

United States Court of Appeals for the Federal Circuit

MOSKOWITZ FAMILY LLC,
Plaintiff-Appellant

v.

GLOBUS MEDICAL, INC.,
Defendant-Appellee

2024-1696

Appeal from the United States District Court for the Eastern District of Pennsylvania in No. 2:20-cv-03271-MSG, Judge Mitchell S. Goldberg.

Decided: September 11, 2026

LAUREN ANN DEGNAN, Fish & Richardson PC, Washington, DC, argued for plaintiff-appellant. Also represented by MICHAEL JOHN BALLANCO, JOSEPH V. COLAIANNI, JR., RUFFIN B. CORDELL, BRIAN JAMES LIVEDALEN, JACK WILSON.

JOHN PIERRE LAHAD, Susman Godfrey LLP, Houston, TX, argued for defendant-appellee. Also represented by MARK HATCH-MILLER, DANIEL SIMON, New York, NY.

Before PROST, SCHALL, and STOLL, *Circuit Judges*.

PROST, *Circuit Judge*.

Moskowitz Family LLC (“Moskowitz”) appeals from decisions of the U.S. District Court for the Eastern District of Pennsylvania granting Globus Medical, Inc.’s (“Globus”) motion for summary judgment of noninfringement, construing the term “universal,” and denying Moskowitz’s motion for judgment as a matter of law (“JMOL”) of infringement. For the following reasons, we affirm.

BACKGROUND

I

The spine has three major regions: the cervical, lumbar, and thoracic. In these regions are intervertebral discs that serve as shock absorbers and aid in movement while maintaining spinal stability. These discs can experience issues like herniation and degeneration. Spinal-fusion surgery helps alleviate those issues by replacing the damaged disc with a spinal implant. The three patents at issue concern implant systems designed to improve spinal-fusion surgery.

U.S. Patent No. 8,353,913 (“the ’913 patent”) describes an implant position tool that works with the implant and screw guide to “accomplish precision screw trajectory.” ’913 patent col. 3 ll. 32–43. U.S. Patent No. 9,889,022 (“the ’022 patent”) relates to an apparatus for facilitating bone and screw fusion. Its focus is a “bidirectional screw (BDS) system, and in particular its application to the spine, also referred to as bi-directional fixating transvertebral (BDFT) screws which can be used as a stand-alone intervertebral device . . . as well as a transvertebral bone fusion screw apparatus.” ’022 patent col. 1 ll. 33–40. And, finally, U.S. Patent No. 10,478,319 (“the ’319 patent”) describes an expandable spinal implant designed for placement between two vertebral bodies to facilitate and encourage bone fusion and maintain anterior column height. *See* ’319 patent col. 2 ll. 54–67, claim 1. The following claims are on

appeal: claims 1 and 10 of the '913 patent, claim 47 of the '022 patent, and claim 1 of the '319 patent. The representative claims are reproduced below, respectively.

1. A tool for manipulating and inserting a universal, intervertebral bone fusion spacer into a disc space between a first vertebral body and a second vertebral body for providing fusion of the first vertebral body to the second vertebral body via biological bone fusion and screw fusion, wherein the universal, intervertebral bone fusion spacer includes an intervertebral cage having a first integral screw guide and a second integral screw guide, wherein each longitudinal end of the intervertebral cage includes a slot or indentation formed adjacent to an edge of an upper surface of the intervertebral cage, the tool comprising:

a gripper having a plurality of prongs,

wherein a distal end of each of the plurality of prongs is capable of engaging a respective slot or indentation of the intervertebral cage; and

a screw guide for controlling a direction of screws that are inserted into the first integral screw guide and the second integral screw guide,

wherein the screw guide is positioned between the plurality of prongs.

'913 patent claim 1.

