

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**In the Matter of**

**CERTAIN TONER CARTRIDGES AND  
COMPONENTS THEREOF**

Investigation No. 337-TA-1106

**COMPLAINANTS' PETITION FOR COMMISSION REVIEW OF INITIAL  
DETERMINATION GRANTING MOTIONS FOR SUMMARY DETERMINATION OF  
NON-INFRINGEMENT AND TERMINATING INVESTIGATION IN ITS ENTIRETY**

337-TA-1106

46132789-v2

Complainants' Petition for Review of  
Initial Determination Granting Summary  
Determination of Non-Infringement

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	STATEMENT OF THE ISSUE FOR WHICH REVIEW IS SOUGHT .....	3
III.	STATEMENT OF FACTS .....	3
	A. The Asserted Patents .....	3
	1. Canon’s Prior Generation Technology .....	5
	2. Canon’s Invention .....	9
	B. The 918 Investigation .....	15
	C. Respondents’ Axially-Movable Designs .....	16
	D. Canon Obtains the Asserted Patents at Issue Here .....	16
	E. The <i>Markman</i> Order and ID .....	17
IV.	LEGAL STANDARDS .....	19
	A. Standard of Review .....	19
	B. Summary Determination .....	19
	C. Claim Construction .....	20
V.	THE <i>MARKMAN</i> ORDER ERRS IN FINDING THAT THE SPECIFICATION DISAVOWS NON-PIVOTING COUPLING MEMBERS .....	24
	A. The Plain and Ordinary Meaning of the “Moveable” Limitation Does Not Require Pivoting .....	24
	B. The Specification Does Not Clearly and Unmistakably Disavow Claim Scope .....	26
	1. The “Present Invention” Sentence Does Not Support a Finding of Disavowal .....	28
	2. The Totality of the Intrinsic Evidence Weighs Against Finding Disavowal .....	32

C. Statements by Canon’s Expert in the 918 Investigation Do Not Support a Finding of Disavowal .....35

D. The Supposed Disavowal in This Case Falls Well Short of the Caliber of Evidence That Has Been Found to Constitute Disavowal.....38

VI. CONCLUSION.....44

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>3M Innovative Props. Co. v. Tredgar Corp.</i> , 725 F.3d 1315 (Fed. Cir. 2013).....	2, 31
<i>Absolute Software, Inc. v. Stealth Signal, Inc.</i> , 659 F.3d 1121 (Fed. Cir. 2011).....	35
<i>AstraZeneca AB v. Hanmi USA, Inc.</i> , 554 Fed. App’x 912 (Fed. Cir. 2013).....	42
<i>Certain Access Control Systems and Components Thereof</i> , Inv. No. 337-TA-1016, Comm’n Op. (May 5, 2017) .....	19
<i>Certain Dimmable Compact Fluorescent Lamps and Products Containing Same</i> , Inv. No. 337-TA-830, Comm’n Op. (Apr. 25, 2014) .....	41
<i>Certain Wiper Blades</i> , Inv. No. 337-TA-816, Comm’n Op. (Apr. 24, 2013) .....	36
<i>Cont’l Circuits LLC v. Intel Corp.</i> , 915 F.3d 788 (Fed. Cir. 2019).....	33, 39
<i>Deere &amp; Co. v. Bush Hog, LLC</i> , 703 F.3d 1349 (Fed. Cir. 2012).....	22
<i>Finjan, Inc. v. Secure Computing Corp.</i> , 626 F.3d 1197 (Fed. Cir. 2010).....	20
<i>Hill-Rom Co. v. Kinetic Concepts, Inc.</i> , 209 F.3d 1337 (Fed. Cir. 2000).....	33
<i>Hill-Rom Servs., Inc. v. Stryker Corp.</i> , 755 F.3d 1367 (Fed. Cir. 2014).....	23, 43
<i>Home Diagnostics, Inc. v. LifeScan, Inc.</i> , 381 F.3d 1352 (Fed. Cir. 2004).....	24, 26, 35
<i>Honeywell Int’l, Inc. v. ITT Indus., Inc.</i> , 452 F.3d 1312 (Fed. Cir. 2006).....	42

<i>Kara Tech. Inc. v. Stamps.com Inc.</i> , 582 F.3d 1341 (Fed. Cir. 2009).....	21, 22
<i>Liebel-Flarsheim Co. v. Medrad, Inc.</i> , 358 F.3d 898 (Fed. Cir. 2004).....	35
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d 967 (Fed. Cir. 1995) (en banc), <i>aff'd</i> , 517 U.S. 370 (1996) .....	24
<i>Openwave Sys., Inc. v. Apple Inc.</i> , 808 F.3d 509 (Fed. Cir. 2015).....	26
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (en banc).....	20, 21, 22, 23, 24
<i>Poly-Am., L.P. v. API Indus., Inc.</i> , 839 F.3d 1131 (Fed. Cir. 2016).....	1, 23, 26, 31, 43
<i>Rambus Inc. v. Infineon Techs. AG</i> , 318 F.3d 1081 (Fed. Cir. 2003).....	26, 32, 39, 40
<i>Regents of the Univ. of Minn. v. AGA Med. Corp.</i> , 717 F.3d 929 (Fed. Cir. 2013).....	43
<i>Renishaw PLC v. Marposs S.p.A.</i> , 158 F.3d 1243 (Fed. Cir. 1998).....	20
<i>SafeTCare Mfg., Inc. v. Tele-Made, Inc.</i> , 497 F.3d 1262 (Fed. Cir. 2007).....	42, 43
<i>SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.</i> , 242 F.3d 1337 (Fed. Cir. 2001).....	41, 42
<i>Summit 6 LLC v. HTC Corp.</i> , Nos. 7:14-cv-00014-O, 7:14-cv-00106-O, 2015 WL 11117868 (N.D. Tex. Mar. 21, 2015) .....	31
<i>Summit 6, LLC v. Samsung Elecs. Co.</i> , 802 F.3d 1283 (Fed. Cir. 2015).....	20
<i>Teleflex, Inc. v. Ficoso N. Am. Corp.</i> , 299 F.3d 1313 (Fed. Cir. 2002).....	22
<i>Thorner v. Sony Comput. Entm't Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012).....	22, 23, 24, 25, 26, 30, 36

<i>U.S. Surgical Corp. v. Ethicon, Inc.</i> , 103 F.3d 1554 (Fed. Cir. 1997).....	21
<i>Unwired Planet, LLC v. Apple Inc.</i> , 829 F.3d 1353 (Fed. Cir. 2016).....	23
<i>Va. Panel Corp. v. MAC Panel Co.</i> , 133 F.3d 860 (Fed. Cir. 1997).....	22
<i>Verizon Servs. Corp. v. Vonage Holdings Corp.</i> , 503 F.3d 1295 (Fed. Cir. 2007).....	43, 44
<i>Vitronics Corp. v. Conceptronic, Inc.</i> , 90 F.3d 1576 (Fed. Cir. 1996).....	21, 24
<i>Voda v. Cordis Corp.</i> , 536 F.3d 1311 (Fed. Cir. 2008).....	40, 41

**Statutes**

19 U.S.C. § 1337.....	3
-----------------------	---

**Other Authorities**

19 C.F.R. § 210.18(a).....	19
19 C.F.R. § 210.18(b) .....	20
19 C.F.R. § 210.42(h)(6).....	19
19 C.F.R. § 210.43 .....	1
19 C.F.R. § 210.43(b)(1).....	19
19 C.F.R. § 210.43(d)(2).....	19
19 C.F.R. § 210.45(c).....	19

## I. INTRODUCTION

Pursuant to Commission Rule 210.43, Complainants Canon Inc., Canon U.S.A., Inc., and Canon Virginia, Inc. (collectively, “Canon”) submit this petition for review of Order No. 40: Initial Determination Granting Motions for Summary Determination of Non-Infringement and Terminating Investigation in Its Entirety (the “ID”), dated March 13, 2019. The ID grants summary determination of non-infringement based on an erroneous claim construction set forth in Order No. 38 (the “*Markman* Order” or “Order”). In the *Markman* Order, the Administrative Law Judge (“ALJ”) construed the “moveable” limitation—which appears in all asserted independent claims—to exclude non-pivoting coupling members like those used in the respondents’ accused products. That construction was based not on the language of the claims—which the Order acknowledges encompasses non-pivoting coupling members—but rather on a supposed disavowal of claim scope in the specification.

“[T]he standard for disavowal is exacting, requiring clear and unequivocal evidence that the claimed invention includes or does not include a particular feature.” *Poly-Am., L.P. v. API Indus., Inc.*, 839 F.3d 1131, 1136 (Fed. Cir. 2016). The *Markman* Order finds disavowal based on a single sentence in the patent specification: “As has been described hereinbefore, in the present invention, the axis of the drum coupling member can take the different angular positions relative to the axis of the photosensitive drum.” This statement—which on its very face is far more benign than the “present invention *requires*” and “present invention *is*” kinds of statements that generally are found to trigger a disavowal—does not come close to rising to the level of a clear and unequivocal disclaimer of claim scope. The Order reaches its conclusion based on an interpretation of the sentence as referring to “different angular positions” within any given embodiment, and dismisses Canon’s interpretation as referring to “different angular positions”

across the many disclosed embodiments. At the same time, the Order acknowledges that the specification does in fact teach different angular positions across different embodiments, and rejects Canon's interpretation based in part on a misunderstanding of the specification's teachings. For those reasons and others, Canon's interpretation is more plausible than the ALJ's. At an absolute minimum, the interpretation offered by Canon and the interpretation adopted by the Order are both plausible, which in and of itself negates any possibility of a clear and unequivocal disavowal. *See 3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013) (reversing a finding of disavowal because "[w]here an applicant's statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable").

Moving past the single sentence seized upon by the Order, the totality of the other evidence does not support the disavowal finding. Neither the specification nor the prosecution history ever disparages or distinguishes cartridge coupling members that move in ways other than by pivoting. To the contrary, the Order in its background discussion acknowledges that the specification includes an embodiment (No. 13) that teaches that the degree of pivoting "can be reduced by configuring the coupling member to move axially." *Markman* Order at 8. But the Order never even considers that embodiment in its disavowal analysis. The specification's clear teaching of axial movement as an alternative to pivoting wholly undercuts the notion that Canon disclaimed coupling members that do not pivot. In addition to the "present invention" sentence relied upon by the Order, the specification uses the words "present invention" more than 175 other times, yet the Order does not point to a single one of those other uses in support of its disavowal finding.

For these reasons, and the additional reasons discussed below, the Commission should (1) hold that the "movable" limitation has its plain and ordinary meaning, which does not require



pivoting, (2) reverse the ID granting summary determination of non-infringement, which was premised on the ALJ’s erroneous finding that Canon disavowed non-pivoting coupling members like those used in the respondents’ accused products, and (3) remand the case for further proceedings.

**II. STATEMENT OF THE ISSUE FOR WHICH REVIEW IS SOUGHT**

Did the ALJ err in finding that Canon disavowed coverage of non-pivoting coupling members, even though the plain and ordinary meaning of the claim language clearly encompasses non-pivoting coupling members?

