

United States District Court,
N.D. Georgia, Atlanta Division.

OUTSIDE THE BOX INNOVATIONS, LLC, d/b/a Union Rich USA,
Plaintiff Counter-Defendant.

v.

TRAVEL CADDY, INC., and Rooster Products, d/b/a the Rooster Group,
Defendants.

Travel Caddy, Inc,
Counter-Plaintiff Counter-Defendant.

v.

**Outside the Box Innovations, LLC, d/b/a Union Rich USA; Union Rich Plastic Factory, Ltd.; Bonaka
Plastic Manufacturing, Co., Ltd., and Bonaka Limited,**
Counter-Defendants.

Civil Action No. 1:05-cv-2482-ODE

Sept. 18, 2006.

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ORDER

ORINDA D. EVANS, District Judge.

In this civil action Outside the Box Innovations, LLC d/b/a Union Rich USA ("Union Rich") is seeking a declaratory judgment that it has not infringed patents held by Travel Caddy, Inc. and Rooster Products, d/b/a The Rooster Group ("Travel Caddy"). In response, Travel Caddy charges that Union Rich has infringed two of Travel Caddy's patents. On August 24, 2006, the Court held a *Markman* hearing to hear arguments in support of the parties' proffered claim constructions of the two patents in suit. Having reviewed the parties' submissions and considered their arguments, the disputed terms are construed as follows. A detailed description of the Court's findings follows the table below; the page number refers to where in this order the term is discussed.

| Pg. | Term | Construction |
|------------|----------------------|---|
| 7 | "between" | In the interval defined by two end points; here, the outer edge of the end panels of the case. |
| 7 | "connecting between" | Linking or bridging the interval defined by two end points; here, the outer edge of the end panels of the case. |

| | | |
|-----|---|---|
| 7 | "joined between" | Fastened in and through the interval defined by two end points; here, the outer edge of the end panels of the case. |
| 13. | "extending substantially entirely between the ... side edges" | Spanning essentially from one side edge to another and opposing side edge; extending entirely within, and not extending beyond, the outer edge of the end panels of the case. |
| 14 | "intermediate" | Between |
| 15. | "continuous, closed loop binding" | A binding that is folded over and stretched to provide a means to join the fabric edges of component parts of the case in a closed loop; a "continuous" closed loop binding extends uninterrupted with no apparent beginning or ending point. |
| 18 | "flexible fabric ... panel" | A panel made of a fabric that is capable of being bent or flexed. |
| 20 | "generally rigid, fabric covered ... panel" | A fabric covered panel that is, on the whole, essentially stiff or non-pliant. |
| 23 | "generally semi-rigid, fabric covered ... panel" | A fabric covered panel that is, on the whole, relatively stiff or relatively non-pliant. |
| 24 | "three-sided generally rigid fabric covered box" | A three sided fabric-covered U-shaped structure in which each side is, on the whole, essentially stiff or non-pliant. |
| 26 | "sewn into" | Captured within layers, by a stitched seam. |
| 28 | "margin" | An edge and the area immediately adjacent to it. |
| 29 | "rectangular perimeter shaped" | Having a four-sided boundary with four right angles. |

I. Background

A. Basic Overview of the Travel Caddy Patents

The patent claims that form the basis of Travel Caddy's motion for preliminary injunction are Claims 19, 21, 23, and 26-28 of U.S. Patent No. 6,991,104 ("the '104 Patent"). The '104 Patent is a continuation of U.S. Patent No. 6,823,992 ("the '992 Patent"), and it incorporates the '992 Patent by reference. The patents cover cases used for transporting tools. A distinctive feature of the patented tool cases is the use of a combination of flexible and rigid panels in the construction of the case. ['104, 1:23-25]. Rather than a case comprised entirely of rigid panels or entirely of flexible panels, Travel Caddy's patented cases feature some rigid panels and some flexible panels. Another distinctive feature is the use of a "continuous, closed-loop binding," which closes certain seams around the perimeter of the bag. ['104, 2:5-10]. This functional binding also makes a clean, decorative statement as the binding has no visible starting or stopping point. ['104, 3:48-50]. The two bags at issue are Travel Caddy's Electrician's Bag, represented in Figure 1 of both patents, and its Plumber's Tote, represented in Figure 10 of both patents.

For the present purpose, only those claims which the parties have disputed will be construed. In doing so, the Court is mindful that there are a number of disputed terms that contain very similar language, most notably "joined between," "connecting between," "generally rigid," and "generally semi-rigid." To the extent possible, each term has been construed in a manner designed to provide a distinct meaning.

