

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN REFRIGERATORS
AND COMPONENTS THEREOF

Investigation No. 337-TA-632

NOTICE OF COMMISSION DECISION TO MODIFY CERTAIN CLAIM
CONSTRUCTIONS MADE IN A FINAL INITIAL DETERMINATION AND TO
REMAND THE INVESTIGATION TO THE ALJ; EXTENSION OF TARGET DATE

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify certain claim constructions made in a final initial determination ("ID") issued in the above-captioned investigation and to remand the investigation to the presiding administrative law judge ("ALJ").

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of the ALJ's IDs and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On February 21, 2008, the Commission voted to institute this investigation, based on a complaint filed by Whirlpool Patents Company of St. Joseph, Michigan; Whirlpool Manufacturing Corporation of St. Joseph, Michigan; Whirlpool Corporation of Benton Harbor, Michigan, and Maytag Corporation of Benton Harbor, Michigan (collectively, "Whirlpool"). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain refrigerators and components thereof that infringe certain claims of U.S. Patent Nos. 6,082,130 ("the '130 patent"); 6,810,680 ("the '680 patent");

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6,915,644 (“the ‘644 patent”); 6,971,730; and 7,240,980. Whirlpool named LG Electronics, Inc.; LG Electronics, USA, Inc.; and LG Electronics Monterrey Mexico, S.A., De, CV (collectively, “LG”) as respondents. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337 and requested that the Commission issue an exclusion order and cease and desist orders.

On September 11, 2008, Whirlpool and LG filed a joint motion seeking termination of this investigation with respect to the ‘680 patent and the ‘644 patent on the basis of a settlement agreement. On September 25, 2008, the ALJ issued an ID, Order No. 10, terminating the investigation, in part, as to the ‘680 and ‘644 patents. No petitions for review were filed. On October 27, 2008, the Commission determined not to review Order No. 10.

On October 17, 2008, Whirlpool filed a motion for summary determination that it had satisfied the importation requirement. On November 20, 2008, the ALJ issued the subject ID, Order No. 14, granting complainant’s motion for summary determination of importation. No petitions for review were filed. On December 15, 2008, the Commission issued notice that it had determined not to review Order No. 14.

On July 24, 2008, Whirlpool filed a motion seeking leave to amend the complaint and notice of investigation to (1) remove references to patents that had been withdrawn from this investigation; (2) add a reference to a non-exclusive license that relates to two patents at issue; and (3) update the current state of the domestic industry. On November 25, 2008, the ALJ issued Order No. 15, in which he granted Whirlpool's motion as to (1) and (3) above and denied it with respect to (2). No petitions for review were filed. The Commission determined not to review the subject ID on December 15, 2008.

On February 26, 2009, the ALJ issued a final ID, in which he found no violation of Section 337. On March 11, 2009, Whirlpool filed a petition for review, and LG filed a contingent petition for review. Whirlpool, LG and OUII filed responses. On April 27, 2009, the Commission determined to review the final ID in its entirety. 74 *Fed. Reg.* 20345-6 (May 1, 2009). The Commission asked the parties to address the following questions:

1. Do the ordinary and customary meanings of the following terms differ from the meanings ascribed to them by the inventors' testimony: “freezer compartment,” “disposed within,” “mounted on,” “having an access opening and a closure member for closing the access opening,” and “ice storage bin having a bottom opening.” Please discuss with reference to dictionary definitions and expert testimony.
2. Are the phrases “mounted on” and “disposed within” mutually exclusive in the context of claim 1 of the ‘130 patent? Are either or both of these terms synonymous with “installed”?

3. How does the prosecution history inform the claim construction, in terms of disclaimer and interpretation?

4. Would one of ordinary skill in the art understand a space defined by a cabinet having an access opening but not having a closure member to mean a “freezer compartment,” given that temperatures within such a compartment cannot be reduced to freezing?

5. In construing claim 1, the parties dispute whether the “closure member” is part of the freezer compartment. What conclusions can be drawn from the term “freezer compartment closure member” appearing in dependent claim 9? What conclusions, if any, can be drawn from a comparison of claim 1 and independent claim 10, the latter clearly identifying the closure member as part of the refrigerator.

6. To what extent should the Commission consider inventor testimony when construing the claims? See *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1580 (“Markman requires us to give no deference to the testimony of the inventor about the meaning of the claims.”).

7. For parties proposing additional or different meanings on claim construction, do these point to a different result for infringement, validity, or domestic industry? Please explain with regard to each relevant refrigerator model. Responses should rely on evidence of record.

8. Specifically, with respect to infringement, respond to the following: Does the closure member have to be the closure member to the access to the freezer compartment? If so, can a self-contained ice maker within a fresh-food compartment qualify as a freezer for which there is a closure member within the meaning of claim 1? Does it matter if both the ice maker and the storage unit are in the closure member?

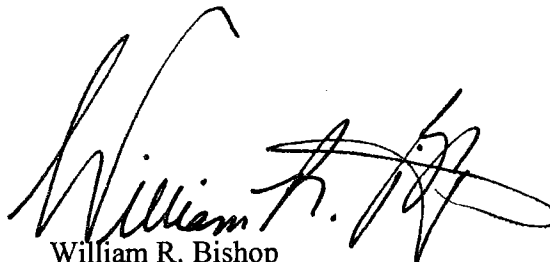
The parties filed initial submissions on May 8, 2009 and reply submissions on May 15, 2009.

Having examined the record of this investigation, including the ALJ’s final ID, the Commission has determined to modify the final ID’s claim constructions of the terms “freezer compartment,” “disposed within the freezer compartment,” and “ice storage bin having a bottom opening.” The Commission has determined to affirm the final ID’s construction of the term “ice maker.” The Commission has further determined to remand the investigation to the ALJ to make findings regarding infringement, validity, and domestic industry that are consistent with the Commission’s claim constructions, and to issue a final remand ID on violation and a recommended determination on remedy and bonding.

The target date of the investigation is extended by two months to September 7, 2009.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46).

