

United States District Court,
D. South Carolina, Greenville Division.

Edward VAN ROMER and Basic Concepts, Inc,
Plaintiffs.

v.

INTERSTATE PRODUCTS, INC,
Defendant.

Civil Action No. 6:06-2867-HFF

Dec. 12, 2008.

Cort R. Flint, Jr., John Raymond Perkins, Jr., Ronald Estes Cardwell, McNair Law Firm, Greenville, SC, for
Plaintiffs.

Timothy David St. Clair, Turner Padgett Graham and Laney, Greenville, SC, for Defendant.

CLAIM CONSTRUCTION ORDER

HENRY F. FLOYD, District Judge.

I. INTRODUCTION

This is a patent infringement case in which Plaintiffs allege that spill containment devices produced by Defendant infringe Plaintiff Van Romer's utility patent, U.S. Patent No. 5,762,233 (the '233 patent). The Court has jurisdiction pursuant to 28 U.S.C. s. 1338(a) and 28 U.S.C. s. 1332. This matter is presently before the Court for a construction of the claims made in the '233 patent.

II. CONTENTIONS OF THE PARTIES

The parties have asked the Court to construe language in claims 1, 2, 9, and 16 of the '233 patent. In general terms, Plaintiffs argue that the claims disclose two different embodiments of spill containment devices: (1) a one-piece embodiment where the ground sheeting folds up and forms the retaining wall and (2) a two-piece embodiment where a separate piece of material is attached to the ground sheeting to form the retaining wall. Defendant argues that, although both embodiments were disclosed in the patent, only the two-piece embodiment was actually claimed. These two positions shape much of the more detailed claim construction arguments raised by the parties and addressed below.

III. DISCUSSION AND ANALYSIS

The Court proceeds from the "bedrock principle" of patent law that "the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. A WH Corp.*, 415 F.3d 1303, 1312 (Fed.Cir.2005) (citations omitted). Determining the proper meaning of those claims, or construing

them, is a matter of law for the Court. *Markman v. Westview Instruments*, 517 U.S. 370, 373, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996).

To ascertain the meaning of claims, courts consider three sources: the claims, the specification, and the prosecution history. *Markman v. Westview Instruments*, 52 F.3d 967, 979 (Fed.Cir.1995). However, the controlling focus of claim construction is the actual words of the claim. *Digital Biometrics v. Identix, Inc.*, 149 F.3d 1335, 1344 (Fed.Cir.1998) (citations omitted). Although a patentee may act as his own lexicographer and ascribe a certain meaning to certain terms, Plaintiff Van Romer has made clear that he did not act as his own lexicographer but intended that all words used in the claims would have their ordinary meaning to a person skilled in the art. (Pls.' Br. 9-10.) As there were no objections to the '233 patent, the prosecution history is unhelpful in this case. Thus, in construing the claims the Court will focus on the claims themselves and the specification, where necessary.

In addition, the Federal Circuit has noted that claim terms are generally accorded their "ordinary and customary meaning," which is the "meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips*, 415 F.3d at 1312. "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314(citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed.Cir.2001)). In determining the ordinary and customary meaning, however, it is appropriate to consult general purpose dictionaries. *Phillips*, 415 F.3d at 1314. Further, a claim must be read as a whole and the disputed language is viewed in context with the other language in the claim. *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed.Cir.2003). Finally, claim terms are presumed to be used consistently throughout the patent. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342 (Fed.Cir.2001). FN1

With these general rules of construction in mind, the Court will address the specific claims at issue in this case.

A. Claim One

Claim One provides as follows with disputed language in bold: FN2

(1) A portable containment for containing spilled material and preventing environmental ground contamination which may be easily folded for transportation and storage, comprising:

(a) foldable **ground sheeting** overlying the ground in an unfolded configuration; said **ground sheeting** having a **floor section** for containing said spilled material in said unfolded configuration.

