

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

**In the Matter of**

**CERTAIN ACCESS CONTROL SYSTEMS  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1016**

**COMMISSION OPINION**

The Commission instituted this investigation on August 9, 2016, based on a complaint filed on behalf of The Chamberlain Group, Inc. (“CGI” or “Complainant”) of Elmhurst, Illinois. 81 *Fed. Reg.* 52713 (Aug. 9, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of certain claims of three U.S. patents, including U.S. Patent No. 7,161,319 (“the ’319 patent”). All of the asserted claims of the ’319 patent require a “wall console,” which the presiding administrative law judge (“ALJ”) construed as “a wall-mounted control unit including a passive infrared detector.” Order No. 13 at 18 (Jan. 26, 2017). On March 2, 2017, Respondents filed a motion for summary determination of non-infringement of the ’319 patent based on the ALJ’s construction.<sup>1</sup> Complainant CGI filed a response in which it stated that it did not oppose the motion based on the ALJ’s construction of “wall console.” On March 27, 2017, the ALJ issued an initial determination (“ID”) granting the motion. Order No. 23 (Mar. 27, 2017).

The Commission has determined to review and vacate the ID, and deny CGI’s motion for leave to file a reply brief. On review, the Commission has determined to construe “wall console”

---

<sup>1</sup> The moving Respondents included Techtronic Industries Co. Ltd. of Tuseen Wan, Hong Kong; Techtronic Industries North America, Inc. of Hunt Valley, Maryland; One World Technologies Inc. of Anderson, South Carolina; OWT Industries Inc. of Pickens, South Carolina; and Et Technology (Wuxi) Co., Ltd., of Zhejiang, China.

to have its plain and ordinary meaning: “a wall-mounted control unit.” The investigation is remanded to the ALJ for further proceedings based on the Commission’s claim construction.

## **I. BACKGROUND**

### **A. U.S. Patent No. 7,161,319**

The ’319 patent is titled “Movable Barrier Operator Having Serial Data Communication” and names Joseph Ergun and James J. Fitzgibbon as the inventors. The ’319 patent is a continuation of application No. 09/544,904, which issued as U.S. Patent No. 6,737,968 (“the ’968 patent”) (not asserted here). The ’968 patent is titled “Movable Barrier Operator Having Passive Infrared Detector” and names Joseph Ergun, Thomas Brookbank, Sandor Goldner, and David Daly as the inventors. Aside from Mr. Ergun, the inventors identified on the ’968 patent are different than those identified on the ’319 patent.

The ’319 patent discloses a “wall control unit for a movable barrier operator,” such as a garage door system, that “sends baseband signals over a wire connection to a head unit of a movable barrier operator to command the movable barrier to perform barrier operator functions.” The ’319 patent at Abstract. Among other features, the patent teaches that the wall control unit includes an “infrared detector [that] causes a command signal to be sent to the head unit to control the illumination state of the light source.” *Id.*

The background section of the ’319 patent specification explains that passive infrared detectors (“PIDs”) have been widely used to detect the presence of a person and that PIDs have been associated with the head unit of prior art garage door operators. *See id.* at 1:21-43. The specification also explains that such prior art systems had several disadvantages including: (1) the need for a PID to have “some type of aiming or alignment mechanism associated with it so that it could be thermally responsive to at least part of the garage interior,” *id.* at 1:44-47; and (2) prior

art PIDs were expensive, fragile, and unreliable as they had to be built into the head unit of the garage door operator, *see id.* at 1:54-61.

In view of such prior art systems, the specification explains that “[w]hat is needed then is a passive infrared detector for controlling illumination from a garage door operator which could be quickly and easily retrofitted to existing garage door operators with a minimum of trouble and without voiding the warranty.” *Id.* at 2:4-8. In addition, the ’319 patent specification describes techniques for data communication between the wall console’s microcontroller and the head unit’s microcontroller without necessarily requiring a PID to be colocated on the wall console. *See, e.g.,* the ’319 patent at Abstract, FIGS. 12A-H, 2:26-63, 4:56-7:26. Every exemplary embodiment of a movable barrier operator described in the ’319 patent includes a PID and a microcontroller. *See id.* at FIGS. 1-12, 3:10-37; Order No. 13 at 17.

