Int’l, Ltd v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002) (citation omitted).

B. Patent Infringement

The Moving Respondents seek summary determination of no patent infringement, and therefore no violation. Mem. at 23. In a section 337 investigation, the complainant bears the burden of proving infringement of the asserted patent claims. *See Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1349 (Fed. Cir. 2010). “Literal infringement requires the patentee to prove that the accused device contains each limitation of the asserted claim(s). If any claim limitation is absent from the accused device, there is no literal infringement as a matter of law.” *Bayer AG v. Elan Pharm. Rsch. Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000) (cleaned up).

“An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc) (cleaned up), *aff’d*, 517 U.S. 370 (1996).

Claim construction resolves legal disputes between the parties regarding claim scope. *See Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1319 (Fed. Cir. 2016).

Evidence intrinsic to the application, prosecution, and issuance of a patent is the most significant source of the legally operative meaning of disputed claim language. *See Bell Atl. Network Servs., Inc. v. Covad Commc’ns Grp., Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). The intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc); *see also Markman*, 52 F.3d at 979. As the Federal Circuit explained in *Phillips*, courts analyze each of these components to determine the “ordinary and customary meaning of a claim term” as understood by a person of ordinary skill in the art at the time of the invention. 415 F.3d at 1313.

“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.’” *Phillips*, 415 F.3d at 1312 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). “[T]he claims themselves provide substantial guidance as to the meaning of particular claim terms.” *Id.* at 1314; see *Interactive Gift Express, Inc. v. CompuServe Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001) (“In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to particularly point out and distinctly claim the subject matter which the patentee regards as his invention.” (cleaned up)). The context in which a term is used in an asserted claim can be “highly instructive.” *Phillips*, 415 F.3d at 1314. Additionally, other claims in the same patent, asserted or unasserted, may also provide guidance as to the meaning of a claim term. *Id.*

The 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.* at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). “[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor’s lexicography governs.” *Id.* at 1316. “In other cases, the specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor.” *Id.* As a general rule, however, the particular examples or embodiments discussed in the specification are not to be read into the claims as limitations. *Id.* at 1323. In the end, “[t]he construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be . . . the correct construction.” *Id.* at 1316 (quoting *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)).

IV. ANALYSIS

A. Claim Construction

The central contention of the Moving Respondents is that the patentee, when distinguishing the Martin prior art device, disclaimed a device made of deformable material that only develops the claimed “contour . . . shaped to fit the contour of an existing vehicle seat” when it is deformed to fit the gap between the seat and the center console. Mem. at 19–21; Reply at 5. Complainant, on the other hand, contends there was no “clear and unmistakable surrender of the particular subject matter at issue” and that a device that “changes shape on installation” is within the scope of the claims because there is no requirement that “the claimed contour must be rigid or fully pre-formed before installation.” Opp. at 17, 22–24.

Claim terms need be construed “only to the extent necessary to resolve the controversy” between the parties as to claim scope. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). Here, the only controversy between the parties is whether the applicant for the ’314 patent disclaimed the type of contour Complainant identifies in the accused device.

The record shows that Complainant’s only theory of infringement is one where the accused Drop Stop product “‘becomes contoured at its front in situ or in place’ *once installed*.” Opp. at 31 (emphasis added); *see also id.* (“A reasonable factfinder could find on this record that the accused product, *installed* as its instructions direct, has a contour shaped to fit the contour of the seat.”) (emphasis added); *id.* at 27 (“*[T]he product’s operative shape is determined on installation.*”) (emphasis added); *id.* at 14 (citing declaration stating that “*after installation* the product . . . also curves with the seat from the back to the front”) (emphasis added). If the asserted patent claims do not cover a contour that only appears in the product after installation, Complainant has proffered no set of facts upon which it can prove a violation of section 337.

As detailed below, the prosecution history clearly and unmistakably disclaims the very type of contour that Complainant relies upon to show infringement. For context in understanding that history, I begin by reviewing the '314 patent specification and claims.

1. The '314 Patent Specification and Claims

The '314 patent describes the following problem:

When an occupant is sitting in the seat of a vehicle, often times, loose articles, such as change, receipts, and miscellaneous articles can be lost between the side bolster of the seat and the next closest compartment (sometimes called the center console). Additionally, if an occupant drops something, such as a pen, pencil, cell phone, and/or another hand held device, the occupant must either get off the road, stop and look for the misplaced item, or alternatively, try to find the misplaced article while driving which can be extremely hazardous. Accordingly, a need therefore still exists for a device that may be effective in eliminating the gaps and spaces between the seat bolsters and the closest compartment such as a center console.

'314 patent at 1:54–2:4.

The '314 patent purports to address the foregoing problem using “a semi-rigid device that is constructed to fit and occupy the space between the outer most edge of a vehicle seat and the next closest compartment of the vehicle, which in most cases is a center console unit.” *Id.* at 2:17-21. In an exemplary embodiment, the device “has a guard that may be contoured to compliment the seating contour of the vehicle.” *Id.* at 2:45–47.