**III. STATEMENT OF FACTS**

**A. The Asserted Patents<sup>1</sup>**

Canon requested this investigation to remedy widespread violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based on the widespread and unlawful importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of mostly Chinese-made toner cartridges that infringe one or more of seven U.S. patents owned by Canon Inc. Currently at issue are the asserted and domestic industry claims listed below (independent claims are shown in bold):

<b>U.S. Patent No.</b>	<b>Short Name</b>	<b>Asserted Claims</b>	<b>Domestic Industry Claims</b>
9,746,826	'826 patent	<b>1, 2, 6</b>	<b>1, 5</b>
9,836,021	'021 patent	<b>1, 2, 4, 7, 8, 10, 13, 18, 20</b>	<b>1, 6</b>

<sup>1</sup> The “Asserted Patents,” as that term is used herein, are U.S. Patent Nos. 9,746,826 (“the ’826 patent”), 9,836,021 (“the ’021 patent”), 9,841,729 (“the ’721 patent”), 9,857,764 (“the ’764 patent”), 9,857,765 (“the ’765 patent”), 9,869,960 (“the ’960 patent”), and 9,874,846 (“the ’846 patent”). Certified copies of the Asserted Patents can be found at Exhibits 1, 2, 5, 6, 7, 8, and 9, respectively, of Canon’s complaint filed February 28, 2018. Certified copies of their prosecution histories can be found at Appendices I, II, V, VI, VII, VIII, and IX, respectively, of the complaint.

<b>U.S. Patent No.</b>	<b>Short Name</b>	<b>Asserted Claims</b>	<b>Domestic Industry Claims</b>
9,841,729	'729 patent	<b>1, 3, 8, 9, 11, 16, 17, 18, 20, 26</b>	<b>27, 31</b>
9,857,764	'764 patent	<b>7, 9</b>	<b>20, 22</b>
9,857,765	'765 patent	<b>1, 3, 4, 6, 13, 16, 19</b>	<b>13, 18</b>
9,869,960	'960 patent	<b>1, 2, 4-6</b>	<b>1, 8</b>
9,874,846	'846 patent	<b>1, 3</b>	<b>1, 4</b>

The Asserted Patents describe innovations relating to a process cartridge, also known as a toner cartridge, for use in an electrophotographic image forming apparatus, such as a laser beam printer. At a basic level, a laser beam printer works by depositing and fusing onto paper a fine, powdery substance called “toner.” In operation, a continuously rotating photosensitive drum is exposed to a laser beam, which is scanned across the drum in a pattern that corresponds to the image to be printed. The laser beam forms a latent image on the drum, and, as the drum rotates, toner first adheres to the drum and next is deposited on the paper, in a manner that corresponds to the latent image.

Because toner is consumed each time an image is printed, from time to time the toner supply must be replenished. So that users can replenish their own toner, manufacturers typically supply toner in the form of a toner cartridge that can be installed in the printer whenever a fresh supply of toner is needed. In addition to containing toner, a toner cartridge typically contains a rotatable photosensitive drum and other components, such as a rotatable developing roller that transfers toner to the drum. The force necessary to rotate the rotating components of the toner cartridge is provided by a motor in the printer. Because the toner cartridge is a replaceable, separate assembly relative to the printer and the motor is located in the printer, it is necessary to provide some mechanism by which rotation can be transmitted from the printer to the rotatable

components of the cartridge. The focus of the Asserted Patents is on ways to engage the cartridge with a printer drive shaft to receive rotational driving force from the printer.

### 1. Canon's Prior Generation Technology

To understand the workings of the inventions of the Asserted Patents, it is helpful to understand how Canon's prior generation toner cartridges worked. Canon's prior generation technology for transmitting rotation from a printer to the rotatable components of a toner cartridge is described in U.S. Patent No. 5,903,803 ("Kawai").<sup>2</sup> See '826 patent<sup>3</sup> at 1:46-2:2 (discussing Kawai). Kawai uses a twisted projection and a complementary twisted recess to transfer rotational force from the printer to the cartridge. As shown in Figure 11 of Kawai (reproduced below), the Kawai cartridge includes a photosensitive drum 7 having a twisted triangular projection 17a provided at one end, while the drive shaft 18 in the printer includes a twisted triangular recess 18a. A motor in the printer rotates the drive shaft 18 and the recess 18a, and when the recess 18a mates with the projection 17a, rotational driving force is transmitted to the drum 7.

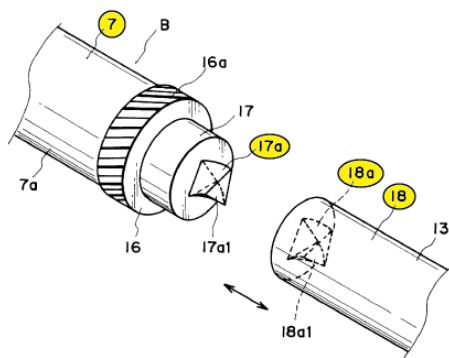
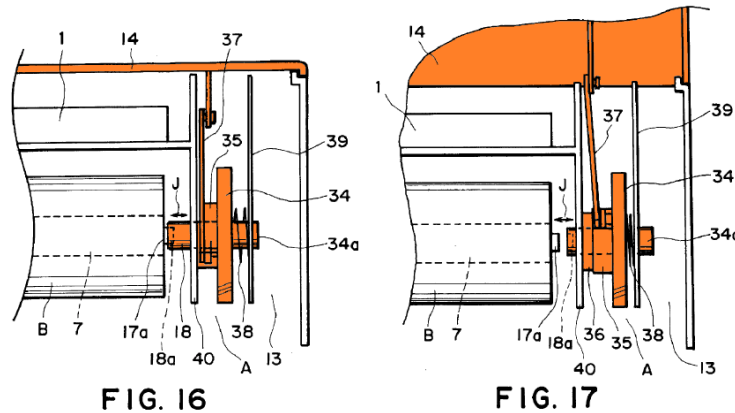


FIG. 11

<sup>2</sup> The Kawai patent was the subject of two previous Commission investigations, namely, 337-TA-731 and 337-TA-829.

<sup>3</sup> Because each Asserted Patent has the same specification, Canon will follow the convention in the *Markman* Order and cite only to the '826 patent when citing to the specification.

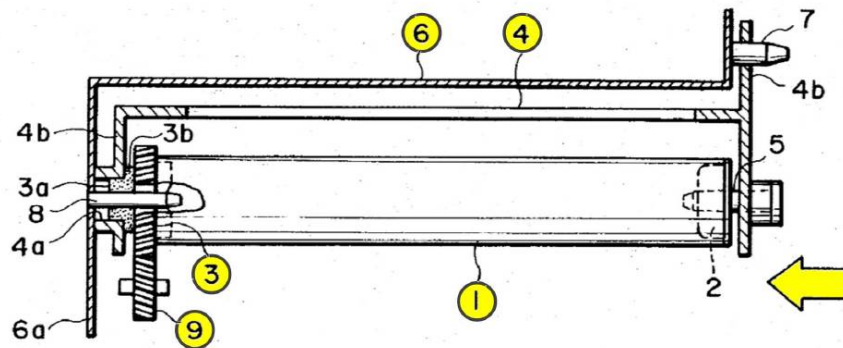
To drive the Kawai cartridge, the projection 17a must be positioned in the printer such that it can engage with the recess 18a. The Kawai cartridge is inserted into the printer in a direction perpendicular to the axis of the drive shaft 18 and guided to a position where the projection 17a is opposite to the recess 18a, as shown in Figure 17 (reproduced below). To engage the cartridge with the printer motor, the printer cover is closed, which causes the drive shaft 18 to be moved toward the projection 17a, so that the projection 17a enters the recess 18a. This is shown in Figure 16 (reproduced below). The reverse happens when the printer cover is opened and the cartridge is removed.



According to the Asserted Patents, the problem with Kawai was the need to have a mechanism in the printer for moving the printer drive shaft into and out of engagement with the cartridge when the printer cover is closed and opened. '826 patent at 2:7-24. That mechanism includes a linkage, which was prone to breakage if too much force was used to open or close the printer cover. If the linkage broke, the printer would need to be repaired.

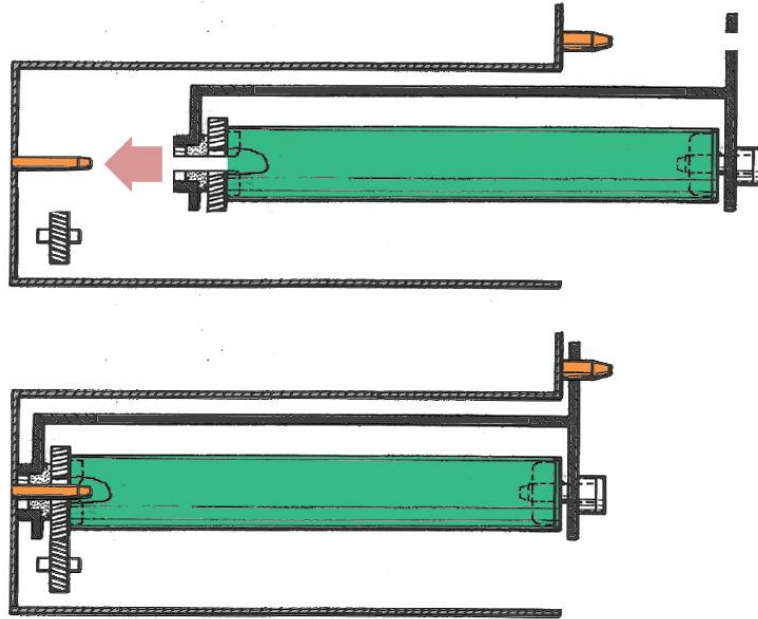
One idea that the Canon inventors briefly considered to address this problem with Kawai, but did not pursue, was to reconfigure a helical gear design that Canon had used much earlier. This design was the subject of Canon's U.S. Patent No. 4,829,335 ("Kanemitsu"). '826 patent at

2:3-6 (discussing Kanemitsu). Kanemitsu used helical gears to connect a printer drive shaft to the cartridge. As shown in Figure 1 of Kanemitsu (reproduced below), the Kanemitsu cartridge includes a photosensitive drum 1, which is rotatably supported in a casing 4. A helical drum gear 3 is provided at one end of the drum, and when the cartridge is installed in the printer, the drum gear meshes with a helical gear 9 in the printer. To print an image, a motor rotates the gear 9, which in turn rotates the drum gear 3 and the photosensitive drum 1.