By order of the Commission.
Marilyn R. Abbott, Secretary



William R. Bishop
Acting Secretary

Issued: July 8, 2009

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

In the Matter of

**CERTAIN REFRIGERATORS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-632

ORDER: REMAND OF INVESTIGATION

The Commission instituted this investigation on February 26, 2008, based on a complaint filed by Whirlpool Patents Company of St. Joseph, MI; Whirlpool Manufacturing Corporation of St. Joseph, MI; Whirlpool Corporation of Benton Harbor, MI; Maytag Corporation of Benton Harbor, MI (collectively “Whirlpool”). 73 *Fed. Reg.* 10285 (February 26, 2008). The respondents named in the Notice of Investigation were LG Electronics, Inc. of South Korea; LG Electronics, USA, Inc. of Englewood Cliffs, NJ; and LG Electronics Monterrey of Mexico (collectively “LG”). *Id.*

The complaint, as supplemented, alleged violations of Section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain refrigerators and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,810,680; 6,915,644; 6,971,730; 7,240,980, and the ‘130 patent. The complaint, as supplemented, further alleged that an industry in the United States exists as required by subsection (a)(2) of Section 337 and requested that the Commission issue an exclusion order and cease and desist orders.

On February 26, 2009, the ALJ issued his final ID, in which he found that no violation of Section 337 of the Tariff Act had occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of the accused refrigerators and components thereof by reason of infringement of one or more of claims 1, 2, 4, 6, 8, and 9 of the '130 patent. On April 27, 2009, the Commission determined to review the final ID in its entirety and asked the parties to address several questions. 74 *Fed. Reg.* 20345-6 (May 1, 2009).

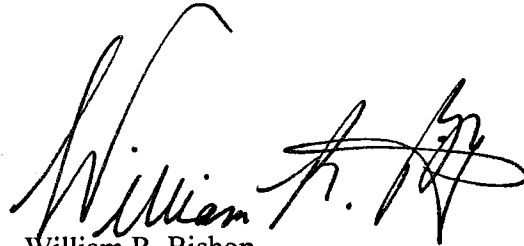
Upon consideration of this matter, the Commission hereby ORDERS that:

1. The claim terms at issue are construed as follows:
 - a. “freezer compartment” means “a section of a refrigerator cabinet kept at a below-freezing temperature, having an opening that provides access to the interior and a closure member that allows access to the access opening;”
 - b. “disposed within the freezer compartment” means “placed within the freezer compartment, including elements mounted on the closure member,” and
 - c. “ice storage bin having a bottom opening” means “an ice storage bin with an opening at a lowest portion of the ice storage bin.”
 - d. the ALJ’s construction of the term “ice maker” is affirmed
2. The investigation is remanded to the presiding administrative law judge (“ALJ”), Judge Theodore R. Essex, to make findings regarding infringement, validity, and domestic industry that are consistent with the Commission’s claim constructions, and to issue a final initial remand determination (“RID”) on violation and a recommended determination (“RD”) on remedy and bonding.
3. The ALJ shall issue an ID within 30 days of this Order extending the target date as he deems necessary to accommodate the remand proceedings.
4. The RID and RD will be processed in accordance with Commission rules 210.42, 210.43-.46, and 210.50. Any petitions for review will be due 12 days after service

of the RID and RD. Responses to any petition for review will be due 8 days after service of the petition. The RID will become the Commission's final determination 60 days after issuance unless the Commission orders review.

5. The administrative law judge may otherwise conduct the remand proceedings as he deems appropriate, including reopening the record.
6. Notice of this Order shall be served on the parties to this investigation.

By order of the Commission
Marilyn R. Abbott, Secretary



William R. Bishop
Acting Secretary

Issued: July 8, 2009

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN REFRIGERATORS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-632

OPINION

The Commission instituted this investigation on February 26, 2008, based on a complaint filed by Whirlpool Patents Company of St. Joseph, MI; Whirlpool Manufacturing Corporation of St. Joseph, MI; Whirlpool Corporation of Benton Harbor, MI; Maytag Corporation of Benton Harbor, MI (collectively “Whirlpool”). 73 *Fed. Reg.* 10285 (February 26, 2008). The respondents named in the Notice of Investigation were LG Electronics, Inc. of South Korea; LG Electronics, USA, Inc. of Englewood Cliffs, NJ; and LG Electronics Monterrey of Mexico (collectively “LG”). *Id.*

The complaint, as supplemented, alleged violations of Section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain refrigerators and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,810,680 (“the ‘680 patent”); 6,915,644 (“the ‘644 patent”); 6,971,730 (“the ‘730 patent”); 7,240,980 (“the ‘980 patent”); and 6,082,130 (“the ‘130 patent”). The complaint, as supplemented, further alleged that an industry in the United States exists as required by subsection (a)(2) of Section 337 and requested that the Commission issue an exclusion order and cease and desist orders.

In the course of the investigation, the issues regarding the '680, '644, '730, and '980 patents were resolved leaving only the '130 Patent issues to be resolved in the final ID. *See* Order No. 8 (granting Whirlpool's motion to terminate U.S. Patent Nos. 6,971,730 and 7,240,980) (June 9, 2008) (unreviewed) and Order No. 10 (granting joint motion to terminate U.S. Patent Nos. 6,810,680 and 6,915,644) (September 25, 2008) (unreviewed).

On February 26, 2009, the ALJ issued his final ID, in which he found that no violation of Section 337 of the Tariff Act had occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of the accused refrigerators and components thereof by reason of infringement of one or more of claims 1, 2, 4, 6, 8, and 9 of the '130 patent. On April 27, 2009, the Commission determined to review the final ID in its entirety and asked the parties to address several questions concerning claim construction. *74 Fed. Reg.* 20345-6 (May 1, 2009). The parties filed initial briefs in response to the Commission's notice on May 8, 2009, and reply submissions on May 15, 2009. The Commission has determined to modify the ALJ's claim construction as set forth in detail below.