The '314 patent states “the invention is depicted in FIG. 1 and illustrates a convenient vehicle device 1 to be used in a vehicle.” *Id.* at 5:54–58. Figure 1 of the '314 patent depicts a device 1 that “may be contoured having a generally curved front portion 3”:

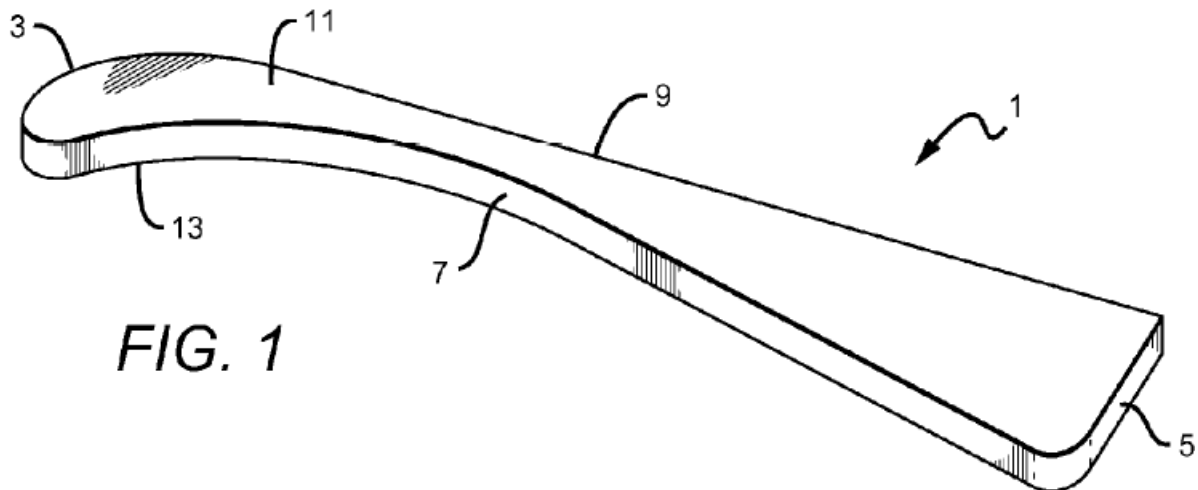


FIG. 1

'314 patent, Fig. 1, 5:59–6:1.

The contoured device of Figure 1 is “configured to fit into the space **19** between a seat **21** and another section and/or compartment of a vehicle,” as depicted in Figure 2 of the '314 patent:

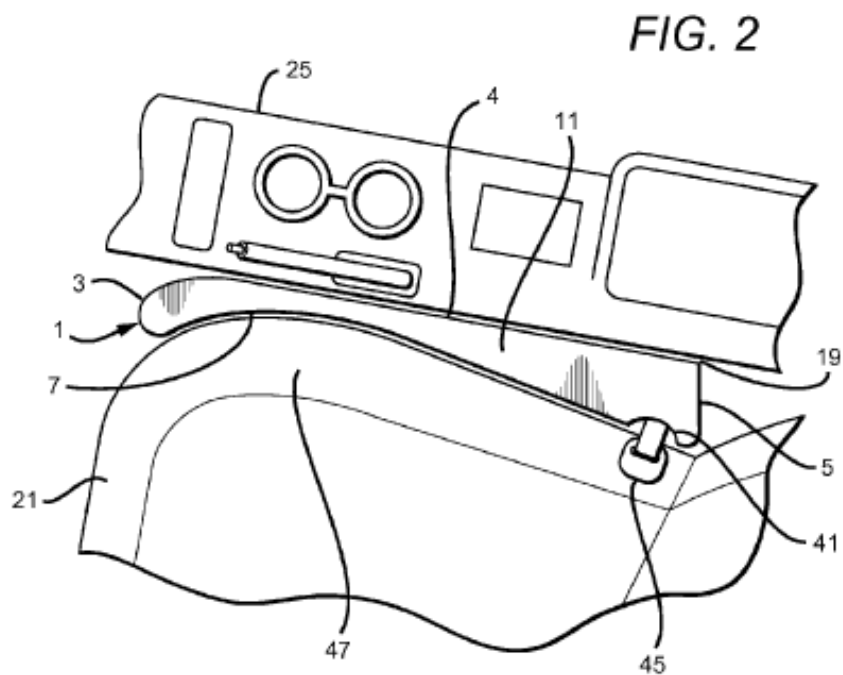
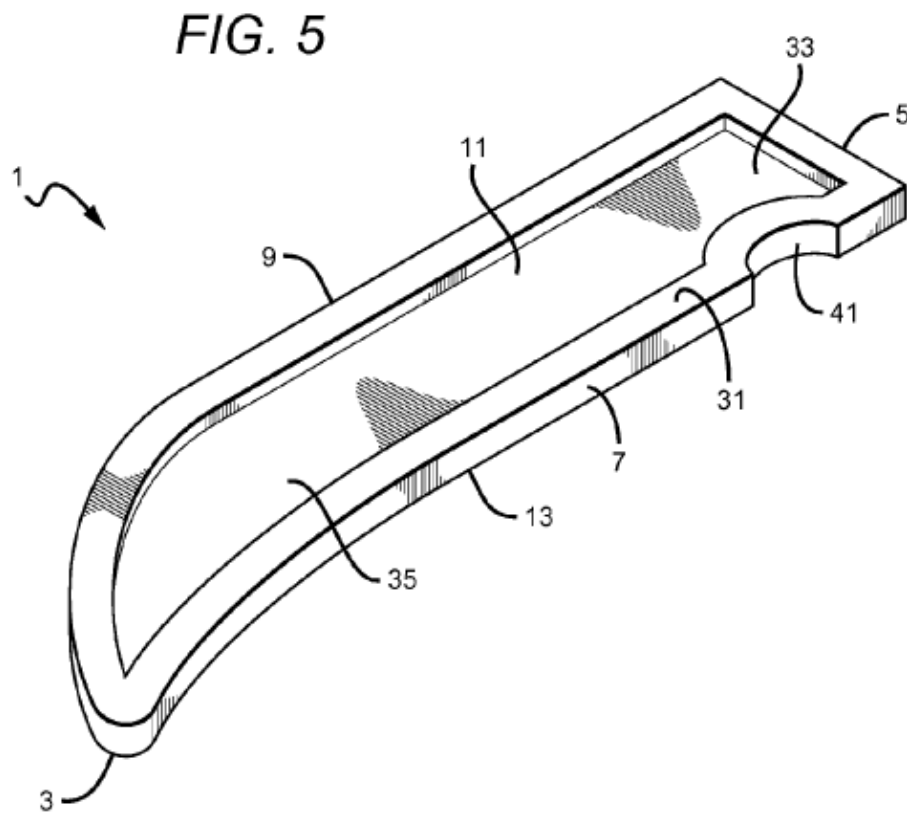
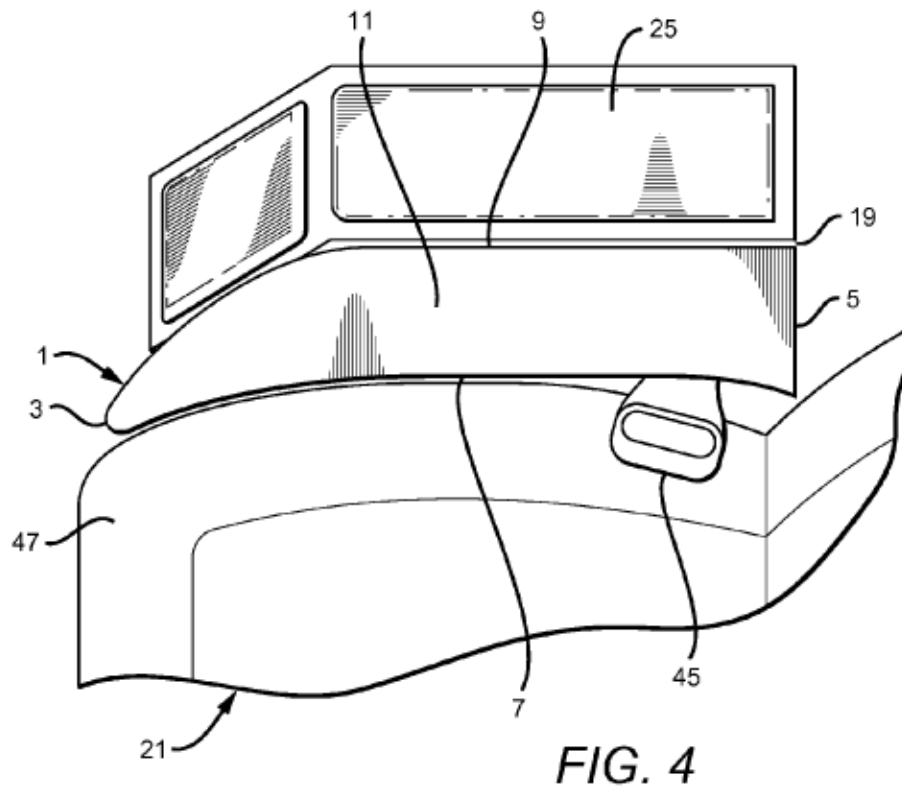


FIG. 2

'314 patent, Fig. 2, 6:1–4.