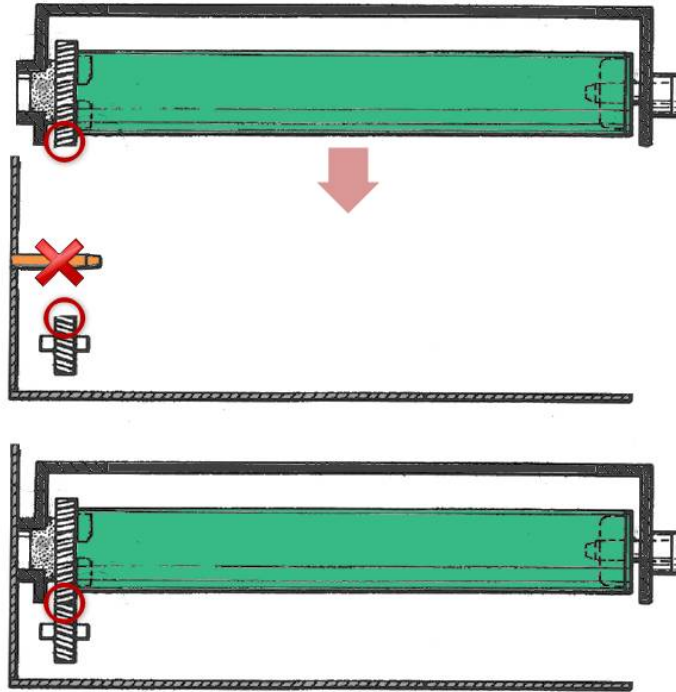


**F I G. 1**

The Kanemitsu cartridge was designed to be inserted and removed in an axial direction, as indicated by the arrow in Figure 1. When the cartridge is inserted, two pins (colored orange in the figure below) fix the position of the cartridge so that the spacing between the helical gear on the cartridge and the helical gear in the printer remains constant, even as the gears exert a force on each other.



The Canon inventors decided not to pursue Kanemitsu's helical gear design because they wanted a cartridge that could be installed in a direction perpendicular to the printer drive shaft, and were concerned that the Kanemitsu gear design would not work well with that kind of set-up. '826 patent at 2:25-33. Reconfiguring the Kanemitsu cartridge so that it could be inserted and removed in the perpendicular direction would have required getting rid of the pins that keep the spacing between the helical gears constant. Without the pins, the Canon inventors were concerned that the spacing between the gear centers would fluctuate due to the force the gears exert on each other when engaged and rotating. That kind of fluctuation could lead to non-uniform rotation of the photosensitive drum, which is undesirable from an image quality standpoint. *Id.*



## 2. Canon's Invention

Against this backdrop, the Canon inventors set out to design a cartridge that (1) could be engaged with a printer drive shaft in a direction perpendicular to the drive shaft's axis of rotation, without having to provide a mechanism in the printer for moving the drive shaft toward or away from the cartridge when the printer cover is closed or opened, and (2) did not have the rotational non-uniformity that Kanemitsu would have if the Kanemitsu cartridge were reconfigured to be installed perpendicularly. Their first breakthrough came when they had the idea that, instead of having a movable drive shaft on the printer, as in Kawai, they could have a movable coupling member on the cartridge. The inventors reasoned that making the coupling member on the cartridge side movable would allow it to get out of the way of the drive shaft as the cartridge is being inserted into the printer, engage with the drive shaft once the cartridge is in place, disengage from the drive shaft, and get out of the way again as the cartridge is removed. This would allow

them to accomplish their goal of eliminating the linkage between the printer cover and the drive shaft that causes the drive shaft to move when the cover is opened and closed.

From there, the Canon inventors started exploring different ways to incorporate a movable coupling member within the cartridge. The Asserted Patents describe many different examples of the movable coupling members that the Canon inventors conceived. One example is shown in Figures 21 and 22 of the Asserted Patents (reproduced below), which correspond to Embodiment 1. In this example, the cartridge is inserted into the printer in the direction X4. The coupling member 150 (colored blue) begins in a position in which it is inclined relative to the photosensitive drum shaft 153 (colored green). As the cartridge is inserted into the printer, the coupling member straightens out, moving from the initial inclined position to a position in which it is coaxial with the drum shaft, as the progression in Figures 22(a)-(d) demonstrates. Once in the coaxial or aligned position shown in Figures 21(b) and 22(d), a motor in the printer causes the printer drive shaft 180 (colored red) to rotate, which in turn rotates the coupling member.



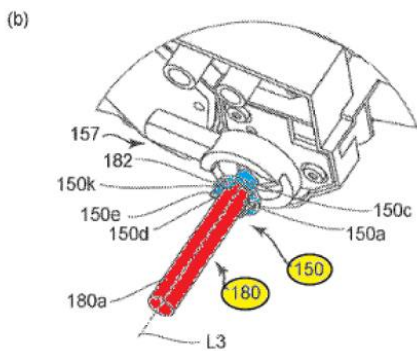
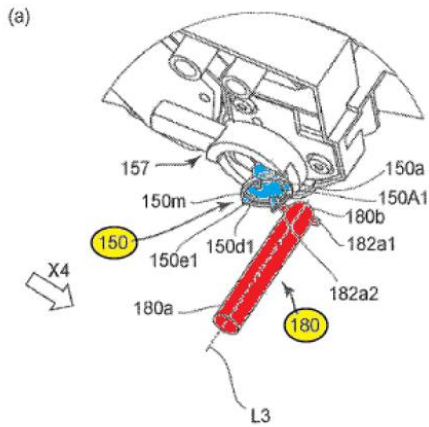


FIG. 21

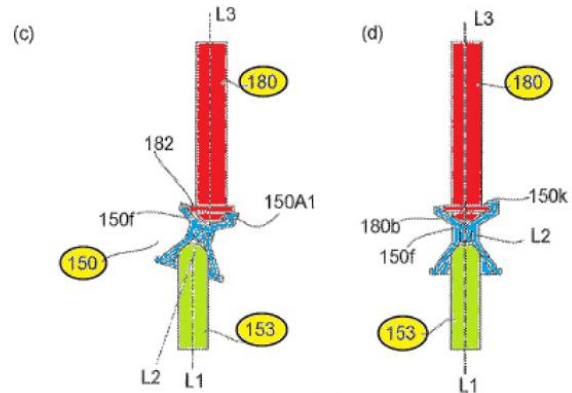
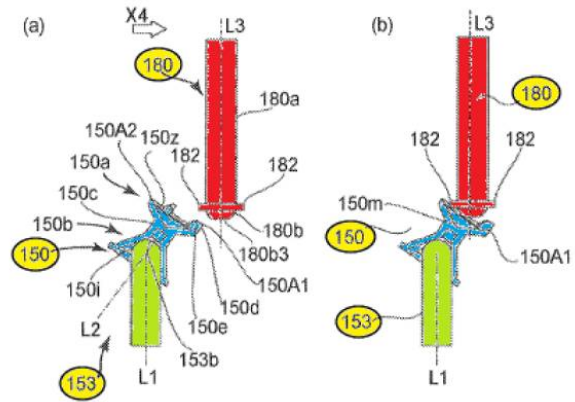
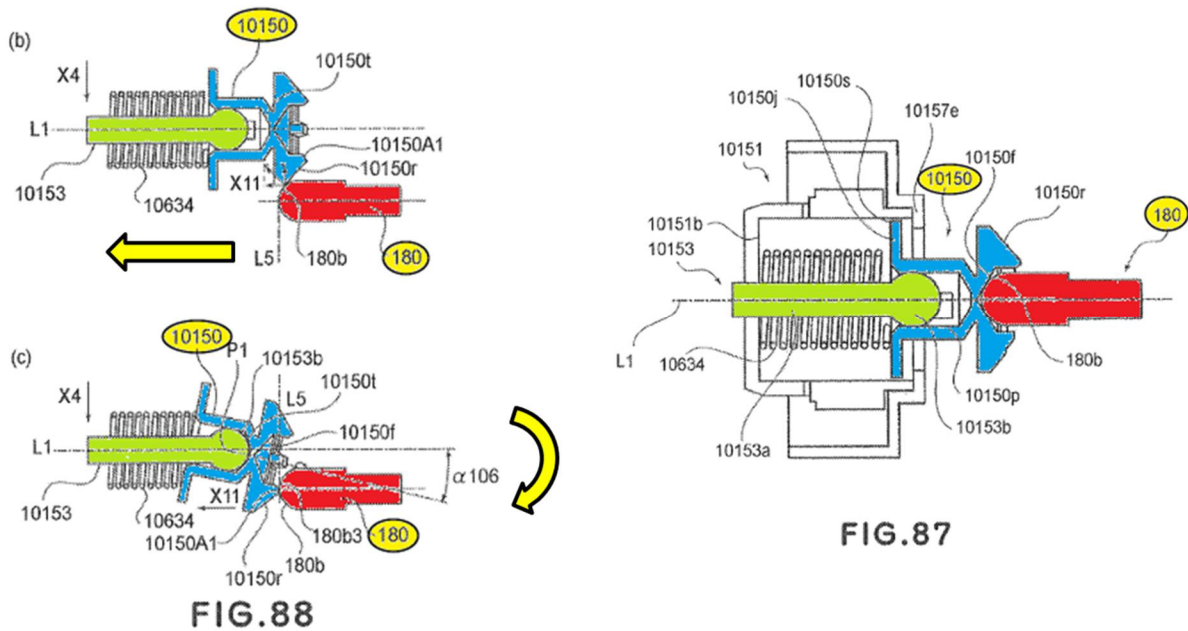


FIG. 22

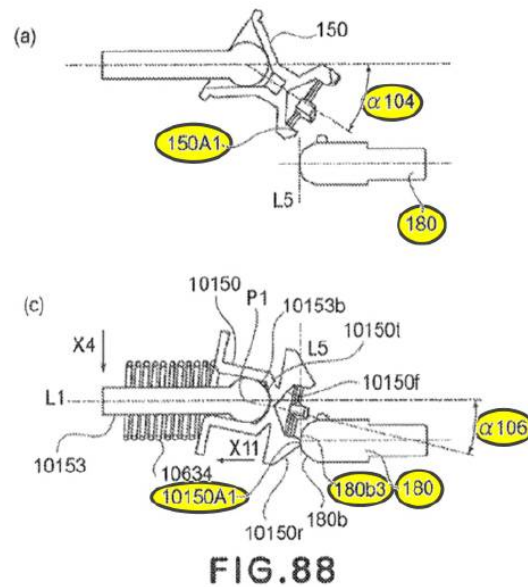
Figures 87 and 88(b) and (c) of the Asserted Patents (reproduced below) show an alternative configuration for the coupling member, which utilizes a coupling member that can move axially. In this example, the coupling member 10150 (colored blue) begins not in an inclined position, but rather in a position in which it is coaxial with the photosensitive drum shaft 153 (colored green), as shown in Figure 88(b). As the cartridge is inserted into the printer in the direction X4, the coupling member retracts in the axial direction X11 toward the drum shaft. '826 patent at 63:22-25. In the specific example depicted in Figure 88, when the coupling member abuts the free end portion 10153b of the drum shaft, it pivots a small amount in the clockwise, or downward, direction. *Id.* at 63:26-30. Figure 88(c) shows the coupling member after it has moved axially to the left and pivoted clockwise. Once the coupling member and the printer drive shaft

180 (colored red) are aligned, a spring 10634 pushes the coupling member back towards the right to ensure a secure connection with the drive shaft, as shown in Figure 87.