Between October 6, 2016 and December 2, 2016, the parties submitted briefs to the ALJ regarding claim terms for construction. As part of that briefing, the parties disputed only a single term from the ’319 patent – “wall console.” The term “wall console” is found in every independent claim of the ’319 patent. For example, claim 1 of the ’319 patent recites:

An improved garage door opener comprising a motor drive unit for opening and closing a garage door, said motor drive unit having a microcontroller and **a wall console, said wall console** having a microcontroller, said microcontroller of said motor drive unit being connected to the microcontroller of **the wall console** by means of a digital data bus.

The ’319 patent at 7:34-39 (emphasis added).

Unlike the ’319 patent, the parent ’968 patent includes claims expressly drafted to recite a wall control unit having a PID. For example, claim 1 of the ’968 patent recites:

**A wall control unit** for a movable barrier operator . . . comprising:

a wall control unit port . . .;

a first switch . . .;

a second switch . . .; and

**a passive infrared detector** for causing a command signal to be sent to the head unit to control the illumination state of the light source.

The '968 patent at 21:2-16 (emphasis added). Other claims of the '968 patent, however, expressly do not include the PID in the wall control unit. For example, claim 7 recites:

A movable barrier operator having an illumination controller, comprising:

a head unit . . .;

**a wall control unit** . . ., wherein the wall control unit further includes a first switch . . . and a second switch . . .;

a communication pathway . . .; and

**a passive infrared detector** for causing a command signal to be sent to the head unit over the communications pathway to control the illumination state of a light source.

*Id.* at 21:34-22:10 (emphasis added). Claim 11 of the '968 patent, which depends from claim 7, requires that “the first switch, the second switch and the passive infrared detector are **colocated** on the wall control unit . . . .” *Id.* at 22:21-24 (emphasis added).

During prosecution, the claims of the '319 patent were rejected under 35 U.S.C. § 112, ¶ 1, for failing to comply with the enablement requirement. *See* Complaint, Appx. A at CGI\_TTI\_00000076. In response to that rejection, the applicant provided “a listing of the claims including numerical and verbal references to subject matter of the claims and where it is described in the text and drawings of the application as filed.” *Id.* at CGI\_TTI\_00000087. Specifically, for the limitation “wall console,” the applicant identified the “wall control **60**” in FIGS. 2 and 4 and

portions of the specification as meeting the enablement requirement. *Id.* at CGI\_TTI\_00000089. The § 112 rejection was subsequently dropped in the next office action. The prosecution history for the '319 patent does not include any other statements from the applicant regarding the scope of the term “wall console,” nor any mention of an infrared detector.<sup>2</sup> *See* Order No. 13 at 14.

**B. Order No. 13 (Claim Construction Order)**

On December 19, 2016, the ALJ held a technology tutorial and a *Markman* hearing. Before the ALJ, the parties agreed that the plain and ordinary meaning of “wall console” is a “wall-mounted control unit.” *See* Order No. 13 at 8, 12. Respondents, however, argued that the plain meaning did not control because “the patentee clearly disclaimed wall consoles *without* passive infrared detectors, making it abundantly clear the invention is limited to a wall unit that *includes* a passive infrared detector.” *See id.* at 10 (quoting Respondents’ Initial *Markman* Brief at 8). While the ALJ acknowledged the lack of traditional disavowal language, he felt compelled to agree with Respondents and find disavowal in light of recent Federal Circuit case law. *Id.* at 12, 16. Thus, although the ALJ was “personally [] reluctant” to find disavowal, he construed “wall console” to mean “a wall-mounted control unit including a passive infrared detector.” *Id.* at 17.

