

United States District Court,  
S.D. California.

**SAFARI LAND, LTD., INC,**  
Plaintiff.

v.

**HELLWEG INTERNATIONAL PTY. LTD. OF AUSTRALIA; Hellweg America's Law Enforcement Sales, Inc,**  
Defendants.

No. 00-CV-2268-IEG (AJB)

**Sept. 2, 2002.**

Edward R. Schwartz, Pasadena, CA, for Plaintiff.

**ORDER CONSTRUING CLAIMS OF THE '980 PATENT PURSUANT TO *MARKMAN***

**IRMA E. GONZALEZ, District Judge.**

Presently before the Court in the above-captioned matter are various disputed claim terms and elements from United States Patent No. 4,694,980 ("the '980 patent"). Pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995), *the Court construes the asserted claims as set forth below.*

**I. BACKGROUND**

Safari Land, Ltd, Inc. ("Safari Land") is a California corporation that owns the '980 Patent, which describes a handgun holster. Defendants Hellweg International, Pty. Ltd. of Australia and Hellweg America's Law Enforcement Sales, Inc. (collectively, "Hellweg") are manufacturers and sellers of weapon carrying systems. Hellweg manufactures and sells the accused Model No.2001 gun holster.

The PTO issued the '980 Patent to William H. Rogers on September 22, 1987. The patent was later assigned to Safari Land. The '980 Patent sets forth fifteen claims. In its complaint, Safari Land alleges that Hellweg is manufacturing and selling a gun holster that infringes on several of the claims. Currently, Safari Land is pursuing its infringement action only as to ten of the '980 Patent's fifteen claims. (Claims 1, 3-6, 8, 10, and 13-15.) FN1

FN1. The '980 Patent contains two independent claims: Claims 1 and 10.

In the instant *Markman* proceedings, the parties dispute claim language from only six of the ten patent claims at issue.FN2 That is, only claims 1, 5, 8, 10, 14, and 15 contain disputed claim language. Additionally, several of the disputed claim terms and elements are repeated and refer to the same subject

matter. Accordingly, the Court finds it necessary to construe 10 claim terms and phrases, as set forth below.

FN2. The parties are not disputing any claim language from Claims 3, 4, 6, or 13.

## II. DISCUSSION

### A. GENERAL OVERVIEW OF THE '980 PATENT

#### 1. The Basic Problem

The '980 patent is directed to the problem of preventing inadvertent withdrawal of a handgun from a holster. ('980 Patent, Col. 1, lines 12-13.) This problem is particularly troublesome for law enforcement officers, who face the danger of having their handguns seized from their holsters by another person. ( *Id.*, Col. 1, lines 1-24.) The '980 Patent attempts to solve this problem by describing an arrangement of straps and other structures that prevent a person other than the holster wearer from withdrawing a handgun from the holster. The '980 Patent also discloses various features, described below, that allow the holster wearer to easily release the handgun by tilting the handgun at a certain angle, and by disengaging two snaps with the wearer's thumb and middle finger. While the '980 Patent is not unique in the use of straps and internal structures for securing a handgun, the '980 Patent purports to be different from many previous holster designs. Unlike most previous holster designs, the '980 Patent is directed at preventing an assailant from grabbing the handgun from in front of the wearer. Many prior designs focused on preventing assailants from grabbing a handgun from behind the wearer. ( *Id.*, Col. 1, lines 16-68 and Col. 2, lines 1-26.)

#### 2. Overview of the '980 Patent's Prosecution History

The '980 Patent is the result of two separate patent applications. The first application ("the Parent Application") was filed on May 3, 1985. (Joint Exhibit 3.) On October 29, 1985, the patent examiner rejected the Parent Application on grounds of, *inter alia*, indefiniteness and obviousness. ( *Id.*, PPH 22-24 .) The inventor abandoned the Parent Application without responding the patent examiner's October 29, 1985 rejection. ( *Id.*, PPH 28.)

On February 10, 1986, the inventor filed a continuation-in-part application ("the '980 Application"). (Joint Exhibit 4.) The '980 Application added new matter to the Parent Application, including additional claim elements. (Defs' Opening Brief, p. 4.) On September 8, 1986, the patent examiner rejected the ' 980 Application, again on grounds of, *inter alia*, indefiniteness and obviousness. ( *Id.*, PH 49-50.)

On December 8, 1986, the inventor responded to the September 8, 1986 rejection by withdrawing two of the pending claims and by amending several other claims of the '980 Application to clarify the claims and to distinguish the claims from the prior art. ( *Id.*, PH 54-61.) On March 27, 1987, the patent examiner allowed the claims of the amended '980 Application. The '980 Patent issued on September 22, 1987. ( *Id.*, PH 62.)

#### 3. Features of the '980 Patent

The basic content of the '980 Patent is best understood by first setting forth the plain language of claim 1, which is one of the '980 Patent's two independent claims. Claim 1 contains most, if not all, of the claim

language in dispute.FN3 Plaintiff Safari Land, in its opening brief, asserts that claim 1 reflects "five primary structural features" of the holster claimed by the '980 Patent. While the Court finds it unnecessary to determine whether or not the '980 Patent in fact contains "five primary structural features," the Court does find it useful to conceptualize the '980 Patent as including five basic features.

FN3. As stated above, several of the disputed claim terms and elements are repeated in several different claims. Thus, although claim 1 contains most of the disputed claim terms and elements, the disputed claim terms and elements can also be found outside of claim 1 as well.

The first portion of claim 1 describes the main body of the holster, which is comprised of two sidewalls. One sidewall is situated near the wearer's side, with the other sidewall being slightly further from the wearer's side. The sidewalls are joined along the forward portion of the sidewalls, as well as along the lower rear portion of the sidewalls. In this context, "forward" refers to the direction in which the holster wearer is facing. "Rear" refers to the opposite direction, behind the holster wearer. The joining of the '980 holster's FN4 sidewalls along the forward and lower rear portions forms a roughly oval-shaped cavity in which a pistol may be situated. This first portion of claim 1 states:

FN4. By "'980 holster," the Court does not refer to any particular embodiment of the '980 patent, but instead refers generally to the invention disclosed and claimed by the '980 patent.

In a holster for a handgun and attachable belt, the holster having with respect to a front and back of a wearer of the holster inner and outer spaced substantially rigid sidewalls joined together along the forward and lower rear portions thereof to define an inner expandable cavity and an open expandable top and upper rear portions for receiving a handgun therein and for removing a handgun therefore, the improvement comprising [ ... ]

*See* '980 Patent, Col. 6, lines 42-50. *See also* '980 Patent, Figure 7 (depicting embodiment of holster from behind the wearer, where inner sidewall 11 joins outer sidewall 40); *Id.*, Figure 8 (depicting embodiment of holster with outer sidewall nearest viewer); *Id.*, Figure 9 (depicting embodiment of holster with inner sidewall nearest viewer); *Id.*, Figure 6 (depicting embodiment of holster from above, with roughly oval-shaped cavity formed by joining of inner sidewall 11 and outer sidewall 40).