47. A universal, intervertebral combination internal screw guide and fixation apparatus configured to be inserted into a disc space between a first vertebral body and a second vertebral body and to provide fusion of the first vertebral body to the second

vertebral body via biological bone fusion and screw fusion, the apparatus comprising:

an intervertebral cage including:

a top wall, a bottom wall, and two sidewalls defining an open space capable of receiving bone filling for the biological bone fusion;

an internal screw guide having an internal bore with an entry opening and an exit opening, the entry opening of the internal bore formed only in a top surface of the top wall and the exit opening formed at least partially in a bottom surface of the top wall and at least partially in a side surface of the top wall, wherein the internal screw guide further includes a counterbore that is larger than and coaxial with the internal bore and has a counterbore entry opening that is formed only in the top surface of the top wall;

a second internal screw guide having a second internal bore with a second entry opening and a second exit opening, the second entry opening of the second internal bore formed only in the top surface of the top wall and the second exit opening formed at least partially in the bottom surface of the top wall and at least partially in a second side surface of the top wall; and

a circular hole extending through the top wall in a direction substantially normal to the top surface of the top wall, wherein the circular hole is positioned between the internal screw guide and the second internal screw guide at the top surface of the top wall.

'022 patent claim 47.

1. A system comprising:

a tool assembly which comprises:

a first tool having a first proximal end and a first distal end with a first handle and a gripper, the gripper being positioned at the first distal end, cooperating with the first handle, and having first and second engagement prongs positioned at the first distal end, wherein the first tool defines an adjusting tool passage through the first tool; and

a second adjusting tool having a second proximal end and a second distal end with a second handle positioned at the second proximal end, a screw engagement portion positioned at the second distal end, and a shaft extending from the second handle to the screw engagement portion, wherein the shaft of the second adjusting tool is sized with a smaller diameter than that of the adjusting tool passage such that the second adjusting tool can extend through the adjusting tool passage of the first tool; and

an expandable spinal implant sized and configured to be implanted in a human spine, the expandable spinal implant comprising a first expandable spinal implant structure, a second expandable spinal implant structure, and an adjusting screw having a screw head and a threaded portion, wherein the expandable spinal implant is configured to expand the first expandable spinal implant structure with respect to the second expandable spinal

implant structure in response to turning of the adjusting screw, wherein the expandable spinal implant defines first and second tool engagement indentations sized and configured for receiving the first and second engagement prongs of the first tool, wherein the adjusting screw is positioned within the expandable spinal implant in a screw location such that the second adjusting tool can extend through the adjusting tool passage of the first tool to engage the screw head of the adjusting screw while the first and second engagement prongs of the first tool are engaged with the first and second tool engagement indentations of the expandable spinal implant.

'319 patent claim 1.

II

In November 2019, Moskowitz sued Globus, alleging that several Globus products (“the Accused Products”) infringed its patents, including the '913, '022, and '319 patents. As relevant to the present appeal, the parties disputed the meaning of “universal” in the '913 and '022 patents at the *Markman* stage. *Moskowitz Fam. LLC v. Globus Med., Inc.*, No. CV 20-3271, 2021 WL 3784243, at *3–4 (E.D. Pa. Aug. 25, 2021) (“*Markman Opinion*”). The district court construed the term “universal” to mean “an intervertebral bone fusion spacer designed to be inserted between [vertebrae / vertebral bodies] in any region of the spine, *i.e.*, cervical, thoracic, or lumbar, using any approach, *e.g.*, posterior, anterior, or lateral.” *Id.* at *4. Moskowitz subsequently moved for clarification of the district court’s construction, which the district court denied. J.A. 22–23. Moskowitz withdrew its infringement allegations for claim 15 of the '913 patent, which recites “universal” in the claim body, but maintained its allegations as to

MOSKOWITZ FAMILY LLC v. GLOBUS MEDICAL, INC.

7

claims 1 and 10 of the '913 patent and claim 47 of the '022 patent, which recite “universal” only in their respective preambles.