In his analysis, the ALJ agreed with Complainant that the claims of the parent '968 patent deliberately “focus on infrared detection and the location of that detector,” but found that “none of the sixteen issued claims of the '319 patent have anything to do with infrared detection.” *Id.* at 13. The ALJ noted that the “titles of the '968 and '319 patents show the deliberate and distinct aims of each patent.” *Id.* He also noted that “the conspicuous differences between the '968 and the '319 patents support Complainant’s contention that ‘despite an exemplary embodiment’s

---

<sup>2</sup> The prosecution history for the '968 patent does not appear to be in the record and is not available electronically through the PTO website.

inclusion of a microcontroller and a passive infrared detector in the wall control unit, the patentee chose to claim only a ‘microcontroller’ as a component of the wall console, not a ‘passive infrared detector.’” *Id.* (quoting Complainant’s Initial Markman Brief at 13). The ALJ found that “[t]his is the opposite of ‘a clear intention to limit the claim scope using words or expressions of manifest exclusion or restriction,’ and the fact that a PID is located in the wall control unit in the only embodiment of the patent does not control the issue.” *Id.* (citing *Innova/Purewater, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111,1117 (Fed. Cir. 2004)). The ALJ also found that “the prosecution history of the ’319 patent contains no argument by the patentee that ‘wall console’ was meant to include PID.” *Id.* at 14. The ALJ referenced the testimony of Complainant’s expert, Dr. Nathaniel Davis, by concluding that he agreed with Dr. Davis that “a person having ordinary skill in the field would not review the intrinsic evidence of the ’319 patent and understand that ‘wall console’ only meant those wall-mounted control units which have a PID.” *Id.*

Nevertheless, the ALJ felt “compelled to accept Respondents’ construction in this case because each piece of intrinsic evidence which was important to the Federal Circuit in [*Poly-America, L.P. v. API Indus., Inc.*, 839 F.3d 1131 (Fed. Cir. 2016), *petition for cert. filed* (U.S. Mar. 16, 2017) (No. 16-1123)] is present in Complainant’s ’319 patent.” Order No. 13 at 16. The patent at issue in *Poly-America* was directed to “an improved construction of an elastic drawstring trash bag.” 839 F.3d at 1133. The Court found that the specification and prosecution history contained clear and unequivocal statements that the inventor intended to limit the claimed invention to a trash bag with “short seals” at its upper corners that extend inwardly to narrow the bag’s upper opening. *Id.* at 1132. The ALJ found “the facts of *Poly-America* hit the present case on all fours and represent the latest instruction from the controlling court.” Order No. 13 at 18. In particular, the ALJ relied on the following intrinsic evidence:

- The '319 patent states that a PID is a “principal aspect” of the “present invention,” *Id.* at 16 (quoting the '319 patent at 2:64-67); *see also* the '319 patent at 3:12-15;
- The invention solves the need for a “passive infrared detector for controlling illumination from a garage door operator which could be quickly and easily retrofitted to existing garage door operators,” Order No. 13 at 16 (quoting the '319 patent at 2:4-9);
- The summary of the invention states that the PID is “contained in a wall control unit,” *id.* (quoting the '319 patent at 2:17-19);
- The prior art is disparaged because it places the PID in other locations such as the head unit of the garage door operator, *id.* (citing the '319 patent at 1:41-61);
- The fact that the '968 patent claims explicitly recite a PID in the wall-mounted control unit is “irrelevant” as those claims are akin to independent claims 1 and 16 in *Poly-America's* asserted patent which explicitly recited the feature read into claim 10 by the court, *id.* at 16-17 (citing *Poly-America*, 839 F.3d at 1337);
- There are no embodiments in the '319 patent where the PID is not positioned in the wall control unit, *id.* at 17; and
- It is fairly implied from the specification that the invention of the '319 patent can be “easily retrofitted to existing garage door operators with a minimum of trouble and without voiding the warranty” because the PID is located in the wall-mounted control unit and not in the more expensive and complicated head unit, *id.* (quoting the '319 patent at 1:41-61).

The ALJ found that CGI did not address *Poly-America* in either of its claim construction briefs but “it did present a slide during the Markman Hearing which said the case is distinguishable because of that patentee’s ‘unequivocal disavowal’ during prosecution *in addition* to the ‘present invention’ language of the specification.” *Id.* at 18 (emphasis in original). The ALJ, however, did not find that argument persuasive because the *Poly-America* court purportedly “explained that that patentee’s statements during prosecution were actually ‘irrelevant’ in light of the clear statements in the specification.” *Id.* (citing 839 F.3d at 1137). Since similarly clear statements were made in the '319 patent, the ALJ concluded that “the lack of *additional* prosecution history activity should not make the difference Complainants look for.” *Id.* (emphasis in original).

