United States District Court,
S.D. California.

AERUS LLC,
Plaintiff.
v.
PROTEAM, INC,
Defendant.
And Related Counterclaim,
And Related Counterclaims.

Civil No. 05CV0448-B (LSP)

July 31, 2006.

CLAIM CONSTRUCTION ORDER FOR UNITED STATES PATENT NUMBER 4,724,574

RUDI M. BREWSTER**, Senior District Judge.**

Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996), on June 20, 2006, the Court conducted a Markman hearing in the above-titled patent infringement action regarding construction of the disputed claim terms for U.S. Patent Number 4,724,574 ("the '574 patent"). Plaintiff Aerus, Inc. was represented by the law firm of Blanchard, Krasner & French; Defendant Proteam, Inc. was represented by the law firm of Procopio, Cory, Hargreaves & Savitch, LLP.

At the Markman hearing, the Court, with the assistance of the parties, analyzed the claim terms in order to prepare jury instructions interpreting the pertinent claims at issue in the '574 patent. Additionally, the Court prepared a case glossary for terms found in the claims and the specification for the '574 patent considered to be technical in nature which a jury of laypersons might not understand clearly without specific definition.

After careful consideration of the parties' arguments and the applicable statutes and case law, the Court **HEREBY CONSTRUES** the claims in dispute in the '574 patent and **ISSUES** the relevant jury instructions as written in Exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in Exhibit B, attached hereto.

IT IS SO ORDERED.

EXHIBIT A FN1

FN1. All terms appearing in bold face type and underlined have been construed by the court and appear with their definitions in the glossary in Exhibit B. The definition for each construed term appears in italics after its first use in the patent.

UNITED STATES PATENT NUMBER 4,724,574-CLAIM CHART

VERBATIM CLAIM LANGUAGE	*COURT'S CONSTRUCTION*
Claim 1	
1. In a lightweight, upright vacuum cleaner,	1. In a lightweight, upright vacuum cleaner,
a base assembly including	a base assembly ***including*** [*to take in as a part, element, or member*]
a suction nozzle,	a suction nozzle,
an elongated body housing,	an elongated body housing,
means attaching said body housing to said base assembly for pivotable movement relative thereto,	**means attaching said body housing to said base assembly for pivotable movement relative thereto** " *means attaching said body housing to said base assembly for pivotable movement relative thereto*" *is a means-plus-function limitation:* **Function:** attaching said body housing to said base assembly for pivotable movement relative thereto
	Structure: parallel supports extending downward from the motor body housing from which cylindrical protrusions extend and are received within sockets of the base assembly with clamps. **Col.** 2, ll. 42-56, **Fig.** 3.
said body housing including	said body housing ***including***
a motor housing assembly,	a motor housing assembly,
a bulkhead assembly,	a bulkhead assembly,
a filter bag housing assembly,	a filter bag housing assembly,
and a body closure assembly,	and a body closure assembly,
means for securing said motor housing assembly, said bulkhead assembly and said filter bag housing assembly in assembled relation,	**means for securing said motor housing assembly, said bulkhead assembly and said filter bag housing assembly in assembled relation,** " *means for securing said motor housing assembly, said bulkhead assembly and said filter bag housing assembly in assembled relation* " is a means-plus-function limitation: **Function:** securing said motor housing assembly, said bulkhead assembly and said filter bad housing assembly in assembled relation
	Structure: the perimeter band of the bulkhead assembly secured to the filter bag housing from above with