Figures 87 and 88(b) and (c) are part of Embodiment 13, but Embodiment 13 is not limited to the specific example depicted in those figures. More generally, the discussion of Embodiment 13 teaches a range of configurations for the coupling member, and teaches those skilled in the art that axial movement can be a substitute for pivoting. *See* Declaration of Richard A. Lux, Ph.D. in Support of Canon’s Opposition to the Ninestar Respondents’ Contingent Motion for Summary Determination of Invalidity for Failure to Satisfy the Written Description Requirement (“Lux Decl.”) at ¶¶ 37-39, 45 (Dec. 10, 2018). With reference to Figures 88(a) and (c) (reproduced below), the specification explains that “[i]n order for the coupling to engage with the drive shaft 180, the downstream free end position 10150A1 with respect to the mounting direction needs to pass the free end portion 180b3 of the drive shaft 180.” ’826 patent at 63:8-11. The specification states that the coupling of Embodiment 1 is inclinable “by more than angle  $\alpha 104$ ” so that “the

coupling moves to the position where the free end position 150A1 does not interfere with the free end portion 180b3 ...” *Id.* at 63:11-15. The discussion of Embodiment 13 then goes on to contrast the coupling of Embodiment 1 depicted in Figure 88(a) to the coupling depicted in Figure 88(c), which moves axially and inclines by a smaller angle  $\alpha 106$ . *Id.* at col. 63:15-45.



The specification states that, “[b]y this structure, even if the angle  $\alpha 106$  (inclination amount of the axis L2) is small, the cartridge can be mounted to the apparatus main assembly A.” *Id.* at 63:43-45. To one skilled in the art, this is a clear teaching that axial movement can be a substitute for pivoting, such that the more axial movement you have, the less pivoting you need. Lux Decl. at ¶ 38; *see also Markman* Order at 8 (“The specification teaches that the degree that the coupling member needs to incline for mounting and demounting operations can be reduced by configuring the coupling member to move axially, *i.e.*, towards and away from the process cartridge. This is shown in Embodiment No. 13.”).

To one skilled in the art, Embodiment 13 teaches a range of configurations in which the coupling member can pass by the printer drive shaft. Lux Decl. at ¶ 39. Angle  $\alpha_{106}$  is not a single value, but rather a variable, and its values can include the angle  $\alpha_{106}$  shown in Figure 88(c) as well as smaller angles. *Id.* The disclosure that angle  $\alpha_{106}$  is a design variable and can be small, coupled with the teaching that axial movement can be a substitute for pivoting, would lead a person of ordinary skill in the art to understand that there is no lower limit to how small angle  $\alpha_{106}$  can be, and that it can be as small as 0 degrees so long as there is enough axial movement for the coupling member to clear the printer drive shaft during cartridge insertion and removal. *Id.* With enough axial movement, the pivoting depicted in Figure 88(c) can be eliminated completely. *Id.* at ¶ 45.

The claims of the Asserted Patents are directed to either a process cartridge or a drum unit usable in a process cartridge. The claimed cartridge and drum unit include, among other things, a coupling member that is movable between (i) a first position in which a tip of the at least one projection is a first distance away from the photosensitive drum as measured in the direction of the axis L1 and (ii) a second position in which the tip of the at least one projection is a second, shorter distance away from the photosensitive drum as measured in the direction of the axis L1. That kind of movability is exhibited by coupling members that pivot, coupling members that move axially, and coupling members that both pivot and move axially. Because the second distance is shorter than the first distance, cartridges including such a movable coupling member can be installed in and removed from a printer in a direction that is perpendicular to the axis of the printer drive shaft without requiring the drive shaft to move toward and away from the cartridge in response to the closing and opening of the printer cover. It is the claimed movement—that is, the tip of the

coupling member projection moving from a position farther away from the drum to a position closer to the drum—that allows the coupling member to clear the printer drive shaft when the cartridge is inserted in and removed from the printer in the perpendicular direction.

## **B. The 918 Investigation**

This is not the first investigation involving the patent family at issue here. In *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-918 (the “918 investigation”), Canon asserted three earlier patents from the same family as the patents asserted in the current investigation: U.S. Patent No. 8,280,278 (“the ’278 patent”); U.S. Patent No. 8,630,564 (“the ’564 patent”); and U.S. Patent No. 8,682,215 (“the ’215 patent”). *Markman* Order at 3. Many of the respondents in the current investigation also were respondents in the 918 investigation, including several Ninestar, Aster, and Print-Rite entities. *Id.*

The asserted claims of the ’278, ’564, and ’215 patents all expressly required pivotable coupling members, which all of the accused products in the 918 investigation had. The language of claim 160 of the ’278 patent emphasized below is exemplary in this regard:

160. A process cartridge comprising:
- a casing;
  - a rotary member having an axis L1, the rotary member being rotatably supported in the casing to permit rotation about the axis L1; and
  - a coupling member having an axis L2, the coupling member having (i) a first end portion connected to the rotary member, (ii) a second end portion, and (iii) a connecting portion connecting the first end portion and the second end portion,
- wherein the coupling member is movable between a first position in which the axis L2 of the coupling member is coaxial with the axis L1 of the rotary member, and a second position in which the axis L2 of the coupling member is inclined with respect to the axis L1 of the rotary member, and*

wherein a maximum angle of inclination of the axis L2 with respect to the axis L1 is about 20 degrees to about 60 degrees.

'278 patent at claim 160 (emphasis added).

The 918 investigation concluded with Canon establishing that there had been numerous violations of Section 337, that Canon satisfied the domestic industry requirement, and that a general exclusion order was the appropriate remedy. On August 31, 2015, the Commission issued a general exclusion order prohibiting the importation of products that infringe the asserted claims of the '278, '564, and '215 patents, as well as two additional patents from different families.

### **C. Respondents' Axially-Movable Designs**

During and after the 918 investigation, several of the respondents, including Ninestar, Aster, and Print-Rite, came out with new cartridge designs. Instead of using a coupling member that pivots out of the way of the printer drive shaft, the new designs use coupling members that retract in the axial direction. These axially-movable coupling members do not pivot, and thus avoid the patents that are the subject of the 918 investigation general exclusion order.

### **D. Canon Obtains the Asserted Patents at Issue Here**

Realizing that the specification supports broader claims than those in the '278, '564, and '215 patents, Canon applied for additional patents based on that specification, with claims that describe the movement of the coupling member in more general terms, and are not limited to pivoting. The following table shows how the new broader language compares to the narrower language of the earlier patents:

<b>Generic Movement Claimed in 1106 Patents</b>	<b>Pivoting Movement Claimed in 918 Patents</b>
wherein the coupling member is movable between (i) a first position in which a tip of the at least one projection is a first distance away from the photosensitive drum as measured in the direction of the axis L1 and (ii) a second position in which the tip of the at least one projection is a second distance away from the photosensitive drum as measured in the direction of the axis L1, with the first distance being greater than the second distance	wherein the coupling member is movable between a first position in which the axis L2 of the coupling member is coaxial with the axis L1 of the rotary member, and a second position in which the axis L2 of the coupling member is inclined with respect to the axis L1 of the rotary member, and

The new language—which appears in all of the independent claims at issue in this investigation—is generic as to the manner in which movement happens, and encompasses at least three species of movable coupling members: (1) those that move by pivoting; (2) those that move axially; and (3) those that move both axially and by pivoting.

Between August 29, 2017 and January 23, 2018, the U.S. Patent and Trademark Office (“PTO”) granted the Asserted Patents to Canon. On February 28, 2018, Canon filed the complaint in this investigation, targeting the axially-movable designs imported and sold by more than 45 respondents.

**E. The *Markman* Order and ID**

On February 28, 2019, the ALJ issued a *Markman* Order (Order No. 38) construing five disputed terms that appear in the claims of the Asserted Patents. Relevant here, the ALJ found that “[t]he term ‘wherein the coupling member is movable between (i) a first position in which a tip of the at least one projection is a first distance away from the photosensitive drum as measured in the direction of the axis L1 and (ii) a second position in which the tip of the at least one projection is a second distance away from the photosensitive drum as measured in the direction of the axis L1’ recited in claims 1 and 6 of the ’826 patent, claims 1 and 8 of the ’021 patent, claims 1 and 27

of the '729 patent, claims 7 and 20 of the '764 patent, claims 1 and 13 of the '765 patent, claim 1 of the '960 patent, and claim 1 of the '846 patent requires a coupling member that is ‘movable between (i) a first *angular* position in which a tip of the at least one projection is a first distance away from the photosensitive drum as measured in the direction of the axis L1 and (ii) a second *angular* position in which the tip of the at least one projection is a second distance away from the photosensitive drum as measured in the direction of the axis L1.’” *Markman* Order at 52 (emphasis in original).

In so construing the “movable” limitation, the ALJ acknowledged that the plain and ordinary meaning of the claim language does not require the coupling member to be capable of pivoting, and found that “[t]he express claim language can be satisfied by a coupling member that moves coaxial to the drum shaft’s axis, as well as by a coupling member that moves between a position coaxial to the drum shaft’s axis and a position inclined with respect to the drum shaft’s axis.” *Id.* at 27. Notwithstanding the clear claim language, the ALJ concluded that the specification disavows non-pivoting coupling members, and construed the claims as being limited to coupling members that pivot between different angular positions. *Id.* at 31-37.

All of the accused products remaining in the investigation have coupling members that move axially, without pivoting. Accordingly, following the issuance of the *Markman* Order, the parties notified the ALJ that they all agree that the accused products do not infringe any asserted claims under the ALJ’s construction of the “moveable” limitation, and that Ninestar’s, Aster’s, and Print-Rite’s motions for summary determination of non-infringement were ripe for adjudication. *See* Joint Submission Regarding Pending Motions for Summary Determination and Request to Suspend the Procedural Schedule (Mar. 8, 2019). On March 13, 2019, the ALJ issued



the ID granting summary determination of non-infringement on the basis that the accused products do not have pivotable coupling members, as is required by the ALJ's construction of the "moveable" limitation. If adopted by the Commission, the ID would have the effect of terminating this investigation in its entirety pursuant to Commission Rule 210.42(h)(6).

#### **IV. LEGAL STANDARDS**

##### **A. Standard of Review**

Pursuant to Commission Rule 210.43, the Commission may review an initial determination if (1) "a finding or conclusion of material fact is clearly erroneous"; (2) "a legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion"; or (3) "the determination is one affecting Commission policy." 19 C.F.R. § 210.43(b)(1). The Commission will grant review "if it appears that an error or abuse of the type described in paragraph (b)(1) of this section is present or if the petition raises a policy matter connected with the initial determination, which the Commission thinks it necessary or appropriate to address." 19 C.F.R. § 210.43(d)(2). Commission review of an initial determination is *de novo*. *Certain Access Control Systems and Components Thereof*, Inv. No. 337-TA-1016, Comm'n Op. at 9 (May 5, 2017). Upon review, the Commission has all the powers it would have in making an initial determination. *Id.* The Commission may affirm, reverse, modify, set aside, or remand an initial determination for further proceedings, in whole or in part. 19 C.F.R. § 210.45(c). In doing so, it also may make any findings or conclusions it deems proper based on the record. *Id.*

##### **B. Summary Determination**

Under Commission Rule 210.18, a "party may move with any necessary supporting affidavits for a summary determination in its favor upon all or any part of the issues to be determined in the investigation." 19 C.F.R. § 210.18(a). "The determination sought by the moving

party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. § 210.18(b).

