

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

GUNTERT & ZIMMERMAN CONST.
DIV., INC., a California Corporation,

Plaintiff,

vs.

GOMACO CORP., an Iowa Corporation,

Defendant.

CASE NO.: 5:20-cv-4007-CJW-KEM

**JOINT CLAIM CONSTRUCTION
STATEMENT**

Pursuant to the Scheduling Order & Discovery Plan (Dkt. No. 34), Plaintiff Guntert & Zimmerman Const. Div., Inc. (“G&Z”) and Defendant Gomaco Corp. (“Gomaco” or “Defendant”) hereby submit this Joint Claim Construction Statement.

I. PROPOSED CONSTRUCTION OF EACH DISPUTED TERM.

The parties’ disputed terms and proposed constructions for each are provided below. The parties reserve their rights to cite additional supporting evidence based on arguments raised in the claim construction briefs.

U.S. Patent No. 9,708,020					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence ¹
"swing leg"	1-3, 6-7, 9-12	No construction necessary – Plain and ordinary meaning.	<p>Extrinsic Evidence</p> <p>Singhose Dep. Tr. at 11:4 – 47:5; 51:5 – 52:9</p> <p>Klein Dep. Tr. at 6:17 – 12:15</p> <p>Guntert Dep. Tr. at 60:19-61:3</p> <p>Bryden Dep. Tr. at 17:21 -24:14; Ex. 7 at 11</p> <p>Bryden Decl. - Dkt. No. 40-3 at ¶¶ 28-58</p> <p>Singhose Decl. - Dkt. No. 53-3 at ¶¶ 54-56</p> <p>Klein Decl. - Dkt. No. 56 at ¶ 20</p>	"leg that is pivotal"	<p><u>Extrinsic Evidence</u></p> <p>Guntert Dep. Tr. at 61:2–3</p> <p>Bryden Dep. Tr. at 18:2–20:2</p> <p>GOMACO00017875–76, 79 - The Penguin Complete English Dictionary (2006) at 1422</p> <p>Gomaco may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light</p>

¹ Under the Scheduling Order and Joint Discovery Plan (D.I. 34 at 2), the parties were required to exchange preliminary claim constructions and extrinsic evidence on September 10, 2020. The parties agreed to extend this exchange to September 15, 2020. On September 15, 2020, the parties exchanged their claim constructions and extrinsic evidence. Shortly before this Joint Claim Construction Statement was to be filed, G&Z added previously unidentified extrinsic evidence to this chart. Gomaco reserves the right to present additional extrinsic evidence if necessary to respond to G&Z's newly identified extrinsic evidence. G&Z disagrees with Gomaco's assertion and provided citations to extrinsic evidence that may be needed to rebut Gomaco's proposed constructions as explicitly set forth in G&Z's disclosure.

U.S. Patent No. 9,708,020					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence ¹
			Dkt. No. 1 at ¶¶ 6-121t GOMACO00017875-76, 79 - The Penguin Complete English Dictionary (2006) at 1422		of the specification and prosecution history.
"hinge bracket"	2-3, 12	No construction necessary – Plain and ordinary meaning	Extrinsic Evidence Singhose Dep. Tr. at 51:5 – 52:9 Singhose Decl. - Dkt. No. 53-3 at ¶¶ 136, 193-194 G&Z may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.	"bracket fastenable to a surface"	<u>Extrinsic Evidence</u> Gomaco may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.
"feedback loop"	6	"a loop formed with the onboard computer/processor and	Extrinsic Evidence	"a circuit, device, or system in which a portion of the output is returned to the input"	<u>Extrinsic Evidence</u>

U.S. Patent No. 9,708,020					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence ¹
		the transducers”	<p>Singhose Dep. Tr. at 51:5 – 52:9; 113:16 – 114:6</p> <p>Klein Dep. Tr. at 54:14 – 56:17</p> <p>GOMACO00017881–83 - Wiley Electrical & Electronics Engineering Dictionary (2004) at 278</p> <p>GOMACO00017875–77 - The Penguin Complete English Dictionary (2006) at 507</p> <p>G&Z may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.</p>		<p>GOMACO00017881–83 - Wiley Electrical & Electronics Engineering Dictionary (2004) at 278</p> <p>GOMACO00017875–77 - The Penguin Complete English Dictionary (2006) at 507</p> <p>Gomaco may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.</p>