Globus sought summary judgment of noninfringement of the '913 and '022 patents. *Moskowitz Fam. LLC v. Globus Med., Inc.*, No. CV 20-3271, 2022 WL 17876699, at *1, *3 (E.D. Pa. Dec. 22, 2022) (“*Summary Judgment Opinion*”). Moskowitz responded that the claims’ preambles are non-limiting but agreed that, under the district court’s construction of “universal,” it could not demonstrate infringement. *Id.* at *4. The district court concluded that the preambles are limiting and entered summary judgment of noninfringement as to these two patents. *Id.* at *6, *11.

The case proceeded to a jury trial. Moskowitz narrowed its infringement allegations to claim 1 of the '319 patent and two other patents not at issue in this appeal. *Moskowitz Fam. LLC v. Globus Med., Inc.*, No. CV 20-3271, 2024 WL 3792390, at *1–2 (E.D. Pa. Aug. 13, 2024) (“*JMOL Opinion*”). Globus argued that its Accused Products did not practice the “cooperating” limitation of claim 1 of the '319 patent, which requires a positioning tool with “a gripper, the gripper being positioned at the first distal end, cooperating with the first handle” ’319 patent claim 1; see *JMOL Opinion*, 2024 WL 3792390, at *2. The jury found that claim 1 was not infringed and was not invalid. See *JMOL Opinion*, 2024 WL 3792390, at *1–2. Moskowitz moved for JMOL of infringement of claim 1, arguing that the jury failed to apply the plain meaning of “cooperating.” See *id.* at *3. The district court denied Moskowitz’s JMOL motion. *Id.* at *13.

Moskowitz appeals the district court’s grant of summary judgment of noninfringement, claim construction, and denial of JMOL of infringement. Appellant’s Br. 17–18. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

DISCUSSION

I

Moskowitz requests that we vacate the district court's grant of summary judgment of noninfringement for the '913 and '022 patents, and remand for further proceedings. Appellant's Br. 65–66. In doing so, it argues that the district court erred in its (1) conclusion that the preambles of claims 1 and 10 (which depends from claim 1) of the '913 patent and claim 47 of the '022 patent are limiting and (2) construction of the term “universal.” See Appellant's Br. 17–18. We address each argument in turn.

A

Moskowitz argues that the district court erred in holding that the preambles are limiting because the preambles do not (1) provide an antecedent basis for any term used in the claim bodies; (2) provide structural support for the claims; or (3) describe a fundamental characteristic of the invention. Appellant's Br. 17. The district court rejected Moskowitz's argument. *Summary Judgment Opinion*, 2022 WL 17876699, at *6–9. So do we.

“We have treated the effect of preamble language as a claim-construction issue.” *Arctic Cat Inc. v. GEP Power Prods., Inc.*, 919 F.3d 1320, 1327 (Fed. Cir. 2019) (cleaned up). “We review a district court's ultimate claim construction and its interpretations of intrinsic evidence de novo and any subsidiary fact findings about extrinsic evidence for clear error.” *Forest Labs., LLC v. Sigmapharm Labs., LLC*, 918 F.3d 928, 932–33 (Fed. Cir. 2019). We have previously explained that “[i]f the body of the claim sets out the complete invention, the preamble is not ordinarily treated as limiting the scope of the claim.” *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 952 (Fed. Cir. 2006) (cleaned up); see also *Summit 6, LLC v. Samsung Elecs. Co., Ltd.*, 802 F.3d 1283, 1292 (Fed. Cir. 2015). “No litmus test defines when a preamble limits claim scope.” *Catalina Mktg.*

Int'l, Inc. v. Coolsavings.com, Inc., 289 F.3d 801, 808 (Fed. Cir. 2002). We have, however, set forth several guideposts that assist in determining whether the preamble is limiting. *See id.* at 808–10. “In general, a preamble limits the invention if it recites essential structure or steps, or if it is necessary to give life, meaning, and vitality to the claim.” *Id.* at 808 (cleaned up). For example, “dependence on a . . . disputed preamble phrase for antecedent basis,” a preamble “reciting additional structure or steps underscored as important by the specification,” and “clear reliance on the preamble during prosecution to distinguish the claimed invention from the prior art” all indicate situations in which a preamble may be limiting. *Id.* at 808–09.

