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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

<p>Really Right Stuff, LLC</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Field Optics Research, Inc.</p> <p style="text-align: center;">Defendant.</p>	<p>DEFENDANT’S REPLY TO PLAINTIFF’S RESPONSE FOR CLAIM CONSTRUCTION</p> <p>CASE NO: 2:20-cv-00345-DBB</p> <p>Judge: David B. Barlow</p> <p>Magistrate Judge: Dustin B. Pead</p>
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Pursuant to Local Patent Rule 4.2 and the Court’s Order dated December 16th, 2022 (Dkt 126), Defendant Field Optics Research, Inc. (“Field Optics Research”) enters this Reply to Plaintiff’s Response for Claim Construction.

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I. BACKGROUND

The Plaintiff has asserted three patents against the Defendant:

- a. U.S. Patent No. 6,773,172 (the ‘172 patent) entitled “Quick-Release Clamp for Photographic Equipment”, hereinafter “the ‘172 patent”;
- b. U.S. Patent No. 10,612,718 (the ‘718 patent) entitled “Dual Clamping Device”, hereinafter “the ‘718 patent”; and
- c. U.S. Patent No. 10,585,337 (the ‘337 patent) entitled “Panoramic Camera Mount”, hereinafter “the ‘337 patent”.

Cross-motions for claim construction were filed relating to two terms of the ‘337 patent and five terms of the ‘172 patent. The parties filed response construction briefs, and the Plaintiff filed a reply construction brief. The Court issued an order granting the Defendant up to and including January 6, 2023, to file a reply construction brief, *see* Dkt 126.

Regarding the ‘337 patent, the Plaintiff continues to make substantively weak arguments unsupported by law as to whether the term “not releasable” is functional and therefore governed by 35 USC § 112, sixth paragraph. In addition, the Plaintiff continues to assert substantively weak, contradictory, and incoherent arguments that the claims recite structure for performing the “not releasable” function. These arguments are so substantively weak they clearly show an intent to harass the Defendant rather than assert a legitimate claim of misappropriation.

Regarding the ‘172 patent, the Plaintiff continues to assert the single embodiment disclosed in the specification does not limit the claims as if it is dispositive. However, it is well established that a single embodiment may limit the claims when appropriate,¹ and at the very least, a single

¹ In *Apple Inc. v. Andrea Elecs. Corp.*, 949 F.3d 697, 707 (Fed. Cir. 2020), the claim term “periodically”

embodiment adds to the preponderance of other intrinsic evidence identified by the Defendant that cumulatively weigh heavily in favor of Defendant’s claim construction. In addition, the Plaintiff asserts the ‘172 specification is devoid of definitions even though the Plaintiff concedes the term “second position” is described in the specification as “i.e., the locked position” and even though the Federal Circuit has firmly established that using “i.e.” is definitional.² The Plaintiff’s blatant disregard for the Federal Circuit precedent set forth in *Edwards* clearly shows the Plaintiff’s intent is to harass the Defendant rather than assert a legitimate claim of patent infringement grounded in the law.

II. CONSTRUCTION OF CLAIM TERMS

US 10,585,337

Patent no. Claim no.	Term	Plaintiff’s Definition	Defendant’s definition
10,585,337 – Claim 1(d) and 25(d)	“said first clamp member and said second clamp member not releasable from said base by movement of said second member”	Plain meaning	<p>Construed under 35 USC § 112, sixth paragraph, “Means-plus-function”:</p> <p>Function: retaining the first clamp member and the second clamp member to the base.</p> <p>Structure in Spec: the plug 22 and retaining member 24 shown in FIG. 1 of ‘337 patent. See also col. 2, lines 61-64, of ‘337 patent.</p>

The text of claims 1 and 25 of the ‘337 patent (emphasis added):

1. An integrated panoramic device comprising:

was limited to “regular interval of time” (and excluded “from time to time”) because this was the only embodiment disclosed in the specification.

² *Edwards Lifesciences LLC v. Cook Inc.*, 582 F.3d 1322, 1334 (Fed. Cir. 2009) (“[U]se of ‘i.e.’ signals an intent to define the word to which it refers.”).

- (a) a base having a lower surface suitable for supporting said base;
- (b) a first clamp member secured for rotation to said base and comprising a first clamp surface rotatable about a single axis substantially normal to said lower surface, said panoramic device being free from and incapable of said first clamp surface being rotatable about an axis other than said single axis substantially normal to said lower surface;
- (c) a second clamp member including a second clamp surface slidably secured to said first clamp member and movable as a result of movement of a first member to approach said second clamp surface relative to said first clamp surface to clamp an article therebetween and movable as a result of movement of said first member to separate said second clamp surface relative to said first clamp surface to release an article clamped between said first clamp surface and said second clamp surface;
- (d) a second member as a result of movement to selectively impede relative rotation of said first clamp member and said base, **said first clamp member and said second clamp member not releasable from said base by movement of said second member**, said first clamp member rotatable through 360 degrees with respect to said base; and
- (e) wherein said first member is engaged with said first clamp member, wherein said first member passes through a portion of said second clamp member.