### **C. Claim Construction**

“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 v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc)) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). “[T]he claim construction inquiry, therefore, begins and ends in all cases with the actual words of the claim,” and “the resulting claim interpretation must, in the end, accord with the words chosen by the patentee to stake out the boundary of the claimed property.” *Renishaw PLC v. Marposs S.p.A.*, 158 F.3d 1243, 1248 (Fed. Cir. 1998).

The words of a claim are generally given their ordinary and customary meaning as understood by a person of ordinary skill in the art when read in the context of the specification and prosecution history. *Phillips*, 415 F.3d at 1312-13. “In some cases, the ordinary meaning of claim language as understood by a person of skill in the art 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. Thus, the court need not construe “commonly used terms” that are “used in common parlance and ha[ve] no special meaning in the art.” *Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015). There is nothing improper about finding that a claim term or phrase has its plain meaning and leaving it at that. *See, e.g., Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1207 (Fed. Cir. 2010) (rejecting argument that district court shirked its responsibility to construe a disputed claim term

where it rejected the defendant's construction and adopted "plain and ordinary meaning"); *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997) ("The *Markman* decisions do not hold that the trial judge must repeat or restate every claim term in order to comply with the ruling that claim construction is for the court. Claim construction is a matter of resolution of disputed meanings and technical scope, to clarify and when necessary to explain what the patentee covered by the claims, for use in the determination of infringement. It is not an obligatory exercise in redundancy.").

When construing claims, "the intrinsic evidence and particularly the claim language are the primary resources." *Kara Tech. Inc. v. Stamps.com Inc.*, 582 F.3d 1341, 1348 (Fed. Cir. 2009). Intrinsic evidence is the evidence in the public record of the patent, and includes the claims, the patent specification, and, if in evidence, the prosecution history. *Vitronics Corp. v. Conception, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Often, "the claims themselves provide substantial guidance as to the meaning of particular claim terms." *Phillips*, 415 F.3d at 1314. For example, "the context in which a term is used in the asserted claim can be highly instructive," and "[o]ther claims of the patent in question, both asserted and unasserted, can also be valuable sources of enlightenment as to the meaning of a claim term." *Id.* "Differences among claims can also be a useful guide in understanding the meaning of particular claim terms." *Id.* By way of example, "the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." *Id.* at 1314-15.

Claims also must be read in light of the specification, which is "the single best guide to the meaning of a disputed term." *Id.* at 1315 (citation and internal quotation marks omitted). In addition to the claims and the specification, the prosecution history should be considered, if it is

in evidence. *Id.* at 1317. “The prosecution history ... consists of the complete record of the proceedings before the PTO and includes the prior art cited during the examination of the patent. Like the specification, the prosecution history provides evidence of how the PTO and the inventor understood the patent.” *Id.* (citations omitted).

The Federal Circuit has repeatedly cautioned against the “cardinal sin” of claim construction—“importing limitations from the written description into the claims.” *Teleflex, Inc. v. Ficoso N. Am. Corp.*, 299 F.3d 1313, 1324 (Fed. Cir. 2002) (quoting *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1340 (Fed. Cir. 2001)). While courts should consider all of the intrinsic evidence, including the claims themselves, the specification, and, where appropriate, the prosecution history, “a claim construction must not import limitations from the specification into the claims.” *Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1354 (Fed. Cir. 2012); *see also Kara Tech.*, 582 F.3d at 1348 (“The claims, not specification embodiments, define the scope of patent protection. The patentee is entitled to the full scope of his claims, and we will not limit him to his preferred embodiment or import a limitation from the specification into the claims.”). “[I]t is well-settled that device claims are not limited to devices which operate precisely as the embodiments described in detail in the patent.” *Va. Panel Corp. v. MAC Panel Co.*, 133 F.3d 860, 866 (Fed. Cir. 1997).

To avoid the “cardinal sin” of improperly importing undue limitations, claims can only be construed in a manner that deviates from their ordinary and customary meaning if (1) the patentee set out a definition and acted as his own lexicographer or (2) the patentee disavowed the full scope of a claim term either in the specification or during prosecution. *Thorner v. Sony Comput. Entm’t*

*Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012); *see also Unwired Planet, LLC v. Apple Inc.*, 829 F.3d 1353, 1358 (Fed. Cir. 2016) (citing *Thorner*).

“To act as its own lexicographer, a patentee must ‘clearly set forth a definition of the disputed claim term’ other than its plain and ordinary meaning.” *Thorner*, 669 F.3d at 1365 (quoting *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002)). “It is not enough for a patentee to simply disclose a single embodiment or use a word in the same manner in all embodiments, the patentee must clearly express an intent to redefine the term.” *Thorner*, 669 F.3d at 1365 (internal quotations marks and citation omitted); *see also Phillips*, 415 F.3d at 1323 (“[A]lthough the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments.”).

“The standard for disavowal of claim scope is similarly exacting,” requiring “expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.” *Thorner*, 669 F.3d at 1366; *see also Poly-Am.*, 839 F.3d at 1136 (“[T]he standard for disavowal is exacting, requiring clear and unequivocal evidence that the claimed invention includes or does not include a particular feature.”). “Mere criticism of a particular embodiment encompassed in the plain meaning of a claim term is not sufficient to rise to the level of clear disavowal.” *Thorner*, 669 F.3d at 1366. “It is likewise not enough that the only embodiments, or all of the embodiments, contain a particular limitation.” *Id.* “To constitute disclaimer, there must be a clear and unmistakable disclaimer.” *Id.* at 1366-67. “There are no magic words that must be used, but to deviate from the plain and ordinary meaning of a claim term to one of skill in the art, the patentee must, with some language, indicate a clear intent to do so in the patent.” *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1373 (Fed. Cir. 2014).

Though generally “less reliable than the patent and its prosecution history,” judges also may consider extrinsic evidence. *Phillips*, 415 F.3d at 1318. Extrinsic evidence “consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc), *aff’d*, 517 U.S. 370 (1996). “[W]hile extrinsic evidence can shed useful light on the relevant art, ... it is less significant than the intrinsic record in determining the legally operative meaning of claim language.” *Phillips*, 415 F.3d at 1317 (citation and internal quotation marks omitted). Under no circumstances may extrinsic evidence be used “to vary or contradict the manifest meaning of the claims” as deduced from the intrinsic evidence. *Vitronics*, 90 F.3d at 1585.

At the end of the day, “[i]t is the claims that define the metes and bounds of the patentee’s invention.” *Thorner*, 669 F.3d at 1367. “The patentee is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning unless the patentee explicitly redefines the term or disavows its full scope.” *Id.*; *see also Home Diagnostics, Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1358 (Fed. Cir. 2004) (“Absent a clear disavowal or contrary definition in the specification or the prosecution history, the patentee is entitled to the full scope of its claim language.”).

**V. THE *MARKMAN* ORDER ERRS IN FINDING THAT THE SPECIFICATION DISAVOWS NON-PIVOTING COUPLING MEMBERS**

**A. The Plain and Ordinary Meaning of the “Moveable” Limitation Does Not Require Pivoting**

Each asserted independent claim recites that “the coupling member is movable between (i) a first position in which a tip of the at least one projection is a first distance away from the photosensitive drum as measured in the direction of the axis L1 and (ii) a second position in which

the tip of the at least one projection is a second distance away from the photosensitive drum as measured in the direction of the axis L1, with the first distance being greater than the second distance.” ’826 patent, claims 1 and 6; ’021 patent, claims 1, 8, and 18; ’729 patent, claims 1, 9, and 18; ’764 patent, claim 7; ’765 patent, claims 1, 4, and 13; ’960 patent, claim 1, and ’846 patent, claim 1. Stated more simply, this language requires that the coupling member be able to move in such a way that the tip of its at least one projection is closer to the photosensitive drum in one position (the second position) than it is in another position (the first position) as measured in the direction of the axis L1.<sup>4</sup> This can be accomplished if the coupling member pivots relative to the drum, retracts axially toward the drum, or both pivots and retracts axially. All of these types of movements accomplish the Canon inventors’ goal of a cartridge that can be installed in a printer in a direction perpendicular to the axis of the printer drive shaft without having to move the drive shaft toward and away from the cartridge in response to the closing and opening of the printer cover. The *Markman* Order agrees that this language is clear and unambiguous, and that the plain and ordinary meaning of the claim language encompasses all such movements. *See Markman* Order at 27 (“The express claim language can be satisfied by a coupling member that moves coaxial to the drum shaft’s axis, as well as by a coupling member that moves between a position coaxial to the drum shaft’s axis and a position inclined with respect to the drum shaft’s axis.”).

To depart from the plain and ordinary meaning, there must be clear lexicography or disavowal. *Thorner*, 669 F.3d at 1365. Here, no one is arguing that Canon acted as its own lexicographer and redefined the “moveable” limitation to have something other than its plain and

---

<sup>4</sup> The parties agree that the phrase “as measured in the direction of the axis L1” means “as measured along an imaginary extension of axis L1 or an imaginary line parallel thereto.” *Markman* Order at 24.

ordinary meaning. *Markman* Order at 31. The only question is whether Canon clearly and unmistakably disavowed non-pivoting coupling members. For the reasons discussed below, Canon did not. Therefore, the plain and ordinary meaning of the “moveable” limitation should control. *See Home Diagnostics*, 381 F.3d at 1358 (“Absent a clear disavowal or contrary definition in the specification or the prosecution history, the patentee is entitled to the full scope of its claim language.”).

**B. The Specification Does Not Clearly and Unmistakably Disavow Claim Scope**

Notwithstanding the clear scope of the claim language, the ALJ concluded that the specification disavows non-pivoting coupling members, and thus construed the claims as being limited to coupling members that pivot between different angular positions. *Markman* Order at 31-37. The *Markman* Order attributes the disavowal to the following sentence, which appears near the end of the specification’s “Description of the Preferred Embodiments”:

As has been described hereinbefore, in the present invention, the axis of the drum coupling member can take the different angular positions relative to the axis of the photosensitive drum.

*Id.* at 31 (quoting ’826 patent at 83:43-47). This sentence falls well short of a clear and unmistakable disavowal of claim scope.

The test for disavowal is set forth in Federal Circuit cases, including *Thorner*, among others. Such cases require an “exacting” showing to be made to evidence a disavowal of claim scope. *Thorner*, 669 F.3d at 1366. The Federal Circuit has described the requisite showing as needing to be “clear,” “unmistakable,” “unequivocal,” and “unambiguous.” *See, e.g., id.* at 1366-67; *Poly-Am.*, 839 F.3d at 1136; *Openwave Sys., Inc. v. Apple Inc.*, 808 F.3d 509, 513 (Fed. Cir. 2015). And it must be all of those things when considered in the context of all of the intrinsic evidence. *See Rambus Inc. v. Infineon Techs. AG*, 318 F.3d 1081, 1094 (Fed. Cir. 2003) (“While



clear language characterizing ‘the present invention’ may limit the ordinary meaning of claim terms, such language must be read in the context of the entire specification, the claims, and the prosecution history.”) (citation omitted).