We begin with the '913 patent. Here, the preamble language cannot be said to be “merely extolling benefits or features of the claimed invention.” *Id.* at 809. Instead, claim 1 of the '913 patent recites (in part) “[a] tool for manipulating and inserting a universal, intervertebral bone fusion spacer . . . wherein the universal, intervertebral bone fusion spacer includes an intervertebral cage having a first integral screw guide and a second integral screw guide.” '913 patent claim 1. The claim proceeds to describe prongs “capable of engaging a respective slot . . . of *the* intervertebral cage” and “a screw guide for controlling a direction of screws that are inserted into *the* first integral screw guide and *the* second integral screw guide.” *Id.* (emphasis added). The claim's limitations, in describing “the intervertebral cage” and “the” first and second integral screw guides, depend on the preamble for antecedent basis—those terms are first introduced in the preamble. Where the preamble provides an antecedent basis for the claim's body, we have found a “strong indication that the preamble acts as a necessary component of the claimed invention.” *Bio-Rad Labs., Inc. v. 10X Genomics Inc.*, 967 F.3d 1353, 1371 (Fed. Cir. 2020) (cleaned up). Without the preamble, then, significant context about what the tool must do and include is missing. *See Pacing Techs., LLC v. Garmin Int'l*,

Inc., 778 F.3d 1021, 1024 (Fed. Cir. 2015) (“Because the preamble terms . . . provide antecedent basis for and are necessary to understand positive limitations in the body of claims . . . we hold that the preamble . . . is limiting”). “[U]se of preamble terms to define positive limitations in the body of claims can evince an inventor’s intent that the preamble limit the scope of the claim.” *Shoes by Firebug LLC v. Stride Rite Children’s Grp., LLC*, 962 F.3d 1362, 1368 (Fed. Cir. 2020).

The preamble at issue furnishes essential meaning to the claim. The claim does not merely recite a gripper with a plurality of prongs and a screw guide. It recites one that is, as the district court explained, “capable of manipulating and inserting ‘a universal, intervertebral bone fusion spacer’ into a disc space.” *Summary Judgment Opinion*, 2022 WL 17876699, at *8. The ’913 and ’022 patents’ common specification confirms this. *See Proveris Sci. Corp. v. Innovasystems, Inc.*, 739 F.3d 1367, 1372 (Fed. Cir. 2014) (“[A] preamble may be construed as limiting when it recites particular structure or steps that are highlighted as important by the specification.”). The “Background of the Invention” section describes “[t]he present invention” as relating “to a unique *universal* bidirectional screw (BDS) system.” *See* ’913 patent col. 1 ll. 25–35; ’022 patent col. 1 ll. 30–40 (emphasis added). And the specification describes use in various spinal regions and through various surgical approaches. *See, e.g.*, ’913 patent col. 3 ll. 41–43; ’022 patent col. 3 ll. 52–54. The body of claim 1 of the ’913 patent references a gripper tool, and only the preamble speaks to the universal bidirectional screw system. Without considering the preamble, the claims fail to capture this essential characteristic. *See Poly-Am., L.P. v. GSE Lining Tech., Inc.*, 383 F.3d 1303, 1309–10 (Fed. Cir. 2004). We conclude that because the drafter “cho[se] to use *both* the preamble and the body to define the subject matter of the claimed invention, the invention so defined, and not some other, is

the one the patent protects.” *Bell Commc’ns Rsch., Inc. v. Vitalink Commc’ns Corp.*, 55 F.3d 615, 620 (Fed. Cir. 1995).