The second portion of claim 1 describes a pair of straps that extend in an arch-like shape over the top of the holster. One of the straps (the "first strap") extends upward from the outer sidewall. The other strap (the "second strap") extends upward from the inner sidewall. The straps are designed to arch over the top of a pistol sitting in the holster. The straps attach together with a fastener. The holster wearer, however, can disengage the fastener by pressing a tab that is adjacent to the fastener's thumb. The second portion of claim 1 describes this structure:

a first strap portion extending upwardly from adjacent said forward portion of said outer sidewall and attached by a releasable first fastener to a second strap portion extending upwardly from adjacent said forward portion of said inner sidewall and including a thumb engaging first tab adjacent said first fastener;

*See* '980 Patent, Col. 6, lines 50-56. *See also* '980 Patent, Figure 3 (depicting embodiment of holster with "first strap" 22 extending over top of pistol); '980 Patent, Figure 2 (depicting embodiment of holster with "first strap" meeting "second strap" at fastener 20, with adjacent tab 21); '980 Patent; figures 11 and 12 (depicting embodiment of holster after holster wearer's thumb disengaged "first" and "second" straps by

pressing tab 21 with thumb, thereby unfastening fastener 20).

The third portion of claim 1 describes a "third" strap which extends laterally around the body of the holster, in the manner of a belt around a person's waist. The two ends of the "third" strap meet near the rear portion of the inner sidewall. The two ends of this "third" strap are joined by a fastener. The holster wearer can disengage this fastener by pressing on an adjacent tab with his or her middle finger. The third portion of claim 1 describes this structure:

a third elongated strap extending laterally across and affixed to said outer and inner sidewalls adjacent said open expandable top, and upper rear portions, a releasable second fastener joining ends of said third strap adjacent a rear portion of said inner sidewall with a middle finger engaging second tab on said third strap adjacent said second fastener,

*See* '980 Patent, Col. 6, lines 56-62. *See also* '980 Patent, Figure 4 (depicting embodiment of holster with two ends of "third" strap 14 encircling body of holster and meeting at fastener 18 with adjacent tab 19); '980 Patent, Figure 1 (depicting embodiment of holster from above, with "third" strap 14 laterally encircling body of holster, meeting at fastener 18 and tab 19 near the rear portion of inner sidewall).

The fourth portion of claim 1 describes a "slidable means." This "slidable means" is essentially a slot cut into the "third strap" (discussed above) that is adapted to slide along a pin that protrudes from the side of the holster. When the holster wearer unfastens the third strap with his or her middle finger, the "slideable means" (i.e., the slot and pin) allows for limited expansion of the third strap. This limited expansion facilitates removal of the pistol from the holster. The fourth portion of claim 1 describes the function of this structure:

slidable means attaching one end of said third strap to said inner sidewall for limited expansion of said open expandable top and upper rear portions and of said inner cavity when said second fastener is opened by a middle finger engaging said second tab and a thumb engages said first tab to open said first fastener,

*See* '980 Patent, Col. 6, lines 62-68. *See also* '980 Patent, Figure 4 (depicting embodiment of holster with "slidable means" shown as slot 16 cut into third strap 14, and adapting with pin or screw 17); '980 Patent, Figure 9 (same); '980 Patent, Figure 2 (same, yet viewed from perspective behind holster wearer),

Finally, the fifth portion of claim 1 describes a "means in said inner cavity." This "means in said inner cavity" is a ledge or protrusion within the holster. The ledge or protrusion blocks a pistol from being pulled straight up and out of the holster. The existence of the ledge or protrusion requires the holster wearer to tilt the pistol in some manner to allow the pistol to bypass the blocking ledge or protrusion. Thus, in addition to the first, second, and third straps discussed above, the "means in said inner cavity" provides an additional defense against an assailant who desires to pull a pistol up and out of the holster. The fifth portion of claim 1 describes the function of this structure:

and means in said inner cavity to engage a portion of a handgun in the holster to resist upward withdrawing of a handgun.

*See* '980 Patent, Col. 6, line 68 to Col. 7, line 2. *See also* '980 Patent, Figure 5 (depicting embodiment of "means in said inner cavity" as being a molded ledge 27 on a portion of holster sidewall 26, and adapting with the edge of a pistol 28 to prevent upward removal of pistol).

## B. LEGAL STANDARDS

When construing the terms of a patent, the district court must first turn to "intrinsic evidence," which includes the language of the claim itself, the patent's specification (of which the claim is a part), and the prosecutorial history of the patent. *Markman*, 52 F.3d at 979-80. In interpreting words within the claims, the court must give the words their customary and ordinary meanings as they would be understood by persons of ordinary skill in the relevant art. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1309 (Fed.Cir.1999). In addition, unless compelled to do otherwise, a court will give a claim term the full range of its ordinary meaning as understood by an artisan of ordinary skill. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342 (Fed.Cir.2001). Generally, a court should apply a "heavy presumption" that a claim term carries its ordinary and customary meaning. *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 989 (Fed.Cir.1999).

Despite this presumption, the court must also consider the specification of the patent to determine whether the inventor used any terms in a manner inconsistent with their plain and ordinary meanings. *Markman*, 52 F.3d at 979-80. The specification acts as a dictionary when it expressly or implicitly defines terms used in the claims. *Markman*, 52 F.3d at 979. The specification generally is "the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). A written description of the preferred embodiments "can provide guidance as to the meaning of the claims, thereby dictating the manner in which the claims are to be construed, even if the guidance is not provided in explicit definitional format." *SciMed Life Sys. Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1344 (Fed.Cir.2001).

Although a court must interpret ambiguous claims in light of the patent specification, the court should not read limitations from the specification into a claim. *Markman*, 52 F.3d at 979. At the same time, however, "when the preferred embodiment is described in the specification as the invention itself, the claims are not necessarily entitled to a scope broader than that embodiment." *Modine Mfg. Co. v. United States Int'l Trade Comm'n*, 75 F.3d 1545, 1551 (Fed.Cir.1996). *See also* *O.I. Corp. v. Tekmark Co.*, 115 F.3d 1576, 1581-83 (Fed.Cir.1997) (limiting claim term when specification described only one claim construction).

Finally, if admitted into evidence, the court may review the prosecution history of the patent. *Markman*, 52 F.3d at 980. This history is "the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims. As such, the record before the Patent and Trademark office is often of critical significance in determining the meaning of the claims." *Id.*; *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 122 S.Ct. 1831, 1838-40 (2002).