Here, there is no disavowal for at least two reasons. First, the “present invention” sentence upon which the *Markman* Order relies simply does not support a finding of disavowal. The Order interprets this sentence to mean that the coupling member in any given embodiment can take different angular positions, but Canon during the *Markman* proceedings offered the more plausible interpretation that the sentence means the angular position of the coupling member can be different across the many different embodiments. Canon’s interpretation is wholly consistent with the wording of the sentence, and with its placement at the end of the specification as a recap of the various preferred embodiments described before it, where the angular position of the coupling member is different in some embodiments than it is in others. At an absolute minimum, the “present invention” sentence is amenable to multiple interpretations—Canon’s interpretation and the ALJ’s—which in and of itself precludes the sentence from being an “unmistakable” or “unequivocal” disavowal.

Second, the totality of the intrinsic evidence weighs heavily against a finding of disavowal. For example, the specification’s discussion of Embodiment 13 clearly teaches axial movement as an alternative to pivoting, a fact that the *Markman* Order acknowledges in its background discussion but does not even consider in its disavowal analysis. Moreover, all statements in the “Summary of the Invention” section and abstracts of the Asserted Patents—places where one might expect to find a limitation on the invention as whole—are equally applicable to

configurations in which the coupling member moves only axially as they are to configurations in which the coupling member moves by pivoting.

**1. The “Present Invention” Sentence Does Not Support a Finding of Disavowal**

The *Markman* Order paints the “present invention” sentence as being unequivocal, asserting that it “expressly states that the cartridge’s coupling member has to be capable of pivoting.” *Markman* Order at 35; *see also id.* at 31 (asserting that the “present invention” sentence “describes the ‘present invention’ as having a coupling member that can pivot”). But in fact, this sentence says nothing about pivoting. The sentence should not be read as requiring a coupling member that is in all instances capable of pivoting, and certainly should not be read as an unequivocal disavowal of all coupling members save those that pivot.

As noted previously, the “present invention” sentence appears near the end of the “Description of the Preferred Embodiments.” Prior to this point, the specification describes many different coupling members, and the “present invention” sentence is a recap of the numerous and varied preferred embodiments that came before it. In some of those embodiments, such as Embodiment 1, the coupling member takes a different angular position than the angular position that the coupling member takes in other embodiments, such as Embodiment 13. *See, e.g.,* ’826 patent at 62:66-63:48 (contrasting the angular position of the coupling member shown in FIG. 88(a) to that shown in FIG. 88(c)). The “present invention” sentence simply is conveying that different embodiments can have different angular positions—some may have large inclinations,

and others may have small inclinations, including down to 0 degrees.<sup>5</sup> The sentence does not in any way disavow a coupling member that does not pivot.

Significantly, the *Markman* Order itself acknowledges that “the specification teaches that different embodiments of the coupling member can have different pre-engagement angular positions and different disengagement angular positions,” *Markman* Order at 34, a fact that gives strong credence to Canon’s interpretation of the “present invention” sentence. The *Markman* Order discounts this, asserting that although the pre-engagement and disengagement angular positions may be different across the different embodiments, “all of embodiments have the same engaged position.” *Id.* But the Order is mistaken in this regard. Contrary to the Order’s assertion, the specification does in fact disclose a range of engaged angular positions. *See* ’826 patent at 31:38-45 (disclosing that the rotational force transmitting angular position preferably is 0 degrees, but that less than about 15 degrees is suitable). And even if the Order were correct that the specification discloses only a single engaged position, that would not change the fact that at least the pre-engagement and disengagement positions can be different from embodiment to embodiment, which in and of itself supports Canon’s interpretation of the “present invention” sentence.

The ALJ credits her interpretation of the sentence over Canon’s, in part based on Embodiment 19’s characterization of the preceding embodiments. *See Markman* Order at 33. While it is certainly true that the discussion of Embodiment 19 states that the couplings “described

---

<sup>5</sup> The Asserted Patents use the phrase “angular position” to refer to both inclined positions and non-inclined positions. For example, the phrase “rotational force transmitting angular position” refers to the engaged position where the angle of the coupling member relative to the photosensitive drum preferably is 0 degrees. ’826 patent at 31:38-43. This is an example of a non-inclined angular position.

above” can pivot, all of the couplings described up to that point are examples of preferred embodiments. That all of the preferred embodiments share something in common, however, is not enough to establish disavowal. *Thorner*, 669 F.3d at 1366. Here, there is nothing to suggest that the inventors intended the scope of their invention to be limited to the preferred embodiments. In fact, the opposite is true, as the specification concludes by stating:

While the invention has been described with reference to the structures disclosed herein, it is not confined to the details set forth, and this application is intended to cover such modification or changes as may come within the purposes of the improvements or the scope of the following claims.

’826 patent at 83:58-63; *see also id.* at 4:29-30 (stating that what follows the “Summary of the Invention” is a “description of the *preferred embodiments* of the present invention,” as opposed to a description of the invention as a whole) (emphasis added). The Embodiment 19 discussion on which the ALJ relies—which appears five columns before the “present invention” sentence—in no way serves a basis for equating the preferred embodiments with the invention as whole. Nor does the Embodiment 19 discussion in any way undermine the reasonableness of Canon’s interpretation of the “present invention” sentence.

In rejecting Canon’s interpretation of the “present invention” sentence, the ALJ also reasons that “if the patentees intended to describe the ‘present invention’ as having coupling members with different pre-engagement angular positions and disengagement angular positions, they would not have described the couplings as having ‘different angular positions,’ but as having ‘different inclined angular positions.’” *Markman* Order at 34. Just because the subject sentence could have been written differently is not a reason to dismiss Canon’s interpretation. Even more importantly, the ALJ’s reasoning is based on the mistaken understanding that the specification only discloses that different embodiments can have different pre-engagement angular positions or

different disengagement angular positions, and fails to disclose different engaged angular positions. As noted above, the *Markman* Order is wrong on that point, as the specification discloses a range of engaged angular positions, from 0 degrees up to about 15 degrees. The “present invention” sentence as written accounts for all of the different angular positions disclosed throughout the specification—pre-engagement, disengagement, and rotational force transmitting—and rewriting it as the ALJ suggests would have made it less accurate.

For all these reasons, Canon’s interpretation of the “present invention” sentence is more plausible than the ALJ’s. But in the end, the Commission need not even engage in the exercise of determining whose interpretation is more correct, as the mere fact that there are multiple reasonable interpretations means the sentence cannot constitute a clear and unmistakable disavowal. See *3M Innovative Proprs.*, 725 F.3d at 1326 (reversing a district court’s finding of disavowal because “[w]here an applicant’s statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable”); *Poly-Am.*, 839 F.3d at 1136 (“Ambiguous language cannot support disavowal.”); *Summit 6 LLC v. HTC Corp.*, Nos. 7:14-cv-00014-O, 7:14-cv-00106-O, 2015 WL 11117868, at \*8 (N.D. Tex. Mar. 21, 2015) (holding that the inclusion of “generally speaking” in the sentence “The present invention, generally speaking, provides an improved web-based media submission tool” rendered the sentence’s meaning too unclear for it to constitute a disavowal of claim scope).

Lastly on this point, the wording of the “present invention” sentence here is far less susceptible to a finding of unequivocal disavowal than the “[d]escriptions of the ‘present invention’” that the *Markman* Order identifies as having been found to constitute disavowal in other cases. *Markman* Order at 31-32. The descriptions quoted in the Order include wording such

as “the present invention *requires*,” “the present invention *is*,” and “*all* embodiments of the present invention *are*,” *id.* at 32 (emphasis added), but no such “requires,” “is,” or “are” wording is present here. While those kinds of words might fairly be read as unequivocal statements triggering a disavowal, the “in the present invention, the axis of the coupling member *can* take different angular positions” (emphasis added) wording under scrutiny here is far more benign, and should not be interpreted as requiring an unclaimed feature to be read into the claims.

## **2. The Totality of the Intrinsic Evidence Weighs Against Finding Disavowal**

In evaluating whether the “present invention” sentence constitutes disavowal, it also is necessary to consider that sentence together with the rest of the intrinsic evidence. *See Rambus*, 318 F.3d at 1094. Here, the intrinsic evidence as a whole weighs heavily against finding that the inventors intended to exclude non-pivoting coupling members from the scope of their invention.

To begin with, the notion that Canon disavowed non-pivoting coupling members is wholly undercut by Embodiment 13, which teaches, in the words of the ALJ, “that the degree that the coupling member needs to incline for mounting and demounting operations can be reduced by configuring the coupling member to move axially, *i.e.*, towards and away from the process cartridge.” *Markman* Order at 8. Notably, while the *Markman* Order acknowledges this teaching of Embodiment 13 in its background discussion summarizing the specification of the Asserted Patents, it never discusses or even considers the import of Embodiment 13’s teaching that axial movement can be used as an alternative to pivoting in its disavowal analysis. Instead, the Order wrongly concludes that the specification “expressly states that the cartridge’s coupling member has to be capable of pivoting,” citing only to the “present invention” sentence for support. *Markman* Order at 35. Far from teaching the criticality or importance of pivoting, the discussion

of Embodiment 13 downplays its importance by explaining that with the introduction of axial movement, “even if the angle  $\alpha_{106}$  (inclination amount of the axis L2) is small, the cartridge can be mounted to the apparatus main assembly A.” ’826 patent at 63:43-45. It cannot be said that the inventors unambiguously disavowed coupling members that do not pivot, given this clear teaching of axial movement as an alternative to pivoting.

Next, the specification of the Asserted Patents uses the words “present invention” more than 175 times, but the ALJ identifies only one instance—in the “Description of the Preferred Embodiments” no less—that supposedly disavows non-pivoting coupling members. Notably, the words “present invention” appear more than 25 times in the “Summary of the Invention,” where one would expect to find limitations on the invention as a whole. Yet, not once does the “Summary of the Invention” state that the invention requires a pivotable coupling member. *See* ’826 patent at 2:35-4:31. To the contrary, everything that the “Summary of the Invention” says about the invention is equally applicable to coupling members that pivot, coupling members that move axially, and coupling members that both pivot and move axially. *See Cont’l Circuits LLC v. Intel Corp.*, 915 F.3d 788, 798 (Fed. Cir. 2019) (finding no disavowal where the summary of the invention did not require a limitation that descriptions of the “present invention” in the discussion of the preferred embodiment allegedly imposed).

The same is true of the abstracts, which describe the subject matter of each Asserted Patent using terminology comparable to that in the claims, and not once state that the coupling member must be pivotable. *See* ’826 patent cover page; ’021 patent cover page; ’729 patent cover page; ’764 patent cover page; ’765 patent cover page; ’960 patent cover page; ’846 patent cover page; *see also Hill-Rom Co. v. Kinetic Concepts, Inc.*, 209 F.3d 1337, 1341 n.\* (Fed. Cir. 2000) (“[W]e

have frequently looked to the abstract to determine the scope of the invention, and we are aware of no legal principle that would require us to disregard that potentially helpful source of intrinsic evidence as to the meaning of claims.”) (citations omitted). In fact, two of the abstracts describe the coupling member’s movement using the same broad language as the claims. *See* ’960 patent cover page (“The coupling member is movable between (i) a first position in which a tip of the at least one projection is a first distance away from the photosensitive drum as measured in the direction of the axis L1 and (ii) a second position in which the tip of the at least one projection is a second distance away from the photosensitive drum as measured in the direction of the axis L1, wherein the first distance is greater than the second distance.”); ’846 patent cover page (“The coupling member is movable between (i) a first position in which a tip of the at least one projection is a first distance away from the photosensitive drum as measured in the direction of the axis L1 and (ii) a second position in which the tip of the at least one projection is a second distance away from the photosensitive drum as measured in the direction of the axis L1.”).

