UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LEGO SYSTEM A/S, **Plaintiff/Counterclaim Defendant,** **v.** **RUBICON COMMUNICATIONS, LP DBA SMALLWORKS AND SMALLWORKS, LLC,** **Defendants/Counterclaim Plaintiff.**	**Civil Action No.: 3:15-cv-00823 (VLB)** **JURY TRIAL DEMANDED** **MARCH 25, 2016**

SMALLWORKS' MARKMAN BRIEF

Defendant Smallworks, LLC (collectively, "Smallworks") file its *Markman Brief* for construction of the asserted claims, and will show the Court the following:

I. Introduction.

Lego System A/S ("Lego") has asserted four patents against Smallworks. These patents were asserted against Smallworks in response to a patent infringement lawsuit filed by a company related to Smallworks against one of Lego's business partners, Belkin International, Inc., in the United States District Court in Austin, Texas. *See* Civil Action No. 1:14-CV-1089 (the "Texas Action"). Lego acquired these four patents from a third party company after the Texas Action was filed against Lego's business partner.

The four patents at issue in this case concern two basic embodiments. First, United States Patent No. 7,731,191 ("the '191 Patent") concerns **controllers** for video games in which the user

can place building elements (*e.g.,* lego blocks) on the controller itself to customize the controller in certain ways. *See* Exhibit 1. This embodiment is shown below:

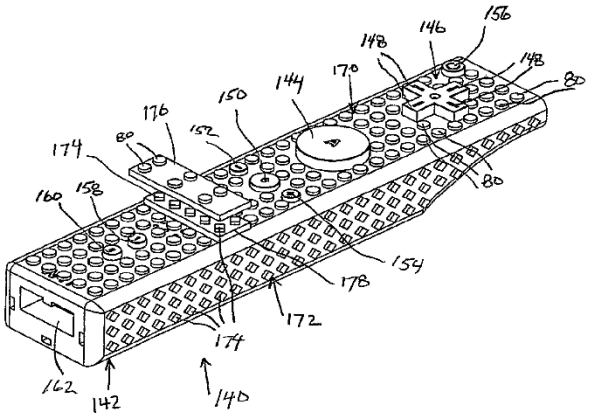

Fig. 4

Smallworks does not make, use, sell, offer for sale, or import any controllers or anything that could even be used as a controller. Smallworks only makes and sells cases for iPhones, iPads, and iPods. The '191 Patent has been asserted against Smallworks for a vindictive purpose and without proper analysis by Lego under Rule 11 of the Federal Rules.

The remaining three patents concern cases for video game controllers, in which the user can place building elements onto the case to customize the controller. This embodiment is shown below:

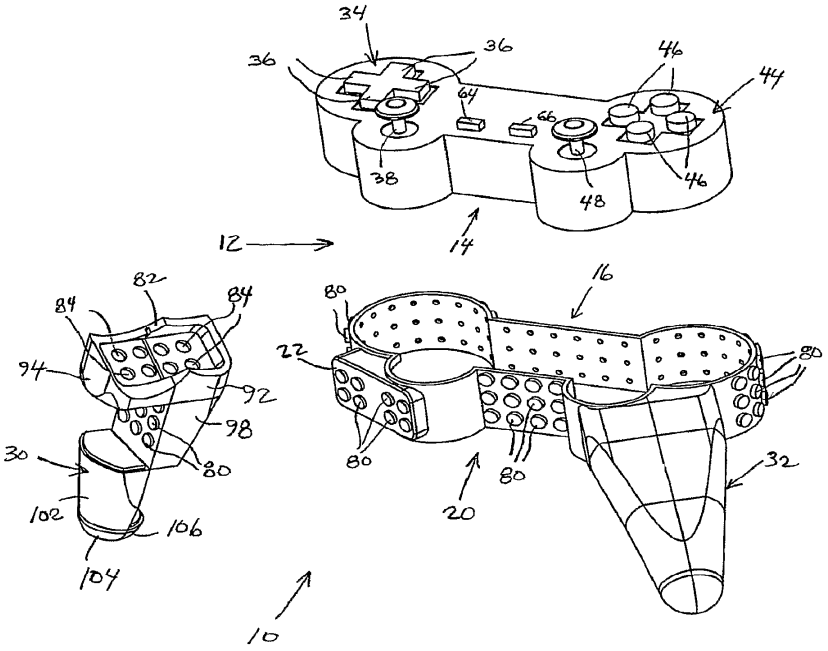

Fig. 1

These three patents are:

- United States Patent No. 8,091,892 ("the '892 Patent") - which covers using building elements to create finished surfaces on the case for the controller (Exhibit 2);
- United States Patent No. 8,628,085 ("the '085 Patent") – which covers using building elements to make replica recreation equipment items (*e.g.,* a golf club or baseball bat) (Exhibit 3); and
- United States Patent No. 8,894,066 ("the '066 Patent) – which covers using building elements to make replica play items (which are the same as recreation equipment items) (Exhibit 4).

Each of the four asserted patents listed above share the same specification and figures.[1]

[1] For ease, all references to the specification for any of the patents will be made to the specification for the '191 Patent, which is attached as Exhibit 1. However, given that each of the asserted patents share the same specification, the Court can review any of the asserted patents to find the same support referenced in the '191 Patent.

As will be demonstrated below, in order to maintain its infringement positions, Lego has broadened the intended meaning of certain claim terms and phrases and in many instances read out key limitations from the claims. Smallworks, on the other hand, presents proposed claim constructions that rely upon the intrinsic record, which includes the claim language, the specification, and the figures.

At the end of the day, the four patents in this case cover (1) a customizable controller for video games (which Smallworks does not make or sell) and (2) customizable cases which must be used in very specific and limited ways for video games. Smallworks requests that the Court give meaning to the limitations in the patent claims so that a jury can accurately determine the infringement issues in this case.

II. Legal Standard for Construing Claims.

To determine infringement, one must first construe the claims of the patents in suit. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970-71 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370, 116 S. Ct. 1384, 134 L. Ed.2d 577 (1996). Claim construction is a question of law. *See Markman*, *supra*, 116 S. Ct. at 1397.

Claim construction begins with the words of the claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) ("It is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude' "); *Teleflex, Inc. v. Ficosa North Am. Corp.*, 299 F.3d 1313, 1324 (Fed. Cir. 2002); *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, for it is that

language that the patentee chose to use to 'particularly point [ ] out and distinctly claim [ ] the subject matter which the patentee regards as his invention' ").

The claim language defines the bounds of claim scope. *See Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 619-20 (Fed. Cir. 1995). The ordinary meaning of a claim term may be determined by reference to a number of sources, including the claims themselves, and other intrinsic evidence including the written description and the prosecution history. *See Teleflex*, *supra*, 299 F.3d at 1325.

In order to properly construe a claim, the Court must also examine the intrinsic evidence for a claim, which includes the written description, the drawings, and, if in evidence, the prosecution history. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996); Interactive Gift, *supra*, 256 F.3d at 1331. The intrinsic evidence may provide "context and clarification" about the meaning of claim terms. *York Prods., Inc. v. Cent. Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1572 (Fed. Cir. 1996). It is also well established that the inventor may be his own lexicographer, *i.e.*, the inventor may clearly define the terms as the inventor chooses. *See Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 990 (Fed. Cir. 1999). The specification should be used to explain ambiguous claim terms. *See LaBounty Mfg., Inc. v. U.S. Int'l Trade Comm.,* 867 F.2d 1572, 1574 (Fed. Cir. 1989). Only when intrinsic evidence is insufficient to enable the court to determine the meaning of the claims, should extrinsic evidence be considered. *See Vitronics*, *supra*, 90 F.3d at 1584.

III. Claim Terms to be Construed by the Court.

The following claim terms need construction by the Court:

a. The "Controller" Terms

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