

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

KAI U.S.A., LTD., dba KERSHAW KNIVES,

Plaintiff,

v.

BUCK KNIVES, INC.,

Defendant.

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BUCK KNIVES, INC.,

Counterclaimant,

v.

KAI U.S.A., LTD., dba KERSHAW KNIVES,

Counterdefendant.

Civil Action No: 05-446-HA

**JOINT CLAIM CONSTRUCTION  
AND PREHEARING  
STATEMENT**

Plaintiff and Counterdefendant KAI U.S.A. Ltd. d/b/a Kershaw Knives ("Kershaw") and Defendant and Counterclaimant Buck Knives, Inc. ("Buck") submit this Joint Claim Construction and Prehearing Statement in accordance with the Court's scheduling order and Northern District of California Local Patent Rule 4-3. Kershaw has asserted two patents in this action against Buck including U.S. Patent No. 6,397,476 ("the '476 Patent") and 6,338,431 ("the '431 Patent"). Buck has asserted one patent in this action against Kershaw including U.S. Patent No. 6,594,906 ("the '906 Patent"). The parties' proposed constructions for the disputed claims of the '476 and '431 Patents are presented side-by-side in charts attached hereto as Exhibit A-B. Similarly, the parties' proposed constructions

for the disputed claims of the '906 Patent are presented side-by-side in a chart attached hereto as Exhibit C.

The Court's August 2, 2005 Scheduling Order (Docket No. 25) indicates that each party claiming patent infringement will file an opening claim construction brief for its asserted patent(s) on November 2, 2005. Opposition briefs will be filed on November 21, 2005. The Court has scheduled a claim construction hearing ("Markman Hearing") for December 13-14, 2005.

The parties have proposed constructions for certain claim terms found in the asserted claims only. The parties reserve their rights to propose constructions for claim terms in the unasserted claims if and when it becomes appropriate or necessary to do so.

**I. KERSHAW'S PROPOSED CLAIM CONSTRUCTIONS AND SUPPORTING EVIDENCE**

Kershaw's proposed constructions for the disputed claim terms are shown in Exhibits A-C. Following each proposed construction, Kershaw also has identified the intrinsic and extrinsic evidence that supports Kershaw's proposed claim constructions. In addition to Kershaw's cited intrinsic and extrinsic evidence, Kershaw reserves the right to rely upon any intrinsic or extrinsic evidence identified by Buck to support its proposed constructions. Kershaw also may rely upon additional intrinsic and extrinsic evidence, including the prosecution history, to rebut Buck's proposed constructions.

Kershaw also may depose the inventors of the patents-in-suit, as well as the prosecuting attorney(s) of the '906 Patent, and rely on their testimony to support its proposed claim constructions.

## **II. BUCK'S PROPOSED CLAIM CONSTRUCTIONS AND SUPPORTING EVIDENCE**

Buck's proposed constructions for the disputed claim terms are shown in Exhibits A-C. Following each proposed construction, Buck has also identified the intrinsic and extrinsic evidence that supports Buck's proposed claim constructions. In addition to Buck's cited intrinsic and extrinsic evidence, Buck reserves the right to also rely upon any intrinsic or extrinsic evidence identified by Kershaw to support its proposed constructions. Buck may also rely upon additional intrinsic and extrinsic evidence, including the prosecution history, to rebut Kershaw's proposed constructions.

Buck may also depose the inventors and prosecuting attorneys of the patents-in-suit and rely on their testimony to support its proposed claim constructions.

## **III. SUMMARY OF EXPERT TESTIMONY THAT KERSHAW MAY OFFER AT THE CLAIM CONSTRUCTION HEARING**

In support of its proposed claim construction, Kershaw will offer the testimony of Louis Glesser in the form of a declaration to be submitted with Kershaw's claim construction briefing and/or in the form of oral testimony to be presented at the claim construction hearing. Mr. Glesser is the founder and President of Spyderco, Inc., a company specializing in the manufacture of knives. He will testify with respect to the development and history of folding knives. He also will address the distinguishing features and characteristics of the various classes of folding knives, such as standard, spring back, automatic, assisted opening, etc. Mr. Glesser also will provide testimony regarding the meaning of the disputed claim terms, as they would be understood by one of ordinary skill in the art at the time the respective patent applications were filed. In his testimony, Mr.

Glesser may cite or refer to the documents submitted or cited as evidence by either party in the present statement and its exhibits. Mr. Glesser also may testify in rebuttal to testimony or arguments submitted by Buck or its witnesses in the present matter.

**IV. SUMMARY OF EXPERT TESTIMONY THAT BUCK MAY OFFER AT THE CLAIM CONSTRUCTION HEARING**

In support of its proposed claim constructions, Buck will offer the testimony of Dr. David Dornfeld, Professor of Manufacturing Engineering at the University of California at Berkeley, in the form of a declaration to be submitted with Buck's claim construction briefing and in the form of oral testimony to be presented at the claim construction hearing. Dr. Dornfeld will testify as to the meaning of the disputed claim terms to a person of ordinary skill in the art at the time of the purported invention(s) of the patents-in-suit based upon his review of the intrinsic evidence (including the claims, specification and prosecution history of the patents-in-suit) and relevant extrinsic evidence. Dr. Dornfeld may also rely upon some or all of the extrinsic evidence identified by Buck in this Statement. Buck may also offer declaration(s) or testimony from Dr. Dornfeld to rebut the declaration(s) or testimony of any expert(s) offered by Kershaw. Information regarding Dr. Dornfeld's education and professional experience is attached hereto as Exhibit D.

In support of its proposed claim constructions, Buck may also offer the testimony of Walter "Blackie" Collins in the form of a declaration to be submitted with Buck's claim construction briefing and/or in the form of oral testimony to be presented at the claim construction hearing. Mr. Collins is a professional knife maker and holds many patents related to standard and folding knives. He will testify as to the meaning of the disputed

claim terms to a person of ordinary skill in the art at the time of the purported invention(s) of the patents-in-suit based upon his review of the intrinsic evidence (including the claims, specification and prosecution history) and relevant extrinsic evidence. In his testimony, Mr. Collins may cite or refer to the documents submitted or cited as evidence by either party in this Statement. Buck may also offer declaration(s) or testimony from Mr. Collins to rebut the declaration(s) or testimony of any expert(s) offered by Kershaw.

**V. LENGTH OF THE CLAIM CONSTRUCTION HEARING**

The parties believe that 1 day is sufficient time for the claim construction hearing.

**VI. ISSUES FOR PREHEARING CONFERENCE**

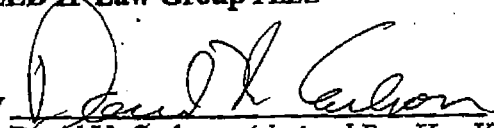
The parties are unaware of any issues that might appropriately be taken up at a pre-hearing conference prior to the Claim Construction Hearing.

DATED: October 17, 2005

Respectfully Submitted,

**SEED IP Law Group PLLC**

By



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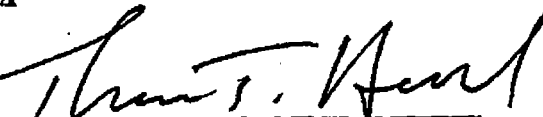
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By



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Robert J. Artaz

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Buck Knives, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2005 a copy of the foregoing JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT was served on Defendant's counsel by electronic filing upon the following attorneys registered to receive service by email through the U.S. District Court, District of Oregon Electronic Case Filing System:

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