

**Keywords:** means-plus function; 35 U.S.C. §112, ¶6; definiteness; 35 U.S.C. §112, ¶2

**General:**

*Inventio AG v. ThyssenKrupp Elevator Am. Corp.*  
99 U.S.P.Q.2d 1112 (Fed. Cir. 2011)  
Decided June 15, 2011

## I. Facts

Inventio holds the patents for a modernized elevator system and a process for modernization. Specifically, the system replaces the traditional “up/down” buttons with terminals that allow a passenger to enter the desired floor when requesting the elevator. The result is a more optimized use of the elevator cars in transporting the passengers to the desired floors.

Inventio brought suit for infringement against ThyssenKrupp for patent infringement in the District Court for the District of Delaware. The District Court granted ThyssenKrupp’s motion for summary judgment ruling that the patents (the ‘861 and ‘465 patents) were invalid for failing to meet the definiteness requirement of 35 U.S.C. §112, ¶2. Specifically, the District Court found that two claim terms, “modernizing device” and “computing unit,” were means-plus-function limitations because the terms lacked sufficiently definite structure. Although the terms were presumptively not means-plus-function limitations, the District Court found that the presumption was overcome because the claims recited a function without providing a sufficient structure for performing that function. The District Court then held the claims to be indefinite because the written description also failed to disclose any corresponding structure for the mean-plus-function limitations. Inventio appealed the District Court’s grant of summary judgment.

Representative claim at issue:

A method of modernizing an elevator installation having at least one elevator controlled by at least one elevator control by way of at least one call report, comprising:

- a. installing at least one floor terminal at each floor served by an elevator controlled by an elevator control for at least one of the input of destination call reports and for recognition of identification codes of users;
- b. installing at least one computing unit and connecting the at least one computing unit to said floor terminals for at least one of evaluating the destination call reports and association of destination floors with recognized ones of the identification codes, and for the output of at least one destination signal; and
- c. installing at least one modernizing device and connecting the at least one modernizing device to said floor terminals and said at least one computing unit for reading the destination signal, for converting the destination signal into at least one call report and for controlling the elevator control by way of the call report. (Emphasis added).

**II. Issues**

- A. Is the “sufficiently definite structure” analysis limited to the claim language in isolation?
- B. Is the strong presumption against a means-plus-function limitation overcome for “modernizing device” and “computing unit”?

**III. Discussion**

- A. No. “[I]t is proper to consult the intrinsic record, including the written description, when determining if a challenger has rebutted the presumption that a claim lacking the term ‘means’ recites sufficiently definite structure.”

There is a strong presumption that when the term “means” or “means for” is used, a claim term is read as a means-plus-function limitation and subject to §112, ¶6. The converse is also true. When the term “means” is not used, there is a strong presumption against a means-plus-function limitation. To overcome this strong presumption, the challenger, ThyssenKrupp, must demonstrate that the claim term fails to “recite sufficiently definite structure” or that the claim recites “function without reciting sufficient structure for performing that function.”

The Court first decided what evidence should be used to determine whether a “sufficiently definite structure” is recited. Citing *TriMed*, ThyssenKrupp argued that only the claim language in isolation should be used for the analysis. Stressing the difficulty of overcoming the presumption against a means-plus-function limitation, the Court rejected ThyssenKrupp’s argument and instead focused on whether the *properly construed claim term* recites a sufficiently definite structure. According to *Phillips*, the Court can look to the words of the claims, written description, prosecution history, and any relevant extrinsic evidence. The Court reasoned that, in litigation, the issue boils down to whether skilled artisans “would conclude that a claim limitation is so devoid of structure that the drafter constructively engaged in means-plus-function claiming.”

- B. No. The challenger, ThyssenKrupp, did not rebutt the strong presumption. Those of ordinary skill in the art would understand “modernizing device” and “computing unit” to connote sufficiently definite structures in light of the claim language and the written description.

The Court reiterated its presumption that “modernizing device” connotes a sufficiently definite structure. Unlike other cases that had insufficiently definite structure, the current claim term “connote[s] structure and the contextual language describe[s] the objective.” Specifically, the court stated that the “claims recite a ‘modernizing device,’ delineate the components that the modernizing device is connected to, describe how the modernizing device interacts with those components, and describe the processing that the modernizing device performs.” In addition, the written description supports this conclusion. Figure 3 showed both the internal components of the modernizing device and the connections with other elements. Furthermore, the written description described the processes performed as well as the inputs and outputs of the modernizing device.

After again reiterating its presumption that “computing unit” connotes a sufficiently definite structure, the Court looked at the claim language that describes the connections and the processes performed by the computing unit. The written description further makes clear that the computing unit refers to a computer, which is able to store and execute a computer program product. In response to ThyssenKrupp’s argument citing *Brown*, the Court emphasized that a “computer” would be a sufficiently definite structure if without more it would be enough to perform the claimed function.

#### **IV. Conclusion**

Reversed and Remanded. A strong presumption against a means-plus-function limitation exists when the claim does not use the term “means.” To overcome the presumption, the challenger must demonstrate that the claim term, properly construed, fails to recite a sufficiently definite structure. When construing the claim term for the analysis, it is appropriate to take into account the written description. To describe a sufficiently definite circuit, it is sufficient to describe an electrical circuit that receives signals, processes signals, and output signals to other components.