(b) a foldable, generally upstanding **retaining wall integrally connected** to said floor section having an upstanding configuration for containing the spilled material in cooperation with said floor section in said unfolded configuration;

(c) a **plurality** of foldable side braces **connected to said wall sheeting** having a **bracing position** for maintaining **said wall** in said upstanding configuration;

(d) said side braces including:

- (i) a **generally vertical rigid leg carried by** said retaining wall;
- (ii) a generally horizontal leg generally parallel to said ground sheeting in said bracing position
- (iii) an inclined rigid leg extending between an **upper portion** of said retaining wall and said horizontal leg in said bracing position for bracing said retaining wall in said upstanding configuration,
- (iv) a **hinge** defined at an intersection of said inclined leg and said horizontal leg about which said inclined leg and said horizontal leg pivot relative to each other, and
- (e) a **brace fixture affixing** said hinge at a **fixed distance** from said retaining wall when side brace is in said bracing position and said retaining wall is in **said upstanding position** for retaining said spilled material.

('233 Patent, Claim 1.)

1. Claim 1(a)

The parties' disagreement over the meaning of **ground sheeting** and **floor section** relates to the larger dispute over whether the claim discloses a one-piece or a two-piece embodiment, or whether it discloses both. For example, Defendant's proposed construction of ground sheeting is "sheet material overlying the ground *not constituting a retaining wall*." Although the Court understands why Defendant seeks this construction, the Court finds that adding the words *not constituting a retaining wall* departs from the general rule of construing claim terms according to their ordinary and customary meaning and imports a limitation not present in the claim or the specification. *See* Liebel-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 904 (Fed.Cir.2004) (noting rules that claims must be read in view of specification and that it is improper to read limitation from specification into the claims). Therefore, the Court construes the disputed terms in claim 1(a) as follows: **ground sheeting** refers to the foldable sheeting that overlies the ground and **floor section** refers to the ground sheeting that provides a floor of the containment.

2. Claim 1(b)

As evidenced by the amount of time spent arguing the proper construction of claim 1(b), the construction of the phrase "**retaining wall integrally connected**" is central to the underlying infringement action. During the *Markman* hearing and in his reply brief, Plaintiffs' counsel argued that the term "**integrally connected**" includes both one-piece (where the ground sheeting folds up and forms the retaining wall) and two-piece embodiments (where the ground sheeting is attached to a separate retaining wall). (Pls.' Reply Br. 5.) It is undisputed that the patent specification describes both embodiments. ('233 Patent, col. 3, lines 54-57.) However, Defendant argues that the one-piece embodiment was not claimed, and, therefore, entered the public domain when the patent was published. (Def.'s Br. 8-9.)

Construction of the term **integrally connected**, depends largely on the meaning of the term "integrally." As noted above, general purpose dictionaries can be helpful in understanding claim terms. The Oxford English Dictionary provides two definitions of the adverb *integrally*: "(a) in an integral manner; as a whole, in its entirety; completely, entirely, wholly and (b) as an integral whole." *Oxford English Dictionary Online*, Dec. 4, 2008, <http://www.oed.com>. As used in other patent contexts, integrally connected suggests the joining of components into a whole. *See e.g.*, Bionx Implants, Inc. v. Linvatec Corp., 299 F.3d 1378, 1380 (using term "integrally connected" to define "single unit" device consisting of shaft joined to base); *Antonius v. Spalding*

& Evenflo Cos., 275 F.3d 1066 (describing golf club head as including "a hosel integrally connected to said club head body").

Defendant urges the Court to construe **retaining wall** as "a barrier that is *separate and distinct* from the ground sheeting and *separate and distinct* from the floor section." (Def.'s Br. 8.) Such a construction, however, is inconsistent with the ordinary meaning of the term **integrally connected**. The case of *International Visual Corp. v. Crown Metal Mfg. Co.*, 991 F.2d 768 (Fed.Cir.1993), provides an instructive illustration. That case involved the patent of a "magnetically secured display apparatus." *Id.* The district court found that the defendant's device did not literally infringe on the plaintiff's device because the defendant's device did not have a housing unit that was *separate and apart* from the operational magnet. *Int'l Visual Corp. v. Crown Metal Mfg. Co.*, 22 U.S.P.Q.2d (BNA) 1778 (N.D.Ill.1992). In other words, the district court found that the plaintiff's patent disclosed a device that was *separate and apart*. The Federal Circuit reversed this determination in large part because the plaintiff's patent contained the phrase "integrally connected." *Int'l Visual*, 991 F.2d at 771. As explained by the court:

Claim 1 requires a clamp means that includes an L-shaped tubular housing and a permanent magnet means integrally connected to the first leg portion of the housing. There is no "separate and apart" limitation in the claims; that phrase appears nowhere in the '780 patent. *The term "integrally connected" in claim 1 is inconsistent with a requirement that the housing and permanent magnet be "separate and apart."*

Id. (emphasis added).