Claim construction "begin[s] with and remain[s] centered on the language of the claims themselves." *Storage Tech. Corp. v. Cisco Sys., Inc.*, 329 F.3d 823, 830 (Fed. Cir. 2003); *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). The language used in a claim bears a "heavy presumption" that it has the ordinary and customary meaning that would be attributed to the words used by persons skilled in the relevant art. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002); *Phillips*, 415 F.3d at 1312-13. Moreover, the language is read in the context of the entire patent, including the specification. *Phillips*, 415 F.3d at 1313-14. To help inform the court of the ordinary meaning of the words, a court may consult

the intrinsic evidence, including the claims themselves, the specification, and the prosecution history, as well as extrinsic evidence, such as dictionaries and treatises and inventor and expert testimony. *Phillips*, 415 F.3d at 1314. While extrinsic evidence, such as inventor testimony, may be useful in determining the meaning of the claim language, that testimony should be discounted where it is “clearly at odds” with the intrinsic evidence. *Phillips*, 415 F.3d at 1318.

The court may rely heavily on the specification when construing claims. *Phillips*, 415 F.3d at 1317. The court must, however, avoid reading limitations from the specification into the claims. *Phillips*, 415 F.3d at 1323. Although “the distinction between using the specification to interpret the meaning of a claim and importing limitations from the specification into the claim can be [] difficult [] to apply in practice,” “the line between construing terms and importing limitations can be discerned ... if the court’s focus remains on understanding how a person of ordinary skill in the art would understand the claim terms.” *Id.*

The Federal Circuit in *Phillips* explained that “the words of a claims ‘are generally given their ordinary and customary meaning[.]’” and that “the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention[.]” *Phillips*, 415 F.3d at 1312-3. The court also noted that “[i]n 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.” *Phillips*, 415 F.3d at 1314. Where, however, “the meaning of a claim term as understood by persons of skill in the art is [] not immediately apparent, [] because patentees frequently use terms idiosyncratically, the court looks to ‘those sources available to the public that show what a

person of skill in the art would have understood disputed claim language to mean.” *Id.* “Those sources include ‘the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.’” *Id.*

“Ice Maker”

Claim 1 of the ‘130 Patent refers to “an ice maker being disposed within the freezer compartment for forming ice pieces.” (‘130 Patent at 12:52-53). The ID finds that the term “ice maker” means “a device that creates ice automatically, without user intervention.” ID at 9. No party petitioned for review, but the Commission determined to review the ID in its entirety. The Commission hereby affirms the ID’s construction of the term “ice maker.”

“Freezer Compartment”

The first phrase the Commission must construe in claim 1 of the ‘130 patent is “freezer compartment,” or in its complete context, “[a] refrigerator including a freezer compartment having an access opening and a closure member for closing the access opening.” Both Whirlpool and LG agree that a “freezer compartment” is an area within a refrigerator cabinet kept at a freezing temperature, and that the freezer compartment has an access opening. ID at 13. The parties differ, however, as to whether the “closure member” is part of the “freezer compartment.” The claim language is somewhat ambiguous and could support either interpretation since it is not readily apparent whether the “closure member” is meant to be a part of the “freezer compartment” or a part of the refrigerator separate and apart from the “freezer compartment.” The Commission does not find the words of the claim at issue to have a specialized meaning. Therefore, under Federal Circuit precedent we may consider the definitions provided by general

purpose dictionaries in attempting to discern the meaning of the claim terms. Since no party disputes the meaning of the terms “refrigerator,” “access opening,” or “closure member,” the term we must focus on is “freezer compartment.”

Whirlpool argues that a “freezer compartment,” in the context of refrigerators, is the part of the refrigerator that is responsible for maintaining ice and/or food at below freezing temperatures. The Commission investigative attorney (“IA”) asserts that the ordinary meaning of the phrase “freezer compartment” in the ‘130 patent is “one of the sections or spaces into which [the refrigerator] is subdivided[,]” specifically the subdivision “that maintains a subfreezing temperature for the rapid freezing and storing of perishable food.”¹ Both definitions are consistent in that both require that a “freezer compartment” *maintain* a below-freezing temperature.

The IA is correct that it is the refrigerator as a whole that lowers temperatures within the compartment to freezing, using many components that are not part of the freezer compartment. But the pertinent question is, what is required to allow the “freezer compartment” to *maintain* a below-freezing temperature, not merely which components are necessary to reduce the temperature in the compartment to below freezing. Maintaining a below-freezing temperature is clearly served by the “closure member,” which according to the language of claim 1, is “for closing the access opening” of the “freezer compartment.” The IA’s example of doorless freezers in grocery and convenience stores is unhelpful, since the ‘130 patent is indisputably directed toward refrigerators, and specifically home refrigerators, that have doors. *See* ‘130 Patent, 1:6-8

¹ LG did not submit a proposed definition for “freezer compartment,” arguing that simply listing dictionary definitions apart from the intrinsic evidence will not assist in the correct construction of the claims and will likely cause confusion and increase the possibility of error.

("[t]he invention relates to an ice making system for a refrigerator and more particularly to an ice delivery system mounted to a refrigerator closure member or door") (emphasis added); 1:11-12, 1:33-35, 1:49-51 (referring to "home refrigerators" or "domestic refrigerators").

The Federal Circuit held in *Phillips* that "[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...[b]ecause claim terms are normally used consistently throughout the patent...." *Phillips*, 415 F.3d at 1314. Unasserted independent claims 10 and 18 recite "[a] refrigerator including a cabinet" which defines "a freezer compartment" having "an access opening," where the refrigerator comprises: "a closure member for closing the access opening" (claim 10) or "a door hingedly mounted to the cabinet for closing the access opening...." (claim 18). Although both claims explicitly define the "closure member" or "door" as being a part of the refrigerator, both claims also explicitly define the purpose of "closure member" or "door" as being "for closing the access opening" of the "freezer compartment." Therefore, even claims 10 and 18 recognize that the "closure member" of the refrigerator does not exist in isolation, but is present and required for the purpose of closing the access opening of the "freezer compartment."

The ALJ found that, throughout the claims and the patent specification, the "closure member" is distinguished from the "freezer compartment." ID at 14. The language that the ALJ initially points to, however, is the ambiguous language of the claim or the language of the Summary of the Invention, which mirrors the language of claim 1, and is thus similarly lacking in clarity. ID at 14-15. The other portion of the specification that the ALJ cites describes the refrigerator cabinet as forming both an "above freezing fresh-food compartment 14" and a "*below freezing* fresh-food compartment 16." ID at 15; '130 Patent, 3:60-64. That portion of the

specification also describes that “a freezer closure member or door 20” is “mounted to the cabinet 12 for closing the access openings....”). ‘130 Patent, 3:64-67. Therefore, the specification describes the “closure member” as having a specific purpose: “closing the access openings.”

