

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

ATLEISURE, LLC	)	
	)	
Plaintiff,	)	Case No. 6:22-cv-682-WWB-DAB
	)	
v.	)	
	)	
LOWE’S HOME CENTERS, LLC	)	
	)	
Defendant.	)	

PLAINTIFF’S OPENING CLAIM CONSTRUCTION BRIEF

Plaintiff ATLeisure, LLC (“ATLeisure”), hereby files its Opening Claim Construction Brief, and in support thereof ATLeisure shows the Court as follows:

I. THE ‘492 PATENT.

Headquartered in Atlanta, Georgia, ATLeisure designs, manufactures, and supplies the outdoor furniture and accessories market with proprietary, innovative products. One of its primary product lines is outdoor patio umbrellas. ATLeisure has various patented designs and inventions, some of which are reflected in its own products. Of relevance here is U.S. Patent No. 8,104,492 (“the ‘492 patent”), which is embodied by certain of ATLeisure’s products, as well as products offered by Defendant Lowe’s Home Centers, LLC (“Lowe’s”).

Broadly speaking, the ‘492 patent is “an offset umbrella with an improved mechanism for raising and lowering the umbrella canopy and for adjusting the

angle of the canopy with respect to a vertical support member.” (Ex. A, ‘492 patent, 1:11-15.) The ‘492 patent explains that “[e]xisting adjustable offset umbrellas...utilize a crank mechanism both for raising and lowering the canopy and for adjusting the angle of the canopy.” (‘492 patent, 1:33-36.) Prior art configurations resulted in the rope routed in “a complex path with many turning points [that] requires more winding force, and the rope can easy bind and wear, adversely affecting the umbrella's operation.” (‘492 patent, 1:36-40.)

To solve these and other problems in the prior art, the ‘492 patent implements “A sliding member [that] is associated with the main pole and is selectably moveable thereon [that] includes a locking means for releasably securing the sliding member to the main pole at a desired location.” (‘492 patent, 1:49-53.) “A winding element is mounted to the sliding member and is movable therewith[; a] line extends along the arm from the winding element to engage the umbrella canopy [to apply] tension to the line to open or close the umbrella canopy...” (‘492 patent, 1:60-65.) This novel configuration provided, among other benefits, an improved offset umbrella that “simplifies the path of the line from the winding mechanism” and separates raising and lowering the umbrella from adjusting the angle of the umbrella to make both adjustments easier to perform. (‘492 patent, 2:1-12.)

II. THE LAW OF CLAIM CONSTRUCTION.

A. Claim Construction Generally.

Claim construction is a legal issue to generally be resolved by the Court. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977 (Fed. Cir. 1995), *aff'd* 517 U.S. 370 (1996). The goal of claim construction is to provide the jury with an understanding of complex terms that are used in particular fields. With this goal in mind, the Federal Circuit has warned that claim interpretation is not to be “an obligatory exercise in redundancy.” *United States Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997). Unfortunately, this process often leads to a proliferation of disputes where parties rewrite claim terms with interjected limitations to avoid infringement under the guise of claim construction. The claims themselves “provide substantial guidance as to the meaning of particular claim terms.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005). There is a “heavy presumption” that the terms used in claims “mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art.” *Resonate Inc. v. Alteon Websystems, Inc.*, 338 F.3d 1360, 1364 (Fed. Cir. 2003), citing *Tex. Digital Sys. v. Telegenix, Inc.*, 308 F.3d 1193, 1201 (Fed. Cir. 2002). Sometimes “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.”

Phillips, 415 F.3d at 1314, citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001). Where this is the case, the court need not construe the claim because the claim language itself suffices.

To interpret a patent claim, the Court is to look first to the intrinsic evidence, which includes: (a) the language of the claims themselves; (b) the specification; and (c) the prosecution history. Secondly, the Court may consider extrinsic evidence, which can include expert and inventor testimony, dictionaries, and learned treatises. *Phillips*, 415 F.3d at 1312-1317. Although a Court may consider extrinsic evidence if the intrinsic evidence is insufficient to arrive at construction, extrinsic evidence is less reliable than intrinsic evidence and should not be used to alter definitions available from the intrinsic evidence. *Id.*, at 1317-1318.