25. An integrated panoramic device comprising:

- (a) a base having a lower surface suitable for supporting said base;
- (b) a first clamp member secured for rotation to said base and comprising a first clamp surface rotatable about a single axis substantially normal to said lower surface, said panoramic device being free from and incapable of said first clamp surface being rotatable about an axis other than said single axis substantially normal to said lower surface;
- (c) a second clamp member including a second clamp surface slidably secured to said first clamp member and movable as a result of movement of a first member to approach said second clamp surface relative to said first clamp surface to clamp an article therebetween and movable as a result of movement of said first member to separate said second clamp surface relative to said first clamp surface to release an article clamped between said first clamp surface and said second clamp surface;
- (d) a second member as a result of movement to selectively impede relative rotation of said first clamp member and said base, **said first clamp member and said second clamp member not releasable from said base by movement of said second member**, said first clamp member rotatable through 360 degrees with respect to said base;
- (e) wherein said second member is engaged with said base and wherein said second member includes a knob attached thereto.

Means-Plus-Function

The claim language “not releasable” is not structural and therefore obviously functional language³ because it describes the invention by “what it does” rather than by “what it is.”⁴ The language “not releasable... by movement of said second member” is equivalent in scope to the language “means for not releasing... by movement of said second member.” In order to infringe the claims, the accused instrumentalities must include a means for retaining the clamp members to the base independent of moving the second member, which is exactly the scope asserted by the Plaintiff. The Plaintiff asserts the restraining band of the accused instrumentalities (e.g., FBT-ASPL) is the means which retains the clamp members to the base independent of moving the second member. *See* Dkt. 118, p. 14: “The band that the second member tightens and loosens must still be pried open to disassemble the parts.”

In Plaintiff’s reply construction brief (Dkt. 124), the Plaintiff continues to assert the claim recites sufficient structure for performing the “not releasable” function. In their opening claim construction brief (Dkt. 112) as well as in their response construction brief (Dkt. 117), the Plaintiff initially asserted the recited structure in the claim for performing the “not releasable” function includes the “base,” “first clamp member,” “second clamp member,” and “second member.” In the Plaintiff’s reply construction brief (Dkt. 124), the Plaintiff now asserts the recited structure is the “second member” merely because movement of the second member can somehow perform the “not releasable” function. This argument is so completely incoherent and nonsensical it shows the Plaintiff’s true intent is to harass the Defendant rather than assert a legitimate claim of misappropriation. The Plaintiff’s harassing intent is further evinced by their prior admission that the structure for performing the “not releasable” function is the plug 22 and retaining member 24

³ *In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997).

⁴ *Application of Swinehart*, 439 F.2d 210, 212 (C.C.P.A. 1971).

shown in FIG. 1 of the '337 patent (Dkt. 69, p. 9). That is, the Plaintiff has already conceded the plug 22 and retaining member 24 perform the “not releasable” function (which is obviously the case), but now asserts it is the “second member” that somehow performs the “not releasable” function? This shifting of the sands argument demonstrates the desperate nature of the Plaintiff’s position.

Rather than concede the obvious, the Plaintiff presses on with incoherent arguments in their campaign to harass the Defendant.

The Plaintiff dives further into the absurdity of their argument in the reply construction brief:

“The plug and retaining member may prevent the clamp members from releasing from the base, but movement of the plug and retaining member is not relevant to whether the parts are releasable.” (Dkt. 124, p. 13).

This sentence is so incoherent and nonsensical the Defendant has no idea how to respond. First the Plaintiff admits the plug and retaining member perform the “not releasable” function, then the Plaintiff asserts movement of the plug and retaining member is not relevant to whether the parts are releasable? Again, this argument is so disjointed and substantively weak it demonstrates the Plaintiff’s intent to harass the Defendant rather than assert a legitimate claim of misappropriation.

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“Not Releasable” – Not Intended for Release

Patent no. Claim no.	Term	Plaintiff’s Definition	Defendant’s definition
10,585,337 – Claim 1(d) and 25(d)	“not releasable”	Plain meaning	Not intended for release

In Plaintiff’s reply construction brief, the Plaintiff continues to assert incoherent, nonsensical arguments. For example, on page 14 the Plaintiff now asserts that “the construction of ‘not releasable’ does not go to a primary dispute” and therefore no construction is necessary under *O2 Micro Intern. v. Beyond Innov*, 521 F.3d 1351, 1360 (Fed. Cir. 2008). However, of course the term “not releasable” is a primary dispute in this case, and therefore under *O2 Micro* construction is necessary as a matter of law.