	interlocking hook-like members and secured to the motor housing assembly from below with screws. **Col.** 3. ll. 17-32, **Figs.** 2, 3, and 10.
means pivotably mounting said body closure assembly on said filter bag housing assembly,	**means pivotably mounting said body closure assembly on said filter bag housing assembly,** " *means pivotably mounting said body closure assembly on said filter bag housing assembly* " is a means-plus-function limitation: **Function:** pivotably mounting said body closure assembly on said filter bag housing assembly
	Structure: a hinge that serves to pivot the body closure assembly relative to the filter bag housing assembly. **Col.** 3, ll. 63-64, **Fig.** 8.
said filter bag housing assembly defining a vacuum chamber,	said filter bag housing assembly defining a vacuum chamber,
air filter means supported within said vacuum chamber and including an apertured disk having an air-permeable bag secured thereto,	**air filter means** supported within said vacuum chamber and **including an apertured disk having an air-permeable bag secured thereto,** " *Air filter means ... including an apertured disk having an air-permeable bag secured thereto* " is a means-plus-function limitation: **Function:** to filter air
	Structure: a disk with an opening in its center attached to an air permeable bag. **Col.** 3, ll. 56-62, **Fig.** 7.
said filter bag housing assembly including	said filter bag housing assembly ***including***
means for supporting said apertured disk adjacent outer peripheral edge portions,	**means for supporting said apertured disk** adjacent outer peripheral edge portions, " *means for supporting said apertured disk* " is a means-plus-function limitation: **Function:** supporting said apertured disk adjacent outer peripheral edge portions
	Structure: a plastic surface in the upper end of the bag housing that supports the perimeter edge of the filter bag disk. **Col.** 3, ll. 10-16, 49-52, 56-58, **Fig.** 7.
said body closure assembly including a duct	said body closure assembly including a duct terminating

terminating in a discharge nozzle,	in a discharge nozzle,
and seal means spaced substantially outwardly of said nozzle for applying a force to the outer peripheral edges of said disk to clamp and seal said disk between said seal means and said means for supporting said disk,	and **seal means** spaced substantially outwardly of said nozzle for applying a force to the outer peripheral edges of said disk to clamp and seal said disk between said **seal means** and said **means for supporting said disk,** " *Seal means* " is a means-plus-function limitation: **Function:** to provide a seal on the top surface of the air filter bag disk in the body closure assembly
	Structure: a generally rectangular recessed track at the outer perimeter edge of the body closure assembly in which a soft sealing material is placed that serves to seal the outer perimeter edges of the top surface of the air filter bag disk. **Col.** 4, ll. 5-11, **Col.** 5, ll. 44-49, **Figs.** 7, 8.
elongated duct means extending between said suction nozzle and said body closure assembly duct means,	elongated **duct means** extending between said suction nozzle and said body closure assembly **duct means,** " *Duct means* " is a means-plus-function limitation: **Function:** to convey dirty air from the suction nozzle to the body closure assembly
	Structure: tubing extending between the body closure assembly duct and the suction nozzle. **Col.** 3, ll. 3-9, **Fig.** 5.
a motor-fan unit mounted within said motor housing assembly for drawing an air stream through said suction nozzle, said elongated duct means, said body closure assembly duct and said air filter means to remove dust and dirt particles from said airstream,	a motor-fan unit mounted within said motor housing assembly for drawing an air stream through said suction nozzle, said elongated ***duct means,*** said body closure assembly duct and said ***air filter means*** to remove dust and dirt particles from said airstream,
an elongated handle assembly,	an elongated ***handle assembly*** [*a hand grip which houses a switch, connected to an elongated hollow tube which houses an electrical harness*],
means supported by said bulkhead assembly for releasably receiving therein the lowermost end portion of said handle assembly,	**means supported by said bulkhead assembly for releasably receiving** therein the lowermost end portion of said ***handle assembly,*** " *Means supported by said bulkhead assembly for*

	releasably receiving " is a means-plus-function limitation: **Function:** releasably receiving the lowermost end portion of said ***handle assembly***
	Structure: a receptacle within the bulkhead assembly to releasably receive the lowermost end portion of the ***handle assembly.*** **Col.** 4, ll. 46-48. **Fig.** 2.
said handle assembly further including means for retaining said body closure assembly in a closed position.	said ***handle assembly*** further ***including*** **means for retaining said body closure assembly in a closed position.** " *means for retaining said body closure assembly in a closed position* " is a means-plus-function limitation: **Function:** to retain the body closure assembly in a closed position **Structure: Col. 4,** ll. 62-65, **Fig.** 9.