While the specification is “always highly relevant to the claim construction analysis” (*Phillips*, 415 F.3d at 1315), “[t]hat claims are interpreted in light of the specification does not mean that everything expressed in the specification must be read into all the claims.” *Teleflex, Inc. v. Ficosa N.Am. Corp.*, 299 F.3d 1313, 1326 (Fed. Cir. 2002), citing *Raytheon Co. v. Roper Corp.*, 724 F.2d 951, 957 (Fed. Cir. 1983). In addition to the claims and specification, a court may consider the “prosecution history” of the patent, which is the complete record of the proceedings before the USPTO during the examination of the patent. *Phillips*, 415 F.3d at 1317, citing inter alia, *Markman*, 52 F.3d at 980; *Graham v. John Deere Co.*, 383 U.S. 1, 33 (1966). However, the *Phillips* Court warned that because the

prosecution history “represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes.” *Phillips*, 415 F.3d at 1317.

B. Claim Construction For Means-Plus-Function Claims.

Claim limitations written in “means-plus-function” format must be construed in accordance with 35 U.S.C. § 112, ¶6¹. A “means-plus-function” limitation sets forth a function to be performed but does not set forth in the claim the structure(s) that perform the function. Claim construction of a means-plus-function limitation includes two steps. The Court first determines the claimed function and identifies “the corresponding structure in the written description [of the patent] that performs that function.” *JVW Enters. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1330 (Fed. Cir. 2005); *Voter Verified, Inc. v. Election Sys. & Software, Inc.*, 2011 WL 3236023, at *5 (M.D. Fla. July 28, 2011), *aff’d sub nom.*, *Voter Verified, Inc. v. Premier Election Sols., Inc.*, 681 F. App’x 977 (Fed. Cir. 2017). When construing the structure of a “means-plus-function” limitation, the Court identifies the structure(s) in the patent specification that perform the claimed function. *JVW Enters.*, 424 F.3d at 1330. In addition to the structures in the specification, the claims are also entitled to equivalents, meaning the

¹ The patent was filed prior to the America Invents Act (pre-AIA), where means-plus-function was defined in 35 U.S.C. §112, ¶6. Now means-plus-function is described in 35 U.S.C. § 112(f).

differences between the structure in the written description and the equivalents “perform the claimed function in substantially the same way to achieve substantially the same result as the structure in the written description.” *Id* at 1333.

Several of the claim construction disputes between the parties focus on means plus function. First, Lowe’s argues that although the “locking means” is means plus function, the definition of the term should *exclude* equivalent structures. There is no legal or factual basis to do so. Second, with one of the “locking means” embodiments (the ratchet tooth and pawl structure), Lowe’s argues it should be further limited beyond what is expressly disclosed in the specification. Third, although the patentee undoubtedly knew how to express claim terms in means plus function language where desired (e.g. “locking means”), Lowe’s argues the claim language “winding mechanism” should be treated as means plus function despite no use of means plus function language. Lowe’s motivation is obvious—to further limit the term in an effort to engineer a noninfringement or invalidity argument—but there is no support for Lowe’s position. Ultimately, the dispute relates to an adjustable offset umbrella, which is not overly complex and does not require rewriting language chosen by the patentee and approved by the USPTO. Lowe’s arguments are not a legitimate effort to clarify challenging terms, but instead pursued to manufacture legal defenses. Lowe’s positions should be rejected.

III. CLAIM TERMS/PHRASES AT ISSUE FOR CLAIM CONSTRUCTION.

A. The Definition of “Locking Means” is Straightforward and Should Include Equivalents As Provided by Statute.

The term “locking means”² is implicated by all claims of the ‘492 patent. Dependent claims 2-4 recite specific limitations on the “locking means” set forth in claim 1. The term “locking means” is interpreted as a means plus function claim under 35 U.S.C. §112 ¶6. The function of the “locking means” is expressly stated in claim 1, namely “releasably securing the sliding member to the main pole at a selected location along the main pole.” After identifying the recited function, the next step for claim construction is to specify the relevant structure in the specification for performing the claimed function. *See JVW Enters*, 424 F.3d at 1330. The specification for the ‘492 patent describes multiple structures for releasably securing the sliding member to the main pole: (a) a “pawl” that engages “ratchet teeth” shown in Figure 8; (b) a “cam latch” shown in Figure 4; and (c) a spring-loaded “latch pin” that engages holes on the pole shown in Figure 7. The structures depicted above are also described in the specification at 3:25-40, 4:12-31, and 4:36-40 as well as in claims 2-4.³ Thus, ATLeisure proposes that the Court