B. Legal Overview

According to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 390-91, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), patent claim construction is a matter of law to be decided by a judge. There are two basic categories of evidence a court uses to interpret patent claims: "intrinsic" evidence and "extrinsic" evidence. Intrinsic evidence includes the language of the claims themselves, the specification, and the prosecution history. Extrinsic evidence is everything else-notably reference materials (dictionaries or other publications) and any expert testimony.

"Intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). There is also a clear hierarchy of the persuasiveness of various kinds of intrinsic evidence. At the top of that hierarchy is the plain language of the claims themselves. *Vitronics*, 90 F.3d at 1582; *see also* *Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*, 381 F.3d 1111, 1115 (Fed.Cir.2004) ("It is a bedrock principle of patent law that the claims of a patent define the invention"); *Interactive Gift Express, Inc. v. CompuServe Inc.*, 256 F.3d 1323, 1331 (Fed.Cir.2001) ("In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves"). Where possible, the words in the claims should be given their ordinary meaning, unless the patentee has used these words in a manner explicitly different from that ordinary meaning. *Vitronics*, 90 F.3d at 1582.

The second most important form of intrinsic evidence is the specification. Because claim terms are often not clear on their face, the specification helps explain the inventor's meaning. According to the Federal Circuit, "[t]he 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." *Vitronics*, 90 F.3d at 1582. However, the Federal Circuit has also cautioned that while the specification may "shed light" on the meaning of the claims, the embodiment found in the specification does not independently limit the scope of the claims' plain language. *See, e.g.*, *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed.Cir.1988) ("Appellant misinterprets the principle that claims are interpreted in the light of the specification. Although the specification may aid the court in interpreting the meaning of disputed language in the claims, particular embodiments and examples appearing in the specification will not generally be read into the claims.").

The third best form of intrinsic evidence is the prosecution history. The prosecution history is the complete record of the proceedings before the PTO leading up to the grant of the patent. Because the prosecution history often includes express representations by the patentee about his invention, this evidence is "often of critical significance in determining the meaning of the claims." *Vitronics*, 90 F.3d at 1582. In this case, neither party has relied on the prosecution history in advancing its proposed claim construction.

"In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim terms." *Vitronics*, 90 F.3d at 1583. Only where this is not the case should the court resort to extrinsic evidence. *Id.* *In Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed.Cir.2005) (en banc), the Federal Circuit clarified its stance on the use of dictionaries in claim construction. The *Phillips court* emphasized that intrinsic evidence is of primary importance and that dictionaries must be considered only in the context of the intrinsic evidence. *See Phillips*, 415 F.3d at 1320-22. The court did not set forth a recommended sequence for construing claims, but explained that:

a judge who encounters a claim term while reading a patent might consult a general purpose or specialized dictionary to begin to understand the meaning of the term, before reviewing the remainder of the patent to

determine how the patentee has used the term. The sequence of steps used by the judge in consulting various sources is not important; what matters is for the court to attach the appropriate weight to be assigned to those sources in light of the statutes and policies that inform patent law.

Id. at 1324. Both parties have relied extensively on dictionary definitions, but have done so in the context of the intrinsic evidence. The dictionary definitions are all taken from general purpose dictionaries, and are intended to offer support for the proposed constructions that have been based on the claim language and specification. In determining the proper weight of the evidence presented by the parties, the Federal Circuit has explained that "[t]he 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." *Id.* at 1316, *quoting* *Renishaw PLC v. Marposs Societa per Azioni*, 158 F.3d 1243, 1250 (Fed.Cir.1998).

II. Claim Construction

A. "*between*"; "*joined between*"; "*connecting between*"

These terms are used throughout both patents, including in independent claims 1 and 4 of the '992 Patent and independent claims 1, 8, 19, and 26 of the '104 Patent. The terms are used to describe the locations of various panels in the claimed bags. The term "*between*" appears in claims 8, 19, and 26 of the '104 Patent in the following context:

a planar, generally rigid, fabric covered, rectangular perimeter shaped, bottom panel *between* the first and second end panels to form a generally three sided, generally rigid, fabric covered box with the first and second end panels extending upwardly from the bottom panel[.]

[104, 7: 55-59] (emphasis added). The full context for the term "*connecting between*," which is used in claims 1 and 4 of the '992 Patent and claim 1 of the '104 Patent, is as follows:

a planar, generally rigid, fabric covered, rectangular bottom panel *connecting between* the first, and second panels to form a three sided, generally rigid fabric covered box[.]

[104, 7: 10-13] (emphasis added). Both "*between*" and "*connecting between*" address the location of the bottom panel in relation to the end panels of the cases. "*Joined between*" appears in all of the independent claims and defines the location of the flexible front and back panels in relation to the end panels. The full context of "*joined between*" is:

a [first or second], flexible, fabric front [or back] panel having a top edge and *joined between* the front [or back] side edges of the first and second [end] panels.