In addition, the Plaintiff now asserts that construing the term “second member” is somehow relevant to the construction of “not releasable”:

“Defendant alleges, in its Reply to Plaintiff’s Response to Defendant’s Motion for Summary Judgment that the ‘second member’ claimed in the ‘337 Patent must be a restraining band. Dkt. 123, at 16. However, for the reasons set forth in the previous section, the ‘second member,’ if not structural itself, must be the rotatable knob. Thus, the question of whether the accused products’ restraining bands are designed with intent regarding releasability is a moot point.” (Dkt. 124, p. 14).

The Defendant is confounded by this argument since the “second member” has nothing to do with performing the “not releasable” function which is clearly performed by the plug 22 and retaining member 24 in FIG. 1 of the ‘337 patent. In addition, there is no pending “question” as to whether the “second member” is designed with intent regarding releasability. The only pending question is whether the term “not releasable” should be construed as “not intended for release” with the answer being found in the patent specification at col. 2, lines 61-64 (Joint Appendix p. 119):

“A retaining member 24 is secured to the plug 22 in such a manner to maintain the panning base and the body 12 together with the desired ability to freely rotate.”

This sentence clearly indicates the “intent” of the invention is to retain the clamp members to the

base (using the plug 22 and retaining member 24) while allowing the clamp members to rotate about the base.

Finally, the Plaintiff asserts the '337 specification lacks any *explicit* description of “intent” as it relates to the term “not releasable.” This is of course true, but also why construction as a matter of law is necessary. Construing the term “not releasable” means discerning how one skilled in the art would interpret the term. In this case, even the Plaintiff concedes that “not releasable” cannot mean “never releasable” (Dkt. 117, p. 19) since given enough force all components are releasable. The Plaintiff therefore asserts that “not releasable” means “not easily removed and replaced” (Dkt. 117, p. 19), but the '337 specification lacks any guidance as to how “easily” it would be to remove the components. In other words, “not easily removed and replaced” is too indefinite, whereas “not intended for release” is definite and consistent with how the invention actually functions as described in the specification ('337 patent at col. 2, lines 61-64; Joint Appendix p. 119).

US 6,773,172 (Side, Around, & Handle)

Patent no. Claim no.	Term	Plaintiff's Definition	Defendant's definition
6,773,172 – Claim 29(b)	“side”	Plain meaning	A flat outer surface of an object
6,773,172 – Claim 29(c)	“around”	Plain meaning	Wrap-around

The text of claim 29 in the '172 patent (emphasis added):

29. An apparatus for engaging photographic equipment to a support, said apparatus comprising:

(a) a member defining a channel having a first side wall capable of lateral movement with respect to a second side wall;

(b) a lever capable of causing said lateral movement and movable between a first position and a second position, said lever engaged on a side of said member, said side defining opposed first and second corners; and

(c) a handle portion of said lever where said handle portion extends beyond said first corner when in said first position and extends beyond and around said second corner when in said second position.

In the Plaintiff’s reply construction brief, the Plaintiff asserts the single embodiment of the invention disclosed in the specification of the ‘172 patent does not limit the claims citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005). However, the Court in *Phillips* merely stated that if a patent describes a single embodiment, the claims of the patent are not necessarily construed as being limited to that embodiment. *Id.* Therefore disclosing a single embodiment may not be dispositive, but it is certainly relevant intrinsic evidence when determining how one skilled in the art would construe the claim terms. For example, in *Apple Inc. v. Andrea Elecs. Corp.*, 949 F.3d 697, 707 (Fed. Cir. 2020), the claim term “periodically” was limited to “regular interval of time” (excluding “from time to time”) because this was the only embodiment disclosed in the specification. Accordingly, when considering that the ‘172 patent specification discloses a single enabling embodiment, together with the preponderance of other intrinsic evidence found in the specification and prosecution history, one skilled in the art would construe the term “side” as a “flat outer surface” and the term “around” as “wrap around.”