If the intrinsic evidence resolves ambiguity in disputed claim terminology, the Court should not resort to consideration of extrinsic evidence to vary the meaning of the terminology. *Markman*, 52 F.3d at 980-81. If, however, intrinsic evidence does not succeed in defining stubbornly ambiguous terminology, the court may evaluate extrinsic evidence such as prior art documents, technical treatises, articles, and expert testimony. *Id.*; *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996).

## C. ANALYSIS AND CLAIM CONSTRUCTION

In all, the parties dispute the meaning of at least 10 claim terms and elements. The Court will address these claim terms and elements in turn.

## 1. "inner and outer ... sidewalls"

The claim element "inner and outer ... sidewalls" is defined as the pair of walls forming the inner and outer sides of the holster, spaced apart to form a cavity that encloses a pistol. *See* '480 Patent, Col. 3, lines 47-52. The Court finds nothing in the claim language, specifications, or prosecution history indicating that the patentee adopted a unique lexicography of this claim element. Thus, the Court defines "inner and outer sidewalls" to mean: the pair of walls forming the inner and outer sides of the holster, spaced apart to form a cavity that encloses **a pistol**.

## 2. "substantially rigid"

The claim language "substantially rigid" refers to the rigidity of the inner and outer sidewalls of the holster. "Substantially rigid" means: largely, yet not entirely, firm or stiff. *See* WEBSTER'S THIRD NEW INT'L DICT (1986) (defining "substantial" as "to a large degree" and defining "rigid" as "very firm" or "stiff"). The Court finds nothing in the claim language, specifications, or prosecution history indicating that the patentee adopted a unique lexicography of the "substantially rigid" element. Accordingly, the Court defines "substantially rigid" as: largely, yet not entirely, firm or stiff.

## 3. "joined together along the forward ... portion[ ]"

The claim element "joined together along the forward ... portion[ ]" refers to the manner in which the inner and outer sidewalls meet toward the front of the holster.<sup>FN5</sup> The ordinary meaning of "join" is "to put or bring together and fasten, connect, or relate so as to form a single unit, a whole, or a continuity." WEBSTER'S THIRD NEW INT'L DICT (1986). Moreover, the Court defines "forward portion" as the front area of the holster where the pair of sidewalls meet. Additionally, the Court notes that the sidewalls need not be comprised of two separate pieces of material, but can be a single piece of material folded in half. *See, e.g.,* '980 Patent, Col. 3, lines 47-50. Accordingly, the Court defines "joined together along the forward ... portion [ ]" as: fastened, connected, folded, or related so as to form, at the front area of the holster where the sidewalls meet, a single unit or continuity. The Court finds that nothing in the '980 Patent's claim language, specification, or prosecution history indicates that the patentee intended this claim element to carry a different meaning.

FN5. By "forward portion," the Court refers to the front or leading edge of the holster, from the perspective of the holster's wearer. *See, e.g.,* '980 Patent, Figures 3 and 8 (from perspective of person viewing Figures 3 and 8, "forward portion" is depicted as right edge of holster figures).

## 4. "joined together along the ... lower rear portion[ ]"

The parties vigorously dispute the meaning of the claim element "joined together along the ... lower rear portion." The source of this dispute is twofold. First, the parties dispute the manner in which the inner and outer sidewalls are "joined together along" the area in question. Second, the parties disagree as to *where* exactly the "lower rear portion" is located. The Court will address the "joined together along" language first, and will address the "lower rear portion[ ]" language second. The Court will then provide a full construction of the claim element "joined together along ... the lower rear portion[ ]."

### a. "joined together along"

According to Hellweg, the Court should construe "joined together along" as meaning: "joined together at only one, bottom or lower corner...." (Defs' Brief, p. 13.) To understand Hellweg's argument, the Court turns its attention to the specification of the '980 Patent, and particularly to Figures 3, 4, and 8 of the specification. These figures depict, among other things, the sidewalls in the vicinity of the lower rear portion of the holster, which are joined at rivet 23. According to Hellweg, the "joined together along" language means that the holster's sidewalls are joined in this lower rear portion at a single point or location only. Hellweg asserts that this single point or location is represented by rivet 23. *See* Defs' Brief, p. 12 (emphasizing specification language stating that "rear edges 39 of walls 40 and 11 are fastened together *only* by rivet 23). Hellweg further asserts that "there is no teaching of multiple rivets." (Defs' Opposition, p. 6.) Thus, Hellweg argues that "joined together along" means that the sidewalls at the lower rear portion of the holster are joined *only* at a single point, and are *not* joined at multiple points. Hellweg states: "Construing the joinder phrase to include joinder 'at one or more points' improperly permits 'applicant to escape examination of a more broadly-claimed invention by filing narrow claims and then, after grant, asserting a broader scope of the claims....' " *Id.* (quoting *Unique Concepts, Inc. v. Brown*, 939 F.2d 1558, 1562 (Fed.Cir.1991)).

While Hellweg's construction of "joined together along" is somewhat persuasive, the Court declines, for two reasons, to adopt Hellweg's construction outright. First, the ordinary meaning of the term "along" is: (a) "over the length of," (b) "in the course of," or (c) "in a line parallel with the length or direction of." WEBSTER'S THIRD NEW INT'L DICT (1986). Thus, the plain and ordinary meaning of the word "along" suggests that the claim language "joined together along" should not be limited to a single joinder at a single point-e.g., a rivet-but instead should also encompass a joinder that covers a longer area, or that describes a more linear shape or pattern.

Second, the specification states:

Preferably, sidewalls 40 and 11 are formed by folding a single piece of material along front portion 31 and fastening the back portions together at the lower corner 23 by *stitching, rivet, or the like,*

(480 Patent, Col. 3, lines 47-50) (emphasis added). This passage is important because it indicates that the joinder need not be accomplished by a rivet, but may instead be accomplished by "stitching" or some "like" structure. By naming "stitching" as a preferred manner of joining the sidewalls, the possibility arises that the joinder may occur "along" the lower rear portion, within the ordinary meaning of that word. That is, the joinder may occur "over the length of" the lower rear portion, or "in a line parallel with" the lower rear portion.FN6

FN6. The Court notes that, in addition to rivets and stitching, the specification also appears to disclose joinder by means of an object resembling a phillips-headed screw. *See* '980 Patent, Figures 3, 8, 13. *Compare id.*, Figures 4, 11, 12.