Whirlpool also points to the brief description of Figure 2 of the ‘130 patent, which “illustrat[es] the ice storing and dispensing system within the freezer compartment of the refrigerator apparatus with the freezer door open[.]” ‘130 Patent, 3: 12-15. Figure 2 of the ‘130 patent clearly shows the ice dispensing system 26 as being mounted onto the inside of the freezer door 20. *Id.*, Figure 2. This figure and the accompanying brief description support the conclusion that the freezer door, or at least the inside of the freezer door, is to be considered as a part of the “freezer compartment.” LG argues that, when interpreted to support the notion that the “freezer compartment” is not isolated from the “closure member,” the brief description of Figure 2 is inconsistent with the “Detailed Description” in the specification and with what is actually shown in Figure 2. Furthermore, LG argues, the brief description of Figure 2 is internally contradictory since, when the door is open, the ice storing and dispensing system cannot be “within the freezer compartment.”

As an initial matter, LG points to no case law which states that we are to ignore any portion of the specification when attempting to construe the proper scope of the claims, regardless of where the relevant discussion happens to be located in the specification. As such, all we can do is to assume that the specification is, in fact, internally consistent, and to read the specification in that light. Examining the specification within that framework, it is clear that the brief description of Figure 2 is consistent with the rest of the specification and with the claims.

The issue here is not to determine whether or not the ice dispensing system is “within the freezer compartment” when the door is open, it is to determine whether or not the asserted claims of the ‘130 patent require that the “freezer compartment” be considered separate and distinct from the “closure member.”

As discussed previously, claim 1 does not clearly make the distinction one way or the other. Claims 10 and 18 make the distinction, but then explicitly link the “closure member” to the “freezer compartment” by requiring that it be “for closing the access opening” of the “freezer compartment.” The majority of the specification does not explicitly state whether or not the two parts are to be considered separate and distinct from one another. Where the “freezer compartment” and “freezer door” are described together, however, the “freezer door” is identified as being present for the purpose of “closing the access opening” of the “freezer compartment.” There is, therefore, only one portion of the specification that explicitly describes the relationship between the “freezer compartment” and the “closure member,” *i.e.*, the brief description of Figure 2, which states that at least the inside of the “closure member” is to be considered a part of the “freezer compartment.”

Contrary to LG’s assertion, it is irrelevant whether or not, when the freezer door is open, the ice dispensing system, as illustrated in Figure 2, is “within the freezer compartment.” With the door open, the ice dispensing system is hanging outside of the refrigerator cabinet. But this would be true even if, for instance, one could unhinge the top of the refrigerator cabinet such that the top wall of the freezer compartment could be opened up. If this were done, then anything mounted on the top wall of the freezer compartment would, likewise, no longer be “within the freezer compartment.” But even LG has not argued that the top wall of the “freezer

compartment” is somehow not a part of the “freezer compartment.” Similarly, consistent with the specification, the inner portion of the “closure member,” as illustrated in Figure 2, is not somehow separated from the “freezer compartment” simply because the door is open.

The IA argues that, because claim 1 is an apparatus claim and is directed to the structural components of a refrigerator, it is irrelevant whether or not the “closure member” contributes to the function of the “freezer compartment.” It is true that claim 1 is an apparatus claim. As the Federal Circuit stated in *Phillips*, however, “the claims themselves provide substantial guidance as to the meaning of particular claim terms” and “the context in which a term is used in the asserted claim can be highly instructive.” *Phillips*, 415 F.3d at 1314. The claims, and indeed the specification, of the ‘130 patent consistently describe that the “closure member” is “for closing the access opening” of the “freezer compartment.”

LG also argues that the prosecution history of the ‘130 patent leads to the conclusion that the “freezer compartment” and “freezer door” are mutually exclusive elements because Whirlpool overcame the prior art Gould reference by explaining to the examiner that the Gould reference “does not have a freezer compartment and a freezer door on which the ice bin is mounted....” *See* JX-02 at Interview Summary. The Federal Circuit has emphasized the appropriateness of consulting the prosecution history of a patent in determining the meaning of the claims. *Phillips*, 415 F.3d at 1317 (“...the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise by.”).

It is, therefore, important to note that the language LG cites was not written by the

Whirlpool inventors, but by the examiner, and as such, is not necessarily the best indicator of “how the inventor understood the invention” or whether the inventor somehow “limited the invention.” The Federal Circuit reversed the Commission for just such a reliance on an examiner’s summary in *Sorensen v. Int’l Trade Comm’n*, 427 F.3d 1375 (Fed. Cir. 2005). In *Sorensen*, the examiner allowed claims directed toward injection molding only after numerous amendments to the claims. *Id.* at 1380. The examiner summarized the final amendments as “...further pointing out that the first and second plastic materials have *different characteristics*.” *Id.* (emphasis added). The ALJ presiding over the Commission investigation interpreted the language “different characteristics” as referring only to plastics that have different molecular properties, not simply different colors of the same material. *Id.* at 1378. The Commission subsequently determined not to review the ALJ’s claim construction and ultimate finding of no infringement. The court reversed the ALJ’s finding that the claims required materials with different molecular properties, stating that “it is the applicant, not the examiner, who must give up or disclaim subject matter that would otherwise fall within the scope of the claims.” *Id.* at 1379-1380. In this case, all that we can tell from the cited portion of the Interview Summary, is that a refrigerator that falls under the claims of the ‘130 patent must have at least a “freezer compartment” as well as “a freezer door on which the ice bin is mounted.” This language, in and of itself, does not indicate whether or not the “freezer door” must be considered as a separate element from the “freezer compartment.”

Therefore, consistent with the claims and the specification of the ‘130 patent, the Commission construes the term “freezer compartment” in claim 1 of the ‘130 patent to mean “a section of a refrigerator cabinet kept at a below-freezing temperature, having an opening that

provides access to the interior, and a closure member that allows access to the access opening.” Although we include the “closure member” in the definition of “freezer compartment,” we note that it is the interior face of the “closure member,” not the exterior face, that is part of the “freezer compartment.” For the purposes of determining infringement, however, this distinction is not critical, since there are no structures on the exterior of the accused refrigerators that are at issue in this investigation.