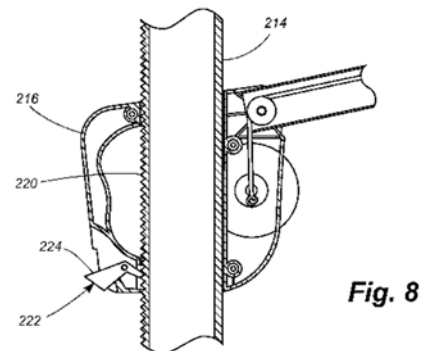
² The same claim term is referred to as both “locking means” (by ATLeisure) and “locking means releasably securing the sliding member to the main pole at a selected location along the main pole” (by Lowe’s), which includes both the term and the function. (Dkt. 34, p. 2.)

³ Notably, the Northern District of Georgia interpreted the same provision in a prior proceeding, *ATLeisure, Inc. v. Ace Evert, Inc.*, Case No. 1:12-cv-1260-CAP, Dkt. No. 85. ATLeisure proposes in this motion that the same interpretation accepted by the Northern District in that action also be used here.

construe the term locking means as having its plain and ordinary meaning and includes the cam latch, latch pin and ratchet and pawl embodiments for releasably securing the sliding member to the main pole at a selected location along the main pole, and the equivalents of each of the three embodiments. In sharp contrast, Lowe's proposes a lengthy and convoluted definition for one of the disclosed embodiments, the ratchet teeth and pawl embodiment (to which claim 3 is directed), that interjects numerous limitations that are not found in the intrinsic evidence and should be rejected, as referenced in more detail below. Lowe's also contends, contrary to statutory language, that the locking means does not include equivalents, which is addressed in more detail in section III.A.4. Each of the three express embodiments is detailed below because each is encompassed in the definition of "locking means."

1. The "Ratchet Teeth" and "Pawl" Embodiment (Claims 1 and 3) is A Locking Means Embodiment Including the Disclosure in Figure 8, Text at 4:21-31 and 4:36-40, the Plain Language of Claims 1 and 3, and All Equivalents Thereof.

One of the three disclosed embodiments is a "ratchet teeth" and "pawl" embodiment shown in Figure 8. As the specification explains, this mechanism is simply a spring-loaded "pawl" that engages the "ratchet teeth" to lock the sliding member in place. To move the sliding member, "the user raises a lever portion 224



on the pawl 222 to disengage the pawl from the ratchet teeth 220, moves the sliding member 216 to a new desired location, and releases the spring-loaded pawl to re-engage the ratchet teeth.” (‘492 patent, 4:26-31.) Claim 3, which issued with the same language as originally filed, specifically describes this embodiment as comprising “a plurality of teeth formed on the main pole and a cooperating pawl associated with the sliding member and selectively operative to engage a selected one of the teeth to prevent movement of the sliding member with respect to the main pole.” Any juror can understand this concept without any explanation beyond the claims themselves.

Rather than accept the claim as written, Lowe’s substitutes narrow language designed to avoid infringement, an exercise not permitted, then further limits the definition by arguing no equivalents are available. First Lowe’s argues the pawl “engages only one of the teeth on the pole at a time” (Dkt. 34-2, p. 2), a limitation contrary to the specification describing that the pawl disengages and engages not only one ratchet tooth but “the ratchet teeth,” e.g., a plurality of teeth. (‘492 Patent, 4:21-22, 4:28-31.) It is true claims 1 and 3 require that a selected one of the teeth is engaged, but they do not require that only one of the teeth is engaged. Claims 1 and 3 use the word “comprising,” which in patent parlance is recognized as

language that “signals that the entire claim is presumptively open-ended.”⁴ *MagSil Corp. v. Hitachi Glob. Storage Techs., Inc.*, 687 F.3d 1377, 1383 (Fed. Cir. 2012), quoting *Gillette Co. v. Energizer Holdings, Inc.*, 405 F.3d 1367, 1371 (Fed. Cir. 2005). “The transition ‘comprising’ creates a presumption that the recited elements are only a part of the device, that the claim does not exclude additional, unrecited elements.” *Id.*, quoting *Crystal Semiconductor Corp. v. TriTech Microelectronics Int’l, Inc.*, 246 F.3d 1336, 1348 (Fed. Cir. 2001). The Federal Circuit has recognized that “‘a’ or ‘an’ can mean ‘one or more’ is best described as a rule, rather than merely as a presumption or even a convention.” *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed. Cir. 2008). “The exceptions to this rule are extremely limited” and in this case would require proof the patentee had a clear intent to limit the claim to engaging one and only one tooth. *See id.*; *see also KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000). Here, there is no such intent in the claims, the specification, or the prosecution history.