We next address the ’022 patent. The preamble of claim 47 of the ’022 patent recites: “[a] universal, intervertebral combination internal screw guide and fixation apparatus configured to be inserted into a disc space . . . and to provide fusion.” ’022 patent claim 47. As the district court pointed out, the rest of the claim “discloses . . . an intervertebral cage with (a) a top wall, bottom wall, and two side-walls; (b) an internal screw guide; (c) a second internal screw guide; and (d) a circular hole extending through the top wall.” *Summary Judgment Opinion*, 2022 WL 17876699, at *8 (citing ’022 patent claim 47). The limitations set forth components of the claimed “apparatus,” like the “internal screw guide[s],” that are given necessary context when taken with the preamble’s directive that the apparatus must be a “universal” apparatus configured for specified functions. See ’022 patent claim 47. We cannot—and do not—read the body of the claim as “set[ting] out the complete invention.” *Bicon*, 441 F.3d at 952 (cleaned up). Instead, the claim at hand is altogether incomplete when read without the preamble. And, as explained above, this understanding is further confirmed by the specification’s explanation that the invention is a “unique universal bidirectional screw . . . system” capable of use in various spinal regions. See ’022 patent col. 1 ll. 32–40, col. 3 ll. 51–54. The preamble both “recites essential structure” and “is necessary to give life, meaning and vitality to the claim.” *Catalina Mktg.*, 289 F.3d at 808 (cleaned up).

Finally, Moskowitz also argues that we should separately consider whether the word “universal” is limiting in claim 1 of the ’913 patent and claim 47 of the ’022 patent. Appellant’s Br. 21–23. In making this argument, Moskowitz relies on *TomTom, Inc. v. Adolph*, where our court held that “generating and updating data for use in” provided an intended use and was not limiting, but “destination tracking system of at least one mobile unit,” which

provided antecedent basis for “the mobile unit” recited in the claims, was limiting. 790 F.3d 1315, 1323–26. (Fed. Cir. 2015). Unlike in *TomTom*, however, here “universal” is intertwined with the remainder of the preambles and does not merely provide an intended use. *See Bio-Rad*, 967 F.3d 1353, 1371 (Fed. Cir. 2020) (declining to find selected limitations of a preamble limiting when, “unlike [in] *TomTom*, the preamble . . . [could not] be neatly packaged into two separate portions” and did not “simply recite a method for an intended use or purpose”). Indeed, “universal[ity]” is a fundamental characteristic of the claimed invention and thus, even if considered alone, we would conclude that it is limiting. *See Poly-Am.*, 383 F.3d at 1310 (“[A] review of the entirety of the ’047 patent reveals that the preamble language relating to ‘blown-film’ does not state a purpose or an intended use of the invention, but rather discloses a fundamental characteristic of the claimed invention that is properly construed as a limitation of the claim itself.” (cleaned up)).

B

Moskowitz next contends that even if the preambles are limiting, the district court erred in its construction of “universal.” *See Appellant’s Br.* 36. The district court construed “universal” as “an intervertebral bone fusion spacer designed to be inserted between [vertebrae / vertebral bodies] in any region of the spine, *i.e.*, cervical, thoracic, or lumbar, using any approach, *e.g.*, posterior, anterior, or lateral.” *Markman Opinion*, 2021 WL 3784243, at *4. Before us, Moskowitz argues that the district court’s construction incorrectly requires “a hypothetical one-size-fits-all intervertebral bone fusion spacer/bi-directional transvertebral screw fusion device to be suitable for implantation in every region of the spine for every patient.” *Appellant’s Br.* 38 (emphasis omitted). It offers its own construction—“stand-alone (*i.e.*, having the dual functionality of an intervertebral spacer and a transvertebral bone fusion screw apparatus).” *Appellant’s Br.* 36. To support its position,

Moskowitz points to the specifications' explanation that the "universal bidirectional screw" system "can be used as a stand-alone intervertebral device which combines the dual functions of an intervertebral spacer . . . as well as a transvertebral bone fusion screw apparatus." Appellant's Br. 37 (emphasis omitted) (citing '022 patent col. 1 ll. 33–40); *see also* '913 patent col. 1 ll. 31–35.

