

Filed on behalf of: TreeFrog Developments, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FELLOWES, INC.,

Petitioner,

v.

TREEFROG DEVELOPMENTS, INC.,

Patent Owner.

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Case IPR2020-01543  
U.S. Patent No. 8,564,950

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**PATENT OWNER'S SUR-REPLY**

**I. FELLOWES' REPLY ARGUES AGAINST PATENT OWNER'S PRELIMINARY RESPONSE ARGUMENTS UNRELATED TO THE CONSTRUCTION OR APPLICATION OF "CORRESPONDS".**

Fellowes' Reply brief is largely unresponsive to Patent Owner's arguments that Kuhn does not teach limitation 17[g]. On page 33 of Patent Owner's Preliminary Response (POPR), Patent Owner argued that Fellowes' failed to provide any motivation to combine the Kuhn and '712 Patent references. On pages 39-41 of the POPR, Patent Owner detailed why the teachings of Kuhn and the '712 Patent fail to teach the limitations of Claim 17 of the '950 Patent. Despite this clearly demarcated separation of arguments, Fellowes' spends most of its Reply responding to arguments related to whether a motivation to combine existed. *See* Reply at 1-3 (responding to argument at POPR page 33). Fellowes' self-created claim construction issue is a red herring.

**II. FELLOWES FAILS TO PROVIDE A PROPOSED CONSTRUCTION OF "CORRESPONDS."**

Fellowes' Reply fails to propose a construction for the term "corresponds" as used in Claim 17 of the '950 Patent. Despite requesting leave of the Board to "address Patent Owner's construction of the term 'corresponds' in claim 17 (pg. 33 of POPR)" (EX1019 at 1), Fellowes never argues how "corresponds" should be construed. Rather, it only argues, without support, how "corresponds" should not be construed, and implicitly concedes that the term should be applied under its plain and ordinary meaning.

### III. “CORRESPONDS” DOES NOT REQUIRE A CONSTRUCTION.

As used in Claim 17 of the '950 Patent, the term “corresponds” should be given its plain and ordinary meaning. Terms should be afforded their ordinary meaning unless the specification reveals a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. *See SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187, 1195 (Fed. Cir. 2013). The specification does not redefine “corresponds.” *See* EX1001.

In its Preliminary Response, Patent Owner did not argue that the specification redefined “corresponds.” POPR at 6 (not offering “corresponds” for claim construction), 39-42 (discussing claim element 17[g]). In its reply, Fellowes did not argue that the specification redefined “corresponds.” Accordingly, it is undisputed that the specification did not redefine “corresponds” and that the term should be given its plain and ordinary meaning. As the Board found in *America Megatrends, Inc. v. Kinglite Holdings Inc.*, the plain and ordinary meaning of “corresponds” is “has a direct relationship.” IPR2015-1079, Paper 17, at \*8 (PTAB Oct. 29, 2015) (rejecting proposed constructions and construing “according to its ordinary meaning, i.e., to having a direct relationship.”).

This meaning is wholly consistent with the use of the term throughout the specification of the '950 Patent, which variously describes corresponding clasping mechanisms (*e.g.*, EX1001, 33:30-34 ), channel members (*id.*, *e.g.*, 50:52-54),

bungs having threads corresponding to port threading (*id.*, *e.g.*, 60:5-17), and other structures. *And id.*, *e.g.*, FIGS. 4I, 4J, 11E (device 100 directly related to enclosure.) Each such direct relationship requires congruity and conformity in at least size, shape, location. It is further consistent with the use of the term in the claim itself, which requires “an inner perimeter defined by a rigid frame that corresponds to ... the perimeter portion of the bottom member”: without a direct relationship, the rigid frame would not be sized, shaped, or otherwise able to permit its ridge to “clasp within the channel of the bottom member” as required.

The ordinary meaning of “corresponds” is to have a direct relationship, to conform.

#### **IV. PATENT OWNER APPLIED THE PLAIN AND ORDINARY MEANING OF “CORRESPONDS” IN ARGUING THAT THE KUHN REFERENCE DOES NOT TEACH CLAIM ELEMENT 17[G].**

Patent Owner applied the plain and ordinary meaning of “corresponds” in the POPR. The plain language of element 17[g] requires that the rigid frame correspond to (*i.e.*, have a direct relationship to or conform to) *both* the outer perimeter of the electronic device and the perimeter portion of the bottom member. No other interpretation makes sense. The rigid frame must correspond to these structures to create a protective enclosure to protect the object (*e.g.*, electronic device) from adverse environmental conditions. *See* EX1001, 2:16-30. If the rigid frame does not conform to the size, shape, and location of *both* the outer

perimeter of the electronic device and the perimeter portion of the bottom member, the top member will not seal against the bottom member. *See* EX1001, 3:39-45.

## **V. FELLOWES READS LIMITATIONS OUT OF THE CLAIM.**

Fellowes' argument that the protective enclosures covered by the '950 Patent are not for a specific device (Reply at 2-3) misses the mark. Patent Owner does not argue that the protective enclosure of the '950 Patent is limited to a single device (*e.g.*, iPhone 7). The protective enclosures contemplated by the challenged claims are not limited to one size of enclosure; different enclosures are clearly contemplated for different devices. However, the enclosures are *device-specific*, in that they must have *correspondence* between the perimeters of the electronic device and the top and bottom members, to provide the claimed functionality. While the dimensions of a specific device may dictate different dimensions of the enclosure, the two must correspond. Without such a correspondence, the switch feature of the claim would be impossible. (EX1001, Cl. 17; *id.*, *e.g.*, Fig. 11E.) For example, an enclosure designed for an iPhone will not also work for an iPad.

Kuhn teaches a case for universal application (*i.e.*, multiple devices of different shapes and sizes can be housed in the enclosure). No correspondence between the size and shape of the device and the protective enclosure is required. This is a complete departure from the design of protective enclosures covered by the challenged claims. Fellowes' efforts to suggest that the purpose of Kuhn and

the challenged claims are identical (Reply at 3 (“The specification instead makes it clear that the alleged invention described therein *can include* an enclosure for different devices, just like Kuhn.” (emphasis added))) must fail. The question is not what the specification *makes possible*, but what the claims at issue *actually cover*.

Fellowes’ argument that limitation 17[g] can be met by separate structures Kuhn 39/40 (Reply at 4) rewrites the plain language of the claim. The claim requires that the “rigid frame” structure correspond to *both* the “outer perimeter of the electronic device *and* the perimeter portion of the bottom member.” (EX1001, Cl. 17 (emphasis added)). Fellowes’ application does not have a single structure correspond to both the outer perimeter of the electronic device and the perimeter portion of the bottom member. At best, Fellowes’ application has *two* structures separately corresponding to (1) the outer perimeter of the electronic device, and (2) the perimeter portion of the bottom member. Kuhn does not teach limitation 17[g].

Fellowes cannot read limitations out of the claims by pointing to other embodiments in the patent. *TIP Sys., LLC v. Phillips & Brooks/Gladwin, Inc.*, 529 F.3d 1364, 1375 (Fed. Cir. 2008) (“[C]laims need not be construed to encompass all disclosed embodiments when the claim language is clearly limited to one or more embodiments.”). The ’950 Patent is 190 pages and contains 140 pages of figures capturing numerous embodiments. Fellowes cannot cherry pick embodiments (Reply at 5) to rewrite the plain language of the claim.

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Respectfully submitted,

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## **CERTIFICATION OF SERVICE**

The undersigned hereby certifies that the foregoing Patent Owner's Sur-Reply was served electronically via e-mail on February 5, 2021, upon the following parties via e-mail at the below email address:

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