Before providing a final construction of the phrase "joined together along," the Court makes one final observation. Namely, the Court observes that it would be improper to construe "joined together along" by reference to a specific number of joined "points," "places," or "locations." For example, Safari Land proposes to define "joined together along" to mean: "joined together at one or more points." (Joint Claim Construction, Exhibit C, p. 1.) Defining "joined together along" by reference to a certain number of "points," however, is ambiguous and fails to provide helpful guidance.FN7 For instance, two or three particular "points" on a sidewall may be joined by a single, large rivet. Conversely, joining a "point" of

larger proportions might require two rivets or, alternatively, a line of stitching. Defining "joined together along" by reference to a certain amount of joined "points" could lead to an anomalous result. Namely, a joiner comprised of two small rivets might be considered different from a joiner of equal length that happens to be comprised of one large rivet or a line of stitching. Accordingly, the Court declines to define "joined together along" solely by reference to a specific number of joined "points," "places," or "locations."

FN7. In this context, the ordinary meaning of the word "point" is "one of the indivisible parts of an extended [and] usually abstract whole," or "a particular narrowly limited part of a surface or of space that is singled out as occupying a precisely indicated spot and that has minimum extension or no relevant extension." WEBSTER'S THIRD NEW INT'L DICT (1986).

On the basis of the above, the Court construes the phrase "joined together along" to mean: joined by a rivet, stitching, or a like structure or structures, resulting in joiner over some length of an area.

**b. "the ... lower rear portion[ ]"**

Having completed its discussion of the *manner* in which the lower rear portions of the '980 holster's sidewalls are joined, the Court must now identify the *location* of "the ... lower rear portion." According to Hellweg, the Court must construe "the ... lower rear portion" as meaning: "in only one place, near the bottom of the rear." (Defs' Brief, p. 12.) Additionally, Hellweg asserts: "Up from or above the lower corner or rivet 23, edges 39 are not fastened together but are left free to move apart from each other." ( *Id.*) In other words, Hellweg contends that the Court should construe "the ... lower rear portion" of '980 holster's sidewalls to exclude the area "up from or above ... rivet 23."

To better conceptualize Hellweg's argument, the Court again turns its attention to Figures 3, 4, and 8 in the '980 Patent's specification. These figures depict, among other things, the sidewalls at the lower rear area of the holster, which are joined at rivet 23. As stated above, Hellweg argues that "the ... lower rear portion" of the '980 holster includes only "the bottom of the rear" of the holster, excluding the area "[u]p from or above ... rivet 23." Thus, turning to Figures 3, 4, and 8, it is apparent that Hellweg desires to define "the ... lower rear portion" of the '980 holster as including only the rear area of the holster at or below the top edge of rivet 23.

In support of this construction, Hellweg relies upon three sources of evidence. First, Hellweg notes that, in the specification, the lower rear portion of the '980 holster's sidewalls "are fastened together only by rivet 23." *See* Defs' Brief, p. 12 (quoting '980 Patent, Col 5, lines 13-16). Hellweg further notes that, due to the placement of rivet 23, the rear edges of the '980 holster are free to spread apart only above the rivet. Thus, according to Hellweg, rivet 23 necessarily defines the upper boundary of "the ... lower rear portion" of the '980 holster.

Second, Hellweg notes that the Parent Application of the '980 Patent did not contain any reference to a "lower rear portion." Instead, the Parent Application merely stated that the holster's sidewalls were "joined together along the ... back portions." (Joint Exhibits, Exhibit 3, PPH 9.) FN8 Hellweg further notes that, in the Continuation Application of the '980 Patent, the inventor added language specifying that the holster's sidewalls are "joined together along the respective forward portions 31 and lower rear portions 32." (14 Exhibit 4, PH 20) (emphasis added). According to Hellweg, the inventor added this "lower rear portions" language to overcome a prior art rejection. *See* Defs' Brief, p. 13 (citing patent amendment statement at



Joint Exhibit 4, PH 59).FN9 Thus, according to Hellweg, Safari Land is now estopped from arguing that the claim language of the ' 980 Patent encompasses holsters with sidewalls that are joined in the area above rivet 23.

FN8. The relevant portion of the Parent Application reads: "The holster has an outer sidewall 40 and an inner sidewall 11 joined together along the respective front portions 31 and back portions 32 ."

FN9. The inventor's Continuation Application stated: "Claims 1-4, 6-14, 16 and 17 as amended, are believed to be patentable under 35 U .S.C. 103 over Bianchi (841) in view of Boyt and Perkins (276) and Bianchi et al (060). Applicant's claimed invention defines, for example, in claim 1, *inter alia*, that the 'sidewalls' are 'joined together along the forward and lower rear portions thereof which is structurally very different from the front opening of the principal reference to Bianchi et al (841)." (Joint Exhibits, Exhibit 4, PH 59.)

Hellweg proffers a third source of evidence in support of its contention that "the ... lower rear portion" language of the '980 Patent refers solely to the area below the top edge of rivet 23. According to Hellweg, the inventor of the '980 Patent repeatedly used the word "adjacent" to signal proximity to the holster's "open top." FN10 Hellweg notes that, in describing the location of the ' 980 Patent's "lower rear portion," the inventor did *not* state that the "lower rear portion" is "adjacent" to the "open top." From this, Hellweg concludes that the "lower rear portion" must necessarily be distant from the "open top." That is, Hellweg concludes that he "lower rear portion" must be located at or below rivet 23.

FN10. The '980 holster's "open top" is depicted as item 13 on Figures 2 and 7. The "open top" is situated approximately midway between rivet 23 (at the bottom of the holster) and the top of the first and second straps, which arch over the top of the pistol. In at least four places, the '980 Patent states that the "third strap" is "adjacent" to the "open top." *See* ' 980 Patent, Col. 2, lines 41-44 ("a third strap ... adjacent the open top"); '980 Patent, Col. 4, lines 9-11 ("Strap 14 encircles and is affixed to both inner and outer sidewalls 11 and 40 adjacent open top 13"); '980 Patent, Col. 5, lines 34-35 ("A lateral strap 14 encircles the holster adjacent open top 13 and is affixed ..."); '980 Patent, Col. 7, lines 14-16 ("said second end portion being wrapped around the forward portions of said sidewalls adjacent said open top ..."),

After carefully considering Hellweg's arguments, the Court finds, for the following three reasons, that it cannot adopt Hellweg's construction of "lower rear portion" as referring solely to the area of the holster below the top edge of rivet 23. First, the Court will not import an example of a joining *structure*-i.e., rivet 23-from the written specification of the '980 Patent in order to limit claim language which describes an *area* of the holster. *General Electric Corp. v. Nintendo Co., Ltd.*, 179 F.3d 1350, 1358 (Fed.Cir.1999) (declining to import example from written description into claims as complete definition of claim term). Consequently, while the position of rivet 23 is certainly useful for determining the location of the "bottom rear portion," the Court will not limit the claim element "bottom rear portion" solely on the basis of rivet 23. *Honeywell, Inc. v. Victor Co. of Japan, Ltd.*, 298 F.3d 1317, 2002 WL 1766005 (Fed.Cir., Aug. 1, 2002) ("a description of a preferred embodiment does not, of course, limit the scope of the claims"). Stated another way, the Court finds that the positioning of rivet 23 in the ' 980 Patent's specification does not preclude a construction of "lower rear portion" as including some area above rivet 23.