The extrinsic evidence is not inconsistent with our proposed construction of “freezer compartment.” The Federal Circuit has stated that it is appropriate to consider extrinsic evidence “in its sound discretion” because “extrinsic evidence can help educate the court regarding the field of the invention and can help the court determine what a person of ordinary skill in the art would understand claim terms to mean.” *Phillips*, 415, F.3d at 1319. The court cautioned, however, that “extrinsic evidence...is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence.” *Id.* The ALJ found that the extrinsic evidence showed that the inventors specifically intended to draw a distinction between the freezer compartment and the freezer door in the ‘130 patent because several of the inventors distinguished between the freezer “compartment” and the freezer “door” in their deposition testimony. *ID* at 16. When examined in the context of the intrinsic evidence, however, the inventors’ testimony merely emphasizes the explicitly claimed location of the ice storage bin rather than drawing any particular distinction between the “freezer compartment” and the “freezer door.”

In accordance with the preceding discussion, the Commission construes the phrase “[a] refrigerator including a freezer compartment having an access opening and a closure member for

closing the access opening” in claim 1 of the ‘130 patent to mean “a section of a refrigerator cabinet kept at a below-freezing temperature, having an opening that provides access to the interior, and a closure member that allows access to the access opening.”

“Disposed within the freezer compartment”

The ALJ found that “disposed within the freezer compartment” does not encompass the closure member, primarily because he found that the freezer compartment and the closure member should be considered to be separate assemblies. ID at 17. We disagree with the ALJ’s conclusion that the “freezer compartment” and “closure member” are necessarily mutually exclusive components of the refrigerator claimed in claim 1 of the ‘130 patent. A close examination of the language of the claims and the specification lends further merit to this conclusion and likewise illustrates that the phrase “disposed within the freezer compartment” in claim 1 does encompass the interior of the closure member.

Claim 1 recites “an ice maker being *disposed within* the freezer compartment[.]” ‘130 Patent, 12:53-54 (emphasis added). Claim 1 also recites “an ice storage bin *mounted to* the closure member below the ice maker for receiving ice from the ice maker[.]” *Id.*, 12:55-56 (emphasis added). Whirlpool asserts that “disposed” refers to where an object is located, while “mounted” refers to how an object is attached. The IA contends that an ice maker “disposed within the freezer compartment” is an ice maker that has been put inside the freezer compartment, while an ice storage bin “mounted to the closure member[.]” is a bin affixed to the door in some manner. LG argues that we should not look at the phrases “disposed within” or “mounted to” in isolation, but within the context of full disputed phrases.¹ Although we agree

¹ LG did not submit proposed definitions of the phrases “an ice maker being *disposed within* the freezer compartment,” or “an ice storage bin *mounted to* the closure member below the ice maker

with LG that the phrases “disposed within” and “mounted to” should not be considered strictly in isolation, an examination of the use of those phrases within claim 1, the other claims of the ‘130 patent, and the specification of the ‘130 patent are instructive.

Under the principles of claim construction, as LG itself points out, two different terms in the same claim should not be construed as having the same meaning. See *Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 93 F.3d 1572, 1579 (Fed. Cir. 1996). Furthermore, “[d]ifferences among claims can also be a useful guide in understanding the meaning of particular claim terms.” *Phillips*, 415 F.3d at 1314. Under the principle put forth in *Ethicon*, we should not consider the phrases “disposed within” and “mounted to” as meaning the same thing. As such, the full phrases “disposed within the freezer compartment” and “mounted to the closure member” must have distinct meanings. This fact leads away from the ALJ’s conclusion that the claim language describes a refrigerator with the items “installed” in specific and different locations. ID at 17. As such, the Commission reaches a different conclusion that “disposed within” and “mounted to” have different meanings.

Looking first at the dictionary definition of the terms, “disposed” is defined as “to place, distribute, or arrange, especially in an orderly way.” *Merriam-Webster Online Dictionary* (retrieved July 7, 2009, from <http://www.merriam-webster.com/dictionary/dispose>). “Mount” is defined as “to attach to a support.” *Merriam-Webster Online Dictionary* (retrieved July 7, 2009, from <http://www.merriam-webster.com/dictionary/mount>). As the dictionary definitions indicated, both terms have exclusive meanings. The language of other claims in the ‘130 patent is also instructive. Claim 10 recites “an ice maker being disposed within the freezer

for receiving ice from the ice maker.

compartment adjacent the top wall...” and “an ice storage bin removably mounted to the closure member below the ice maker...[.]” ‘130 Patent, 13:60-64. Beyond the added requirement that the ice storage bin be “removably mounted,” claim 10 is different from claim 1 in that it assigns a specific location to the ice maker – “adjacent the top wall” – beyond that it be “disposed within the freezer compartment.” This additional language leads to the conclusion that “disposed within” does not, in and of itself, denote a specific location. Claim 18 does not mention the ice maker. Claim 19, which depends from claim 18, however, recites “an ice maker mounted within the freezer compartment for delivering ice pieces to the ice storage bin.” *Id.*, 15:38-39. The fact that claim 19 uses the term “mounted within” rather than “disposed within” in connection with the storage bin also gives credence to the conclusion that there is some difference between the terms “disposed” and “mounted.”

Here, the specification of the ‘130 patent provides the correct interpretation of the disputed terms. The specification discloses:

“An ice making assembly 22 is *disposed within* the freezer compartment 16. The ice making assembly 22 is *mounted to* the inside surface of the wall 24 of the freezer compartment 16. An ice dispensing system 26, *mounted to* the freezer door 20, is provided below the ice making assembly 22 for receiving ice pieces therefrom.”