We see no error in the district court's construction. The district court pointed to the patents' specifications, which provide for multiple uses in all three spinal regions. *Markman Opinion*, 2021 WL 3784243, at *4 (citing '913 patent col. 1 ll. 35–43 ("In the posterior lumbosacral and thoracic spine, BDFT screw/box constructs can be used independently or supplemented In the anterior lumbosacral spine BDFT screw box constructs can be inserted into and supplemented by a circumferential cage. These posteriorly and anteriorly placed stand-alone intervertebral body fusion constructs may obviate the need for supplemental pedicle screw fixation."); *id.* at col. 3 ll. 50–52 ("Posteriorly or anteriorly in the lumbar spine, these screws can be capped with a horizontal mini-plate which will prevent bony growth into the thecal sac and nerves."); '022 patent col. 3 ll. 51–54 ("The expandable embodiment of the screw box can also be enlarged and modified to be suitable for cervical, thoracic and lumbar vertebral body replacements.")). The specifications also describe—as the district court highlighted—complications in the prior art that the patented inventions address by "propos[ing] the use of novel . . . screws which can be strategically inserted via anterior or posterior surgical spinal approaches into the anterior and middle columns of the interverte[bra]l disc space." '913 patent col. 2 ll. 32–37; '022 patent col. 2 ll. 38–43. The district court concluded that "[t]hese portions of the specifications reflect the inventor's intent that a universal invention is one that can be modified for use in any spinal region and via multiple surgical approaches." *Markman Opinion*, 2021 WL 3784243, at *4. We agree with the

district court’s analysis of the patents’ specifications and its resulting construction.

At bottom, Moskowitz’s argument appears to be that the district court’s construction improperly requires a “one-size-fits-all,” Appellant’s Br. 38 (emphasis omitted), device to be suitable for “implantation in *every* region of the spine for *every* patient,” something it contends is a “physical impossibility” *id.* (emphasis added). *See also* Appellant’s Br. 43. We disagree with that characterization—as did the district court in denying Moskowitz’s motion for clarification of the “universal” claim construction. *See* J.A. 22–23. The construction does not result in a physical impossibility by requiring a “one-size-fits-all” device, as Moskowitz contends. The patents combine the functions of an intervertebral spacer and transvertebral body fusion screws without specifying size, place, or manner of insertion. *See, e.g.*, ’913 patent col. 2 ll. 14–17. And the patents unambiguously describe the device as being adaptable across spinal regions and usable with multiple surgical approaches. That adaptability makes the design “universal.” The district court did not err in its construction.

Moskowitz conceded that the Accused Products do not infringe under the district court’s construction of the term “universal.” J.A. 3717. Because we agree with the district court’s claim construction of “universal” and its conclusion that the ’913 and ’022 patents’ relevant preambles are limiting, we affirm its grant of summary judgment of noninfringement as to those patents.

II

The final issue Moskowitz presents on appeal is whether the district court erred in denying its motion for JMOL of infringement as to the ’319 patent.

We review the denial of a motion for JMOL under the law of the regional circuit. *Wis. Alumni Rsch. Found. v. Apple Inc.*, 905 F.3d 1341, 1346 (Fed. Cir. 2018). Third

Circuit law instructs that we “exercise plenary review over a district court’s rulings on motions for JMOL, applying the same standard as the district court.” *Idenix Pharms. LLC v. Gilead Scis. Inc.*, 941 F.3d 1149, 1153 (Fed. Cir. 2019) (cleaned up). “To prevail on a renewed motion for JMOL following a jury trial,” the movant “must show that the jury’s findings, presumed or express, are not supported by substantial evidence, or, if they were, that the legal conclusion(s) implied by the jury’s verdict cannot in law be supported by those findings.” *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1348 (Fed. Cir. 1998) (cleaned up).