Thus, the ALJ's construction "wall console" was not the plain and ordinary meaning, but rather "a wall-mounted control unit including a passive infrared detector." *Id.*

**C. Order No. 23 (Subject ID)**

On March 2, 2017, Respondents filed a motion for summary determination of non-infringement of the asserted claims of the '319 patent based on the ALJ's claim construction. CGI filed a response in which it stated that it did not oppose the motion based on the ALJ's construction of "wall console" and that it did not oppose the motion with respect to one accused product which is still under development to the extent it does not include a "wall console." *See* ID at 1. The ALJ granted the motion because "it is undisputed that Respondents' accused products do not include a 'wall console' as required by the claims of the '319 patent." *Id.* at 5; *see also* CPet<sup>3</sup> at 2. The ID, thus, concluded that "there is no genuine issue of material fact over whether Respondents' accused products infringe the '319 patent." ID at 5.

Complainant filed a timely petition for review of the ID and the ALJ's underlying claim construction. Respondents filed a timely joint response. On April 14, 2017, CGI filed a motion for leave to file a reply brief.

**II. STANDARD OF REVIEW**

A petition for review should be granted and review ordered if it appears that "an error or abuse of the type described in paragraph (b)(1) of [19 C.F.R. § 210.43] is present or if the petition raises a policy matter connected with the initial determination, which the Commission thinks is necessary or appropriate to address." 19 C.F.R. § 210.43. The "errors" described in 19 C.F.R. § 210.43(b)(1) include "(i) that a finding or conclusion of material fact is erroneous; [and] (ii) that a legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of

---

<sup>3</sup> Complainant's Petition for Review of Initial Determination Granting Summary Determination of Non-Infringement of U.S. Patent No. 7,161,319 (Apr. 3, 2017) ("CPet")



discretion.” If a petition is granted, the Commission reviews all issues under a *de novo* standard. *Certain Soft-Edged Trampolines and Components Thereof*, Inv. No. 337-TA-908, Comm’n Op. at 4 (May 1, 2015). 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 for further proceedings, in whole or in part, the initial determination of the administrative law judge.” 19 C.F.R. § 210.45(c). “The Commission also may make any findings or conclusions that in its judgment are proper based on the record in the proceeding.” *Id.*

### **III. LEGAL STANDARD**

#### **A. Summary Determination**

Under Commission Rule 210.18 (a), 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).

#### **B. Infringement**

Section 337 prohibits “the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that . . . infringe a valid and enforceable United States patent.” 19 U.S.C. § 1337(a)(1)(B)(i). Determining whether an accused article is covered by a patent claim is a two-step process. *See, e.g., Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*), *aff’d*, 517 U.S. 370 (1996). “The first step is determining the meaning and scope of the patent claims

asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” *See id.* (citation omitted). The patent holder bears the burden of proof by a preponderance of the evidence that each of the claim’s limitations is found either literally or equivalently in the accused product. *Warner-Lambert Co. v. Teva Pharm. USA, Inc.*, 418 F.3d 1326, 1342 (Fed. Cir. 2005).

### C. Claim Construction

Claim construction focuses on the intrinsic evidence, which consists of the claims, the remainder of the specification, and the prosecution history. *See generally Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*). The words of a claim “are generally given their ordinary and customary meaning,” which is “the meaning that term would have to a person of ordinary skill in art” as of the date the patent application was filed. *Id.* at 1312-13 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)) (citations omitted). A person of ordinary skill in the art “is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Id.* 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.” *Id.* at 1314. Often, however, “determining the ordinary and customary meaning of the claim requires examination of terms that have a particular meaning in a field of art.” *Id.* “[T]he 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.* (citing *Innova/Purewater*, 381 F.3d at 1116). 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.*

The court departs from the plain and ordinary meaning in only two instances. *Hill–Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014). The first is when a patentee acts as his own lexicographer. *Id.* The second is when the patentee disavows the full scope of the claim term in the specification or during prosecution. *Id.* Disavowal can be effectuated by language in the specification or the prosecution history. *See Phillips*, 415 F.3d at 1316–17. “In either case, the standard for disavowal is exacting, requiring clear and unequivocal evidence that the claimed invention includes or does not include a particular feature.” *Poly-America*, 839 F.3d at 1136.

