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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 MOTION AND MEMORANDUM FOR CLAIM CONSTRUCTION</p> <p>CASE NO: 2:20-cv-00345-DBB</p> <p>Judge: David B. Barlow Magistrate Judge: Dustin B. Pead</p>
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Pursuant to Local Patent Rule 4.2, Defendant Field Optics Research, Inc. (“Field Optics Research”) MOVES THAT the Court construe the following claim terms and phrases as supported by the accompanying Memorandum.

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I. BACKGROUND

The Plaintiff has asserted three patents against the Defendant:

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

On October 6th, 2022, the Court granted Defendant’s motion to amend the Defendant’s non-infringement/invalidity contentions and denied the Plaintiff/Defendant previously filed motions for claim construction ordering updated and comprehensive claim construction briefs be filed by both parties (Dk. 108).

On October 19th, 2022, the Defendant emailed the Plaintiff proposed terms to be construed, and the Plaintiff indicated that all of the proposed terms need to be construed during the Markman hearing. Accordingly, the Plaintiff and Defendant ask the Court to construe the following terms for the ‘172 patent and the ‘337 patent:

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	Construed under 35 USC § 112, sixth paragraph, “Means-plus-function”: <u>Function</u> : retaining the first clamp member and the second clamp member to the base. <u>Structure in Spec</u> : the plug 22 and retaining member 24 shown in FIG. 1 of ‘337 patent. See also col. 2, lines 61-64, of ‘337 patent.
10,585,337 – Claim 1(d) and 25(d)	“not releasable”	Plain meaning or alternatively “not easily removed and replaced”	Not intended for release

US 6,773,172

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

II. LEGAL STANDARD

Claim terms are generally construed under the “ordinary meaning” standard:

“The ordinary and customary meaning of a claim term 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, i.e., as of the effective filing date of the patent application. . . . The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation. . . . Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005).

There are two exceptions to the rule that claim terms are construed according to their ordinary meaning: (1) when a patentee sets out a definition and acts as his own lexicographer, or (2) when the patentee disavows the full scope of the claim term either in the specification or during prosecution, either impliedly or explicitly. *Golden Bridge Tech., Inc. v. Apple Inc.*, 758 F.3d 1362, 1365 (Fed. Cir. 2014). For prosecution history disclaimer to attach, a patentee must clearly and unmistakably disavow the full scope of a claim term. *Computer Docking Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1374 (Fed. Cir. 2008); “A patentee could do so, for example, by clearly characterizing the invention in a way to try to overcome rejections based on prior art.” *Computer Docking Station*, 519 F.3d at 1374.

When a claim is construed as ordinary meaning, “the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Phillips* at 1313. Further, in *Phillips* at 1315: “The claims, of course, do not stand alone. Rather, they are part of ‘a fully integrated written instrument,’ consisting principally of a specification that concludes with

the claims... For that reason, claims ‘must be read in view of the specification, of which they are a part.’” (citing *Markman v. Westview Instruments*, 52 F.3d 967, 978 (Fed. Cir. 1995) (internal citations omitted). Also, the Court further reiterates: “As we stated in *Vitronics*, the specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’” *Phillips* at 1315, citing *Vitronics Corp. v. Conceptronic* 90 F.3d 1956, 1582 (Fed. Cir. 1996). Additionally, “The construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction.” *Phillips* at 1316. From this, concludes the Court: “It is therefore entirely appropriate for a court, when conducting claim construction, to rely heavily on the written description for guidance as to the meaning of the claims.” *Phillips* at 1317.