Second, the Court finds that the prosecution history of the '980 patent does not require the Court to construe

"lower rear portion" as including only the area at or below rivet 23. After closely reviewing the prosecution history submitted by Hellweg, the Court cannot find any attempt by the inventor to distinguish the '980 patent from the prior art on the basis of the location of the '980 Patent's "lower rear portion." While a narrowing amendment made to satisfy any requirement of the Patent Act may give rise to an estoppel, *Festo*, 122 S.Ct. at 1839, the prosecution history of the '980 Patent does not demonstrate that Safari Land surrendered any claim coverage pertaining to the location of the "lower rear portion." Safari Land, during prosecution, surrendered the "joined together along the ... back portions" language in favor of the "joined together along the ... lower rear portion" language. This altered language, however, does not limit the scope of the "lower rear portion" claim element. Moreover, the changed language makes no reference to rivet 23, and provides no support for construing the claim language "lower rear portion" solely by reference to rivet 23.

Third, the Court is not persuaded by Hellweg's argument premised on the inventor's failure to describe the "lower rear portion" of the holster as being "adjacent" to the holster's "open top." Hellweg's argument is unpersuasive because it relies on the premise that, where the inventor failed to describe structures as being "adjacent," the inventor necessarily intended to convey that the structures are far apart. After close examination of the patent, the Court finds no indication that the inventor intended the omission of the word "adjacent" to mean "far from" or "away from." FN11

FN11. The Court notes that the premise of Hellweg's argument can form the basis of an argument in opposition to Hellweg's position on this issue. For example, one could argue that, because the inventor did not describe rivet 23 as being "adjacent" to the bottom edge of the '980 holster, rivet 23 may necessarily be situated further from the bottom edge of the holster, in the direction of the "open top."

However, while the Court is not persuaded to adopt Hellweg's construction of the claim element "lower rear portion," neither is the Court persuaded to adopt Safari Land's alternative construction. According to Safari Land, the Court should construe "lower rear portion" to mean "lower rear portion." (Pl's Opening Memo., p. 13; Joint Statement, Attachment C, p. 2.) That is, Safari Land argues that the phrase "lower rear portion" requires no claim construction. With regard to the "Sower rear portion" claim element, Safari Land states:

[T]he claim ... by its express terms would include a holster with sidewalls that are joined together at multiple points in the lower rear portion of the holster, or even sidewalls that are joined together throughout the entire lower rear of the holster.

Under defendants' proffered interpretation, the "lower rear" of the holster would encompass *only* the extreme bottom-most rear corner of the holster where the sidewalls are joined together in only a single spot. Everything above that point would be considered the "upper" rear, including portions that are much closer to the bottom of the holster than to the top. Defendants' distorted interpretation has no basis in the specification or prosecution history....

(Pl's Reply, p. 3.)

The Court disagrees with the above statement insofar as Safari Land suggests that the "lower rear portion" of the '980 holster may extend the entire length between the lower, rear corner of the holster and the "third strap" that laterally encircles the holster .FN12 The basis of the Court's disagreement with Safari Land's construction is as follows.

FN12. *See* '480 Patent, Figures 3, 4, 7, 8, and 12. These figures depict the lower rear edges 39 of the inner 11 and outer 40 sidewalls as extending from the holster's bottom rear corner, in the area of rivet 23, up to the "third strap" 15 of the holster.

The specification of the '980 Patent teaches that rear edges 39 of the inner and outer sidewalls are allowed to "spring apart" or "spread apart" near top opening 13. '980 Patent, Col. 5, lines 12-15 ("rear edges 39 of walls 40 and 11 ... will spread apart near top opening 13 when handgun 24 is rotated ..."). The sidewalls may "spring apart" or "spread apart" as a result of a downward rotation of the butt of the pistol. *See* '980 Patent, Col. 5, lines 56-59 ("Rear edges 39 of walls 40 and 11 are held together ... until revolver 36 is moved in the direction of arrow 30 to cause edges 39 to spring apart ..."); Col. 6, lines 1-4 ("In the second step ... butt 44 is pulled backward in the direction of arrow 47 causing rear edges 39 to spread apart ..."); Col. 7, lines 54-56 ("each sidewall having forward and lower rear portions joined together to define an expandable open top and upper rear portions"). *See also* Figure 12 (depicting withdrawal of pistol from preferred embodiment of '980 holster, including downward rotation of pistol and spreading of rear edges 39).

In the preferred embodiments of the '980 holster FN13, the specification teaches that the required downward rotation of the pistol may cause the rear edges of the sidewalls to spread apart in the area "near top opening 13." *See* Col. 5, lines 56-59 ("revolver 36 is moved in the direction of arrow 30 to cause edges 39 to spring apart near top opening 13 ..."); Col. 6, lines 1-4 (describing process of withdrawing pistol from either revolver or semi-automatic embodiments, and stating that "butt 44 is pulled backward in the direction of arrow 47 causing rear edges 39 to spread apart ..."). *See also* '980 Patent, Col. 8, lines 50-61 (suggesting, for purposes of claim 15 of the '980 Patent, that a holster wearer cannot remove the pistol without rotating the pistol backward and downward, thereby causing upper rear portions of holster to expand); Col. 8, lines 32-33 ("to permit said open top and upper rear portions to be expanded"). This teaching from the specification, and language from the patent claims, indicates that the rear sidewalls of the '980 Patent must *not* be joined in the area "near top opening 13" because such a joining would prevent the sidewalls from spreading apart in that area. Accordingly, the Court finds that it cannot construe "lower rear portion" to include the area "near top opening 13" because such a construction would prevent any spreading or expanding of the holster's sidewalls near the top opening.

FN13. The '980 Patent specification describes embodiments designed for a revolver pistol, and embodiments designed for a semi-automatic pistol.

Thus, the Court preliminarily construes the claim element "the ... lower rear portion[ ]" to mean: the rear portion of the holster extending from the lower rear corner of the holster, up to a point near the holster's open top, but not including the area between said point and the holster's open top.

The Court deems this claim construction "preliminary" because the Court understands that the phrase "up to a point near the holster's open top" causes the Court's construction to retain a certain degree of ambiguity. For example, one might locate this "point near the holster's open top" as being a point several millimeters from the open top, a point one centimeter from the open top, or perhaps a point several centimeters from the open top. Thus, the Court will attempt to provide further guidance as the location of this "point near the holster's open top."