#### IV. DISCUSSION

The specification and the prosecution history in the record, taken in their entirety, demonstrate that the patentee of the ’319 patent did not disclaim wall consoles without PIDs. The Commission, therefore, construes “wall console” to have its plain and ordinary meaning, “a wall-mounted control unit,” and remands the investigation to the ALJ for further proceedings based on the Commission’s claim construction.

There is no dispute that the only embodiment of the wall control unit in the ’319 patent specification includes a PID, and that the specification describes the “principal aspect of the present invention” as providing an improved PID for a garage door operator. However, in addition to providing “a quickly and easily retrofitted” PID for a garage door operator, a substantial portion of the ’319 patent specification is devoted to describing techniques for data communication between the wall console’s microcontroller and the motor drive unit’s microcontroller without necessarily requiring a PID to be colocated on the wall console. *See, e.g.*, the ’319 patent at Abstract, FIGS. 12A-H; 2:26-63, 4:56-7:26.

Moreover, the ’319 patent specification describes the PID as a separate component of the

wall control unit. As stated in the specification, the “invention relates in general to movable barrier operators.” *Id.* at 1:14-15. One objective of the patent is to provide a PID that can be “retrofitted” into existing garage door operators. *Id.* at 2:4-9, 2:64-66. The specification describes multiple components that can be included in a wall control unit to control the functionality of a movable barrier operator, including PIDs, other detectors and sensors, and microcontrollers. *See id.* at 2:17-22 (“Both the infrared detector and the comparator and the microcontroller are contained in a wall control unit. The wall control unit has a plurality of switches which would normally be used to control the functioning of the garage door operator and are connected in conventional fashion thereto.”). The specification indicates that the output signal from a PID is just one example of the kinds of detector or switch output that can be communicated between the microcontrollers of the wall console and the head unit. *See id.* at FIG. 4, 4:22-48 (associating a momentary contact light switch **120**, a door control switch **122**, a vacation switch **124**, an auto-manual select switch **126**, and an ambient light sensor **140** with the wall control **60**). When the ’319 patent specification is viewed in this context, we agree with the ALJ’s finding, referencing Dr. Davis’ testimony, that “a person having ordinary skill in the field would not review the intrinsic evidence of the ’319 patent and understand that ‘wall console’ only meant those wall-mounted control units which have a PID.” Order No. 13 at 14.

Moreover, we decline to find disavowal because the intrinsic evidence shows that the patentee intended for a PID to be optionally located in a wall control unit. A patentee is not required to include within each of their claims all advantages or features described as significant or important in the written description. *See Golight, Inc. v. Wal-Mart Stores, Inc.*, 355 F.3d 1327, 1331 (Fed. Cir. 2004). Otherwise, there would be no need for claims. *Id.* Independent claims 1 and 12 of the ’968 patent expressly claim a “wall control unit” having first and second switches

and “a passive infrared detector.” The ’968 patent at 21:2-16, 22:25-38. By contrast, independent claim 7 of the ’968 patent expressly claims a “movable barrier operator” having a “wall control unit” that includes first and second switches, and a PID (but not expressly included in the wall control unit). *Id.* at 21:34-22:10. Claim 11 of the ’968 patent, which depends from claim 7, recites that “the first switch, the second switch and the passive infrared detector are **colocated on the wall control unit . . .**” *Id.* at 22:21-24 (emphasis added). The differences between the claims of the ’968 patent demonstrate the patentee’s intent to claim wall control units *with* and *without* PIDs.