III. 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:
 - (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;

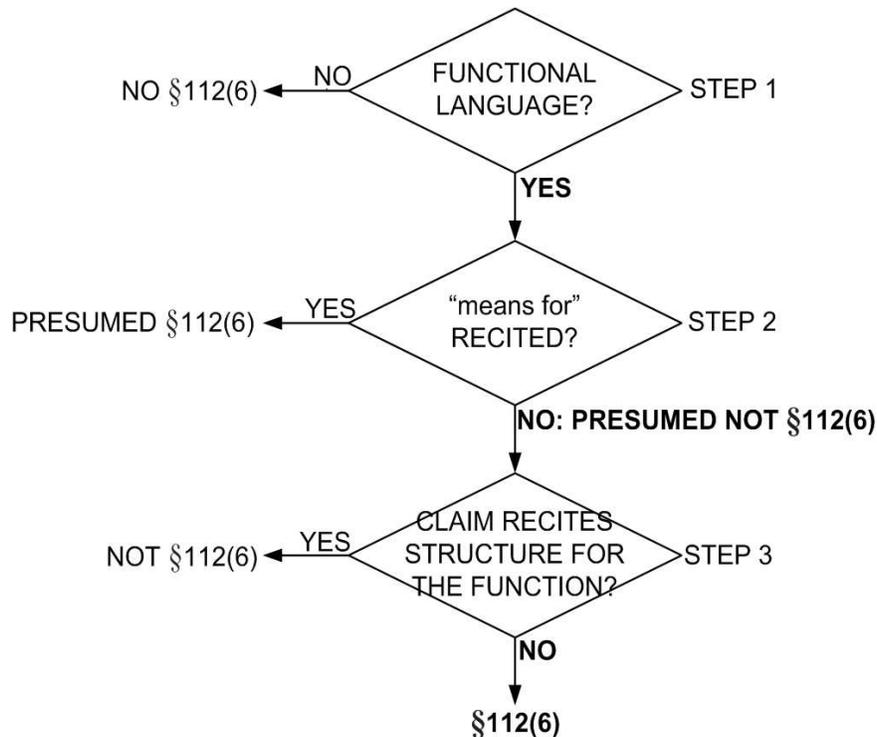
(c) a second clamp member including a second clamp surface slidably secured to said first clamp member and movable as a result of movement of a first member to approach said second clamp surface relative to said first clamp surface to clamp an article therebetween and movable as a result of movement 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.

In the above claims 1(d) and 25(d) of the '337 patent, the phrase “said first clamp member and said second clamp member not releasable from said base by movement of said second member” is functional without reciting any structure for enabling the function. Although a claim element may recite functional language without reciting the corresponding structure, “Congress struck a balance in allowing patentees to express a claim limitation by reciting a function to be performed rather than by reciting structure for performing that function, while placing specific constraints on how such a limitation is to be construed, namely, by restricting the scope of coverage to only the structure, materials, or acts described in the specification as corresponding to the claimed function and equivalents thereof.” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1347 (Fed. Cir. 2015). The failure to use the word “means” when reciting a claim element creates a rebuttable presumption that 35 U.S.C. § 112, sixth paragraph, does not apply.” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015). However, this presumption is overcome when "the claim term fails to 'recite sufficiently definite structure' or else recites 'function without reciting sufficient structure for performing that function.'" *Williamson v. Citrix Online, LLC*, 792 F.3d 1349, 115 USPQ2d at 1111 (Fed. Cir. 2015) (*en banc*) (quoting *Watts v. XL Systems, Inc.*, 232 F.3d 877, 880 (Fed. Cir. 2000); see also *Personalized Media Communications, LLC v. International Trade Commission*, 161 F. 3d 696, 704 (Fed. Cir. 1998).

The following flow diagram provides an overview of how a claim element is construed by the Courts under 35 USC § 112, sixth paragraph, “means-plus-function”:



In Step 1 the Court determines whether the claim recites functional language,¹ and in this case the language “said first clamp member and said second clamp member not releasable from said base by movement of said second member” is functional. In Step 2 the Court determines whether the claim recites the phrase “means for” preceding the recited function: if yes, there is a presumption that 35 USC § 112, sixth paragraph, applies;² and if no, there is a presumption that 35 USC § 112, sixth paragraph, does not apply.² When the presumption arises that 35 USC § 112, sixth paragraph, does not apply as in this case (since the claim lacks “means for”), the Court moves to Step 3 to determine whether the claim recites sufficient structure for performing the recited function.² In this case since the claim is completely devoid of any structural language for performing the function, the functional language “said first clamp member and said second clamp member not releasable from said base by movement of said second member” should be construed under 35

¹ *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1347 (Fed. Cir. 2015)

² *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015)

USC § 112, sixth paragraph) for performing the “not releasable” function.