EXHIBIT B

UNITED STATES PATENT NUMBER 4.724,574-GLOSSARY OF TERMS

TERM	***DEFINITION***
Air filter means ... including an apertured disk having an air-permeable bag secured thereto	" *Air filter means ... including an apertured disk having an air-permeable bag secured thereto* " is a means-plus-function limitation; **Function:** to filter air **Structure:** a disk with an opening in its center attached to an air permeable bag. **Col.** 3, ll. 56-62, **Fig.** 7.
Duct means	tubing extending between the body closure assembly duct and the suction nozzle
Handle assembly	a hand grip which houses a switch, connected to an elongated hollow tube which houses an electrical harness
Including	to take in as a part, element, or member

Means attaching said body housing to said base assembly for pivotable movement relative thereto

" *means attaching said body housing to said base assembly for pivotable movement relative thereto* " is a means-plus-function limitation:

Function: attaching said body housing to said base assembly for pivotable movement relative thereto

Structure: parallel supports extending downward from the motor body housing from which cylindrical protrusions extend and are received within sockets of the base assembly with clamps. **Col.** 2, ll. 42-56, **Fig.** 3.

Means for retaining said body closure assembly in a closed position

" *means for retaining said body closure assembly in a closed position* " is a means-plus-function limitation:

Function: to retain the body closure assembly in a closed position

Structure: Col. 4, ll. 62-65, **Fig.** 9.

Means for securing said motor housing assembly, said bulkhead assembly and said filter bag housing assembly in assembled relation

" *means for securing said motor housing assembly, said bulkhead assembly and said filter bag housing assembly in assembled relation* " is a means-plus-function limitation:

Function: securing said motor housing assembly, said bulkhead assembly and said filter bad housing assembly in assembled relation

Structure: the perimeter band of the bulkhead assembly secured to the filter bag housing from above with interlocking hook-like members and secured to the motor housing assembly from below with screws. **Col.** 3, ll. 17-32, **Figs.** 2, 3, and 10.

Means for supporting said apertured disk

" *means for supporting said apertured disk* " is a means-plus-function limitation:

Function: supporting said apertured disk adjacent outer peripheral edge portions

Structure: a plastic surface in the upper end of the bag housing that supports the perimeter edge of the filter bag disk. **Col.** 3, ll. 10-16,

	49-52, 56-58, **Fig.** 7.
Means for supporting said disk	means for supporting said apertured disk
Means pivotably mounting said body closure assembly on said filter bag housing assembly	" *means pivotably mounting said body closure assembly on said filter bag housing assembly* " is a means-plus-function limitation: **Function:** pivotably mounting said body closure assembly on said filter bag housing assembly **Structure:** a hinge that serves to pivot the body closure assembly relative to the filter bag housing assembly. **Col.** 3, ll. 63-64, **Fig.** 8.
Means supported by said bulkhead assembly for releasably receiving	" *Means supported by said bulkhead assembly for releasably receiving* " is a means-plus-function limitation: **Function:** releasably receiving the lowermost end portion of said ***handle assembly*** **Structure:** a receptacle within the bulkhead assembly to releasably receive the lowermost end portion of the ***handle assembly.*** **Col.** 4, ll. 46-48, **Fig.** 2.
Seal means	" *Seal means* " is a means-plus-function limitation: **Function:** to provide a seal on the top surface of the air filter bag disk in the body closure assembly **Structure:** a generally rectangular recessed track at the outer perimeter edge of the body closure assembly in which a soft sealing material is placed that serves to seal the outer perimeter edges of the top surface of the air filter bag disk. **Col.** 4, ll. 5-11, **Col.** 5, ll. 44-49, **Figs.** 7, 8.

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