[104, 7: 14-16] (emphasis added).

Union Rich proposes the following constructions. For "*connecting between*": "extending and attached entirely within, and not extending beyond, two fixed points or boundaries." [Pl.'s Opening Brief, at 9]. For "*joined between*": "linked the entire length of; connected within two members, fastened one to the other; extending and attached entirely within, and not extending beyond, two fixed points or boundaries." [*Id.* at 11].

Travel Caddy proposes the following constructions. For "*connecting between*": "joined or fastened in or

through the interval separating component panels or parts of the case." [Defs.' Opening Brief, at 7]. For "joined between": "connected in or through the interval separating component panels or parts of the case." [Id.]. For "between": "existing in or through the interval separating component panels or parts of the case."

In their claim construction filings, the parties focused attention on whether the bag that is represented as Figure 10 in both the '992 and '104 Patents, allegedly showing Travel Caddy's Plumber's Tote product, is properly understood to be a preferred embodiment of the claimed invention. According to Travel Caddy, Union Rich's proposed construction would not include the embodiment featured in Figure 10, which may feature a bottom panel that extends beyond the end panel. [Id. at 12-14].

Federal Circuit precedent indicates that a proposed construction normally cannot stand if it fails to cover a preferred embodiment disclosed in the specification of the patent. *See Cytologix Corp. v. Ventana Med. Sys., Inc.*, 424 F.3d 1168, 1175 (Fed.Cir.2005); *Vitronics*, 90 F.3d at 1583 ("[a] claim construction that excludes a preferred embodiment is 'rarely, if ever correct' "). Overcoming the strong presumption against a claim construction that does not cover a preferred embodiment requires "highly persuasive evidentiary support." *Vitronics*, 90 F.3d at 1583.

Union Rich contends that the embodiment in Figure 10 is explicitly labeled an "alternative embodiment" and is not covered by the language of the patent claims. [Pl.'s Reply Brief, at 5-6]. Union Rich is correct that Figure 10 is described in the text of the patent as "a fifth alternative embodiment" of the claimed invention. [104, 2: 42-43]. However, this language is not dispositive of the issue, especially since the embodiment is explained within the lengthy specifications included in the "Description of the Preferred Embodiment" contained in the patent. [104, 6: 1-58].

Union Rich contends that Figure 10 should be treated as subject matter that has been disclosed, but not claimed in the patent. [Pl.'s Reply Brief, at 6-9]. If Union Rich is correct, then Travel Caddy is attempting to expand the scope of its patent to include a bottom panel that extends beyond the side panels, despite the fact that this characteristic is not part of the patent claims.

In resolving this question at the claim construction stage, the Federal Circuit has held that although "it is true that we must read a claim in light of the specification, rarely will we limit the claim to the preferred embodiments described in that specification." *Taskett v. Dentlinger*, 344 F.3d 1337, 1340 (Fed.Cir.2003) (rejecting proposed claim construction that was based solely on the specification of one preferred embodiment when alternative embodiments and the Summary of Invention were not covered by the proposed construction). In other words, whether or not Figure 10 represents a preferred embodiment, the Court will consider it in determining proper claim construction. That being said, the Court does indeed have some doubt as to whether Figure 10 is a preferred embodiment.

The fundamental question in construing this claim term is how far the panels can extend in connecting to other panels. For example, Union Rich argues that in order to "connect between" the side panels, the bottom panel can extend no further than either side panel. [Pl.'s Opening Brief, at 9-11]. Travel Caddy contends that the bottom panel "connects between" even if it extends "through the interval separating" the side panels. [Def.'s Opening Brief, at 8]. This definition relies on an understanding of "through" that incorporates the act of going beyond. At the *Markman* hearing, Union Rich explained that the parties agree on the proper construction of "between." Although not apparent in its claim construction filings, Union Rich contends that "between" does mean "in or through the interval separating two boundaries" however, it is in defining the proper "interval" and the meaning of "through" that the disagreement arises.

For Union Rich, the interval is defined as the space between the end panels, with a boundary demarcated by the bottom point of the panels, and another boundary demarcated by the inner wall of the end panels. [Pl.'s Reply Brief, at 4-6]. As counsel for Union Rich explained at the *Markman* hearing, the bottom panel of the Electrician's Bag exists entirely within this interval, as defined both at the bottom boundary and the inner boundary. However, according to Union Rich, the bottom panel of the Plumber's Tote is not between the end panels, because it is both underneath and outside of the interval.