Lowe’s “definition” continues on with additional limitations, including that the teeth are “angled so that the sliding mechanism is free to move in the upward direction and the pawl must be released to permit motion of the sliding member

⁴ Alternatively, “[c]onsisting of” is a term of patent convention meaning that the claimed invention contains only what is expressly set forth in the claim.” *Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp.*, 831 F.3d 1350, 1358 (Fed. Cir. 2016), quoting *Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1331 (Fed. Cir. 2004).

216 in the downward direction...” (Dkt. 34-2, p. 2.) While the word “angle” is used a dozen times in the ’492 patent, it is never used to describe the ratchet teeth. If the inventor wanted to limit the teeth to a certain angle, he could have done so as it pertains to the ratchet teeth. Lowe’s definition suggests an unrecited function for the sliding member with regard to this embodiment, namely that the locking means functions to lock the sliding member to prevent only downward motion (but freely allows upward motion. However, the Court may not construe a means-plus-function limitation “by adopting a function different from that explicitly recited in the claim.” *Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed. Cir. 1999); see *Generation II Orthotics Inc. v. Med. Tech. Inc.*, 263 F.3d 1356, 1364-65 (Fed. Cir. 2001). Lowe’s definition seems to violate this principle, as the function of the “locking means” is expressly recited as securing the sliding member at a selected location.

Lowe’s limitation that the sliding mechanism is “free to move in the upward direction” is also contradicted by the specification. The specification discusses moving the sliding member upward throughout, but there is not a single mention of the locking mechanism permitting “free” motion upward but not downward. Instead, the description of moving the sliding member of this embodiment (without regard for the direction of motion) explains the user will “disengage the pawl from the ratchet teeth 220, move[] the sliding member 216 to a new desired location, and release[] the spring-loaded pawl to re-engage the ratchet teeth.”

(‘492 patent, 4:28-31.) This is consistent with the recited function of securing the sliding member at the selected location along the main pole. Simply put, the teeth lock the sliding member in place and must be disengaged to move the sliding member.

Lowe’s also suggests the prosecution history somehow supports these additional limitations, yet none of the statements cited in the prosecution history describe the ratchet teeth and pawl embodiment as requiring angled teeth, requiring engagement of only one tooth, or requiring “free” motion in one direction. Lowe’s cites to the Examiner’s nonfinal rejection on June 24, 2010 (Dkt. No. 34-2, p. 6), which rejected the claims as obvious in view of the Harbaugh and Liu references, which the Examiner states teach the claimed invention, including a “teeth-and-pawl locking means.” (Ex. B, ATLEISURE-000112-113). Lowe’s also references the April 11, 2011 final rejection of claim 3 (Dkt. No. 34-2, p. 6), which repeats the same rejection, word for word, as in the June 24, 2010 nonfinal rejection. (Ex. C, ATLEISURE-000077-78). First, an “unilateral statements by an examiner do not give rise to a clear disavowal of claim scope by an applicant.” *Salazar v. Procter & Gamble Co.*, 414 F.3d 1342, 1347 (Fed. Cir. 2005). Second, the referenced statements were the Examiner’s characterization of the prior art and position (at that time) that claim 3 was obvious. (Ex. C, ATLEISURE-000077-78.) Nothing referenced defined the structures disclosed in the ‘492 patent and ultimately the claim issued without any amendment. Lowe’s proposed limitations

that the locking means require angled teeth, engagement of only one tooth, or “free” motion in one direction are not supported by anything referenced.