Applying the logic from *International Visual*, the Court declines to read the limitation "separate and distinct" into the meaning of **retaining wall integrally connected**. The claim does not include the language "separate and distinct" and defining **retaining wall integrally connected** in this manner would conflict with the ordinary meaning of integrally connected as forming an integral whole. In light of this analysis, the Court offers the following construction of claim 1(b): A **retaining wall integrally connected** refers to a retaining wall forming an integral whole with the floor section. At this stage in the litigation, the Court need not explicitly decide whether this construction of the term **integrally connected** discloses a one-piece embodiment or a two-piece embodiment or both.

3. Claim 1(c)

The parties agree that **plurality** refers to a number greater than one and that **connected to** means "joined or united." Thus, the Court adopts that construction of those terms. The Court further finds that **bracing position** needs no construction in the context of the claim.

Construing **said wall sheeting** is a more difficult proposition. Defendant correctly points out that "said" as used in patent claims is a term of art that generally precedes a term that has previously been used in the patent. (Def.'s Br. 8-9.) However, "wall sheeting" is mentioned for the first time in claim 1(c). Thus, Defendant argues that the Court should construe the term as indefinite. In response, Plaintiffs cite the proposition that claims are generally construed so as to sustain their validity. *See e.g.*, *Whittaker Corp. v. UNR Indus.*, 911 F.2d 709, 712 (Fed.Cir.1990) (applying proposition).

Although the Defendant makes a persuasive argument, construing the claim in light of the specification suggests that **said wall sheeting** refers to the retaining wall. Figure 1 (and all the illustrations for that matter) discloses only one wall for the device-the retaining wall. This interpretation is reinforced by the written

description of the drawings in the specification. ('233 patent, col. 3, lines 63-65). Looking at the term **said wall sheeting** as would one skilled in the art of spill containment devices, the Court construes that term as referring to the retaining wall.

In light of this construction of **said wall sheeting**, the phrase **said wall** is clearly referring to the same wall. Thus, the Court construes, **said wall** as the retaining wall.

4. Claim 1(d)

The parties also dispute the meaning of the phrase **generally vertical rigid leg carried by** in Claim 1(d)(i). Defendant argues that vertical means disposed of at a right angle to the horizon. Although accurate, this interpretation ignores the adverb "generally," which suggests that the rigid leg does not have to be disposed at a perfect right angle. Thus, applying the ordinary meaning of the term, the Court construes **generally vertical rigid leg** as referring to a leg of the side brace that does not have to be completely vertical.

The latter part of the disputed phrase, **carried by**, is less susceptible to straightforward interpretation. Plaintiffs suggest that the term refers to the rigid leg being contained in or held by the retaining wall. (Pls.' Br. 16.) In contrast, Defendant's proposed construction is that the side braces are attached against the retaining wall. (Def.'s Br. 13.) The Court believes that neither proposal is completely accurate.

As Defendant correctly points out, the illustrations and the written description in the specifications suggest that the generally vertical rigid leg is "attached to" the retaining wall. (Fig. 3, 3A, and 4 and Col. 4, lines 47-53.) However, the Federal Circuit has cautioned courts to be careful not to read limitations into the claim from the specifications. *Arlington Indus., Inc. v. Bridgeport Fittings, Inc.*, 345 F.3d 1318, 1327 (Fed.Cir.2003). The ordinary meaning of the phrase "carried by" does not have to mean "attached to." As explained by the Supreme Court, "carried by" can also mean "embedded in" though it is broader than the term "embedded in." *See Exhibit Supply Co. v. Ace Patents Corp.*, 315 U.S. 126, 136, 62 S.Ct. 513, 86 L.Ed. 736 (1942) (discussing terms). Thus, being careful not to read a limitation into the phrase but also being mindful of the patent specifications, the Court construes **carried by** to mean attached to or embedded in.