The interval does need to be defined, but Union Rich has offered an incorrect definition. In its own proposed constructions, Union Rich refers to "two fixed points or boundaries," [Pl.'s Opening Brief, at 9], yet in describing the bottom panel of the Plumber's Tote as both underneath and outside of the interval, it has offered three boundaries, not two. In light of the specific reference in the patent claims to "the first and second end panels extending upwardly from the bottom panel," it cannot be true that a bottom panel that lies underneath the two end panels is not between those panels. ['104, 7: 55-59].

Instead, the interval at issue is properly understood to be demarcated by the outer edge of the end panels. The specification does not provide any conclusive intrinsic evidence that any of the panels that are said to be "between," "connecting between," or "joined between" extend beyond the outer edge of the end panels. Figure 10, on which Travel Caddy relies for proof that "through the interval" can mean beyond the boundaries, does not provide such proof. The part of the bag displayed in Figure 10 that appears to stick out from the end panels, at the point where the panels connect to the bottom is unlabelled in the specification. Travel Caddy included labels on Figure 10 in its claim construction filings with the Court. [Def.'s Opening Brief, at 8]. According to Travel Caddy's labels, the part of the bag that is sticking out is the bottom panel, extending beyond the end panels. [*Id.*].

Despite Travel Caddy's subsequent labeling of Figure 10, nowhere in the patent claims, specification, or prosecution history is there intrinsic evidence to support a construction that allows for "a bottom panel extending outwardly beyond the end panels." Unlike the explicit claim language referring to the end panels "extending upwardly from the bottom panel," the evidence does not support a construction that allows for the bottom panel to extend beyond the outer edges of the end panels.

Weighing the entirety of the evidence, the Court adopts the following constructions. For "between": "In the interval defined by two end points; here, the outer edge of the end panels of the case." For "connecting between": "Linking or bridging the interval defined by two end points; here, the outer edge of the end panels of the case." For "joined between": "Fastened in and through the interval defined by two end points; here, the outer edge of the end panels of the case."

B. "*extending substantially entirely between the ... side edges*"

This phrase appears in independent claim 4 of the '992 Patent, and is used to describe the location and size of reinforcement elements in the claimed case. As acknowledged by both parties, the dispute over this term is focused on the meaning of "between." Union Rich argues that Travel Caddy's proposed construction of, "extending between the side edges such that it is located at least almost completely between the side edges," [Def.'s Opening Brief, at 36], would allow for extension beyond the side edges. [Pl.'s Reply Brief, at 19-20]. Union Rich proposes a construction of, "spanning essentially from one side edge to another and opposing side edge; extending entirely within, and not extending beyond, two fixed points or boundaries." [*Id.*]. To the extent that Travel Caddy's proposed construction of "between" is adopted by the court, Union Rich's

concern is well-founded. However, given the analysis previously outlined for the term "between," and the parties' agreement that this is really the only contested word in this claim term, the following construction is adopted: "Spanning essentially from one side edge to another and opposing side edge; extending entirely within, and not extending beyond, the outer edge of the end panels of the case."

C. "*intermediate*"

This term appears in the '992 Patent in dependent claim 2 and the '104 Patent in dependent claims 2, 9, 20, and 27 in the following manner: "The storage case of claim [1 or 8] further including a reinforcing member sewn into the flexible panels intermediate the end panels." ['104, 7: 26-28]. Union Rich argues that the use of the term "intermediate" is synonymous with the use of the term "between," and should be construed as such. [Pl.'s Opening Brief, at 20-21]. As it argues with respect to "between" and the related terms. Union Rich contends that intermediate does not allow for extension beyond the end panels. [Id.]. Travel Caddy, on the other hand proposes a claim construction of, "being or lying in a middle position between extremes," based on two different dictionary definitions. [Def.'s Opening Brief, at 32-33]. Merriam-Webster Dictionary defines intermediate as "being or occurring at the middle place, stage, or degree or between extremes," and the American Heritage Dictionary defines it as "[l]ying or occurring between two extremes or in a middle position or state."

Both parties have proposed definitions that rely on another disputed claim term, "between." Travel Caddy correctly pointed out at the hearing that claim 20 of the '104 Patent is dependent on claim 19, and claim 19 uses the word "between" while claim 20 uses the word "intermediate." As such, there is a presumption that these terms have different meanings. However Travel Caddy's proposed construction merely surrounds "between" with more words, none of which change the fundamental scope of the definition of "intermediate" as "between" two sides. Ultimately, the parties are arguing over the proper construction of "between." As such, the Court adopts Union Rich's proposed construction of "intermediate" as "between." Consistent with the Court's construction of "between" as, "in or through the interval defined by the outer edge of the end panels of the case," that construction will likewise be applied to "intermediate."