As discussed above, the specification of the '980 Patent teaches that the sidewalls of the '980 holster are not joined "near top opening 13" because such a joinder would prevent spreading or expansion of the sidewalls near the top opening. Thus, the location of the "point near the holster's open top" is related to the permissive "springing" or "spreading" of the '980 holster's sidewalls near the top opening. That is, the "point near the holster's open top" must be located far enough from the pistol's open top to permit spreading or expansion of the pistol's sidewalls "near the open top."

Ideally, the Court would prefer to provide a precise location of the "point near the holster's open top." However, the location of this point may vary from one embodiment of the '980 holster to the next. For example, if an embodiment of the '980 holster is characterized by highly rigid, stiff sidewalls, the "point near the holster's open top" may be located closer to rivet 23 to allow for some spreading of the sidewalls in the area between that point and the holster's open top. Conversely, if an embodiment of the '980 holster is characterized by sidewalls that are less stiff, then the "point near the holster's open top" may be located nearer to the holster's open top.

In sum, the Court construes the claim element "joined together along the ... lower rear portion[ ]" to mean: joined by a rivet, stitching, or a like structure or structures, resulting in joinder of the sidewalls over some length of the lower rear portion of the holster, which is the portion extending from the lower rear corner of the holster, up to a point near the holster's open top, but not including the area between said point and the holster's open top. For purposes of this construction, the "point near the holster's open top" is the point along the rear of the holster's sidewalls located just far enough from the pistol's open top to permit, upon joinder at the point, the pistol's sidewalls near the open top of the holster to spread or spring apart,

## **5, "upper rear portions"**

The Court construes the claim language "upper rear portions" consistently with the construction of the claim language "lower rear portions," discussed above. That is, the Court construes "upper rear portions" to mean: the rear portions of the holster's sidewalls extending from the open top of the holster, down to a point near the holster's open top, and including the area between said point and the holster's open top. For purposes of this construction, the "point near the holster's open top" is the point along the rear of the holster's sidewalls located just far enough from the pistol's open top to permit, upon joinder at the point, the pistol's sidewalls near the open top of the holster to spread or spring apart.

## **6. "expandable"**

The claim term "expandable" appears in at least five places in the '980 Patent's claims.FN14 Within the claims, "expandable" is used to describe an "expandable cavity" and an "open expandable top and upper rear portions." After examining the claim language, the specifications, and the prosecution history, the Court finds no reason to ascribe a different meaning to the term "expandable" depending on whether the word is used to describe a "cavity" or a "top." Accordingly, the Court will provide a single definition of the term. FN15

FN14. *See* Column 6, lines 46-47, 58, 64; Column 7, line 56.

FN15. The Court, will, however, provide a separate definition of the claim language "for limited expansion." *See infra.*, Part II.C .7.

Plaintiff Safari Land defines "expandable" to mean "capable of being expanded." *See* Joint Claim Construction, Exhibit C, p. 2 (citing Mirriam Webster's Collegiate Dict., Tenth Ed.). *See also* WEBSTER'S THIRD NEW INT'L DICT. (1986) (defining "expandable" as "capable of being expanded"). It is unclear whether defendant Hellweg disagrees with this definition because Hellweg does not set forth a separate definition of the term. *See* Joint Claim Construction, Exhibit C, p. 2 (stating that "[t]his expandable structure is confirmed by claim 5 which expressly teaches that the holster must permit downward rotation of the butt of the handgun. These structures must be expandable to permit rearward rotation of the handgun to clear the restraining ledge ..."). Accordingly, the Court construes "expandable" to mean: capable of being expanded.

## 7. "for limited expansion"

The claim element "for limited expansion" is written in means-plus-function language pursuant to 35 U.S.C. s. 112 para. 6. The "for limited expansion" language refers to the expansion of the '980 holster that the "slot and pin" arrangement within the third strap permits when the holster wearer disengages the first, second, and third straps. *See* 980 Patent, Col. 6, lines 49-50, 62-68 ("the improvement comprising ... slideable means attaching one end of said third strap to said inner sidewall *for limited expansion* of said open expandable top and upper rear portions and of said inner cavity when said second fastener is opened by a middle finger engaging said second tab and a thumb engages said first tab to open said first fastener ...") (emphasis added). *See also* '980 Patent, Figures 4, 8, 9 (depicting embodiment of "slideable means" as slot 16 and pin 17 located within "third strap" 14).

According to Safari Land, the claim element "for limited expansion" means that "releasing the first and second fasteners *permits*, but does not necessarily *cause* or *require*, limited expansion of the top and upper rear portions and the inner cavity." (Joint Claim Construction, Attachment C, p. 3.) (plaintiff's emphasis). According to Hellweg, on the other hand, the Court should construe the claim element "for limited expansion" as "requiring ... expanding structures...." (*Id.*) Thus, the Court must determine whether the claim element "for limited expansion" means that disengaging the first and second fasteners, along with operation of the "slidable means," *permits* limited expansion or, alternatively, *requires* limited expansion.

The specification of the '980 Patent teaches that the claim element "for limited expansion" means that disengaging the first and second fasteners, along with operation of the "slidable means," *permits* limited expansion of the holster's open expandable top, upper rear portions, and inner cavity. *See* '980 Patent, Col. 4, lines 22-24 ("When strap 14 is loosened, it *permits* open top 13 and interior cavity 25 to expand so the handgun may be withdrawn"); '980 Patent, Col. 4, lines 50-53 ("When fastener 18 is opened, strap 14 will automatically slide along slot 16 to *permit* spreading of sidewalls 40 and 11 for ease in withdrawing the handgun from the holster"); '980 Patent, Col. 5, lines 17-20 ("When fastener 18 is open, strap 14 is loosened slightly and *permits* the butt of handgun 24 to be moved just enough for edge 28 to clear ledge 27 ..."); '980 Patent, Col. 5, lines 6-9 ("The unsnapping of fastener 18 releases strap 14 permitting it to slide with respect to slot 16 and pin 17, which, in turn, *permits* butt 44 to be moved backward"). Nowhere in the '980 Patent's specification does the inventor teach that operation of the slideable means "requires" expansion.

Moreover, the specification indicates that the inventor of the '980 Patent designed the slideable means for the purpose of permitting expansion of the holster while, at the same time, preventing the holster from expanding so far that an assailant could remove the pistol from the rear. *See* '980 Patent, Col. 4, lines 24-27 ("It is important, however, for strap 14 to be limited in its loosening movement so that the handgun can never be withdrawn from the rear, but must always be withdrawn upwardly"); '980 Patent, Col. 4, lines 54-

56 ("The limits of slot 16 do not permit enough slack in strap 14 for handgun 24 to be withdrawn from the rear of the holster"). Thus, the specification does not teach that the purpose of the slideable means in the third strap is to *require* the '980 holster's open top, upper rear portions, and inner cavity to expand.