The only statements relied on by Lowe’s that were made by Applicant (as opposed by the Examiner) were from on February 3, 2011. (Dkt. 34-2, p. 5.) However, the statements of Applicant referenced the ratchet and pawl embodiment generically (and consistent with the specification) as part of an argument that his invention was patentable. (Ex. D, ATLEISURE-00103). Importantly, the Applicant does not argue his invention requires angled teeth, engagement of only one tooth, or “free” motion in one direction (Ex. D, ATLEISURE-00103). Instead, the Applicant simply argued one of skill in the art would not have been motivated to modify “the locking means of Harbaugh reference by using a teeth-and-pawl means taught by Liu...” (Ex. D, ATLEISURE-00103). Nothing in this exchange supports the limitations proposed by Lowe’s.

With no intrinsic evidence supporting Lowe’s proposed limitations of angled teeth, engagement of only one tooth, or “free” motion in one direction—and some intrinsic evidence directly contradicting at least one of these limitations—Lowe’s turns to extrinsic dictionary definitions to interject limitations contrary to the specification. This tactic is always rejected, as extrinsic evidence cannot be used to support a definition that conflicts with the intrinsic evidence. *See, e.g., Acumend LLC v. Stryker Corp.*, 483 F.3d 800, 809 n. 2 (Fed. Cir. 2007); *see also Hynix Semiconductor Inc. v. Rambus Inc.*, 645 F.3d 1336, 1350 (Fed. Cir. 2011). Lowe’s

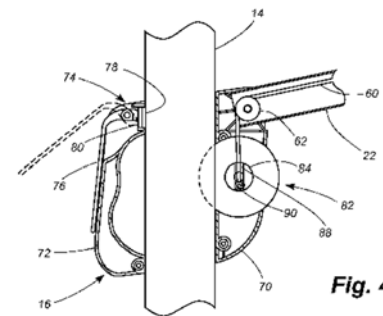
proposed limitations are contrary to the specification and the presumption based on open-ended claim language. Many of the dictionary definitions differ significantly from the '492 patent, as much of it refers to structures not anything like those disclosed in the intrinsic evidence, such as:

- A “ratchet is a form of gear in which the teeth are cut for one-way operation...”
- A pawl is a “pivoted hook-like component which engages with a ratchet wheel...”
- A ratchet is a “wheel or ring with inclined teeth”
- “Ratchet gearing...”

(Dkt. 34-2, p. 7.) There is no ratchet gear or hooked pawl in the '492 patent. Rather than the '492 patent supporting a “one-way” motion limitation, the specification expressly states that the ratchet teeth are disengaged for any motion of the sliding member, not just motion in one direction. ('492 patent, 4:26-31.) The locking means in claim 1 and 3 should be interpreted consistent with the specification to include the ratchet teeth and pawl embodiment disclosed in Figure 8 (and corresponding text at 4:21-31 and 4:36-40), the plain language of the claims, and all equivalents as required by statute.

2. The “Cam Latch” Embodiment (Claim 1) is A Locking Means Embodiment Including the Disclosure in Figure 4, Text at 3:25-40 and 4:36-40, the Plain Language of Claims 1 and 2, and All Equivalents Thereof.

A second embodiment covered by the scope of the “locking means” is a “cam latch” embodiment shown in Figure 4. None of the products currently accused of infringement include a cam latch, but it is discussed to provide the full scope of the “locking means.” Under 35 U.S.C. §112(¶6), the plain language of the “locking means” includes the cam latch embodiment depicted in the provisional and issued patent in figure 4 and described at 3:25-40 and 4:36-40, and the equivalents of this embodiment.



During the technology tutorial, Lowe’s argued that the cam latch embodiment in the issued ‘492 patent destroys the priority date for the ‘492 patent. The priority date is primarily related to questions of validity. Specifically, a reference does not qualify as “prior art” unless it predates the priority date of the challenged patent claim(s). Lowe’s suggested this Court should consider priority in the context of claim construction. Questions of invalidity and priority are unequivocally issues to be resolved by the fact finder only after claim construction, making them inappropriate for consideration here. In fact, in *X2Y Attenuators* the Federal Circuit specifically held that claim construction must come before decisions on priority, stating that “entitlement to priority cannot be decided

without first construing the asserted claims.” *X2Y Attenuators*, 757 F.3d at 1365.

The Federal Circuit further

held “it is improper to construe claims with the goal of arriving at a particular priority date.” *Id.* Thus, consideration of priority during claim construction is improper under binding Federal Circuit law.

3. The “Latch Pin” Embodiment (Claim 1) is A Locking Means Embodiment Including the Disclosure in Figure 7, Text at 4:12-21 and 4:36-40, the Plain Language of Claims 1 and 4, and All Equivalents Thereof.