D. "*continuous, closed loop binding*"

This term appears in independent claim 1 of the '992 Patent and independent claims 1, 8, 19 and 26 of the '104 Patent and it is used to identify the manner in which panels of the tool case are joined together. ['104, 7: 20-25]. The dispute over this term focuses on whether the claimed binding must encompass "all" fabric parts of the case, or merely certain "component parts" of the case.

Union Rich contends that the only permissible reading of the term is one that requires joining of "all panels of the claimed case." [Pl.'s Opening Brief, at 5]. As such, Union Rich's proposed construction is, "uninterrupted, peripherally extending, endless length of a strip, lengthwise folded over the adjacent edges of all fabric parts, capturing and joining same as multiple layers within the fold of the strip." [Id. at 4]. Furthermore, according to Union Rich, the patent fails to contain an enabling disclosure that would support Travel Caddy's proposed construction. [Id. at 6]. Finally, Union Rich relies on the Federal Circuit case, *Athletic Alternatives, Inc. v. Prince Mfg., Inc.*, for the contention that when faced with "an equal choice between a broader and a narrower meaning of a claim ... the notice function of the claim [is] best served by adopting the narrower meaning." 73 F.3d 1573, 1581 (Fed.Cir.1996).

In response, Travel Caddy argues for a proposed construction of:

A binding that is folded over and stretched to provide a means to join component parts of the case such that the binding forms a closed loop; a "continuous," closed loop binding is a closed loop binding that extends uninterrupted as it joins component panels or parts of the case[.]

[Def.'s Opening Brief, at 14]. According to Travel Caddy, this construction is supported by the specification and the language of the claim. [*Id.* at 14-15]. The specification details a "closed loop binding," represented in Figure 4 of both patents, that "serves to join all of the flexible fabric component panels" of the bag. ['104, 3: 37-38]. In this embodiment, the first and second rigid end panels are not bound. Travel Caddy further points to claim 19 of the '104 Patent, which explicitly discloses "a continuous, closed loop binding extending over fabric covering the bottom panel and the flexible panels." [Def.'s Reply Brief, at 2]. This claim supports the argument that the contested term does not require that all panels of the case be bound.

Once again, Travel Caddy contends that Union Rich's proposed construction would not cover the preferred embodiment represented in Figure 10. [Def.'s Opening Brief, at 18-19]. However, in this instance, there is nothing in Figure 10, as reproduced in the patent, that clearly indicates that the "closed loop binding" is employed in the manner claimed in the embodiment. Instead, Travel Caddy has supplemented the drawing, in its filings with the Court, with a label indicating that the binding does not cover the rigid end panel. [*Id.*].

Furthermore, Travel Caddy fails to acknowledge certain inconsistencies within the specification. While Travel Caddy relies on the specification for the contention that the binding must merely "join all of the flexible fabric component panels or parts" of the case, the specification also refers to the fact that "a single binding is useful for connecting all of the component parts forming the carrying case." Also, the Summary of the Invention details a "case which includes generally rigid, spaced, end panels and generally flexible, but reinforced, front and back panels all sewn together by a use of a single, continuous binding strip which forms a continuous loop about ... the storage case."

As the Federal Circuit has repeatedly held, it is the language of the claims that is paramount in questions of claim construction. *See e.g.*, Vitronics 90 F.3d at 1582. With respect to this term, the explicit language of claim 19 makes clear that the Court must reject Union Rich's proposed construction. Furthermore, the Court disagrees with the contention that Travel Caddy's use of this term is analogous to the situation in *Athletic Alternatives*, wherein "one patent applicant made two *contradictory* and *irreconcilable* affirmative representations of the contested limitation." *Housey Pharms., Inc. v. Astrazeneca UK Ltd.*, 366 F.3d 1348, 1356 (Fed.Cir.2004). Representing the "continuous, closed loop binding" as joining all panels in one claimed embodiment is not "contradictory" to nor "irreconcilable" with a binding that captures only some of the panels. In both instances, the binding joins "component panels," as directed by the patent claims.

However, Travel Caddy's proposed construction is deficient because it lacks a definition for "closed loop." In fact, "closed loop" is susceptible to two different definitions. Either the fabric is bound at each stitch point by the use of a closed loop, or the entirety of the binding forms a closed loop. The Summary of the Inventions provides an answer to this question in detailing, "a single, continuous binding strip which forms a continuous loop about ... the storage case." Also made clear by the intrinsic evidence is the fact that the claimed binding joins the fabric covering the component parts of the case. As such, the Court adopts the following construction of "continuous, closed loop binding": "A binding that is folded over and stretched to provide a means to join the fabric edges of component parts of the case in a closed loop; a "continuous" closed loop binding extends uninterrupted with no beginning or ending point."