We agree with the ALJ’s finding in the Claim Construction Order that, “the conspicuous differences between the ’968 and the ’319 patents,” shows “the opposite of ‘a clear intention to limit the claim scope using words or expressions of manifest exclusion or restriction.’” Order No. 13 at 13. The ’319 patent and the ’968 patent claim different inventions as discussed above and as evidenced by the titles, the different inventors, and the claims. *See id.*; CPet at 12. The ’968 patent is entitled “Movable Barrier Operator Having Passive Infrared Detector,” whereas the ’319 patent is entitled “Movable Barrier Operator Having Serial Data Communication.” Aside from Mr. Ergun, the inventors identified on the ’968 patent are different than those identified on the ’319 patent. In addition, the ’968 patent includes certain claims expressly drafted to recite a wall control unit including a PID, whereas the claims of the ’319 patent have nothing to do with infrared detection.

We find that this case is distinguishable from *Poly-America*. The patent at issue in *Poly-America* was directed to “an improved construction of an elastic drawstring trash bag.” 839 F.3d at 1133. The Court found that the specification and prosecution history contained clear and unequivocal statements that the inventor intended to limit the claimed invention to a trash bag with

“short seals” at its upper corners that extend inwardly to narrow the bag’s upper opening. *Id.* at 1132. The accused trash bags did not have short seals at its upper corners that extend inwardly. *Id.* at 1135. In finding disavowal of trash bags without an extended short seal, the court made the following findings regarding the intrinsic evidence:

- The patentee’s “reply to the examiner’s second rejection of **all claims** also contains a clear and unmistakable disavowal of short seals that do not extend inwardly,” *id.* at 1137 (emphasis added);
- “[E]very section of the specification indicates the importance of inwardly extended short seals,” *id.* at 1137, *see also id.* at 1133-34;
- The title of the invention is “Reduced Opening Elastic Drawstring Bag,” *id.* at 1133;
- The specification disparages prior art bags that do not have extended short seals, *id.* at 1134, 1136; and
- Of the five figures in the patent at issue, the only figure that does not have a bag with an extended short seal is the figure that depicts prior art bags, *id.* at 1134, 1137.

The ALJ’s Claim Construction Order characterized the prosecution history in *Poly-America* as “irrelevant.” Order No. 13 at 18. However, we find that prosecution history disclaimer is the crucial intrinsic evidence relied on by the court in *Poly-America* that is not present in this case. During prosecution of the patent at issue in *Poly-America*, the court found that the patentee “distinguished [prior art] from **all of the [] independent claims** on the basis that [the prior art’s] short seals were not extended . . . .” 839 F.3d at 1135 (emphasis added). The court explained that all of the claims were subsequently allowed because the examiner found that “the prior art fails to teach elastic drawstrings welded into the bag hem at short seals that form an upper opening that is smaller than the width of the bag.” *Id.*

The Claim Construction Order’s interpretation of *Poly-America* led to the erroneous conclusion that “the existence of the ’968 patent, with its shared specification and distinct claims

explicitly reciting a PID in the wall-mounted control-unit, is ‘irrelevant,’ as those claims are akin to independent claims 1 and 16 in Poly-America’s ’308 patent which explicitly recited the feature read into claim 10 by the court.” Order No. 13 at 16-17 (citing 839 F.3d at 1337). Even though the patent at issue in *Poly-America* had three independent claims (claims 1, 10, and 16), and one of those independent claims (claim 10) did not expressly state any limitation as to the size of the short seals or the relationship between the size of the upper opening and the bag proper, the court found such claim differences “irrelevant” because it was clear that the patentee’s statements during prosecution related to all of the independent claims. *See Poly-America*, 839 F.3d at 1135, 1137. For this reason, the court in *Poly-America* dismissed the appellant’s claim differentiation argument and concluded that the claim differentiation principles “cannot override clear statements of claim scope found in the specification and prosecution history.” *Id.* at 1137.

Unlike the clear prosecution history disclaimer present in *Poly-America*, we find no such disclaimer in the prosecution history for the ’319 patent. In fact, the prosecution history for the ’319 patent supports our conclusion that the patentee intended that the term “wall console” be given its plain and ordinary meaning, *i.e.*, “a wall-mounted control unit.” The ’319 patent claims were initially rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement. Complaint, Appx. A at CGI\_TTI\_00000076. In response to that rejection, the applicant detailed where the subject matter of the claims were described in the text and drawings of the patent application as filed. *Id.* at CGI\_TTI\_00000087. In particular, for the “wall console having a microcontroller” limitation, the applicant directed the examiner to the “wall control 60 (Fig. 4) includes a microcontroller 110” and portions of the specification as meeting the enablement requirement. *Id.* at CGI\_TTI\_00000089. Following this response, the examiner dropped the § 112 rejection. We reject Respondents’ argument that such statements

constitute a disavowal of claim scope with respect to the term “wall console.” RResp<sup>4</sup> at 12.