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

In the context of the ‘337 patent, a well-known and appropriate definition of the term “releasable” is “intended for release.” *TheFreeDictionary.com*. This definition is consistent with the specification of the ‘337 patent which shows in the above FIG. 1 a plug 22 and retaining member 24 which are intended to retain the clamp body 12 and the base 20 together without any intention of release by movement of the second member 30. These elements are described in the ‘337 patent 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.”

One skilled in the art would construe this sentence as meaning the “intent” of the invention is to retain the body 12 (clamping members) to the panning base 20 independent of the second member 30 which enables the “desired ability to freely rotate.”

Referring to the above summary of legal standard, it is “entirely appropriate for a court, when conducting claim construction, to rely heavily on the written description for guidance as to the meaning of the claims.” *Phillips* at 317.. Accordingly, when the claims are read in view of the specification, construing “not releasable” to mean “not intended for release” therefore “stays true to the claim language and most naturally aligns with the patent's description of the invention.” *Phillips* at 1316.

The Plaintiff asserts the term “not releasable” should be construed as “not easily removed and replaced” (Dkt. 69, p. 9) without pointing to any part of the ‘337 patent or prosecution history

that supports this construction. Further, the term “easily” is indefinite on its face, particularly since the ‘337 patent provides no description of how to remove the plug 22 and/or the retaining member 24, let alone how “easy” it would be even assuming the term “easy” were sufficiently definite under 35 USC § 112. Although one skilled in the art would be unable to discern whether it would be “easy” to remove the clamping members from the base in view of the specification of the ‘337 patent, one skilled in the art would certainly discern that the intent of the invention disclosed in the ‘337 patent is to retain the first and second clamping members to the base independent of the second member.

The Federal Circuit has adjudicated, “[a] determination that a claim term ‘needs no construction’ or has the ‘plain and ordinary meaning’ may be inadequate when a term has more than one ‘ordinary’ meaning or when reliance on a term’s ‘ordinary’ meaning does not resolve the parties’ dispute.” *O2 Micro International, Ltd. v. Beyond Innovation Technology Co.*, 521 F.3d 1351, 1361 (Fed.Cir.2008). In this case, both parties are asserting differing definitions for the term “not releasable” with the Plaintiff asserting “not easily removed and replaced” and the Defendant asserting “not intended for release.” Accordingly, the Court should render a decision other than “ordinary meaning” since the term “not releasable” has more than one “ordinary” meaning, and in this case, construing “not releasable” as “not intended for release” is most true to the claim language and most naturally aligns with the patent’s description of the invention. *Phillips* at 1316.

Certification of Dispositive Result 2 (LPR 4.1(b))

Adopting the Defendant’s claim construction is dispositive since with the accused instrumentalities the clamp members are intended to be released from the base by movement of the member that impedes the clamp members from rotating about the base.

US 6,773,172

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

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.

Claim 29(b) of the ‘172 patent recites “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.” A well-known and appropriate definition of the term “side” in the context of the ‘172 patent is “a flat outer surface of an object.” *Cambridge Dictionary, Cambridge University Press 2022*. Accordingly, one skilled in the art would understand this claim element to mean a side, or flat outer surface of said member, defining opposing first and second corners. This construction is further supported by the only embodiment disclosed in the ‘172 patent which shows the claimed “side” as a flat outer surface having opposing first and second corners such as shown in FIG. 4 (Joint Appendix p. 8):