E. "flexible, fabric ... panel"

This phrase appears in claims 1 and 4 of the '992 Patent and claims 1, 8, 19, and 26 of the '104 Patent. The phrase is used to describe the structure of the front and back panels of the claimed cases. ['104, 7: 14-16]. Union Rich's proposed construction of, "non-rigid, non-semi-rigid, non-stiff canvas or plastic cloth member," is fairly unhelpful, as it primarily defines flexible by what it is not, rather than by what it is. [Pl.'s Opening Brief, at 14-15]. Furthermore, this proposed construction is limited to only two materials, canvas or plastic. The specification explicitly refers to "flexible material such as canvas, plastic or the like. The fabric material utilized to make the case is thus typically a canvas material, a fabric material or flexible plastic material..." ['104, 3: 17-20]. [Def.'s Reply Brief, at 9]. As Travel Caddy points out, Union Rich is unable to reference any intrinsic evidence to support its proposed claim construction, especially with respect to the limitation of only canvas or plastic. Not only does Union Rich fail to introduce intrinsic evidence, but it does not even attempt to cite to a dictionary definition.

Union Rich claims that its proposed construction is supported by Travel Caddy's own definitions, specifically Travel Caddy's admission that "rigid" is not synonymous with semi-rigid or flexible, and that "flexible" is not synonymous with rigid or semi-rigid. [Pl.'s Reply Brief, at 14-15]. However, these two admissions do not provide a working definition of "flexible," because merely stating that two terms are not synonymous does not explain what either term actually means.

In contrast, Travel Caddy argues that its proposed construction of, "a panel made of a fabric that is capable of being bent or flexed (e.g., canvas, plastic or the like)," is supported by the specification and dictionary definitions. [Def.'s Opening Brief, at 25-26]. The specification describes the front and back panels of one embodiment as being "comprised of flexible material such as canvas, plastic or the like." One dictionary defines "flexible" as "capable of being flexed; pliant," [Merriam-Webster Dictionary, at 478], and another dictionary defines the word as "capable of being bent or flexed; pliable." [American Heritage Dictionary, at 672]. In order to provide the necessary amount of differentiation between "flexible", "generally rigid" and "generally semi-rigid," the court adopts the following construction of "flexible, fabric ... panel": "a panel made of a fabric that is capable of being bent or flexed."

F. "*generally rigid, fabric covered ... panel*"

This phrase appears in independent claims 1 and 4 of the '992 Patent and independent claims 1, 8, 19 and 26 of the '104 Patent. It provides part of the description of the bottom panel of the patented cases. As it did in its proposed construction of "flexible," Union Rich relies on Travel Caddy's admissions that "rigid" is not synonymous with semi-rigid or flexible, and that "flexible" is not synonymous with rigid or semi-rigid. [Pl.'s Reply Brief, at 15-16]. Union Rich argues that the word "generally" should not be construed to allow "panels that are more or less than completely rigid." [Id. at 15]. Union Rich appears to be arguing that "generally rigid" should be construed in the exact same manner as "rigid," which is defined in the dictionary as "deficient in or devoid of flexibility." [Id.]. Its proposed construction is, "non-flexible, non-semi-rigid, stiff board or sheet member encapsulated between and enclosed within two layers of cloth." [Pl.'s Opening Brief, at 12].

Union Rich also raised the argument that its proposed construction is supported by the patent Examiner's final expression of patentability which states that "the present invention, by including both rigid or semi-rigid and flexible panels," is patentable. [Id. at 13]. Union Rich contends that under Travel Caddy's proposed definition, a case containing five panels, all with the same degree of rigidity, would be covered by the patent. [Pl.'s Reply Brief, at 15]. To that end, Union Rich requests constructions of both "generally rigid" and "generally semi-rigid" that provide more differentiation between the varying degrees of rigidity

claimed in the patent.

Travel Caddy cites to the same dictionary definition of "rigid," but argues that the adverb "generally" must be read to modify "rigid." Travel Caddy's proposed construction is:

A fabric covered panel that is, for the most part, relatively stiff or relatively non-pliant; the use of the word "generally" means that this limitation covers panels that are more or less than completely rigid.

[Def.'s Opening Brief, at 27]. The Federal Circuit has recognized that "generally" is often used in patents as a word of approximation. *Anchor Wall Sys., Inc. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 1310-11 (Fed.Cir.2003). In *Anchor Wall*, the court held that "[b]ecause the claim language itself expressly ties the adverb 'generally' to the adjective 'parallel,' the ordinary meaning of the phrase 'generally parallel' envisions some amount of deviation from exactly parallel." *Id.* at 1311. In the present term, "generally" is used in the same manner, with respect to "rigid," and should be construed to allow for some amount of deviation from exactly rigid. In its proposed construction, Travel Caddy limits that deviation, through use of the phrase "for the most part," which is derived from the dictionary definition of "generally." [Def.'s Opening Brief, at 27].