The third disclosed embodiment is a “latch pin” embodiment. The ’492 patent simply describes the latch pin engaging or disengaging the hole to lock or unlock the sliding member in the selected location on the main pole. (’492 patent, 4:12-20.) Nothing more is

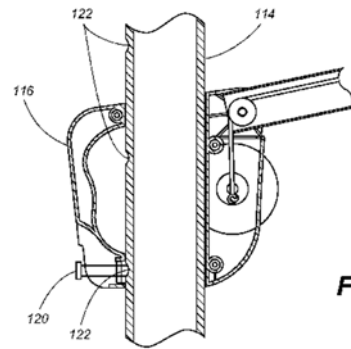


Fig. 7

needed for the jury to understand this embodiment and its equivalents. Under 35 U.S.C. §112(¶6), the plain language of the “locking means” includes the latch pin embodiment depicted in figure 7 and described at 4:12-21 and 4:36-40, and the equivalents of this embodiment.

4. Locking Means Includes All Embodiments Plus All Equivalents Under 35 USC 112, ¶6.

Means-plus-function claims are statutorily entitled to encompass both the disclosed structures and their equivalents. However, Lowe’s argues that the scope of the “locking means” does not include equivalent structures, incorrectly

contending that theories of prosecution history estoppel and disclaimer “narrow or preclude the application of equivalents for this claim element.” (Dkt. 34-2, p. 3.) Lowe’s is incorrect with respect to both theories.

“Prosecution history estoppel requires that the claims of a patent be interpreted in light of the proceedings in the PTO during the application process.” *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 733, 122 S. Ct. 1831, 1838 (2002). Prosecution history estoppel can limit the equivalents available where subject matter was surrendered by a narrowing amendment made during prosecution. *See Festo*, 535 U.S. at 737. “The determination of equivalence should be applied as an objective inquiry on an element-by-element basis.” *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 40 (1997). With no amendments made to the claim limitation containing locking means there can be no argument that subject matter was narrowed and therefore surrendered during prosecution of the ‘492 patent.

The doctrine of prosecution disclaimer is well established in Supreme Court precedent, precluding patentees from recapturing through claim interpretation specific meanings disclaimed during prosecution. *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003), citing *Schriber-Schroth Co. v. Cleveland Trust Co.*, 311 U.S. 211, 220-21 (1940). “[The Federal Circuit] has often stated that prosecution history limits claim meaning when an applicant “clearly and unmistakably” disclaims claim scope or meaning.” *Grober v. Mako Prods.*,

686 F.3d 1335, 1342 (Fed. Cir. 2012). Prosecution disclaimer does not apply to “an ambiguous disavowal” where statements in prosecution have multiple reasonable interpretations, nor where “the applicant simply describes features of the prior art and does not distinguish the claimed invention based on those features.” *Comput. Docking Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1375 (Fed. Cir. 2008); *see also N. Telecom Ltd. v. Samsung Elecs. Co.*, 215 F.3d 1281, 1293-95 (Fed. Cir. 2000). Instead, the prosecution history must show that the patentee “clearly and unambiguously” disclaimed or disavowed the proposed interpretation “during prosecution to obtain claim allowance.” *Middleton, Inc. v. 3M Co.*, 311 F.3d 1384, 1388 (Fed. Cir. 2002).

The only element of Claim 1 reciting a locking means reads as follows: “locking means for releasably securing the sliding member to the main pole at a selected location along the main pole.” (‘492 patent, Cl. 1.) This element was unchanged during prosecution. Similarly, dependent claims 2-4, all of which also recite embodiments of the locking means, were also unchanged during prosecution. With no amendment or clear disavowal to the locking means element, there can be no prosecution history estoppel nor disclaimer as to the construction of locking means. *See Warner-Jenkinson*, 520 U.S. at 40; *see also Vae Nortrak N. Am. v. Progress Rail Servs. Corp.*, No. 03-AR-1480-M, 2005 U.S. Dist. LEXIS 58932, at *34 (N.D. Ala. Mar. 1, 2005) (holding that where no amendment was made to a means plus function element, prosecution history estoppel cannot

apply); *See Middleton*, 311 F.3d at 1388. Locking means should be interpreted to include the three embodiments for releasably securing the sliding member to the main pole at a selected location along the main pole shown in Figures 4, 7, 8, and further described in the specification at 3:25-40, 4:12-31, and 4:36-40 (and claimed in claims 2-4), and the equivalents of each of the three embodiments.