U.S. Patent No. 9,708,020					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence ¹
"trailing module"	8-11	No construction necessary – Plain and ordinary meaning	<p>Extrinsic Evidence</p> <p>Singhose Dep. Tr. at 51:5 – 52:9</p> <p>G&Z may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.</p>	"dowel bar inserter (DBI) attachable to the rear of the paving machine"	<p><u>Extrinsic Evidence</u></p> <p>Gomaco may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.</p>

U.S. Patent No. 9,908,571					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence
"swing leg"	1-3, 7-13, 15	No construction necessary – Plain and ordinary meaning.	See extrinsic evidence cited in table for '020 patent above.	"leg that is pivotal"	See extrinsic evidence cited in table for '020 patent above.
"hinge"	2-3, 10-11	No construction necessary – Plain and	See extrinsic evidence cited in table for '020 patent above.	"bracket fastenable to a surface"	See extrinsic evidence cited in table for '020 patent above.

U.S. Patent No. 9,908,571					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence
bracket"		ordinary meaning			
"feedback loop"	7, 12	"a loop formed with the onboard computer/processor and the transducers"	<i>See</i> extrinsic evidence cited in table for '020 patent above.	"a circuit, device, or system in which a portion of the output is returned to the input"	<i>See</i> extrinsic evidence cited in table for '020 patent above.
"laterally telescoping leg"	8	No construction necessary – Plain and ordinary meaning	<p><u>Extrinsic Evidence</u></p> <p>Singhose Dep. Tr. at 51:5 – 52:9</p> <p>GOMACO00017872–74 - Means Illustrated Construction Dictionary (3d ed. 2000) at 651</p> <p>GOMACO00017875–76, 78, 80 - The Penguin Complete English Dictionary (2006) at 790, 1448</p> <p>GOMACO00017867–71- Academic Press Dictionary of Science and Technology (1992) at 1209, 2179</p>	"leg that is perpendicularly extendable from and retractable into the forward bolster"	<p><u>Extrinsic Evidence</u></p> <p>GOMACO00017872–74 - Means Illustrated Construction Dictionary (3d ed. 2000) at 651</p> <p>GOMACO00017875–76, 78, 80 - The Penguin Complete English Dictionary (2006) at 790, 1448</p> <p>GOMACO00017867–71- Academic Press Dictionary of Science and Technology (1992) at 1209, 2179</p> <p>Gomaco may also present expert testimony regarding how a person of</p>

U.S. Patent No. 9,908,571					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence
			G&Z may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.		ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.

U.S. Patent No. 10,029,749					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence
"swing leg"	1-6, 10, 13, 15-20	No construction necessary – Plain and ordinary meaning.	<i>See</i> extrinsic evidence cited in table for '020 patent above.	"leg that is pivotal"	<i>See</i> extrinsic evidence cited in table for '020 patent above.
"hinge bracket"	2-6, 18	No construction necessary – Plain and ordinary meaning	<i>See</i> extrinsic evidence cited in table for '020 patent above.	"bracket fastenable to a surface"	<i>See</i> extrinsic evidence cited in table for '020 patent above.

U.S. Patent No. 10,053,167					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence
"swing leg"	1-12, 17-20	No construction necessary – Plain and ordinary meaning.	<i>See</i> extrinsic evidence cited in table for '020 patent above.	"leg that is pivotal"	<i>See</i> extrinsic evidence cited in table for '020 patent above.
"hinge bracket"	2-4, 7	No construction necessary – Plain and ordinary meaning	<i>See</i> extrinsic evidence cited in table for '020 patent above.	"bracket fastenable to a surface"	<i>See</i> extrinsic evidence cited in table for '020 patent above.
"feedback loop"	8-10, 20	"a loop formed with the onboard computer/processor and the transducers"	<i>See</i> extrinsic evidence cited in table for '020 patent above.	"a circuit, device, or system in which a portion of the output is returned to the input"	<i>See</i> extrinsic evidence cited in table for '020 patent above.