However, Travel Caddy's proposed construction unnecessarily expands the ordinary use of the word "generally." While Travel Caddy is correct that "generally" is commonly used as a word of approximation in patent claims, the need to differentiate between "flexible", "generally rigid" and "generally semi-rigid" requires more certainty and less approximation than Travel Caddy proposes. There is also the potential for a double-meaning to the disputed claim term, in that "generally rigid, fabric covered ... panel" could either refer to a panel where most of the area will be rigid while some is not, or to a panel that is of uniform rigidity throughout, although it may be less than completely rigid. In other words, the panel could be either "generally rigid" quantitatively or qualitatively. There is no indication from the intrinsic evidence that Travel Caddy intended the claim to cover a panel where the majority of the panel, as measured quantitatively, is rigid. As such, the claim term "generally rigid, fabric covered ... panel" is construed as follows: "A fabric covered panel that is, on the whole, essentially stiff or non-pliant." The use of "on the whole" reflects a requirement of a uniform quality of rigidity, and the word "essentially" provides the degree of approximation inherent in the use of the word "generally".

G. "*generally semi-rigid, fabric covered ... panel*"

This phrase appears in claim 4 of the '992 Patent, and describes the end panels of that particular claimed case. [992, 8: 1-4]. The parties reiterate the arguments raised in connection with the contested term "generally rigid". Union Rich contends that Travel Caddy's proposed construction could encompass "flexible" panels, and is therefore impermissible. [Pl.'s Opening Brief, at 13-14]. Union Rich's proposed construction is, "non-rigid and non-flexible member encapsulated between and enclosed within two layers of cloth." [*Id.*]. Travel Caddy argues that the specification indicates that semi-rigid material can be folded but also provides structural support, and proposes the following construction:

A fabric covered panel that is, for the most part, to some extent, relatively stiff or relatively non-pliant; the use of the word "generally" means that this limitation covers panels that are more or less than semi-rigid.

[Def.'s Opening Brief, at 28].

Union Rich's concerns seem especially well-founded in connection with this term. For example, the

Summary of Invention makes reference to "a rigid material which is not flexible and which is covered by fabric, or a flexible, semi-rigid material which may be folded over the top of the case." ['992, 1: 53-56]. By using the phrase "flexible, semi-rigid," Travel Caddy appears to be attempting to expand its proposed construction to include "flexible materials".

In light of the fact that Travel Caddy has admitted that flexible is not synonymous with semi-rigid, and the Court's treatment of "generally" with respect to "generally rigid," the following construction of "generally semi-rigid, fabric covered ... panel" is adopted: "A fabric covered panel that is, on the whole, relatively stiff or relatively non-pliant."

H. "*three sided, generally rigid fabric covered box*"

This phrase appears in independent claims 1 and 4 of the '922 patent and independent claims 1, 8, 19 and 26 of the '104 Patent. The phrase describes the structure that is formed by the joining of the generally rigid bottom panel and the generally rigid end panels of the claimed cases. ['104, 7: 10-13]. Union Rich proposes a construction of:

Inflexible or non-pliant U-shaped container structure encapsulated between, and enclosed within, two layers of flexible fabric; the box further defined by a base, two attached sides extending upwardly from the base, and two open sides.

[Pl.'s Opening Brief, at 15]. Travel Caddy's proposed construction is:

A fabric-covered container having at least three sides that is, for the most part, relatively stiff or relatively non-pliant; the use of the word "generally" means that this limitation covers panels that are more or less than completely rigid. [Def.'s Opening Brief, at 20]. According to Union Rich, there is no support for Travel Caddy's proposed construction within the specifications. [Pl.'s Opening Brief, at 15]. Notably, the claim does not allow for the creation of a three sided box consisting of the bottom, front and back panels. [Pl.'s Opening Brief, at 18]

However, Union Rich's response, as evidenced in its proposed construction, does not account for Travel Caddy's explicit use of the phrase "generally rigid." The evidence indicates that Travel Caddy's intention in claiming a "three sided, generally rigid box," was to include the generally rigid elements of the case, and to exclude the flexible front and back panels. ['104, 7: 10-13]. Perhaps more troubling is Union Rich's inclusion, in its proposed construction, of a requirement of "two open sides." As Travel Caddy points out, there is nothing within the claims or specification that supports such a proposed construction.