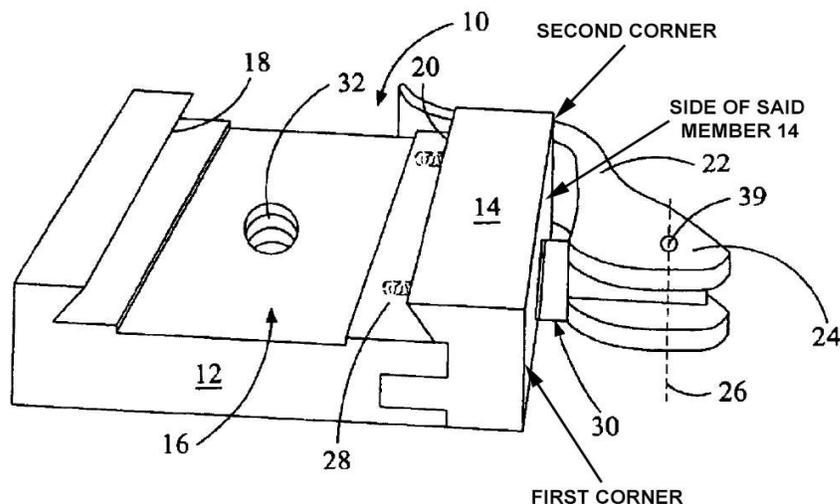


FIG. 4

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

The '172 patent does not describe or suggest any other embodiment other than the embodiment shown in FIG. 4 wherein the “side” of said member is a flat outer surface defining opposing first and second corners. Accordingly, one skilled in the art would ascribe this meaning to the term “side” when discerning the scope of claim 29.

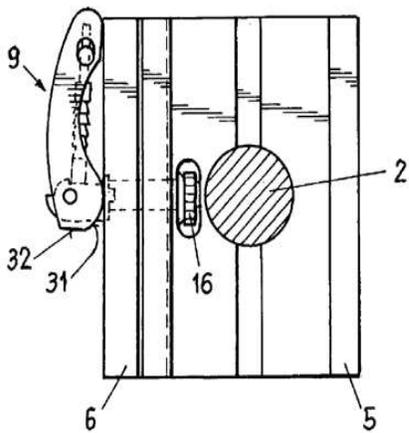
The Plaintiff asserts that the term “side” should be construed as “lateral surface” which would be consistent with the specification of the '172 patent as long as the lateral surface is also construed in view of FIG. 4 (i.e., the only disclosed embodiment). In other words, a construction consistent with the specification of the '172 patent would be “a lateral flat outer surface of an object” as shown in FIG. 4 of the '172 patent.

Further, every embodiment of the '172 patent (e.g., FIG. 4) shows the handle of the lever wrapping around the second corner (i.e., literally curving around the contours defined by the second corner). One skilled in the art would therefore construe the term “around” in claim 29 as “wrap-around” since this is the only embodiment described by the '172 patent. The patentee described the handle portion at col. 6, lines 16-21 (Joint Appendix p. 19):

“The handle portion 56 is elongate and has a sufficient length to extend beyond, *and curve around, a lateral corner* 61 of the clamp 10 when the cam lever is in the second, or locked position as seen in FIG. 4.”

Accordingly, the only reasonable construction of the term “around” is “wrap-around” (or curving around the contours of the second corner) as shown in the above FIG. 4 of the ‘172 patent.

