CLAIM CONSTRUCTION
MEANS-PLUS-FUNCTION LIMITATIONS
(PRECEDENTIAL)

FLO HEALTHCARE SOLUTIONS, LLC v. KAPPOS, Appeal No. 2011-1476 (Fed. Cir. October 23, 2012). Before Newman, Plager, and Wallach. Appealed from the Board of Patent Appeals and Interferences.

Background:

Flo's disputed claims are directed to a mobile computer work-station that includes "a height adjustment mechanism for altering the height of the horizontal tray." During *inter partes* reexamination, Flo argued that the recited "height adjustment mechanism" is a means-plus-function limitation that invokes 35 U.S.C. §112, ¶6. Flo argued that "altering the height of the horizontal tray" is the function of the "height adjustment mechanism," and the corresponding structure disclosed in the written description includes a length-adjustable vertical beam, which distinguishes over the fixed-length vertical structures disclosed by the applied references. The Examiner maintained that because the claims did not contain the phrase "means for," the claims were presumed not to invoke §112, ¶6.

The Board agreed with Flo that the disputed claim language must be interpreted as invoking §112, ¶6. However, the Board concluded that the claims did not require a vertical beam as part of the recited height adjustment mechanism and affirmed the Examiner's prior art rejections. Flo appealed.

Issue/Holding:

Did the Board err in holding that the "height adjustment mechanism" limitation invoked §112, ¶6? Yes, affirmed on other grounds.

Discussion:

The Federal Circuit indicated that failure to use the word "means" in a claim limitation creates a rebuttable presumption that the drafter did not intend to invoke §112, ¶6, which may be overcome if it is shown that the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function. The Federal Circuit found that the term "height adjustment mechanism," as used in Flo's written description and in common parlance, reasonably imparted sufficient structure so that the presumption against §112, ¶6 was not overcome. Specifically, "adjustment" has a reasonably well understood meaning as a name for structure and the written description used "height adjustment mechanism" to refer to structures known to those in the art. However, the Federal Circuit agreed with and affirmed the Board's ultimate conclusion that the claims did not require a length-adjustable vertical beam.

Judge Plager and Judge Newman filed separate additional views that raised the issue of the Federal Circuit applying inconsistent standards of review to claim construction decisions of the Board. Judge Plager identifies two contradictory lines of authority on the question of how the Federal Circuit reviews Board claim constructions—a deferential "reasonable" review, and a no-deference "pure" law review—and indicates that a recent case suggests a third approach that is a blend of the other two approaches. Both judges entreated the Federal Circuit to resolve the conflict.

MZL