The evolution of the claims in the family of patents to which the Asserted Patents belong further demonstrates that the Canon inventors did not intend to limit the independent claims of the Asserted Patents to coupling members that pivot. As discussed above, earlier patents in the family, such as the ’278, ’564, and ’215 patents, expressly require the coupling member to be pivotable, describing it as being “movable between a first position in which the axis L2 of the coupling member is *coaxial* with the axis L1 of the rotary member, and a second position in which the axis L2 of the coupling member is *inclined* with respect to the axis L1 of the rotary member.” *See, e.g.,* ’278 patent at claim 160 (emphasis added). In the Asserted Patents, the requirement that the coupling member be pivotable between coaxial and inclined positions was relegated to dependent



claims, while the independent claims are purposefully broader, encompassing, for example, axial movement as an alternative to pivoting. This is strong evidence that the Canon inventors did not intend to disavow non-pivoting coupling members. See *Home Diagnostics*, 381 F.3d at 1357-58 (Fed. Cir. 2004) (comparing scope of claims in related patents to determine proper claim construction); *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 909 (Fed. Cir. 2004) (“The omission of reference to a pressure jacket in many of the claims of the applications that matured into the ’669 and ’261 patents is a strong indication that the applicants intended those claims to reach injectors that did not use pressure jackets.”).

Finally, the inventors do not criticize or otherwise disparage cartridges with coupling members that move in ways other than by pivoting in either the specification or the prosecution histories of the Asserted Patents. Far from disparaging movement other than pivoting, the Asserted Patents teach axial movement as an alternative to pivoting. Nor did the inventors ever argue that any prior art fails to anticipate or render obvious any claim of the Asserted Patents on the ground that the prior art does not disclose a pivoting coupling member.

Where, as here, references to the “present invention” are “not uniform,” and “where other portions of the intrinsic evidence do not support applying the limitation to the entire patent,” a single reference to the “present invention” is not limiting. *Absolute Software, Inc. v. Stealth Signal, Inc.*, 659 F.3d 1121, 1136 (Fed. Cir. 2011).

**C. Statements by Canon’s Expert in the 918 Investigation  
Do Not Support a Finding of Disavowal**

The *Markman* Order asserts that “[i]nterpreting the specification as disavowing non-pivoting coupling members is consistent with the statements of Canon’s own expert in the 918

investigation.” *Markman* Order at 36. The Order’s reliance on statements by Canon’s expert in the 918 investigation is misplaced, for at least two reasons.

First, anything that Canon’s expert, Dr. Lux, said in the 918 investigation is extrinsic evidence, which cannot give rise to disavowal or override the plain and ordinary meaning of the claim language. *See Thorner*, 669 F.3d at 1365 (holding that disavow may arise from statements in the specification or during prosecution); *Certain Wiper Blades*, Inv. No. 337-TA-816, Comm’n Op. at 40 (Apr. 24, 2013) (holding that positions the complainant took outside the current investigation were “extrinsic evidence that ought not affect claim construction”).

Second, Dr. Lux’s comments in the 918 investigation concerned different patents with different claims. As discussed above, the claims of the ’278, ’564, and ’215 patents at issue in the 918 investigation expressly recited a coupling member that moves between a coaxial position and an inclined position. In his rebuttal report, Dr. Lux was responding to opinions by the respondents’ experts, particularly Mr. Curley, that it would have been obvious to use an inclinable coupling as claimed in the ’278, ’564, and ’215 patents because inclinable couplings were known in the prior art as a way to transfer rotation between misaligned shafts. Throughout his report, Mr. Curley had asserted that the Canon inventors were looking to solve a misalignment problem, and that is why they designed their coupling member to be inclinable. 918 investigation, Rebuttal Expert Report of Richard A. Lux, Ph.D. (Nov. 7, 2014) at ¶ 5. The comments by Dr. Lux that the ALJ relies on were made in the context of responding to Mr. Curley’s opinion that it would have been obvious to use an inclinable coupling to solve the problem that the Canon inventors faced. In so responding, Dr. Lux pointed out that Mr. Curley had incorrectly stated the problem that the Canon

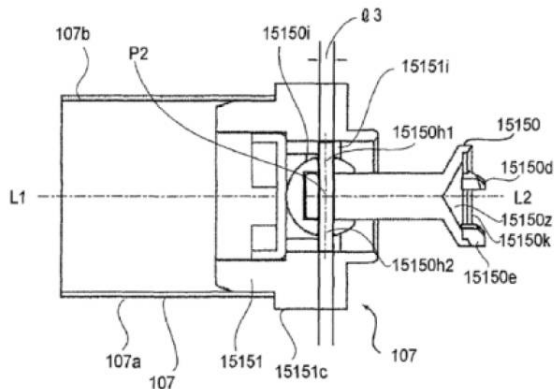
inventors faced, and explained how the inventors' use of an inclinable coupling member was unlike anything that had been done before:

Respondents' experts, and Mr. Curley especially, miss the most important point of Canon's inventions. Throughout his report, Mr. Curley asserts that the Canon inventors were looking to solve a misalignment problem, and that the reason they designed their coupling member to be inclinable is because they needed a way to transfer rotation between misaligned shafts. That is not correct. The Canon inventors were looking for a way to engage a cartridge with a printer drive shaft in a direction perpendicular to the drive shaft's axis of rotation, without having to provide a mechanism in the printer for moving the printer drive shaft toward the cartridge when the printer cover is opened and closed, or, in the case of color printers, when a cartridge in a carousel is rotated into position. Their solution was a coupling member that is maximally inclined just prior to engagement with the printer drive shaft, and that pivots to be coaxial with the drive shaft as the coupling member and drive shaft become fully engaged. To my knowledge, and based on my review of the prior art, no one before Canon had used a pivotable coupling on a cartridge to engage a printer drive shaft in this way.

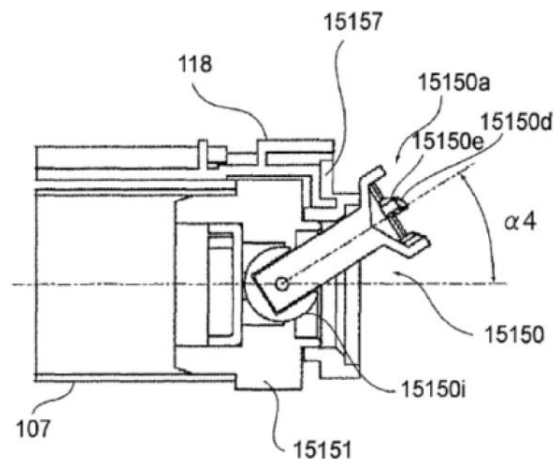
*Id.*

Read in context, Dr. Lux's comments regarding the inventor's "solution" were directed to the solution provided by the invention claimed in the 918 investigation, and not the broader solution as a whole. This is clear from Dr. Lux's initial report in the 918 investigation, where he described the invention independently of the prior art. There, Dr. Lux characterized the patented cartridge and drum unit as including a "moveable coupling member," with the ability to incline being just "one example" of how the coupling member can move:

The patented cartridge and drum unit include a *movable coupling member* connected to an end of the photosensitive drum. In *one example* of this connection, the coupling member is movable between a position in which it is coaxial with the photosensitive drum (shown in the left figure below) and a position in which it is inclined with respect to the drum (shown in the right figure below).



'278 patent, Fig. 98



'278 patent, Fig. 99

918 investigation, Initial Expert Report of Richard A. Lux, Ph.D. at ¶ 33 (Oct. 21, 2014) (emphasis added).<sup>6</sup>

The totality of Dr. Lux’s comments in the 918 investigation—even if they were the kind of evidence that could sway claim construction in this case—are fully consistent with according the “moveable” limitation its full scope, which encompasses both pivoting and non-pivoting coupling members.

**D. The Supposed Disavowal in This Case Falls Well Short of the Caliber of Evidence That Has Been Found to Constitute Disavowal**

Comparing cases that find no disavowal to those that do, it is clear that the facts here align more closely with the former.

*Continental* is a recent example of a Federal Circuit case where references to the “present invention” did not constitute disavowal. In *Continental*, the issue was whether the claims should

<sup>6</sup> This report was filed on a confidential basis in the 918 investigation because its appendices contained confidential business information. The report, without its appendices, is attached hereto as Exhibit 1.

be limited to a “repeated desmear process” even though the plain language of the claims did not require this. The district court limited the claims to a repeated desmear process because (1) the specification repeatedly distinguished the process covered by the patent from the prior art’s use of a single desmear process, (2) the specification characterized the “present invention” as using a repeated desmear process, and (3) the patentee submitted an expert declaration during prosecution that the district court found “clearly describe[d] the patented method as involving two etching processes,” *i.e.*, a repeated desmear process. *Cont’l*, 915 F.3d at 794. The Federal Circuit reversed the district court, holding that it erred in reading a “repeated desmear process” limitation into the claims. *Id.* at 799-800.

Notably, the appeals court found that several statements regarding the “present invention” were directed to a preferred embodiment (the use of Probelec XB 7081) rather than the invention as a whole, and that the statements distinguishing the prior art’s single desmear process were not sufficiently clear and unmistakable. *Id.* at 797-98. The court also noted that “the use of ‘the present invention’ throughout the specification does not uniformly require use of a repeated desmear process,” and pointed out that the summary of the invention did not limit the invention to the repeated desmear process, and in fact did not use the word “desmear” at all. *Id.* at 798. Regarding the expert declaration, the court found that the statements therein merely explained one technique and did not amount to clear statements of disavowal. *Id.* at 799. Finally, because the patentee did not make clear that the repeated desmear process was essential to the invention, the court found that it was inappropriate to read a process limitation into the claims at issue, which were directed to a product. *Id.*

*Rambus* is another case where the Federal Circuit did not find disavowal. There, the district

court limited the meaning of the claim term “bus” to a multiplexed bus that carries three types of information: address, data, and control information. *Rambus*, 318 F.3d at 1094. The district court did so because of two references in the specification. The first reference appeared in the “Summary of the Invention,” where the patentee stated that “the ‘present invention’ includes a bus for carrying substantially all address, data, and control information.” *Id.* The second reference appeared in the “Detailed Description,” where the patentee stated that “[t]he present invention is designed to provide a high speed, multiplexed bus for communication between processing devices and memory devices ....” *Id.* Notwithstanding these seemingly clear characterizations of the “present invention,” the Federal Circuit concluded that the remainder of the specification and prosecution history showed that the patentee did not clearly disclaim or disavow buses that are not multiplexed. *Id.* at 1094-95. In particular, the Federal Circuit pointed to other claims presented during prosecution that expressly recited a “bus including a plurality of bus lines for carrying substantially all address, data and control information needed by said memory device.” *Id.* at 1095. The court concluded that such claim language indicated that the patentee did not redefine “bus” in the specification to be a multiplexing bus; otherwise, it would have been unnecessary to include that language in the claims. *Id.* The court also credited a statement by the PTO examiner during prosecution, which demonstrated an understanding of “bus” that was not limited to a multiplexing bus. *Id.*

In *Voda v. Cordis Corp.*, 536 F.3d 1311 (Fed. Cir. 2008), the Federal Circuit concluded that a feature described in the specification as the “present invention” could not be imposed on the claims. In *Voda*, the patent specification provided that “the contact portion of the catheter of the present invention” is “a straight portion.” *Id.* at 1320. Elsewhere, however, the specification

referred to the contact portion of the catheter without requiring that it be straight. *Id.* at 1320-21. Given the non-uniform descriptions, the Federal Circuit found the specification did not clearly limit the scope of the claims to a straight contact portion. *Id.* at 1321.