The parties also dispute the meaning of **upper portion** used in Claim 1(d)(iii). **Upper portion** is likely one of those terms that the Federal Circuit had in mind that would be "readily apparent even to lay judges." *Phillips*, 415 F.3d at 1314. Although not a precise term, the Court finds that one skilled in the relevant art would more likely agree with Plaintiffs' proposed construction of the phrase. Thus, the Court construes **upper portion** as a higher part of the retaining wall.

Although originally disputed, the parties now agree that **hinge** should be construed as a flexible portion of the side brace which allows the inclined leg and horizontal leg to move relative to each other. The Court adopts this construction of the word **hinge**.

5. Claim 1(e)

Defendant has not challenged Plaintiffs' interpretation of **said upstanding position**. (Def.'s Br. 15.) Thus, the Court adopts Plaintiffs' proposed construction and construes **said upstanding position** as the position of the retaining wall for containing any spilled material.

In their briefs, the parties have gone back and forth over the meaning of **brace fixture**. During the

Markman hearing, Plaintiffs' counsel rejected Defendant's proposal that the brace fixture is the same as the connector strap referred to in the specifications. Looking at the term in the context of the entire claim and giving the term its ordinary meaning, the Court construes **brace fixture** as a device for holding the hinge in a bracing position.

The parties also dispute the meaning of **fixed distance**. Although "fixed" has many different dictionary definitions, the most relevant in light of the context of the patent is "definitely and permanently placed; stationary or unchanging in relative position." *Oxford English Dictionary Online*, Dec. 4, 2008, <http://www.oed.com>. Defendant's proposed construction as "a distance of predetermined constant," although similar to the dictionary definition, is too limiting in the context of the entire claim. As was pointed out at oral argument, courts do not construe the claims in a vacuum and can consider the function of the patented device as would a person of ordinary skill in the art. *See e.g.*, *Medrad, Inc. v. MM Devices Corp.*, 401 F.3d 1313, 1319 (Fed.Cir.2005) (stating proposition). The device in this case was designed to contain spilled liquids that may fluctuate in volume. In light of this function, the Court construes **fixed distance** as the distance of the hinge from the retaining wall.

B. Claim 2

Claim two contains one of the more legally interesting disputed claim terms. Plaintiffs argue that the term **interior leg** is a misprint and should read "inclined leg." (Pls.' Br. 21.) Defendant contends that the Court lacks the authority to inquire into the subjective intent of the drafter and must construe the term as indefinite. (Def.'s Br. 17-18.) During oral argument, Defense counsel cited the case of *Chef America, Inc. v. Lamb-Weston*, 358 F.3d 1371 (Fed.Cir.2004). In that case, the court construed the following claim language: "heating the resulting batter-coated dough to a temperature in the range of about 400 degrees F. to 850 degrees F." *Id.* The patentee argued that the word "to" was clearly intended to mean "at" because if the batter itself was heated "to" the specified temperature it would burn to a crisp. *Id.* at 1373. The Court rejected this argument, and noted "courts may not redraft claims, whether to make them operable or to sustain their validity." *Id.* at 1374. Importantly, however, the *Chef America* court went on to note that "where as here, *claims are susceptible to only one reasonable interpretation* and that interpretation results in a nonsensical construction of the claim as a whole, the claim must be invalidated." *Id.* at 1374 (emphasis added).

In this case, unlike *Chef America*, Plaintiffs have persuasively argued that the term interior leg is susceptible to more than one reasonable interpretation. Earlier in their brief, Defendant argued

Whenever an element or part of an element is referred to a second time in a claim, it is preceded by the term 'said.' Stated differently, whenever a term is recited in a claim and is preceded by the word 'said,' it is necessary that there exist an antecedent basis for that element in the claim-the element must have already been introduced in the claim.

(Def.'s Br. 9-10.) In claim two, the word "said" precedes the term "interior leg." Using Defendant's logic, this suggests that **interior leg** should have already been used in the claim. However, it had not been used, but "inclined leg" had. The *Chef America* principle does not override a construing court's general obligation to construe claim language in the context of the entire patent rather than in the abstract. *See Phillips*, 415 F.3d at 1321 ("Properly viewed, the 'ordinary meaning' of a claim is its meaning to the ordinary artisan after reading the entire patent.") *See also Haemonetics Corp. v. Baxter Healthcare Corp.*, 517 F.Supp.2d 514, 519 (D.Mass.2007) (distinguishing *Chef America* in this manner).