Subsequent office actions rejected the claims of the '319 patent on the basis of statutory and non-statutory double patenting as being unpatentable over U.S. Patent No. 6,624,605 (“the '605 patent”). Complaint, Appx. A at CGI\_TTI\_00000107-108, CGI\_TTI\_00000126-127. The applicant stated in its response that CGI was the owner of the present application and the '605 patent, and that the '319 patent claims were purposefully drafted to be similar to those found in the '605 patent. *See id.* at CGI\_TTI\_00000115. To overcome the double patenting rejection, the applicant filed a terminal disclaimer so that the term of the '319 patent would not extend beyond the expiration of the '605 patent. *Id.* at CGI\_TTI\_00000136-138. The examiner’s reasons for allowance stated that the claims were allowed because the prior art failed to teach or suggest “a garage door opener comprising a motor drive having a microcontroller and a wall console having a microcontroller, wherein the microcontroller of the motor drive unit and the microcontroller of the wall console being connected by a digital data bus.” *Id.* at CGI\_TTI\_00000155. We agree with the ALJ’s Claim Construction Order that “the prosecution history of the '319 patent contains no argument by the patentee that ‘wall console’ was meant to include PID, or that the presence of a PID in the ‘wall console’ was what made the '319 patent claims novel or nonobvious.” Order No. 13 at 14. In sum, the prosecution history gives no indication that “wall console” has any meaning other than the plain and ordinary meaning.

There is no dispute that the '319 patent disparages prior art garage door operators that place PIDs in the head units rather than the wall control units. *See id.* at 16 (citing the '319 patent at 1:41-61). If a PID is to be included in a garage door operator, the '319 patent explains that it is

---

<sup>4</sup> Respondents’ Response to Complainant’s Petition for Review of Initial Determination Granting Summary Determination of Non-Infringement of U.S. Patent No. 7,161,319 (Apr. 10, 2017) (“RResp”)



advantageous to include the PID in the wall control unit instead of the head unit of the garage door operator. *See id.* However, the '319 patent does not disparage garage door operators and wall control units that do not have or use PIDs. In fact, as discussed above, the '968 patent expressly claims a “movable barrier operator” having a PID that is not necessarily located in a wall control unit. *See* the '968 patent at 21:34-22:10.

In addition to *Poly-America*, the ALJ's Claim Construction Order relied on three other Federal Circuit cases to support its finding of disavowal. Order No. 13 at 17 (citing *UltimatePointer, L.L.C. v. Nintendo Co., Ltd.*, 816 F.3d 816 (Fed. Cir. 2016); *Luminara Worldwide, LLC v. Liown Elecs. Co. Ltd.*, 814 F.3d 1343 (Fed. Cir. 2016); and *GPNE Corp. v. Apple Inc.*, 830 F.3d 1365 (Fed. Cir. 2016)). These cases are distinguishable on their facts. The claim construction dispute in *UltimatePointer* focused on whether the claimed “handheld device” was limited to direct-pointing devices or also included indirect-pointing devices. 816 F.3d at 823. The court found that “the repeated description of the invention as a direct-pointing system, the repeated extolling of the virtues of direct pointing, and the repeated criticism of indirect pointing clearly point to the conclusion that the ‘handheld device’ in the asserted claims is limited to a direct-pointing device.” *Id.* The claim construction dispute in *Luminara* focused on whether the claimed artificial flame element of a candle device disclaimed non-chaotic pivoting and was limited to chaotic movements. 814 F.3d at 1353-54. The court found that the patentee disclaimed devices driven by non-chaotic movements because the patent taught that the “present description” solved the problem associated with prior art candle devices by using devices driven by “real but chaotic movements.” *Id.* at 1354. In *GPNE*, the court construed the term “node” as being limited to a “pager” because the specification and the prosecution history “consistently and exclusively” described the invention as a system of pagers. 830 F.3d at 1370-71. None of these

cases involved a patentee claiming different inventions in two related patents that share a common specification.