In accordance with the above, the Court construes the claim element "for limited expansion" to mean: "permitting limited expansion."

**8. "means in said inner cavity engaging a cartridge ejection port of a semi-automatic pistol" FN16**

FN16. This claim element appears in claim 8.

**"ledge means projecting into said inner cavity engage[d] to a portion of a handgun" FN17**

FN17. This claim element appears in claim 10.

**"a small molded lateral ledge projecting into said Inner cavity from the inside surface of one of said sidewalls and adapted to engage a corresponding ledge on a handgun" FN18**

FN18. This claim element appears in claim 14.

Safari Land submits a proposed claim construction for each of the above three claim elements, which are located in claims 8, 10, and 14. FN19 First, Safari Land construes "means in said inner cavity engaging a cartridge ejection port of a semi-automatic pistol," from claim 8, as meaning: "any structure within the holster cavity, including a lateral ledge or other protrusion, that is adapted to engage the cartridge ejection portion of a semi-automatic pistol." Second, Safari Land construes "ledge means projecting into said inner cavity engage[d] to a portion of a handgun to prevent upward withdrawal of a handgun," from claim 10, to mean: "any ledge or other protrusion within the cavity that is adapted to engage the handgun, and that is shaped and located such that the handgun cannot be pulled directly upward out of the holster...." Third, Safari Land construes "a small molded lateral ledge projecting into said inner cavity from the inside surface of one of said sidewalls and adapted to engage a corresponding ledge on a handgun, from claim 14, to mean: "a small molded lateral ledge within the cavity that is adapted to engage the handgun, and that is shaped and located such that the handgun cannot be pulled directly upward out of the holster...." (Joint Claim Construction, Attachment C, pp. 5, 7.)

FN19. For convenience, the Court will refer to these three claim elements as "the above three claim elements," or "the 'ledge means' claim elements."

In opposition to Safari Land's construction of the above three claim elements, Hellweg does not provide any alternative proposed construction. Instead, Hellweg's "proposed construction" asserts that "[t]he structure, function and relation of the lateral ledge must be consistent with the proposed interpretation of claim 5 already discussed." *See* Joint Claim Construction, Attachment C, p. 7. *See also* id., pp. 5, 8 (stating "[t]his element should be interpreted the same as already discussed regarding claim 5," and "[t]he structure, function and relation of the lateral ledge must be consistent with the proposed interpretation of claim 5 already discussed"). Hellweg's statement does not inform the Court of the basis of Hellweg's disagreement with Safari Land's construction of the above three elements. Moreover, Hellweg's statement does not apprise

the Court of Hellweg's desired final claim construction of the above three elements.

The Court has closely reviewed Hellweg's proposed construction of claim 5. (Joint Claim Construction, Attachment C, p. 4.) In Hellweg's proposed construction of claim 5, Hellweg asserts that a wearer of the '980 holster can disengage a handgun from "the small lateral ledge"-i.e., the "ledge means"-only because the upper rear portions of the holster's sidewalls "spread apart" to make way for the rearward rotation of the handgun. According to Hellweg, the expandability of the upper rear portions "is critical to the structure and function of the claims and the interrelation with the lateral ledge." *Id.* Moreover, Hellweg appears to construe "the small lateral ledge"-i.e., the "ledge means"-as being functionally dependent on the expandability of the upper rear portions of the holster's sidewalls. That is, Hellweg appears to assert that the "ledge means" within the holster's inner cavity will not function properly without corresponding expansion of the holster's open top and upper rear portions during removal of the pistol.

Thus, by importing Hellweg's construction of claim 5 into Hellweg's "proposed construction" of the "ledge means" claim elements, the Court understands Hellweg's construction of the "ledge means" elements to be as follows: A lateral ledge, within the holster's inner cavity, that prevents a handgun from being pulled directly upward out of the holster, and that will function properly only if the holster's upper rear portions spread apart to make way for the rearward (lateral) travel of the handgun.

For three reasons, the Court declines to limit the three "ledge means" claim elements in the manner that Hellweg desires. First, the plain language of claims 8, 10, and 14 does not indicate that expansion of the holster's upper rear portions is a prerequisite to the proper functioning of the "ledge means." Thus, the claim language, plainly read, does not preclude the possibility that an embodiment of the '980 Patent could be characterized by upper rear sidewalls which, though expandable, do not *require* expansion as a prerequisite to removing a pistol.FN20 Second, the Court finds that nothing in the '980 Patent's specification compels the Court to limit the three "ledge means" elements by requiring the ledge means to be functionally dependent on expandable upper rear portions. Third, as discussed further below, the Court finds that claim 15 of the '980 Patent does require a wearer of the '980 Patent to actively expand the upper rear portions of the holster's sidewalls. Thus, to prevent claim 15 from being redundant, the Court will construe the "ledge means" claim elements of claims 8, 10, and 14 in a manner that allows, but does not require, expandable upper rear portions.

FN20. A close examination of the '980 Patent's specification reveals that the depicted embodiments are shaped differently in the areas adjacent to, and along, rear edges 39. For instance, Figure 2 depicts a holster with shorter rear edges than the rear edges depicted in Figure 7. Moreover, Figures 11 and 12 depict a holster with a greater amount of "flare" in the area above rear edges 39. The Court finds it reasonably conceivable that a '980 holster could allow the wearer to disengage the pistol from the "ledge means," without expanding the upper rear portions, if the holster were characterized by: (1) relatively short rear edges 39; (2) relatively stiff sidewalls; (3) a relatively greater amount of "flare" in the area above rear edges 39; and (4) a relatively small "ledge means."

In accordance with the above, the Court adopts Safari Land's proposed claim constructions of the disputed claim elements from claims 8, 10, and 14. Thus, the Court construes "means in said inner cavity engaging a cartridge ejection port of a semi-automatic pistol," from claim 8, as meaning: "any structure within the holster cavity, including a lateral ledge or other protrusion, that is adapted to engage the cartridge ejection portion of a semi-automatic pistol." The Court construes "ledge means projecting into said inner cavity

engage[d] to a portion of a handgun to prevent upward withdrawal of a handgun," from claim 10, to mean: "any ledge or other protrusion within the cavity that is adapted to engage the handgun, and that is shaped and located such that the handgun cannot be pulled directly upward out of the holster...." The Court construes "a small molded lateral ledge projecting into said inner cavity from the inside surface of one of said sidewalls and adapted to engage a corresponding ledge on a handgun," from claim 14, to mean: "a small molded lateral ledge within the cavity that is adapted to engage the handgun, and that is shaped and located such that the handgun cannot be pulled directly upward out of the holster...."