Id., 4:1-6. It is clear from the portion of the specification cited above that the terms “disposed” and “mounted” are distinct concepts. The ice making assembly 22 is described as being both “disposed within the freezer compartment” and being “mounted to the inside surface of the wall 24 of the freezer compartment.” *Id.* As is illustrated by the use of the terms in the claims, the use of the terms in the specification clearly shows that while “mounted” is used to denote a specific location, “disposed” provides a more general location. Therefore, since we have already

found that the “freezer compartment” and the “closure member” are not necessarily mutually exclusive locations, it is entirely consistent to construe claim 1 as requiring that, while the ice storage bin must be specifically “mounted to” the “closure member,” it may also be “disposed within” the general location of the “freezer compartment.” Likewise, the requirement that the ice maker be “disposed within the freezer compartment” does not limit the location of the ice maker in claim 1 beyond the fact that it must not be situated in some portion of the refrigerator other than the “freezer compartment.” As such, neither claim 1 nor the specification prohibits the ice maker from being mounted on the door. In fact, mounting the ice maker on the freezer door would contribute to the goal of the ‘130 patent, which, as the ALJ acknowledged, was to reduce the amount of equipment located in the freezer compartment. ID at 18.

The ALJ noted that Whirlpool filed two unrelated patent applications with an overlap of inventorship on the same day, December 28, 1998, one leading to the ‘130 patent and the other leading to the ‘624 patent. ID at 21. The ALJ stated that what made the inventions patentably distinct was the fact that the application leading to the ‘130 patent claimed “an ice maker being disposed *within the freezer compartment*,” while the second application leading to the ‘624 patent claim “an ice maker *mounted on the closure member*.” *Id.* The ALJ then concluded that the inventors must have intended the phrases “an ice maker *disposed within* the freezer compartment” and “an ice maker *mounted on* the closure member” to mean different things, otherwise they would have filed only one application covering both embodiments of a single invention. *Id.*

Claim 1, as originally filed in the application leading to the ‘130 patent, is identical to issued claim 1 and reads as follows:

1. A refrigerator including a freezer compartment having an access opening and a closure member for closing the access opening, the refrigerator comprising:

an ice maker being disposed within the freezer compartment for forming ice pieces;

an ice storage bin mounted to the closure member below the ice maker for receiving ice from the ice maker, the ice storage bin having a bottom opening;

a motor mounted on the closure member; and

an auger disposed within the ice storage bin and drivingly connected to the motor,

wherein upon energization of the motor, the auger moves ice pieces from the ice storage bin through the bottom opening for dispensing from the ice storage bin.

JX-02 (emphasis added). Claim 1 as originally filed in the application leading to the '624 patent reads as follows:

1. A refrigerator comprising:

a cabinet forming a freezer compartment having an access opening;

a closure member hingedly connected to the cabinet for closing the access opening;

an ice maker mounted on the closure member; and

an ice storage receptacle mounted to the closure member below the ice maker for receiving ice from the ice maker.

RFF-02.50 (emphasis added). As is apparent from a comparison of the two claims, there is no basis for the ALJ's conclusion that the only patentable distinction between them was the purported location of the ice maker. Claim 1 of the application leading to the '130 patent included requirements concerning "a motor mounted on the closure member," "an auger disposed within the ice storage bin for receiving ice from the ice maker," and that the ice storage bin have a "bottom opening." Claim 1 of the application leading to the '624 patent, on the other hand, requires only that both the ice maker and "ice storage receptacle" be "mounted to the closure

member.” Furthermore, claim 1 of the ‘624 patent, as issued, recites requirements for other structure, specifically, “a support rail vertically disposed along the closure member wherein the ice maker is vertically moveable along the support rail.” RX-440 (the ‘624 Patent), 4:31-43. The prosecution history of the ‘624 patent is not in evidence. As such, it is impossible to draw any conclusions regarding what the examiner of that patent application considered to be patentable and why the “support rail” structure was added to claim 1 during prosecution. All that can be concluded from the differences between the two claims is that the phrases “disposed within” and “mounted on” have distinct meanings, as discussed previously.²

LG argues that Whirlpool’s proposed construction would not be enabled. Specifically, LG asserts that the ‘130 patent fails to provide any disclosure of an ice maker mounted to the freezer door, much less the mechanics necessary to mount a functioning ice maker to the freezer door. LG’s Response Br. at 30. During the hearing, the IA questioned whether the ‘130 patent properly enables mounting the ice maker to the “closure member.” Hearing Tr., 1247:9-16.

A patent specification must:

“contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to *enable* any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same...”

35 U.S.C. § 112, ¶ 1 (emphasis added). The Federal Circuit has interpreted this section to mean that “to be enabling, the specification of a patent must teach those skilled in the art how to make and use the full scope of the claimed invention without ‘undue experimentation.’” *Genentech, Inc. v. Novo Nordisk A/S*, 108 F.3d 1361, 1365 (Fed. Cir. 1997). The determination of

² We also note that, although the ALJ said that there was an overlap of inventorship between the two patents, only two out of the seven inventors of the ‘130 patent, Jim Pastryk and Mark Nelson, are listed as inventors of the ‘624 patent. Moreover, the ‘624 patent lists two additional inventors who are not listed as inventors of the ‘130 patent.

“[w]hether making and using the invention would have required undue experimentation...is a legal conclusion based upon several underlying factual inquiries.” *Id.* “While every aspect of a generic claim certainly need not have been carried out by an inventor, or exemplified in the specification, reasonable detail must be provided in order to enable members of the public to understand and carry out the invention.” *Id.* Although “a specification need not disclose what is well known in the art[,] ... [i]t is the specification, not the knowledge of one skilled in the art, that must supply the *novel* aspect of an invention in order to constitute adequate enablement.” *Genentech*, 108 F.3d at 1366 (emphasis added); *see also Automotive Technologies Intern., Inc. v. BMW of North America, Inc.*, 501 F.3d 1274 (finding that where the “novel aspect of the invention [was] side impact sensors, it [was] insufficient to merely state that known technologies can be use to create an electronic sensor” where the specification only disclosed mechanical sensors).