As depicted in Figures 4 and 5 of the '314 patent, the device can be made with various thicknesses and contour shapes to accommodate vehicles with smaller, larger, and differently shaped spaces between the seat bolster and the center console:



'314 patent, Figs 4 and 5, 6:36-45.

Claims 1 and 14 are the only independent claims asserted. The language of claims 1 and 14 is reproduced below, with the disputed claim language highlighted:

1. A vehicle convenience device, the device comprising:
a contoured vehicle space guard whereby the contour is shaped to fit the contour of an existing vehicle seat, said space guard having a top portion, bottom portion, a first and second side portion and a front portion and rear portion wherein said front portion is contoured to wrap around the edge of a vehicle seat;
at least one of said top portion, bottom portion, first and second portion and front and rear portion adapted for removable attachment to a seat of a vehicle;
a cutout portion provided on the vehicle space guard that provides adequate space for fitment around vehicle seatbelts;
said space guard adapted for fitment into the space between the seat of the vehicle;
an attachment means whereby the attachment means allows the vehicle space guard to move in relation to the seat whereby when a user desires to move the seat forward, the guard moves in unison with the seat; and
a compartment in close proximity to the seat of the vehicle such that the space guard is adapted to eliminate the loss of loose articles.

'314 patent at 7:29–50 (emphasis added).

14. A method for using a convenience vehicle device, said method comprising the steps of:
providing **a contoured vehicle space guard for the retrieval of lost loose articles whereby the contour is shaped to fit the contour of an existing vehicle seat**, said space guard having a top portion, bottom portion, a first and second side portion and a front portion and rear portion;
providing a cutout portion that provides adequate space for standard vehicle hardware;
providing an attachment means for allowing for removably attaching the vehicle space guard to at least one of a seat or a vehicle compartment portion; and
providing at least one of said top portion, bottom portion, first and second portion and front and rear portion adaptable for removably attachment to a seat of a vehicle; and
adapting the space guard for fitment into the space between a seat of a vehicle and a compartment in close proximity to the seat of the vehicle.

'314 patent at 8:22–39 (emphasis added).

2. The Disclaimer in the Prosecution History

The original version of claims 1 and 14 of the '314 patent did not contain the language “whereby the contour is shaped to fit the contour of an existing vehicle seat”:

1. A vehicle convenience device, the device comprising:
a contoured vehicle space guard, said guard having a top portion, bottom portion, a first and second side portion and a front portion and rear portion;
at least one of said top portion, bottom portion, first and second portion and front and rear portion adapted for removable attachment to a seat of a vehicle; and
said space guard adapted for fitment into the space between the seat of the vehicle and a compartment in close proximity to the seat of the vehicle.

14. A method for using a convenience vehicle device, said method comprising the steps of:
providing a contoured vehicle space guard, said guard having a top portion, bottom portion, a first and second side portion and a front portion and rear portion;
providing at least one of said top portion, bottom portion, first and second portion and front and rear portion adaptable for removably attaching to a seat of a vehicle; and
adapting the space guard for fitment into the space between a seat of a vehicle and a compartment in close proximity to the seat of the vehicle.

Mot. Ex. C.

In an office action dated May 13, 2008, the examiner rejected the original claims as being anticipated by U.S. Patent Application Publication No. 2007/0241581 listing Martin as the inventor. Mot. Ex. B (“Martin”); Ex. D at 5. The Martin device is “urged into” the gap between the seat and the console by “manually applying pressure” such that the “resiliently deformable material thereof is compressed into conformance with the dimensions and shape of the gap.” Martin, ¶ [0028]. Figures 1 and 2 of Martin show the prior art device:

FIG - 1

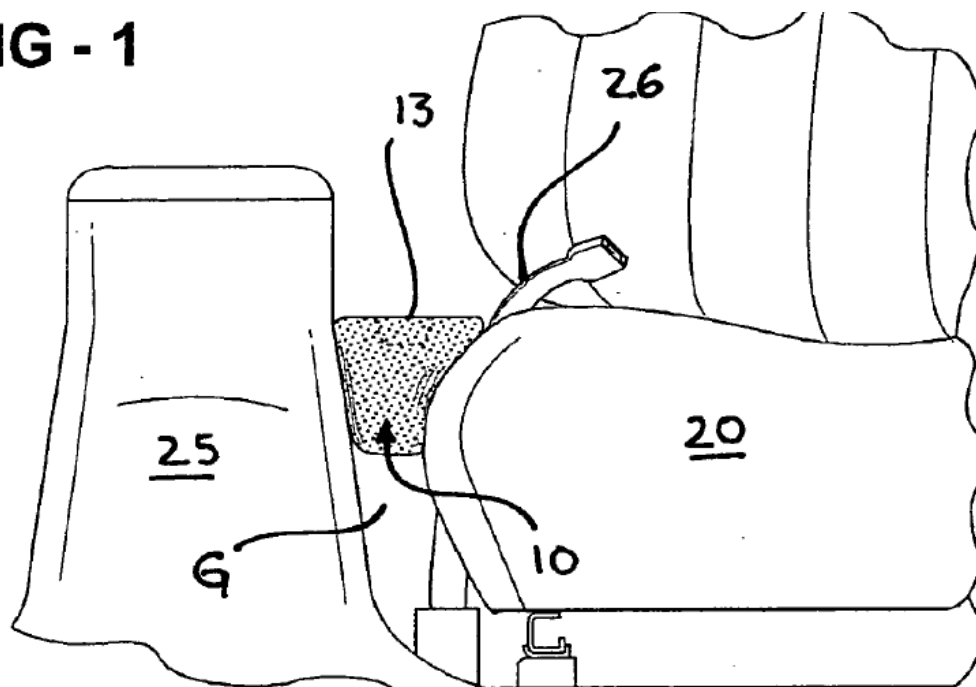
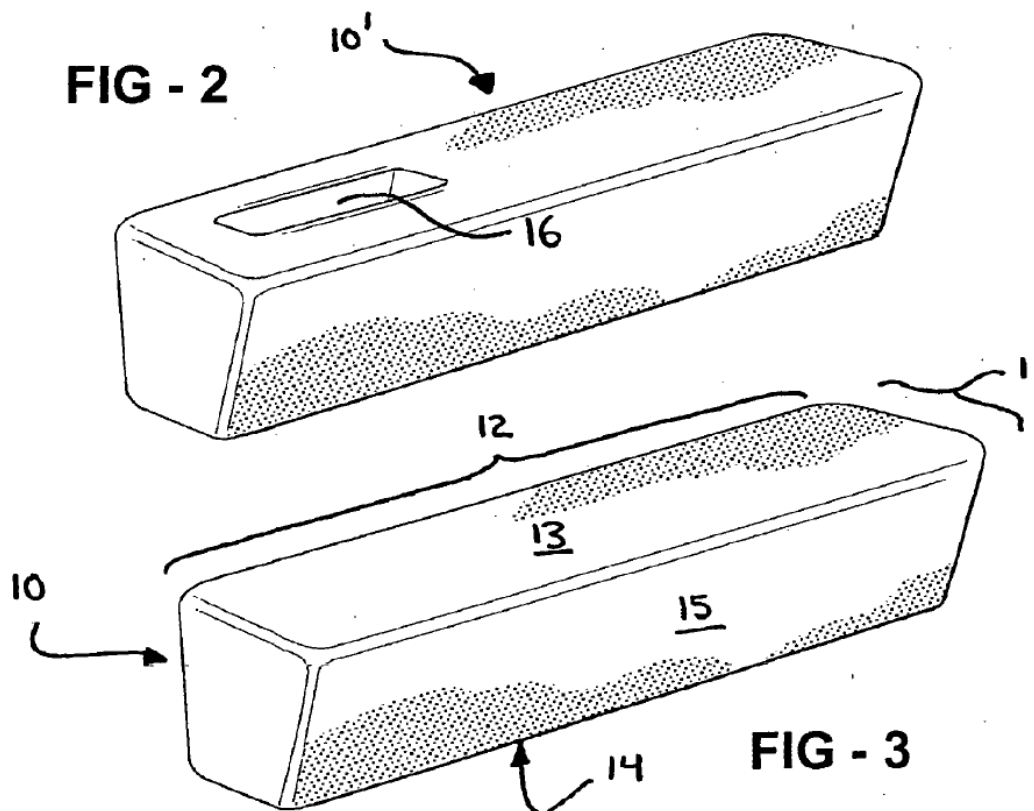


FIG - 2



Martin, Figs. 1 and 2.

In response to the Martin rejection, claims 1 and 14 were amended to require that the space guard is “shaped to fit the contour of an existing seat.” Mot. Ex. E at 3–4. In connection with that amendment, the patent applicant distinguished the amended claims from Martin as follows:

However, *Martin* does not teach or suggest that the space guard is contoured as required by claim 1 and 14. Additionally, *Martin* does not teach or suggest that the space guard is contoured into a shape that will fit the contour of an existing vehicle seat as required by Claim 1 and 14. On the contrary, *Martin* teaches a deflector that deforms to fit the space between the vehicle seat and the door/compartiment. The specification of the *Martin* application specifically states that the deflector is a deformable material and has a width greater than the width of the gap. Therefore, the Martin deflector is not capable of being specifically contoured to take the shape of an existing vehicle seat.

Id. at 9.