## **9. "until a butt of a handgun is rotated rearwardly and downwardly"**

The claim language "until a butt of a handgun is rotated rearwardly and downwardly" is located in claim 5. Claim 5 states:

The holster of claim 1 wherein said means to engage a handgun includes a small lateral ledge adapted to engage a shoulder of a handgun when fully inserted into the holster, said ledge when engaged with a shoulder providing resistance to upward withdrawal of a handgun *until a butt of a handgun is rotated rearwardly and downwardly*.

(1980 Patent, Col. 7, lines 25-31) (emphasis added). Generally, the claim element at issue describes the manner in which a wearer of the '980 holster must manipulate the pistol in order to extricate the pistol from the internal impediment formed by the "ledge means."

According to Safari Land, the Court should construe the claim element "until a butt of a handgun is rotated rearwardly and downwardly" as meaning that "the ledge [means] is shaped and located such that the handgun cannot be pulled directly upward out of the holster, until it has first been freed from the ledge [means] by rotating the butt of the handgun down and to the back." (Joint Claim Construction, Attachment C, p. 4.)

Once again, Hellweg does not provide a proposed construction in opposition to Safari Land's proposed construction. As stated above, however, Hellweg desires the Court to limit claim 5 by requiring a functional relationship to exist between the internal "ledge means" and the expandability of the upper rear portions of the '980 holster's sidewalls. Here, Hellweg desires the Court to construe the language "until a butt of a handgun is rotated rearwardly and downwardly" in a similar manner. Namely, Hellweg desires the Court to find that

[t]he rotational function of the butt of the handgun requires certain structure. The butt of the handgun can be rotated rearwardly and downwardly ... far enough to disengage the small lateral ledge because the sidewalls 40 and 11, including the upper rear portions 39, "spread apart" and make way for the rearward (lateral) travel of the handgun.... Hence, the structure of the upper rear portions permitting them to spread apart is critical to the structure and function of the claims and the interrelation with the lateral ledge.

(Joint Claim Construction, Attachment C, p. 4) (citations omitted).

For the same reasons stated above, however, the Court is unwilling to limit the language "until a butt of a handgun is rotated rearwardly and downwardly" in the manner that Hellweg desires. The plain language of claim 5 does not indicate that rearward, downward rotation of a handgun necessarily causes expansion of the '980 holster's upper rear portions. That is, the plain language of claim 5 does not preclude the possibility that



an embodiment of the '980 Patent could have sidewalls which, at their upper rear portions, do not expand as a result of rotating a handgun rearward and downward. Second, the Court does not find that the '980 Patent's specification requires the Court to construe "until a butt of a handgun is rotated rearwardly and downwardly" as requiring cooperating expandable upper rear portions. Third, as discussed below, the Court finds that claim 15 of the '980 Patent requires a wearer of the '980 Patent to expand the upper rear portions of the holster's sidewalls as a prerequisite to removal of the pistol. Thus, to prevent claim 15 from being redundant, the Court will construe the disputed language of claim 5 in a manner that allows, but does not require, expandable upper rear portions.

In accordance with the above, the Court adopts Safari Land's proposed claim construction of the disputed claim element from claim 5. Thus, the Court construes "until a butt of a handgun is rotated rearwardly and downwardly" to mean: the handgun or pistol cannot be pulled directly upward out of the holster until the handgun or pistol has first been freed from the ledge means by rotating the butt of the handgun down and to the back.

**10. "withdrawable only by subsequent rotation rearwardly of a handgun in said holster by expanding said open top and upper rear portions of said holster and a handgun clearing said ledge means."**

The claim language "withdrawable only by subsequent rotation rearwardly of a handgun in said holster by expanding said open top and upper rear portions of said holster and a handgun clearing said ledge means" is located in claim 15. Claim 15 states:

The holster of claim 10 wherein ... both of said first and second fasteners are opened and a handgun is *withdrawable only by subsequent rotation rearwardly of a handgun in said holster by expanding said open top and upper rear portions of said holster and a handgun clearing said ledge means.*

'980 Patent, Col. 8, lines 50-61 (disputed claim language in italics). The claim language at issue in claim 15 describes a holster that allows the holster wearer to remove a handgun from the holster **only if**: (1) the holder wearer rotates the butt of the handgun rearward and downward such that the upper rear portions of the holster expand; and (2) the rearward and downward rotation of the handgun causes sufficient expansion to allow the handgun to clear the internal "ledge means."

The parties appear to substantially agree on the meaning of claim 15. According to Safari Land:

The claim element requires that the holster design be such that (1) the handgun is withdrawable only by rocking the butt of the gun rearward and downward to free the ledge means; and (2) removing the handgun causes or requires at least some expansion of the open top and upper rear portions of the holster.

(Joint Claim Construction, Attachment C, p. 8.)

In opposition to Safari Land's claim construction, Hellweg states that "[t]he structure, function and relation of the lateral ledge must be consistent with the proposed interpretation of claim 5 already discussed." As discussed above, Hellweg construes claim 5 as follows:

The rotational function of the butt of the handgun requires certain structure. The butt of the handgun can be rotated rearwardly and downwardly ... far enough to disengage the small lateral ledge because the sidewalls 40 and 11, including the upper rear portions 39, "spread apart" and make way for the rearward (lateral) travel of the handgun.... Hence, the structure of the upper rear portions permitting them to spread apart is critical to the structure and function of the claims and the interrelation with the lateral ledge. (Joint Claim

Construction, Attachment C, p. 4) (citations omitted). As discussed above, the Court finds that Hellweg's analysis of claim 5, if adopted by the Court, would improperly limit the scope of claim 5. However, the Court finds that Hellweg's construction of claim 5 is substantially correct as applied to claim 15. The plain and ordinary language of claim 15 indicates that the scope of claim 15 is limited to holsters possessing internal "ledge means" that function properly only when accompanied by expansion of the holster's open top and upper rear portions upon a rearward rotation of the handgun.

The Court finds that Safari Land's proposed construction of claim 15 adequately incorporates Hellweg's analysis of claim 5. Accordingly, the Court construes "withdrawable only by subsequent rotation rearwardly of a handgun in said holster by expanding said open top and upper rear portions of said holster and a handgun clearing said ledge means," from claim 15, to mean: the handgun is withdrawable only by rocking the butt of the gun rearward and downward to free the ledge means, and removing the handgun causes or requires some expansion of the open top and upper rear portions of the holster.

### **CONCLUSION**

Pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995), the Court construes the disputed claim terms and elements as set forth above.

**IT IS SO ORDERED.**

S.D.Cal.,2002.

Safari Land, Ltd., Inc. v. Hellweg Intern. Pty. Ltd. of Australia

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