B. The Claim Element “A winding mechanism having a winder hub around which a line can be wound, the winder hub being mounted to the sliding member and movable therewith” Does Not Need Construction.

There is no doubt the patentee was familiar with the recitation of means plus function limitations, having expressly claimed a “locking means” in claim 1 of the ‘492 patent. In contrast, patentee did not use means plus function language for the winding mechanism also recited in claim 1. No special meaning or definition for this phrase is required, as this phrase is straightforward and can be easily understood by a layperson. Yet Lowe’s contends this phrase implicitly invokes §112¶6. Lowe’s motivation is obvious—it seeks to limit this claim element to only structures disclosed in the specification—rather than providing the claim its plain meaning as required. Indeed, Lowe’s contention in the Parties’ Joint Claim Construction Statement highlights the narrowing construction it seeks, arguing that a “latch mechanism” be imported into the claim while precluding equivalents provided under 112 ¶6, although it is not found in any claim of the ‘492 patent. Absent a clear disavowal of claim scope, “particular embodiments appearing in the

written description will not be used to limit claim language that has broader effect.” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1117 (Fed. Cir. 2004); *Phillips*, 415 F.3d at 1323 (“although the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments”); *see also, e.g., Nazomi Communs., Inc. v. ARM Holdings, PLC*, 403 F.3d 1364, 1369 (Fed. Cir. 2005) (claims may embrace “different subject matter than is illustrated in the specific embodiments in the specification”). Lowe’s efforts to graft limitations from the specification through claim construction are improper and unsupported.

The first issue for the Court to determine is whether Lowe’s can meet its burden to show the claim limitation somehow qualifies as a “means plus function” claim limitation under 35 U.S.C. §112¶6. A claim limitation is presumed to invoke 35 U.S.C. 112¶6 when it explicitly uses the term “means” or “step” and includes functional language. By contrast, a claim limitation that does not use the term “means” or “step” will trigger the rebuttable presumption that 35 U.S.C. §112(f) does not apply. *See, e.g., Phillips*, 415 F.3d at 1310; *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1369 (Fed. Cir. 2002); *Personalized Media Communs., L.L.C. v. ITC*, 161 F.3d 696, 703-04 (Fed. Cir. 1998). The presumption can only be 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, L.L.C.*, 792 F.3d 1339, 1349 (Fed. Cir. 2015)

(*en banc*) (quoting *Watts v. XL Sys.*, 232 F.3d 877, 880 (Fed. Cir. 2000); *see also Personalized Media Communs*, 161 F.3d at 704. “The standard is whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Williamson*, 792 F.3d at 1349, citing *Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580, 1583 (Fed. Cir. 1990). During prosecution, if an examiner believes the claim should be interpreted in accordance with 35 U.S.C. 112¶6, he or she must expressly state as such in an Office Action.

The Patentee did not invoke §112¶6 by choosing the “means plus function” language in the claim, nor did the Examiner cite to §112¶6 or contend the claim lacked sufficiently definite structure. In order to overcome the presumption against interpretation as a means plus function, Lowe’s must prove the “claim element recited a function without reciting sufficient structure for performing that function.” *Watts v. XL Sys.*, 232 F.3d 877, 880 (Fed. Cir. 2000). Lowe’s cannot do so. There is nothing complicated about the phrase identified by Lowe’s for construction, nor is there a basis to suggest a normal layperson could not easily understand the term. Indeed, the structure is defined within the plain language of the claim itself, namely, the winding mechanism is a winder hub mounted to and moveable with the sliding member such that the line can be wound. The claim goes on (in another element) to explain that the line winds around the winder hub and is attached to the umbrella canopy in order to open and close the canopy. The

winding mechanism recited in claim 1 means what it says, and the meaning is easily appreciated by laypersons. See *Resonate*, 338 F.3d at 1364; *Phillips*, 415 F.3d at 1314. There is no basis to change straightforward language or import limitations from the specification. The plain meaning of the language is proper.

C. The Claim Element “Wherein operation of the winding mechanism to apply tension to the line opens and closes the umbrella canopy in response to movement of the line” Does Not Need Construction.