Despite the foregoing amendments and arguments, in an office action dated October 17, 2008, the claims were again rejected as anticipated by Martin. Mot. Ex. F at 4. In response to the rejection, the applicant amended claim 1 again to require that the “front portion is contoured to wrap around the edge of a vehicle seat” and to include “a cutout portion provided on the vehicle space guard that provides adequate space for fitment around vehicle seatbelts” and “an attachment means whereby the attachment means allows the vehicle space guard to move in relation to the seat whereby when a user desires to move the seat forward, the guard moves in unison with the seat.” Mot. Ex. G at 4. The patent applicant also amended claim 14 to require “providing a cutout portion that provides adequate space for standard vehicle hardware” and “providing an attachment means for allowing for removably attaching the vehicle space guard to at least one of a seat or a vehicle compartment portion.” *Id.* at 5–6.

In the same response, the applicant characterized Martin as follows:

Martin discloses a debris deflector for occupying a gap disposed between, and having a shape and a width at least partially defined by, an automobile seat and an adjacent console. The deflector consists essentially of a resiliently deformable material and has a width greater than the width of the gap. The deflector is capable

of reversible compressible conformation to the shape of the gap so as to obstruct the passage of objects into the gap.

Mot. Ex. G at 10. The patent applicant argued that the amended claims were not anticipated by Martin because:

Martin does not teach or suggest a contoured shaped vehicle space guard. On the contrary, looking at the figures and description of the embodiments described in *Martin*, the guard disclosed is generally planar and is not contoured to fit around the curvature of the seat as embodied by the present invention.

Id. at 11. The applicant noted other features that distinguished the invention from Martin, such as a seatbelt cutout portion and an attachment means that allows the device to move in relation to the seat. *Id.*

The claims were then allowed.

The undisputed statements by the applicant during prosecution are dispositive of the claim construction issue. First, there is no dispute that the only kind of contour disclosed in Martin is a contour acquired only after the device is installed. In the applicant's own words, the contour in Martin is one in which "a resiliently deformable material" achieves "conformation to the shape of the gap" where that gap shape is "defined by, an automobile seat and an adjacent console." Mot. Ex. G at 10–11; *see also* Mot. Ex. E at 9 (the Martin device "deforms to fit the space between the vehicle seat and the door/compartament"). The record contains no evidence that there is some other kind of contour at play in Martin.

Next, there can be no dispute that the applicant clearly and unmistakably disclaimed the contour of Martin from the scope of the invention. First, the applicant unmistakably stated that the kind of contour in Martin is not within the scope of the disputed phrase in claims 1 and 14: "*Martin* does not teach or suggest that the space guard is contoured into a shape that will fit the contour of an existing vehicle seat as required by Claim 1 and 14." Mot. Ex. E at 9. Next, the applicant drew a distinction between the claims, on the one hand, and the "contrary" contour in Martin achieved

by a device that “deforms to fit the space between the vehicle seat and the door/compartment.” *Id.* And then reemphasizing the point, the applicant stated that the kind of post-installation contour disclosed by Martin “is not capable of” meeting the claim language requiring the device be “contoured to take the shape of an existing vehicle seat.” *Id.* Complainant’s own opposition brief appears to agree that this is language of disclaimer. *See* Opp. at 23 (“[T]hose statements distinguish Martin’s disclosed structure and its lack of a seat-fitting contour.”); *id.* at 27 (“[T]he applicant distinguished Martin’s disclosed structure and its lack of a seat-fitting contour.”).

Thus, whatever is meant by a “contour . . . shaped to fit the contour of an existing vehicle seat,” it cannot be the contour taught by Martin. The applicant clearly and unmistakably surrendered that claim scope. And the contour taught by Martin is, in the patent applicant’s own words, a contour formed only when the device “deforms to fit the space between the vehicle seat and the door/compartment.” Mot. Ex. E at 9. Based on this intrinsic evidence, I determine that the patent claim term “a contoured vehicle space guard whereby the contour is shaped to fit the contour of an existing vehicle seat” excludes a contour formed only when the device deforms to fit the space between the vehicle seat and the door or compartment.

3. Complainant’s Arguments Against Disclaimer Lack Merit

Complainant makes several arguments against disclaimer, but none of them lead to a different conclusion.