U.S. Patent No. 10,196,101					
Claim Term	Claim(s)	G&Z's Proposed Construction	G&Z's Citation to Extrinsic Evidence	Gomaco's Proposed Construction	Gomaco's Citation to Extrinsic Evidence
"swing leg"	1, 10-11, 14, 18	No construction necessary – Plain and ordinary meaning.	<i>See</i> extrinsic evidence cited in table for '020 patent above.	"leg that is pivotal"	<i>See</i> extrinsic evidence cited in table for '020 patent above.
"feedback loop"	7, 18-19	"a loop formed with the onboard computer/processor and the transducers"	<i>See</i> extrinsic evidence cited in table for '020 patent above.	"a circuit, device, or system in which a portion of the output is returned to the input"	<i>See</i> extrinsic evidence cited in table for '020 patent above.

II. TIME FOR CLAIM CONSTRUCTION HEARING.

The parties anticipate that they will not require more than three (3) hours for the entire claim construction hearing.

III. WITNESSES AT CLAIM CONSTRUCTION HEARING.

G&Z's Statement:

G&Z intends to offer a declaration and may present live witness testimony from Carl A. Nelson, Ph.D, P.E., University of Nebraska College of Engineering, Department of Mechanical and Materials Engineering, W316 Nebraska Hall, P.O. Box 880526, Lincoln, NE 68688-0526, regarding a tutorial of the relevant technology, the technical background of the asserted patents, the qualifications of one of skill in the art at the time of the inventions, how the above terms are understood by one of skill in the art, and to support G&Z's claim construction positions. Furthermore, Dr. Nelson will rebut any testimony or opinions offered by Defendant's expert witness.

Gomaco's Statement:

Gomaco intends to offer a declaration and may present live witness testimony from William Singhose, The George W. Woodruff School of Mechanical Engineering Georgia Institute of Technology, 813 Ferst Drive, N.W., Atlanta, GA 30332, regarding a tutorial of the relevant technology, the technical background of the asserted patents, the qualifications of one of skill in the art at the time of the inventions, how a person of ordinary skill in the art at the time of the claimed invention would have understood the above terms in light of the specification and prosecution history, and to support Gomaco's claim construction positions. Furthermore, Dr. Singhose will rebut any testimony or opinions offered by G&Z's expert witness.

Dated: October 2, 2020

Paul D. Lundberg (#WO0003339)
LUNDBERG LAW FIRM, P.L.C.
600 4th Street
Suite 906
Sioux City, IA 51101
Telephone: (712) 234-3030
paul@lundberglawfirm.com

*Attorneys for Plaintiff
Guntert & Zimmerman Constr., Div., Inc.*

By: /s/ Paul Andre
Paul Andre
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 752-1700
pandre@kramerlevin.com

*Attorneys for Plaintiff
Guntert & Zimmerman Constr., Div., Inc.*

/s/ Luke J. McCammon
Luke J. McCammon (Admitted *pro hac*
vice)
David K. Mroz (Admitted *pro hac vice*)
Sonja W. Sahlsten (Admitted *pro hac vice*)
FINNEGAN, HENDERSON,
FARABOW,
GARRETT & DUNNER, LLP
901 New York Avenue, NW
Washington, DC 20001-4413
Telephone: (202) 408-4000
Facsimile: (202) 408-4400
luke.mccammon@finnegan.com
david.mroz@finnegan.com
sonja.sahlsten@finnegan.com

Thaddeus Cosgrove, AT0001750
Cosgrove Law Firm
607 W. Second Street
Ida Grove, Iowa 51445
Telephone: (712) 364-4138
Facsimile: (712) 364-4445
tcosgroveig@netllc.net

Counsel for Defendant Gomaco Corp.