The Commission held that the use of the phrase “present invention” did not constitute disavowal in *Certain Dimmable Compact Fluorescent Lamps and Products Containing Same*, Inv. No. 337-TA-830, Comm’n Op. (Apr. 25, 2014). There, the claim on its face did not impose a bi-directionality requirement, but the Commission considered whether such a requirement should be imposed as a result of an alleged disavowal of claim scope. *Id.* at 10. The alleged disavowal was based on a statement in the specification that certain limitations were “[i]n accordance with the present invention.” *Id.* at 13. Noting that mere reference to “the invention,” without more, does not ordinarily constitute disavowal, the Commission held that the statement in question was not a clear disavowal. *Id.* at 12-14 (citing *Rambus*, 318 F.3d at 1094-95). The Commission reasoned that “being in ‘accordance’ with the ‘present invention’ need not be the same thing as being required by it,” and that reading the limitations into the claim would have resulted in there being duplicate claims. *Id.* at 13-14.

One of the more widely cited cases where the Federal Circuit found disavowal is *SciMed*. In that case, the parties disputed whether the claims covered only coaxial lumens or both coaxial and dual lumens. *SciMed*, 242 F.3d at 1340. The Federal Circuit concluded that the claims covered only coaxial lumens, citing four reasons. *Id.* at 1345. First, the abstract stated that the lumen was coaxial. *Id.* at 1342. Second, the specification distinguished the prior art on the basis of the use of dual lumens. *Id.* at 1342-43. Third, the “Summary of the Invention” repeatedly and unambiguously described “the present invention” as having a coaxial structure. *Id.* at 1343.

Fourth, and “most compelling” in the court’s view, the specification described the coaxial lumen structure as the “basic sleeve structure for *all embodiments of the present invention contemplated and disclosed herein.*” *Id.* (emphasis in original).

In *Honeywell International, Inc. v. ITT Industries, Inc.*, 452 F.3d 1312 (Fed. Cir. 2006), the Federal Circuit held that the claim term “fuel injection system component” was limited to a fuel filter. *Id.* at 1318. Although the ordinary meaning of “fuel injection system component” is not limited to a fuel filter, the court found that the proper construction was narrower than the ordinary meaning. The court concluded that a fuel filter was discussed in the specification not merely as a preferred embodiment, but as a limitation on the patent’s scope, because on at least four occasions the specification referred to the fuel filter as “this invention” or “the present invention.” *Id.*

In *AstraZeneca AB v. Hanmi USA, Inc.*, 554 Fed. App’x 912 (Fed. Cir. 2013) (nonprecedential), the Federal Circuit held that the claim term “alkaline salt” was limited to six specific cations, even though the term on its face and outside the context of the patent would not be so limited. *Id.* at 914-15. In limiting the scope of the term, the court relied on a sentence in the specification which stated that “[t]he present invention refers to” the six cations. *Id.* at 915. The court also relied on the abstract, which stated that those six cations were “novel.” *Id.*

In *SafeTCare Manufacturing, Inc. v. Tele-Made, Inc.*, 497 F.3d 1262 (Fed. Cir. 2007), the Federal Circuit found disclaimer where the specification repeatedly emphasized that the invention operated by “pushing (as opposed to pulling) forces,” and then characterized the “pushing forces” as “an important feature of the present invention.” *Id.* at 1269-70. The specification further made



“clear this attribute of the invention is important in distinguishing the invention over the prior art.”  
*Id.* at 1270.<sup>7</sup>

*Poly-America* is another case where the Federal Circuit found disavowal. In that case, the question was “whether the inventor disavowed trash bags with short seals that do not extend inwardly to narrow the upper opening width in relation to the bag proper width.” *Poly-Am.*, 839 F.3d at 1136. The court found that there was disavowal, citing multiple reasons. First, the specification unambiguously stated that “one of the characteristics of *the present invention* is a reduction in upper width ... resulting from the extended short seals.” *Id.* (emphasis and alteration in original). Second, the specification disparaged prior art bags because they lacked extended short seals. *Id.* at 1136-37. Third, the prosecution history included a “clear and unmistakable disavowal of short seals that do not extend inwardly.” *Id.* at 1137. And fourth, “[e]very embodiment described in the specification has inwardly extended short seals and every section of the specification indicates the importance of inwardly extended short seals.” *Id.*

In *Verizon Services Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295 (Fed. Cir. 2007), the Federal Circuit found a clear disavowal of claim scope where, during the prosecution history, the applicants distinguished the prior art by stating the “present invention” was “restricted to operate

---

<sup>7</sup> In addition to the foregoing cases, the *Markman* Order’s disavowal analysis additionally cites *Hill-Rom Services* and *Regents of the University of Minnesota v. AGA Medical Corp.*, 717 F.3d 929 (Fed. Cir. 2013). Although *Hill-Rom Services* cites examples of “present invention” language that can result in disavowal, there were no comparable statements in the patents at issue in that case, and the court in that case found there was no disavowal. *Id.* at 1372, 1377, 1379. Meanwhile, *Regents of the University of Minnesota* is not a true disavowal case. There, the court’s claim construction was in accordance with the ordinary meaning of the claim language, *id.* at 937, and a statement in the specification regarding the “present invention” was consistent with that ordinary meaning. Here, the ALJ is using the “present invention” sentence in the Asserted Patents to construe the claims more narrowly than their plain and ordinary meaning.

within a few feet from a base station (i.e. wireless handsets).” *Id.* at 1307. The court held that this statement in the prosecution history “clearly disclaimed coverage of systems operating with a range greater than a ‘few feet,’ and that the district court erred in failing to construe the localized system as requiring a range of a few feet.” *Id.*

The common theme that differentiates cases where disavowal was found from cases where disavowal was not found is that in the former, statements regarding the “present invention” were clear and unambiguous and reinforced by something else, whether it was repeated, consistent references to the “present invention,” disparagement of the prior art, or drawing distinctions over the prior art. Here, none of those things exist. The “present invention” sentence stands alone and is, at most, ambiguous as to what it means. Viewed in light of the intrinsic evidence as a whole, that single reference to the “present invention” in the Asserted Patents is an insufficient basis for narrowing the purposefully broad claim language.

## **VI. CONCLUSION**

For the foregoing reasons, the ALJ erred in finding that the specification clearly and unmistakably disavows coverage of non-pivoting coupling members. Canon therefore requests that the Commission (1) hold that the “movable” limitation has its plain and ordinary meaning, which does not require pivoting, (2) reverse the ID granting summary determination of non-infringement, which was premised on the ALJ’s erroneous finding that Canon disavowed non-pivoting coupling members like those used in the respondents’ accused products, and (3) remand the case for further proceedings.

Dated: March 25, 2019

Respectfully submitted,

/s/ Michael P. Sandonato

Michael P. Sandonato

Dennis J. McMahon

Seth E. Boeshore

Andrew J. Kutas

VENABLE LLP

1290 Avenue of the Americas

New York, New York 10104-3800

Phone: 212-218-2100

Fax: 212-218-2200

Edmund J. Haughey

VENABLE LLP

600 Massachusetts Avenue, NW

Washington, DC 20001

Phone: 202-530-1010

Fax: 202-530-1055

*Counsel for Complainants*

*Canon Inc., Canon U.S.A., Inc., and*

*Canon Virginia, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2019, copies of the foregoing **COMPLAINANTS' PETITION FOR COMMISSION REVIEW OF INITIAL DETERMINATION GRANTING MOTIONS FOR SUMMARY DETERMINATION OF NON-INFRINGEMENT AND TERMINATING INVESTIGATION IN ITS ENTIRETY** and supporting papers were filed and served as indicated below.

/s/ Andrew Kutas  
Andrew Kutas

The Honorable Lisa R. Barton  
Secretary of the Commission  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E. Street SW, Room 112-A  
Washington, DC 20436

Via EDIS

The Honorable Dee Lord  
Administrative Law Judge  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E. Street SW, Room 317  
Washington, DC 20436

Via Hand Delivery  
(two copies by next business day)

Edward Jou  
Attorney Advisor to the Honorable Dee Lord  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E. Street SW  
Washington, DC 20436

Via Email  
*edward.jou@usitc.gov*

Monisha Deka  
Office of Unfair Import Investigations  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street SW, Suite 401  
Washington, DC 20436

Via Email  
*monisha.deka@usitc.gov*

### **Respondents:**

**For Ninestar Corporation, Ninestar Image Tech Limited, Ninestar Technology Company, Ltd., Static Control Components, Inc., LD Products, Inc., and The Supplies Guys, Inc.:**

Gary M. Hnath  
MAYER BROWN LLP  
1999 K Street NW  
Washington, DC 20006-1101

Via Email  
*MB-337-TA-1106*  
*@mayerbrown.com*

**For Ninestar Corporation, Ninestar Image Tech Limited, Ninestar Technology Company, Ltd., and Static Control Components, Inc.:**

Lei Mei  
MEI & MARK LLP  
818 18th Street NW, Suite 410  
Washington, DC 20006

Via Email  
*Ninestar-ITC-1106*  
*@meimark.com*

**For Print-Rite N.A., Inc., Union Technology Int'l (M.C.O.) Co. Ltd., Print-Rite Unicorn Image Products Co. Ltd., LD Products, Inc., and The Supplies Guys, Inc.:**

Steven E. Adkins  
MCGUIREWOODS LLP  
2001 K Street NW  
Washington, DC 20006

Via Email  
*Print-RiteITC1106*  
*@mcguirewoods.com*

**For Aster Graphics, Inc., Jiangxi Yibo E-Tech Co., Ltd., and Aster Graphics Company Ltd.:**

Barbara A. Murphy  
FOSTER, MURPHY, ALTMAN & NICKEL, PC  
1150 18th Street NW, Suite 775  
Washington, DC 20036

Via Email  
*FM-Aster-1106@*  
*fostermurphy.com*

**For Aster Graphics, Inc. and Jiangxi Yibo E-Tech Co., Ltd.:**

Michael N. Rader  
WOLF, GREENFIELD & SACKS, P.C.  
405 Lexington Avenue  
New York, NY 10174

Via Email  
*WGS-Canonv.Aster@*  
*WolfGreenfield.com*

**Ourway US Inc.**  
17800 Castleton Street, Suite 412  
City of Industry, California 91748

Via First Class Mail