Based on the Federal Circuit’s interpretation of the enablement issue, the first question we must consider is what is the “novel aspect of the invention.” With respect to the placement of items within the refrigerator, the problem that the ‘130 patent purports to solve is that

“conventional ice making and dispensing systems ... occupy a relatively large amount of freezer shelf space. In particular, the ice storage bin extends across the freezer compartment and occupies a large amount of freezer compartment space. This is perceived as a disadvantage by many consumers who generally prefer to have more available shelf space. Accordingly, *it would be an improvement to provide an ice making system which occupied less freezer space.*”

‘130 Patent, 2:5-13. The ‘130 patent solves this problem by moving the ice storage bin from the interior of the “freezer compartment” and mounting it on the “closure member.” Although removing the ice maker itself from the interior of the “freezer compartment” would also

contribute to the goal of increasing the amount of available shelf space, it is clear that the inventors of the '130 patent considered the novel aspect of the invention to be the placement of the ice storage bin, not the ice maker. Specifically, the specification discloses a "conventional ice piece making apparatus." *Id.*, 4:16-18. The specification also provides detailed description of how to adapt the novel placement of the ice storage bin to an ice maker that is conventionally mounted in the interior of the "freezer compartment." *Id.* 6:50 – 7:18. Testimony of inventor Vern Myers bears out this conclusion:

Q. And [Whirlpool] felt that the design shown in figure 3 of the '130 patent in its entirety provided better mounting for the ice maker in the cabinet, correct?

A. ...I don't recall that the mounting consideration was particularly important one way or the other regarding the ice maker.

Hearing Tr., 284:10-18.

Since the placement of the ice maker was not considered the "novel aspect" of the invention, it is not clear that § 112, ¶ 1 requires that the '130 patent specification "enable" any particular embodiment concerning the placement of the ice maker. Out of an abundance of caution, however, we will consider whether or not mounting the ice maker on the door would have been beyond the ability of one of ordinary skill in the art at the time the of the invention.

In making its enablement challenge, LG argues that the ready supply of water and power that is available to prior art ice makers mounted within the "freezer compartment" are not possible if the ice maker is located on the freezer door. Furthermore, LG argues that the "conventional" ice makers disclosed in the '130 patent specification are not designed for mounting on a freezer door. LG's expert, Dr. Bessler, testified that the main technical challenge involved in mounting an ice maker on the door is insuring "that when you move the door back

and forth, water doesn't come out of the ice maker and the ice maker can work reliably when it is on the door." Hearing Tr., 1240:14-20 (emphasis added). Dr. Bessler further testified that a secondary challenge is supplying water to an automatic ice maker mounted on a freezer door. Id., 1244:1-5.

Dr. Bessler acknowledged that U.S. Patent No. 6,904,765 ("the '765 patent) to LG discusses the activity of mounting an ice maker to a freezer door. Id., 1239:15-20; JX-59. Although the '765 patent does discuss structure for preventing water overflow, the '765 patent does not discuss structure for supplying water to an automatic ice maker mounted on a freezer door. Nor does the '765 patent discuss structure for providing power to an automatic ice maker so mounted. As such, we can conclude that, since not even LG bothered to disclose water and power supply structures in its own patent concerned with mounting an automatic ice maker on a freezer door, those structures must not be so critical to enabling the function of an automatic ice maker so mounted such that not discussing them creates an enablement problem. With respect to the water overflow preventing structures, Dr. Bessler testified that such structures allow an automatic ice maker mounted on a freezer door to work reliably, not that they are required to allow the ice maker to work at all. Without more evidence regarding the difficulty of mounting an automatic ice maker on a "closure member," we do not believe that the lack of disclosure in the '130 patent for such an embodiment leads to the conclusion that such an embodiment is not enabled. As the Federal Circuit has stated, "we have expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment." Phillips, 415 F.3d at 1323.

We, therefore, construe the phrase "disposed within the freezer compartment" to mean

“placed within the freezer compartment, including elements mounted on the closure member.”

“Ice storage bin having a bottom opening”

The IA argues that the term “ice storage bin having a bottom opening” has no bearing on either infringement or validity, and indeed the ALJ found, without explanation, that the limitation was present in the accused side by side refrigerators, either literally or under the doctrine of equivalents. ID at 29. LG, however, argues that this limitation is not found in the accused LG models because the accused models have openings in the side walls, not the bottom wall, of the ice storage bin. LG Response Br. at 90. LG is also under the mistaken impression that the ALJ “has implicitly recognized that LG’s refrigerators do not meet these limitations” when, in fact, the ALJ found precisely the opposite. Id. at 91-92. Regardless of whether the term has any bearing on infringement or whether it is relevant only regarding the technical prong of the domestic industry requirement, the Commission is called upon to provide a construction of phrase “ice storage bin having a bottom opening.” It will be up to the parties to argue what relevance the term has during the remand proceedings.

The ALJ found that “ice storage bin having a bottom opening” means “an ice storage bin with an ice outlet opening in the ‘bottom wall portion’ of the lower ice bin, citing the ‘130 specification. ID at 22-23. The ALJ noted that claim 1 refers to only one bottom opening: the opening leading to the ice discharge chute “for dispensing from the ice storage bin.” ID at 23. The ALJ found that the only opening leading from the storage bin to the discharge chute in the embodiment shown in Figure 9 is opening 170, located below the ice crushing blades. Id. He, thus, concluded the “bottom opening” must be the “ice outlet opening” located in the “bottom wall portion” of the lower ice bin because the specification states that “[t]he bottom wall portion

168 includes an ice outlet opening 170 through which the ice pieces must pass to be dispensed.”
Id., citing ‘130 Patent, 9:53-58.

Although the specification is the typically the best guide for the meaning of claim terms, there is no corresponding claim term in claim 1 for parts of the specification relied on by the ALJ. Specifically, the ALJ states that claim 1 refers to the opening leading to the ice discharge chute when claim 1 does not mention an “ice discharge chute.” The only limitation claim 1 places on the location on the “bottom opening,” other than it be at the “bottom” of the “ice storage bin,” is that it be positioned such that an auger may move ice pieces through it for dispensing. Notably, claim 2 does recite “an ice discharge chute.” Under the theory of claim differentiation, therefore, claim 1 should not be so limited. Furthermore, claim 1 does not make any mention of a “bottom wall portion” or a “lower ice bin,” the latter of which is specifically claimed only in dependent claim 8.