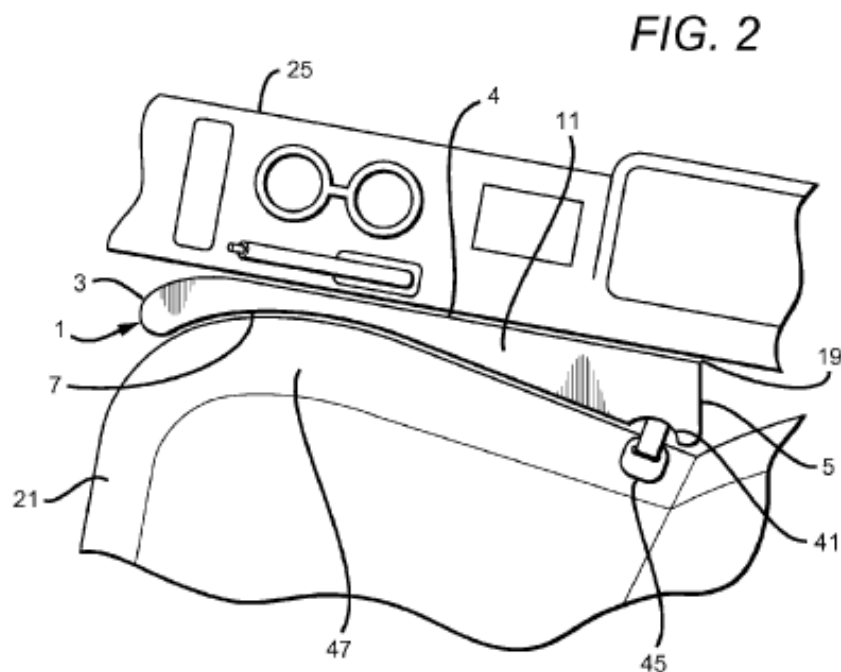
First, Complainant tries to argue that the distinction the applicant was making with respect to Martin is that “Martin neither depicts nor describes the deflector conforming to a vehicle *seat*” and instead the Martin prior art “describes conformation to the dimensions and shape of the *gap*.” Opp. at 7 (emphasis added). But those are just two sides of the same coin, as the prosecution history makes clear. The applicant argued to the Patent Office that Martin “discloses a debris deflector for occupying *a gap* disposed between, and having a shape and a width at least partially *defined by*,

an automobile seat and an adjacent console.” Opp. at 5 (emphasis added). Complainant’s argument in this litigation, Opp. at 7, that Martin does *not* describe “the deflector conforming to a vehicle seat” is directly contrary to the applicant’s own statements in prosecution and is rejected.

Next, Complainant argues that construing the prosecution history to disclaim the contour disclosed by Martin would be in tension with dependent claim 8 of the ’314 patent. Opp. at 19-21, 27. Claim 8 provides:

The device of claim 1 wherein the guard may be constructed of any compressible material whereby upon insertion into a space between the seat of a vehicle and the compartment of a vehicle, said guard will attempt to a natural extended state thereby providing a tight fitment between the seat of the vehicle and the compartment.

’314 patent, claim 8. But claim 8 presents no inherent inconsistency. A device such as shown in Figure 2 of the ’314 patent has a contour that differs from the type in the Martin reference that was disclaimed:



’314 patent, Fig. 2, 6:1-4. The contour of such a device is not derived from deformation during installation. Such a device could meet the further limitation of claim 8 by being made of

“compressible material” that “will attempt to a natural extended state thereby providing a tight fitment between the seat of the vehicle and the compartment.” *See* ’314 patent, claim 8. Complainant’s argument about claim 8 is unavailing.

Complainant additionally argues that the contour of Martin is not disclaimed because the applicant’s statements distinguishing Martin did not result in allowance of the claims. *Opp.* at 24-26. Complainant posits that the claims were actually allowed for other reasons, such as adding a limitation requiring a seatbelt cutout. *Id.* But disclaimer arises from the applicant’s statements about the scope of her invention, not whether the examiner accepted those arguments or allowed the claims based on other limitations that distinguished the prior art. *See, e.g., UShip Intell. Props., LLC v. U.S.*, 714 F.3d 1311 (Fed. Cir. 2013) (“Under the doctrine of prosecution disclaimer, the fact that the patent applicant may have given up more than was necessary does not render the disclaimer ambiguous; the analysis focuses on what the applicant said, not on whether the representation was necessary or persuasive.”). Here, the applicant stated unequivocally that the contour disclosed in Martin was outside the scope of the invention. *Mot. Ex. E* at 9. The public is entitled to rely on the applicant’s limiting statements even if the applicant ultimately obtained allowance by adding an additional limitation.

B. There Is No Dispute of Fact about the Accused Drop Stop Product Structure

A single product is accused in the investigation, the “Drop Stop” product made by respondent Drop Stop, LLC, and sold or distributed by other respondents. The Drop Stop product is an elongated, deformable, tubular device with a notch at one end to accommodate insertion of a seat belt. The record shows there is no dispute that the following photographs “depict[] the accused product in an uninstalled condition”:



Mot. Ex. I (Drop Stop product in packaging); RSMF ¶ 42.



Mot. Ex. H (two Drop Stop products out of packaging); RSMF at ¶ 41.



Mot. Ex. I. (one Drop Stop product out of packaging); RSMF at ¶ 41.

There is also no dispute that the Drop Stop installation instructions tell the user to “[p]ull and stretch Drop Stop to make easier to stuff down into the gap.” Mot. Ex. J; RSMF at ¶ 46. All

parties agree that the following image “depicts a unit of the accused product being manipulated by hand”:



Mot. Ex. I. (one Drop Stop product being manipulated by Complainant’s witness); RSMF at ¶ 45.