Given the intrinsic evidence of the claims, which indicates that it is the generally rigid bottom and side panels that form the claimed box, Travel Caddy cannot claim that the patent covers a three sided box wherein any of the three sides are flexible. Furthermore, Union Rich's inclusion of "U-shaped" is supported by the claim requirements that the two end panels be "parallel to" each other, and prevents any confusion about the possible shape of the box created by the panels. Therefore, the Court adopts the following construction based, in part, on the construction of "generally rigid": "A three-sided fabric covered U-shaped structure in which each side is, on the whole, essentially stiff or non-pliant."

I. "*sewn into*"

This phrase appears in dependent claim 2 and independent claim 4 of the '992 Patent and dependent claims

2, 9, 20, and 27 of the '104 Patent. It is used to describe the manner in which the reinforcing members are connected to the flexible panels. ['104, 7: 26-28]. Union Rich contends that the patent does not contemplate superimposition on, or contact with, a panel as sufficient to be "sewn into." [Pl.'s Opening Brief, at 19]. Instead, Union Rich proposes the following construction, "captured between and encapsulated within layers, by a stitched seam." [Id. at 18]. Furthermore, it argues that Travel Caddy's proposed construction of, "inserted in, superimposed on, or in a position of contact with a panel of the case by the use of stitching," is contrary to the ordinary meaning of the term. [Id. at 19].

The drawings of the preferred embodiments support Union Rich's proposed construction. There appears to be no disclosed manner of sewing the reinforcing members into the panels other than by "captur[ing] between and encapsulat[ing] within layers, by a stitched seam." However, the specification does state that the "reinforcing elements depicted in Fig. 11 are sewn into or encapsulated between layers of fabric...." ['104, 6: 29-31]. The use of "or encapsulated" indicates that the elements can either be sewn into or encapsulated between, not necessarily that sewn into means encapsulated between.

Union Rich, in arguing that Travel Caddy's construction is not the ordinary meaning, relied on an incomplete definition from the dictionary. [Def.'s Reply Brief, at 14]. The full dictionary definition, pointed out by Travel Caddy, explicitly refers to "insertion, superposition, or inclusion." FN1 However, the Court is not persuaded that the full dictionary definition of "into" must be applied to the disputed term. There is nothing within the specification that indicates how the reinforcing member may be "sewn into" a panel merely by being "in a position of contact with" that panel. Travel Caddy's proposed definition is not supported by the specification and is therefore rejected. However, Union Rich's proposed construction is too narrow, with its requirement that to be "sewn into" the reinforcing member must be both "captured between *and* encapsulated within layers." (emphasis added). As the specification states, the reinforcing member may actually be "sewn into *or* encapsulated between." (emphasis added). This indicates that the reinforcing member does not have to be entirely within the layers of the panel. As such, the Court adopts the following construction of "sewn into": "Captured within layers, by a stitched seam."

FN1. At the *Markman* hearing, Travel Caddy agreed to abandon its inclusion of "superimposition" in its proposed construction. This was due, in part, to uncertainty regarding whether "superimposition" carries the same meaning as "superposition," the latter being the word used in the dictionary definition of "into."

J. "*margin*"

This term appears in the '992 Patent only, in dependent claim 3 and independent claim 4. The margins, which are described in the claim and drawings as the outer parts (both upper and lower) of the flexible panels, are used in reinforcing and binding. ['992, 7: 24-26]. The issues raised with respect to this term are similar to those raised for the terms involving the word "between." Union Rich's proposed construction is, "outer edge or end," [Pl.'s Opening Brief, at 21], and Travel Caddy's proposed construction is, "an edge and the area immediately adjacent to it." [Def.'s Opening Brief, at 34]. Union Rich's major concern is that by including the word "adjacent" in its proposed construction, Travel Caddy is attempting to include the entirety of the other panels. [Pl.'s Opening Brief, at 22]. Such an inclusion would expand the scope of Travel Caddy's claimed invention.

The inclusion of the word "immediately" in Travel Caddy's proposed construction is helpful in addressing this concern. In its ordinary meaning, "immediately adjacent" could not be extended to include either an

"entire panel" or "a substantial portion of a panel" of a case, as Union Rich fears. Furthermore, the dictionary definitions relied upon by both parties make explicit reference either to "the area immediately adjacent" or to the "adjoining surface of something." [Def.'s Opening Brief, at 34]. Therefore, the Court adopts Travel Caddy's proposed construction of "margin" as: "an edge and the area immediately adjacent to it."

K. "*rectangular perimeter shaped*"

This term is used in independent claims 8 and 19 of the '104 Patent to describe the shape of the bottom panel of certain Travel Caddy tool bags. ['104, 7: 55-56]. At the *Markman* hearing, the Court proposed, and the parties agreed to the following construction which is now adopted: "Having a four-sided boundary with four right angles."

SO ORDERED.

N.D.Ga., 2006.

Outside the Box Innovations, LLC v. Travel Caddy, Inc.

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