The prosecution history of the ‘172 patent also supports the construction of “around” as “wrap-around” since the examiner rejected claim 29 under 35 USC § 102 as anticipated by FIG. 3 of US 6,435,738 (Exhibit 1 p. 3):



**FIG. 3 of '738 patent
(Exhibit 1 p. 3)**

Fig.3

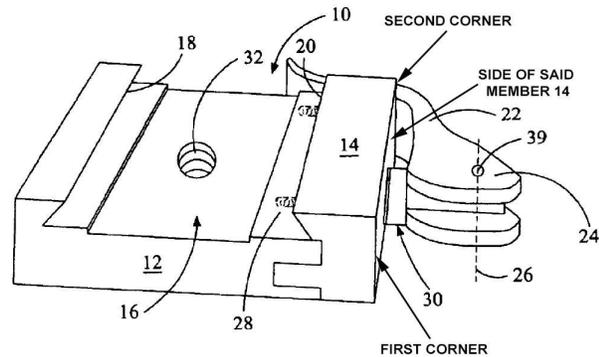


FIG. 4

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

The examiner asserted FIG. 3 of the ‘738 patent shows a clamp that anticipates claim 29 of the ‘172 patent except that the handle portion (end portion) of the lever 9 does not extend beyond *and wrap-around* the corner of the clamp (Joint Appendix p. 51). The patentee overcame the rejection by amending claim 29 (Joint Appendix p. 45, 47) to recite the handle portion of the lever extends beyond *and around* the corner of the clamp as shown in FIG. 4 of the ‘172 patent. Having amended claim 29 in this manner to overcome the rejection based on the ‘738 patent, one skilled in the art would reasonably construe the phrase “extends beyond and around the second corner” to mean the handle portion extends beyond and *wraps-around* the second corner as shown in FIG. 4 of the ‘172

patent as compared to the handle portion of the lever 9 shown in FIG. 3 of the '738 patent (prior art).

Still further, prosecution history disavowal prevents the patentee from broadening the meaning of the terms “side,” “first corner,” “second corner,” and “around.” As described above, claim 29 was allowed by the examiner only after the patentee amended the claim to clarify that the handle portion of the lever extends beyond *and around* said second corner when in said second position (locked position) as shown in FIG. 4. The patentee pointed to col. 6, lines 22-23, (Joint Appendix p. 19, 45, 47) of the '172 patent for the benefit of this amendment that supported the allowability contention: “The cam lever 22 is therefore easily accessible even though a camera body is secured to the clamp [when the clamp is in the second, or locked position].” Having relied on this benefit to assert patentability, prosecution history disavowal prevents the patentee from later asserting a broader interpretation of the claim. Accordingly, the only reasonable construction of the term “side” is a “flat outer surface” and the only reasonable interpretation of the term “around said second corner” is that the handle “wraps-around said second corner” as shown in all of the embodiments disclosed in the '172 patent (e.g., FIG. 4).

The “handle portion” recited in claim 29(c) should be construed 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:

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 term during prosecution of the patent application. Referring to the following sections of the ‘172 patent:

Col. 3, lines 3-15 (Joint Appendix p. 18):

“The lever 22 may be a cam lever that includes a cam portion 24 that rotates about a pivot axis 26 as the cam lever is moved between *a first, unlocked position* (shown in FIG. 1) and *a second, locked position* (shown in FIG. 4). The cam portion 24 has an asymmetrical shape about the pivot axis 26 so that the lever 22 pushes the adjustable arm 14 inward as the lever 22 is moved from a first position for releasing photographic equipment from the clamp 10 to a second position for gripping photographic equipment to the clamp 10. Conversely, as the lever 22 is moved from the second position to the first position, a pair of counterforce Springs 28, housed within the body 12, push outward on the adjustable arm 14 so that the channel 16 expands [into the unlocked position].”

Col. 3, lines 16-19 (Joint Appendix p. 18):

“The outwardly directed force applied by the springs 28 on the adjustable arm 14 is at a maximum when the lever 22 is in *the second position, i.e. when the channel 16 is intended to grip photographic equipment.*”

Col. 6, lines 16-20 (Joint Appendix p. 19):

“The handle portion 56 is elongate and has a sufficient length to extend beyond, and curve around, a lateral corner 61 of the clamp 10 when the cam lever is in *the second, or locked position* as seen in FIG. 4.”