In its entirety, claim two states as follows, "The apparatus of claim 1 wherein said *inclined leg* is disposed on an exterior side of said retaining wall, and said brace fixture includes an anchor **carried near** said exterior side of said retaining wall securing said **interior leg** in an **exterior bracing position** ." In light of the entire claim, the Court finds that it is reasonable to construe **interior leg** as a typographical error intended to be "inclined leg." FN3 To summarize, the use of the term "said" suggests that the term following it should have already been used. "Inclined leg" was just used within the claim. Additionally, it does not make sense that an interior leg would be on the *exterior* side of the retaining wall in an *exterior* bracing position. Thus, the Court construes **interior leg** as a typographical error intended to be "inclined leg." *See also* Hoffer v. Microsoft Corp., 405 F.3d 1326, 1331 (Fed.Cir.2005) (noting typographical error exception to general rule that courts may not redraft claims).

The parties also dispute the terms **carried near** and **exterior bracing position** in claim two. In light of the foregoing interpretation of "interior leg" as a typographical error, Plaintiff's proposed construction of **exterior bracing position** as "the configuration of the inclined leg when bracing the retaining wall" is consistent with the ordinary meaning of that term. Thus, the Court adopts that construction of the phrase **exterior bracing position**.

Carried near is another somewhat imprecise term similar to "upper portion" discussed above. The dictionary defines "near" as "with reference to space or position: close at hand; not distant ." *Oxford English Dictionary Online*, Dec. 4, 2008, <http://www.oed.com>. Such an interpretation is consistent with Plaintiff's construction of **carried near** as close to the exterior side. Thus, in the context of claim two, the Court construes **carried near** as "close to the exterior side."

C. Claim Nine

Claim nine reads as follows with the disputed language in bold: "The apparatus of claim 1 wherein said inclined leg folds generally flat in **said folded configuration**." Defendant argues that this language is indefinite because the device could be folded in any number of ways. Although the device does not clearly state how the device is to be folded, the Court fails to see how the device is folded is relevant at this stage in the litigation. Thus, the Court declines, at this point, to construe claim nine.

D. Claim Sixteen

Claim sixteen contains many of the same disputed terms as claim one. As noted above, the parties have agreed that to the extent the same terms appear in both claims, the same construction will apply. Thus, the Court adopts its claim constructions from claim one where applicable to claim sixteen.

Several additional disputed terms appear for the first time in claim sixteen, however, and those are indicated below:

(c) a **plurality** of foldable, **generally rigid braces connected to said wall** and said ground sheeting for maintaining said wall in said upstanding configuration.

(d) **Said side braces** including a generally vertical **rigid leg carried by** said retaining wall, a generally horizontal leg extending generally parallel to said ground sheeting in **said bracing position**, and an inclined rigid leg extending generally between an upper portion of said retaining wall and **said horizontal leg** for maintaining said retaining wall in said upstanding configuration in said bracing position, and said inclined

leg having a **terminal end** terminating at said horizontal leg; and

The parties have agreed that **plurality** means more than one. Thus, as above, the Court construes **plurality** as "more than one." The Court has already construed many of the words in the disputed phrase **generally rigid braces connected to said wall**. As noted above, "generally" is an adverb that suggests that the rigid braces do not have to be completely rigid, but simply "generally rigid." The parties agreed in the context of Claim 1(c) that **connected to** means "joined or united." In the context of the claim, **said wall** refers back to the retaining wall in Claim 16(b). Thus, the Court construes the phrase **generally rigid braces connected to said wall** as braces that are not completely rigid that are joined or united to the retaining wall.

In light of this construction, the phrase **said side braces** needs no construction because it refers back to the braces the Court has just construed. FN4

Said bracing position is somewhat more difficult to construe because, until this point, the patent has not used the term "bracing position." However, in the context of the entire claim, it is clear that the claim describes the device in a bracing position. Thus, in this context, the Court construes **said bracing position** as the position of the horizontal and inclined legs when the side braces are unfolded and bracing the retaining wall.