The parties’ dispute regarding the ’319 patent stems from claim 1’s description of a tool assembly that comprises, in relevant part, “a gripper, the gripper being positioned at the first distal end, *cooperating* with the first handle.” ’319 patent claim 1 (emphasis added). At trial, Globus disputed whether the Accused Products satisfied the “cooperating” limitation. *See JMOL Opinion*, 2024 WL 3792390, at *2. “The claim limitation comes to us without a claim construction and without any argument from [Moskowitz] that there should have been a claim construction.” *Freshub, Inc. v. Amazon.com, Inc.*, 93 F.4th 1244, 1249 (Fed. Cir. 2024). Therefore, “[t]he substantial-evidence question is whether the jury could reasonably have found the claim limitation not to be met, considering the facts and the unconstrued limitation.” *Id.* at 1250.

Globus’s expert opined, based on a plain-and-ordinary-meaning understanding of the term, that the gripper cooperating with the handle, “involves an actuation . . . it’s a co-operation. You need to do something . . . to the handle . . . and it does something to the gripper. They operate together. They co-operate. There needs to be some action and reaction.” J.A. 5568. Moskowitz responds by arguing that the plain and ordinary meaning of “cooperating” merely requires that two components work together, and that “actuat[ing]” improperly imports an additional limitation into the claim. *See Appellant’s Br.* 48, 58. The parties

did not request claim construction of this term, despite being given an opportunity to brief any remaining terms requiring construction just prior to trial. *JMOL Opinion*, 2024 WL 3792390, at *4. And Moskowitz was ostensibly aware of Globus’s expert’s understanding long before trial. See J.A. 3217–18 (Globus’s Expert’s Noninfringement Expert Report). Although Moskowitz now attempts to frame the issue as one of improper claim construction, *see, e.g.*, Appellant’s Br. 57, the issue is “limited to the question of whether substantial evidence supported the verdict under the agreed [jury] instruction,” *Hewlett-Packard Co. v. Mus-tek Sys., Inc.*, 340 F.3d 1314, 1320 (Fed. Cir. 2003).¹ Here, the jury instructions reflected the parties’ agreed-upon use of the term’s plain and ordinary meaning. See J.A. 68.

At trial, Moskowitz’s expert provided only limited testimony regarding whether the Accused Products satisfied the “cooperating” limitation. *JMOL Opinion*, 2024 WL 3792390, at *4. Its expert did not explain what “cooperating” meant, and, as the district court noted, “[t]he jury was at liberty to find his testimony not credible.” *Id.* Globus’s expert, on the other hand, opined why the Accused Products did not meet the claim limitation at issue and

¹ Moskowitz also argues that the district court prevented its expert from providing rebuttal testimony regarding the “cooperating” limitation—a ruling that, in Moskowitz’s view, was a “manifest injustice.” Appellant’s Br. 53 n.8. No such injustice has occurred. The district court squarely addressed this issue in resolving Moskowitz’s *JMOL* motion. See *JMOL Opinion*, 2024 WL 3792390, at *4 n.1. The district court explained that the court had asked Moskowitz what its expert would clarify. *Id.* At that time, Moskowitz did not identify rebuttal testimony regarding the “cooperating” limitation among the planned testimony. Moskowitz’s argument on this point is unconvincing.

MOSKOWITZ FAMILY LLC v. GLOBUS MEDICAL, INC.

17

explained his plain-and-ordinary-meaning interpretation, as known to a person of ordinary skill in the art, of the word “cooperate.” *See* J.A. 5568, 5614–16. The jury was entitled to credit that testimony. *See Comcast IP Holdings I LLC v. Sprint Commc’ns Co.*, 850 F.3d 1302, 1311–12 (Fed. Cir. 2017). And, further, Globus’s Director of Product Development testified that the handle plays “no role” in operating Globus’s gripping mechanism. J.A. 5476. The record before us demonstrates that substantial evidence supports the jury’s finding of noninfringement. The district court’s denial of Moskowitz’s JMOL motion was proper.

CONCLUSION

We have considered Moskowitz’s remaining arguments and find them unpersuasive. For the foregoing reasons, we affirm.

AFFIRMED