Like the winding mechanism, Lowe’s seeks to incorporate limitations into the claims not supported by intrinsic evidence to manufacture a noninfringement position. As with the limitation in the prior section, no special meaning or definition for this phrase is required, as the claim element can be easily understood by a layperson. The bulk of the language in this claim element is permissible functional language that is used to provide context and describe the capabilities of the structure. See, e.g., *Mastermine Software, Inc. v. Microsoft Corp.*, 874 F.3d 1307, 1315 (Fed. Cir. 2017) (discussing the use of functional language tied to structure of the claim). As the ‘492 patent explains for one embodiment, to open the umbrella canopy, the winder hub of the winding mechanism winds the line to increase tension on the line to open the canopy, or winds the winder hub in the opposite direction to reduce tension and close the canopy. (‘492 patent, Cl. 1; see also 1:63-65.) Certainly jurors can understand this language winding or unwinding line to open or close an umbrella.

Lowe's contends that this claim element, and in particular the language "to apply tension to the line," should be construed to mean "to increase tension on the line." It is unclear what Lowe's change in language is attempting to narrow or change. Is Lowe's suggesting the winding mechanism can only "increase" tension regardless of which direction the line moves? If so, this would be absurd, seemingly inconsistent with the laws of physics, and directly contrary to the claim itself, which explains that the line is wound in both directions (i.e. by applying more tension or less tension) to open and close the umbrella canopy. ('492 patent, Cl. 1.) Setting aside the fact that importing limitations from the specification is contrary to the claim construction principles, nothing in the specification supports Lowe's position. Lowe's proposed limitation should be rejected and the claim should simply be the plain and ordinary meaning of the language as set forth in the claim itself.

IV. CONCLUSION

Predictable for a defendant in patent litigation, Lowe's lobbies for various claim interpretations that improperly narrow the scope of the claims rather than to assist the jury with claim language interpreted consistent with the patent itself. Each of Lowe's theories would require the Court to disregard the specification and rules of claim construction. Lowe's cannot point to any amendment made for patentability as it pertains to the locking means, and therefore cannot establish prosecution history estoppel. Lowe's likewise cannot establish a clear disavowal of

scope or clear intent to limit the claims as suggested by Lowe's with respect to Claims 1-4. The Court should reject Lowe's efforts to interject limitations and preclude equivalents, and instead construe the terms as follows:

Claim Term	Proper Construction
Locking means/ Locking means for releasably securing the sliding member to the main pole at a selected location along the main pole	Plain and ordinary meaning consistent with §112 ¶6, which includes the three embodiments ("Ratchet teeth" and "pawl," "cam latch," and "latch pin") for releasably securing the sliding member to the main pole at a selected location along the main pole, and the equivalents of each of the three embodiments as shown in Figures 4, 7, 8, at 3:25-40, 4:12-31, and 4:36-40 and in claims 2-4.
A winding mechanism having a winder hub around which a line can be wound, the winder hub being mounted to the sliding member and movable therewith	The phrase is not subject to 35 USC 112, ¶6, and has its plain and ordinary meaning
Wherein operation of the winding mechanism to apply tension to the line opens and closes the umbrella canopy in response to movement of the line	The phrase has its plain and ordinary meaning
The umbrella of claim 1, wherein the locking means for releasably securing the sliding member to the main pole comprises a plurality of teeth formed on the main pole and a cooperating pawl associated with the sliding member and selectively operative to engage a selected one of the teeth to prevent movement of the sliding member with respect to the main pole	Plain and ordinary meaning of the language from claim 3 consistent with §112 ¶6, which includes the embodiment for releasably securing the sliding member to the main pole at a selected location along the main pole depicted in Fig. 8 and described at 4:21-31, and 4:36-40 and in claim 3

Respectfully submitted, December 16, 2022.

By: /s/ Ryan T. Santurri
Ryan T. Santurri
Florida Bar No. 15698
Email: rsanturri@allendyer.com
ALLEN, DYER, DOPPELT + GILCHRIST, P.A.
255 South Orange Avenue, Suite 1401
Orlando, Florida 32801
407.841.2330

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I also certify that I have electronically filed a copy of the foregoing and understand that notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system and that parties may access this filing through the CM/ECF system.

Dated: December 16, 2022.

/s/ Ryan T. Santurri
Ryan T. Santurri
Florida Bar No. 15698
Email: rsanturri@allendyer.com