IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNICORN GLOBAL, INC. and HANGZHOU CHIC INTELLIGENT TECHNOLOGY CO., LTD., Plaintiffs, v. DGL GROUP, LTD., Defendant.	Case No. 1:21-cv-1443-MKB-SJB Hon. Margo K. Brodie, U.S.D.J. Hon. Sanket J. Bulsara, U.S.M.J. **Jury Trial Demanded**

DEFENDANT DGL GROUP, LTD.'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

The parties dispute the meaning of only three terms in this patent litigation. Black letter law of claim construction requires the Court, not a jury, to construe those terms. Plaintiffs' suggestion that "no construction is needed" for any of those terms, however, essentially and improperly puts that responsibility in the jury's hands.

Plaintiffs consistently state the wrong legal standard by arguing that no construction is required because each of the disputed terms allegedly has "a readily understood plain and ordinary meaning." *See* ECF 45 at 8, 10, 11. The question here is not whether the disputed terms have a readily understood meaning, but rather what the meaning of each disputed term is in the context of the '107 Patent. More specifically, the task is to determine "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention . . . ." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005). "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id*. at 1313. The Federal Circuit has further explained that "the question is not whether there is a settled ordinary meaning of the terms in some abstract sense of the words. Rather, as we recently explained, 'The only meaning that matters in claim construction is the meaning in the context of the patent.'" *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F. 3d 1314, 1321 (Fed. Cir. 2016) (quoting *Trs. of Columbia Univ. v. Symantec Corp.*, 811 F.3d 1359, 1363 (Fed. Cir. 2016)).

Plaintiffs repeatedly insist that DGL's proposed constructions are unsupported by the '107 Patent. This is plainly not the case. Based on the context of the disputed terms in the '107 Patent

and the law guiding claim construction, the Court should adopt the constructions proposed by DGL.

II. DISPUTED CLAIM TERMS

A. Electric balance vehicle

Plaintiffs first argue that the term "electric balance vehicle" has a "readily understood plain and ordinary meaning," and the Court should therefore decline to construe this term. ECF 45 at 8. First, this is not the legal standard. Plaintiffs' suggestion that the term has a facially apparent "plain and ordinary meaning" would not be sufficient, even if it were true. *See Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) ("We cannot look at the ordinary meaning of the term ... in a vacuum. Rather, we must look at the ordinary meaning in the context of the written description and the prosecution history.") (internal citations omitted). The Court must interpret the claims "in the context of the entire patent, including the specification." *Phillips*, 415 F.3d at 1313.

Second, Plaintiffs offer no support for this argument beyond a conclusory statement from their expert that "'electric balance vehicle' is a common term used to describe the hoverboard products in this case." ECF 45 at 8 (quoting Dr. Hartup's Declaration, ECF 45-4 at 6). Not only is such conclusory evidence insufficient, but by relying on the accused hoverboard products in this case, Plaintiffs advocate an approach that is verboten by controlling law. *See Wilson Sporting Goods Co. v. Hillerich & Bradsby Co.*, 442 F. 3d 1322, 1331 (Fed. Cir. 2006) ("claims may not be construed with reference to the accused device."). Plaintiffs' improper proposal to apply the "plain and ordinary meaning" of "electric balance vehicle" and then summarily equate that meaning to the accused products is manifestly misguided

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