No party provides a specific definition for the term “bottom.” LG proposes to construe the term as “an ice storage bin having an ice outlet opening in its underside[,]” while Whirlpool advocates for a construction that would equate “bottom opening” with “an opening positioned at a *lower portion* of the ice storage bin.” ID at 22. LG notes that several other claims, including asserted claim 8, use the word “lower” to indicate an area in the ice storage bin, thus indicating a distinction in meaning between “bottom” and “lower.” This distinction is not readily apparent, however, due to some imprecision in the claims that LG relies on. Claim 8, which is representative of the claims specified by LG, recites:

8. The refrigerator according to claim 1 further wherein the ice storage bin comprises:

an upper ice bin member having a bottom edge;

a lower ice bin member connected to *the lower edge of the upper ice bin member*....

'130 Patent, 13:36-40 (emphasis added). As is apparent from the emphasized portions of claim 8, there is confusion with respect to the antecedent basis for the terminology used. Specifically, the "upper ice bin member" is simultaneously described as having a "bottom edge" and a "lower edge." Therefore, the only conclusion that can be drawn without the claim violating the requirement of 35 U.S.C. § 112, ¶ 2 for claims "particularly pointing out and distinctly claiming the subject matter which the application regards as his invention[,] is that no distinction in meaning between "bottom" and "lower" is intended.

Neither the ALJ nor the parties cite to any evidence in the record to indicate that the term "bottom opening" has any particular meaning to one of ordinary skill in the art beyond its plain and ordinary meaning, so it is proper to consider a dictionary for a definition of the term.

Phillips, 415 F.3d at 1314. Choosing between LG and Whirlpool's proposed constructions is not aided by reference to a general purpose dictionary, which defines "bottom" as meaning both "the underside of something" and "the lowest part or place." *Merriam-Webster Online Dictionary* (retrieved June 11, 2009, from <http://www.merriam-webster.com/dictionary/bottom>). The term "opening," on the other hand, is more conclusively defined as "something that is open: as a (1): breach, aperture." *Id.* (retrieved June 11, 2009, from <http://www.merriam-webster.com/dictionary/opening>). Therefore, from nothing but the plain meaning of the term, a "bottom opening" could either be defined as "an opening in the underside of the ice storage bin," or as "an opening in the lowest part of the ice storage bin."

Since we have exhausted the claim language itself, we turn to the specification for assistance in assigning the appropriate meaning to a "bottom opening" through which "the auger

moves ice pieces from the ice storage bin” “for dispensing from the ice storage bin.” Looking first for limitations on the definition of “opening,” the specification states that ice pieces are dispensed through outlet opening 170. ‘130 Patent, 9:58-59; 10:52-53; 10:63-64. The use of “outlet opening” in the specification while the claim uses the term “bottom opening” cautions us against limiting directly equating “bottom opening” with outlet opening 170, without some further rationale.

The specification additionally states that “rotation of the auger 172 ensures that the ice pieces are free to move downwardly, under the urgings of gravity, through the lower ice bin member...such that the ice pieces may be dispensed.” *Id.*, 9:65 – 10:2. This statement would seem to support the conclusion that the “bottom opening” must, indeed, be in the underside of the ice storage bin, since only in this position would gravity have any direct effect on dispensing the ice from the ice storage bin. Reference to the claims, however, brings a halt to that line of reasoning. Unasserted claim 3, which depends from claim 1, recites that “the auger is supported in a vertical orientation within the ice storage bin.” *Id.*, 13:4-6. It is precisely this vertical orientation of the auger that is disclosed in the ‘130 patent’s specification such that rotation of the auger would allow gravity to affect the dispensing of the ice from the ice storage bin. *Id.*, Figure 3; Figure 9; 10:25-67.

Since this embodiment of a vertical auger, with all of the limitations thereby implied, is explicitly recited in dependent claim 3, we read claim 1 as being broader. Since claim 1 does not contain any limitations on the orientation of the auger, we do not construe the elements recited in claim 1 as needing the assistance of gravity in dispensing ice from the ice storage bin. This means, not only allowing the auger to have a non-vertical orientation, but also that the “bottom

opening” is free to be an opening in either “the underside” or “the lowest part” of the ice storage bin.

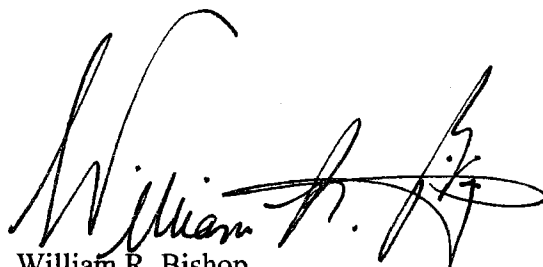
Based on the preceding discussion, the Commission hereby construes the phrase “ice storage bin having a bottom opening” to mean “an ice storage bin with an opening at a lowest portion of the ice storage bin.” While this proposed construction is close to Whirlpool’s broader request, we do note that “lowest” rather than “lower” better satisfies the meaning of the term “bottom” without explicitly requiring that the opening be in the “underside” of the ice bin.

The Commission construes the disputed claim terms as follows:

1. “freezer compartment” means “a section of a refrigerator cabinet kept at a below-freezing temperature, having an opening that provides access to the interior and a closure member that allows access to the access opening;”
2. “disposed within the freezer compartment” means “placed within the freezer compartment, including elements mounted on the closure member,” and
3. “ice storage bin having a bottom opening” means “an ice storage bin with an opening at a lowest portion of the ice storage bin.”

The Commission affirms the ID’s construction of the term “ice maker.”

By order of the Commission.
Marilyn R. Abbott, Secretary


William R. Bishop
Acting Secretary

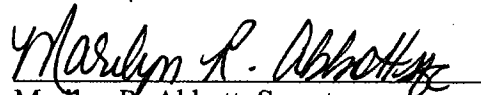
Issued: July 8, 2009

**CERTAIN REFRIGERATORS AND COMPONENTS
THEREOF**

337-TA-632

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION DECISION TO MODIFY CERTAIN CLAIM CONSTRUCTIONS MADE IN A FINAL INITIAL DETERMINATION AND TO REMAND THE INVESTIGATION TO THE ALJ; EXTENSION OF TARGET DATE** has been served by hand upon the Commission Investigative Attorney, Lisa Murray, Esq., and the following parties as indicated, on July 8, 2009.


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