There is no dispute that the only infringement evidence proffered by Complainant to show satisfaction of the requirement of “a contoured vehicle space guard whereby the contour is shaped to fit the contour of an existing vehicle seat” is evidence that the Drop Stop product “becomes contoured at its front in situ or in place’ once installed.” Opp. at 31; *see also id.* (“A reasonable factfinder could find on this record that the accused product, installed as its instructions direct, has

a contour shaped to fit the contour of the seat.”); *id.* at 27 (“***[T]he product’s operative shape is determined on installation.***”) (emphasis original); *id.* at 14 (citing declaration stating that “after installation the product . . . also curves with the seat from the back to the front”).

Because the asserted patent claims do not cover a contour that only appears in the product via deformation after installation, Complainant has proffered no set of facts upon which it can prove a violation of section 337. The Moving Respondents are therefore entitled to summary determination as a matter of law. *See Exigent Tech., Inc. v. Atrana Sols., Inc.*, 442 F.3d 1301, 1308 (Fed. Cir. 2006).

C. Complainant’s Other Arguments Lack Merit

Complainant makes a handful of other arguments to avoid summary determination, but none have merit.

First, Complainant contends that the Moving Respondents failed to prove non-infringement because the Moving Respondents did not present affidavits made on personal knowledge. *Opp.* at 28. Complainant misapprehends the Moving Respondents’ burden. The Federal Circuit’s decision in *Exigent Technology* illustrates the point. In that case, as here, the accused infringer moved for summary judgment of non-infringement. 442 F.3d at 1308. The patent owner contended there, as Complainant does here, that the motion should fail because it “was not supported by admissible evidence establishing non-infringement.” *Id.* The court explained that the accused infringer “did not have to support its motion with evidence of non-infringement” under the Supreme Court’s decision in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). *Id.* The accused infringer need only show “that there is an absence of evidence to support the nonmoving party’s case.” *Id.* (quoting *Celotex*, 477 U.S. at 325). It is then incumbent on the patent owner “to come forward with all of her evidence” of infringement. *Id.* (quoting *Celotex*, 477 U.S. at 326).

Here, the Moving Respondents allege that, under the proper understanding of the asserted patent claims, there is no evidence of infringement. Mem. at 1. In response, Complainant came forward only with evidence that the Drop Stop product “‘becomes contoured at its front in situ or in place’ once installed.” Opp. at 31; *see also id.* at 14, 27. Above I have determined that, as a matter of law, the asserted patent claims do not cover such a contour. Accordingly, as in *Exigent Technology*, it is of no moment that the Moving Respondents did not submit affidavits here based on personal knowledge.

Complainant also makes several passing references to the doctrine of equivalents in its opposition brief. *See* Opp. at 17, 19, 32–33. Complainant includes a header stating, “The Equivalents Request Need Not Be Reached and, in Any Event, Is Not Established.” *Id.* at 32. It is unclear what Complainant means by these passages. But what is clear is that the Moving Respondents argued in their motion that the record will not support a finding of infringement under the doctrine of equivalents. Mem. at 21–23. If Complainant intended to oppose summary determination by showing a dispute of fact as to infringement under the doctrine of equivalents, it was Complainant’s burden “to come forward with all of her evidence” of infringement under that doctrine. *Exigent Tech.*, 442 F.3d at 1308 (affirming summary determination of no infringement where the patent owner “failed to set forth any argument or evidence of infringement—either literal or by equivalents—in response to [the accused infringer’s] motion”). To survive summary determination, Complainant was required to proffer “particularized testimony and linking argument” to establish what the function, way, and result of both the claimed device and the accused device are, and why those functions, ways, and results are substantially the same. *See NexStep, Inc. v. Comcast Cable Commc’ns, LLC*, 119 F.4th 1355, 1371 (Fed. Cir. 2024) (citing *Malta v. Schulmerich Carillons, Inc.*, 952 F.2d 1320, 1327 n.5 (Fed. Cir. 1991)). Complainant

made no such showing here, making summary determination appropriate in favor of the Moving Respondents. *See Zelinski v. Brunswick Corp.*, 185 F.3d 1311, 1317 (Fed. Cir. 1999) (affirming that summary judgment is appropriate where the non-moving party fails to provide the necessary evidentiary basis to support a claim that there is a genuine issue of material fact on equivalence).

V. INITIAL DETERMINATION

For the reasons provided herein, it is my initial determination that Motion No. 1509-004 is granted. It is further my initial determination that Complainant has not preserved any issue for trial that could lead to a finding of violation by any respondent. Accordingly, it is my initial determination that this investigation should be terminated in its entirety with a determination of no violation.

This initial determination is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review pursuant to § 210.43(a) or the Commission, pursuant to § 210.44, orders on its own motion a review of the initial determination or certain issues herein.

SO ORDERED.


Clark S. Cheney
Chief Administrative Law Judge