Patent no. Claim no.	Term	Plaintiff’s Definition	Defendant’s definition
6,773,172 – Claim 29(c)	“handle portion”	Plain meaning	End portion of lever

One skilled in the art would construe “handle portion” recited in claim 29(c) as the “end portion of the lever” (see handle portion 56 of the lever 22 in FIG. 8A of the ‘172 patent) which “wraps-around” the second corner as shown in FIG. 4:

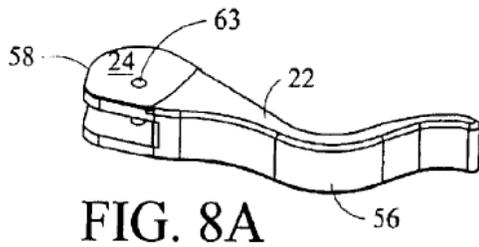


FIG. 8A

**FIG. 8A of '172 patent
(Joint Appendix p. 12)**

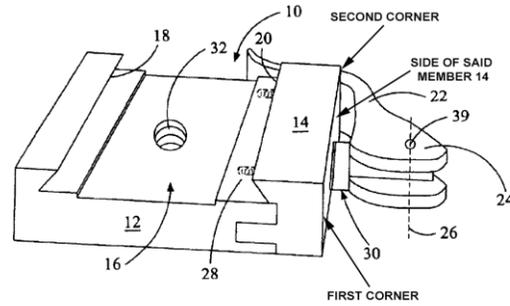


FIG. 4

**FIG. 4 of '172 patent
(Joint Appendix p. 8)**

In the Plaintiff's response construction brief, the Plaintiff asserts the "handle portion" could include "everything from the pivot point of the lever to the tip." (Dkt. 117, p. 11). However, the Plaintiff relies on no intrinsic evidence to support this assertion. The Plaintiff seems to be aware the law requires a proposed claim construction be supported by the intrinsic evidence (patent specification and prosecution history), yet the Plaintiff fails to abide by this legal requirement. Instead, the Plaintiff disregards the law and proposes a contrived construction of the term "handle portion" in order to promote their own unreasonable and harassing claim of infringement.

The Defendant, on the other hand, has asserted reasonable claim constructions that are well supported by the intrinsic evidence, including to construe "handle portion" as the "end portion of the lever." The claim itself calls out a "lever" and a "handle portion of said lever" which clearly shows an intent to define the "handle portion" as something less than the entire lever. Further, the '172 specification discloses a single enabling embodiment wherein the "handle portion" of the lever is described and illustrated as the end portion of the lever (see above FIG. 8A and 4) that wraps around the corner of the clamp. Still further, in allowing the claim over the prior art the examiner construed the "handle portion" as the end portion of the lever, and therefore even the prosecution history supports this construction. Yet even further, the Plaintiff distinguished the prior art ('738 patent; Exhibit 1) during prosecution by asserting the benefit of the invention is to

extend the end portion of the lever beyond the corner of the clamp, and to wrap the end portion of the lever around the corner of the clamp, so that the end portion (handle portion) of the lever is more easily accessible when in the locked position. (Joint Appendix p. 45, 47, 51, 80-81).

The Plaintiff’s contrived construction of the “handle portion,” without relying on any intrinsic evidence as required by law, further demonstrates the Plaintiff’s intent to harass the Defendant rather than assert a legitimate claim of infringement grounded in the law.

US 6,773,172 (First and Second Position)

Patent no. Claim no.	Term	Plaintiff’s Definition	Defendant’s definition
6,773,172 – Claim 29(c)	“first position”	Plain meaning	Unlocked position of the clamp
6,773,172 – Claim 29(c)	“second position”	Plain meaning	Locked position of the clamp

In the ‘172 patent, the patentee provided a specific definition of the term “first position” and “second position” in the patent specification, as well as disavowed scope of the terms during prosecution of the patent application, based on a preponderance of supporting intrinsic evidence identified by the Defendant in the previously filed claim construction briefs. For example, the specification of the ‘172 patent describes the terms “first position” and “second position” using definitional identifiers such as “i.e.”. *Edwards Lifesciences LLC v. Cook Inc.*, 582 F.3d 1322, 1334 (Fed. Cir. 2009) (“[U]se of ‘i.e.’ signals an intent to define the word to which it refers.”).

In the Plaintiff’s response construction brief (Dkt. 117, p. 14), the Plaintiff asserts that *Edwards* deciding “i.e.” is definitional is merely dicta, and therefore the Plaintiff is not held to this Federal Circuit precedent. However, the holding in *Edwards* is exactly the opposite of dicta. The well accepted legal meaning of “dicta” is: “Opinions of a judge that do not embody the resolution or

determination of the specific case before the court.”⁵ Deciding the use of “i.e.” as being definitional was dispositive in *Edwards* and therefore the opposite of dicta. Asserting *Edwards* is dicta demonstrates the Plaintiff’s reckless behavior litigating this lawsuit having such a limited understanding of the law. Additionally, disregarding clear Federal Circuit precedent further illustrates the Plaintiff’s true intent is to harass the Defendant rather than assert a legitimate claim of infringement grounded in the law.

III. CONCLUSION

For the reasons described above, Defendant requests this Court construe the claim terms as asserted by the Defendant and as fully supported by this reply claim construction brief.

Dated this 27th day of December, 2022

Respectfully Submitted,

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5 <https://legal-dictionary.thefreedictionary.com/Dicta>