Plaintiffs argue that the term **said horizontal leg** is a typographical error and was intended to read "said horizontal leg." In the context of the entire claim, this interpretation makes sense. Horizontal leg appears in the same sentence as the term **horizontal leg**. This, along with the use of the term "said" suggests that the term **horizontal leg** is a typographical error intended to be "said horizontal leg." The issue is whether the Court has the authority to construe **horizontal leg** as a typographical error.

The general rule is that "courts may not redraft claims to cure a drafting error made by the patentee." *Lucent Techs., Inc. v. Gateway, Inc.*, 525 F.3d 1200, 1215 (Fed.Cir.2008) (citing cases). However, there is an exception to this rule when there is an obvious administrative or typographical error not subject to reasonable debate. *See id.* at 1216 (citing *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1331 (Fed.Cir.2005)). In light of the surrounding claim language, the Court finds that **horizontal** is an obvious typographical error that was intended to read "horizontal."

Finally, the parties dispute the meaning of the phrase **terminal end**. Although originally far apart in their proffered constructions, Plaintiffs' most recent submission closely mirrors the construction offered by Defendant. Applying the ordinary meaning of the term in the context of the patent, the Court construes **terminal end** as the end of the inclined leg at the horizontal leg.

IV. CONCLUSION

To summarize, the Court construes the disputed language in the above claims as follows:

A. Claim 1

Ground sheeting refers to the foldable sheeting that overlies the ground and **floor section** refers to the ground sheeting that provides a floor of the containment. A **retaining wall integrally connected** refers to a retaining wall forming an integral whole with the floor section. **Plurality** means a number greater than one and **connected to** means "joined or united." **Said wall sheeting** refers to the retaining wall as does the phrase **said wall**.

Generally vertical rigid leg is a leg of the side brace that does not have to be completely vertical. **Carried by** means attached to or embedded in. **Upper portion** refers to a higher part of the retaining wall. Upon agreement of the parties, **hinge** is construed as a flexible portion of the side brace which allows the inclined leg and horizontal leg to move relative to each other. **Brace fixture** is a device for holding the hinge in a bracing position. **Fixed distance** is the distance of the hinge from the retaining wall. **Said upstanding position** is the position of the retaining wall for containing any spilled material.

B. Claim Two

Carried near is close to the exterior side. **Interior leg** is construed as a typographical error intended to be "inclined leg." **Exterior bracing position** is the configuration of the inclined leg when bracing the retaining wall.

C. Claim Sixteen

Generally rigid braces connected to said wall refers to braces that are not completely rigid that are joined or united to the retaining wall. **Said bracing position** is the position of the horizontal and inclined legs when the side braces are unfolded and bracing the retaining wall. **Horizontal** is a typographical error intended to read "horizontal." **Terminal end** is the end of the inclined leg at the horizontal leg.

D. Scheduling Order

Because many of the existing scheduling deadlines were contingent upon completion of claim construction, the parties are hereby instructed to file a proposed consent amended scheduling order reflecting more concrete dates than those in the current order within five (5) days of this order.

IT IS SO ORDERED

FN1. Both parties agreed during oral argument, that the Court should construe terms from claim one the same as the same terms from claim sixteen.

FN2. Throughout the order, disputed terms appear in bold. Further, in construing the claims, the Court is only construing disputed terms and not the entire claim.

FN3. During oral argument, Defense counsel suggested that Plaintiffs' proposed typographical error was part of its overall litigation strategy and that if any competitor ever produced a product with interior leg braces that Plaintiffs would argue that "interior" is not a typographical error. In light of the context of the claim, such a construction seems implausible. Further Plaintiffs would be judicially estopped from making such an argument. *See e.g.,* Cothran v. Brown, 357 S.C. 210, 215, 529 S.E.2d 629, 631 (S.C.2004) (discussing doctrine of judicial estoppel)

FN4. The Defendant failed to provide further argument regarding the construction of **rigid leg carried by** in claim sixteen. Thus, the Court declines to construe this term any further than similar language has already been construed in claim one.

D.S.C.,2008.

Van Romer v. Interstate Products, Inc.

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