We find this investigation is more closely aligned with *Rambus Inc. v. Infineon Techs. Ag.*, 318 F.3d 1081 (Fed. Cir. 2003) and *LG Elecs., Inc. v. Bizcom Elecs., Inc.*, 453 F.3d 1364 (Fed. Cir. 2006), *rev'd on other grounds*, *Quanta Comput. Inc. v. LG Elecs., Inc.*, 553 U.S. 617 (2008). The claim construction dispute at issue in *Rambus* focused on whether the term “bus” was limited to “a multiplexed set of signal lines used to transmit address, data, and control information.” 318 F.3d at 1094. The court found certain passages in the specification may suggest limiting “bus” to a multiplexing bus, but the remainder of the specification and prosecution history shows that the patentee did not clearly disclaim a broader claim scope. *Id.* at 1095. In particular, the court found that the prosecution history showed that a multiplexing bus was only one of many inventions disclosed in the application. *Id.* The court noted that a “careful review of the prosecution histories of the patents-in-suit” shows that the patentee “expressly recited multiplexing in the claim language for claims limiting the bus to the inventive multiplexing bus.” *Id.* Like *Rambus*, *LG Elecs.* also involved an original patent application that described multiple inventions and different sets of claims directed to the different inventions. The court in *LG Elecs.* refused to attribute statements related to an invention not elected during prosecution to find disclaimer with respect to the invention actually claimed in the asserted patent. 453 F.3d 1378. The court noted that the unelected claims expressly contained the limitation that was erroneously imported into the elected claims by the district court. *Id.* Respondents attempt to distinguish *LG Elecs.* on the basis that the examiner did not issue a Restriction Requirement with respect to the claims of the '319 and '968 patents. However, there is no requirement (and Respondents cite no case law) that a patent application must be subject to a Restriction Requirement in order to disclose

multiple inventions that are pursued in separate patent applications.

In sum, the specification and the prosecution history, taken in their entirety, support the Commission's determination that the patentee did not limit "wall console" to those wall-mounted control units having a PID. None of the patentee's statements constitute a clear disclaimer of claim scope and, thus, we find the term "wall console" carries its plain and ordinary meaning: "a wall-mounted control unit."

Respondents argue that no remand is necessary even if we reverse the ALJ's claim construction because "Complainant's experts failed to provide any expert opinion on infringement (under either party's construction) [and] failed to rebut the non-infringement opinion of Respondents' experts." RResp at 22-23. We reject the argument that a remand is unnecessary. We leave it to the ALJ to weigh the infringement evidence in the first instance based on the Commission's construction of "wall console."

Finally, the Commission denies CGI's motion for leave to file a reply brief. Although CGI's motion states that its reply corrects factual and legal misrepresentations in Respondents' Response, we find that all of CGI's arguments in the reply could have been raised in its Petition because Respondents made the same arguments before the ALJ in their claim construction briefs.

## **V. CONCLUSION**

For the foregoing reasons, the Commission has determined to construe "wall console" to have its plain and ordinary meaning: "a wall-mounted control unit." Thus, the Commission has determined to vacate the ID and remand the investigation to the ALJ for further proceedings based on the Commission's claim construction. The Commission has also determined to deny CGI's motion for leave to file a reply brief.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton  
Office of the Secretary

Issued: May 5, 2017

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served upon the following parties as indicated, on **May 5, 2017**.



\_\_\_\_\_  
Lisa R. Barton, Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainant The Chamberlain Group, Inc.:**

Joseph V. Colaianni, Jr., Esq.  
**FISH & RICHARDSON PC**  
The McPherson Building  
901 15th Street NW, 7th Floor  
Washington, DC 20005

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**On Behalf of Respondents Techtronic Industries Company  
Limited, Techtronic Industries North America Inc., One  
World Technologies, Inc., OWT Industries, Inc., and Et  
Technology (Wuxi) Co., Ltd.:**

Eric S. Namrow, Esq.  
**MORGAN, LEWIS & BOCKIUS LLP**  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_