It is well established that using the abbreviation “i.e.” is often definitional. *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.”); *see also Abbott Labs. v. Novopharm Ltd.*, 323 F.3d 1324, 1330 (Fed. Cir. 2003) (holding that a patentee “explicitly defined” a term by using “i.e.” followed by an explanatory phrase). In addition, using the conjunction “or” is grammatically equivalent to using the abbreviation “i.e.” (referring to the above description of the “second position” as the *second, or locked position*). Accordingly, considering the specification’s explicit definition of the terms “first position” and “second position,” particularly when using definitional identifiers such as “i.e.” and “or,” the claim term “first position” should be construed as the unlocked position of the clamp, and the claim term “second position” should be construed as the locked position of the clamp.

Further, prosecution history disavowal prevents the patentee from broadening the meaning of the terms “first position” and “second position.” Claim 29 was allowed by the examiner only after the patentee amended the claim to clarify that the handle of the lever extends beyond and around said second corner when in said *second position* (locked position) as shown in FIG. 4. The patentee pointed to col. 6, lines 22-23, (Joint Appendix p. 19) of the ‘172 patent for the benefit of this amendment that supported the allowability contention (Joint Appendix p. 47, p. 80): “The cam lever 22 is therefore easily accessible even though a camera body is secured to the clamp [when the clamp is in the second, or locked position].” Having relied on this benefit to assert

patentability, prosecution history disavowal prevents the patentee from later asserting a broader interpretation of the claim. *Computer Docking Station*, 519 F.3d at 1374. Accordingly, the only reasonable interpretation of the term “first position” is the unlocked position as shown in FIG. 1, and the only reasonable interpretation of the term “second position” is the locked position as shown in FIG. 4 of the ‘172 patent:

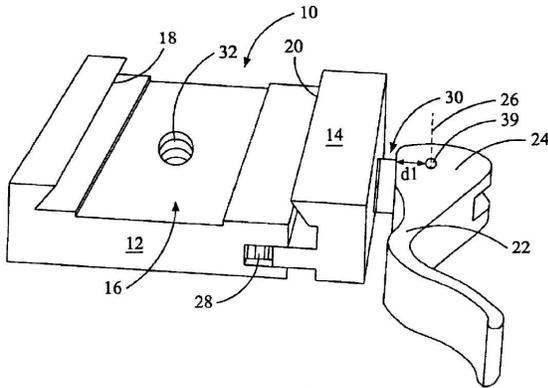


FIG. 1

**FIG. 1 of '172 patent
First Position - Unlocked
(Joint Appendix p. 7)**

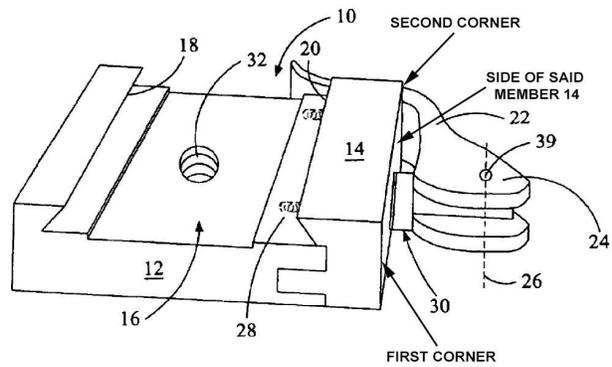


FIG. 4

**FIG. 4 of '172 patent
Second Position - Locked
(Joint Appendix p. 8)**

Certification of Dispositive Result 2 (LPR 4.1(b))

Adopting the Defendant’s claim construction is dispositive since the accused instrumentalities do not include a handle portion (end portion of a lever) that wraps-around a second corner of the clamp member as shown in FIG. 4 of the ‘172 patent. In addition, with the accused instrumentality FPH-ULP, the lever moves between the “first position” and “second position” in a manner opposite that recited in claim 29 of the ‘172 patent (as illustrated in FIG. 1 and FIG. 4 of the ‘172 patent).

IV. 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 claim construction brief.

Dated this 4th day of November, 2022

Respectfully Submitted,

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