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Attorneys for
The Tonytail Company, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

THE TONYTAIL COMPANY, INC.
a Delaware Corporation,

Plaintiff,

v.

CONAIR, a Delaware Corporation; SCUNCI INTL., Ltd., a Delaware Corporation; RITE AID, a Delaware Corporation; L&N Sales & Marketing, Inc., a Pennsylvania Corporation and DOES 1-10, inclusive,

Defendants.

CASE NO. 3:07-cv-05895-WHA

DECLARATION OF ANNE-LEITH MATLOCK IN SUPPORT OF PROPOSED AMENDED ORDER REGARDING SCHEDULE FOR CLAIM CONSTRUCTION

I, ANNE-LEITH W. MATLOCK, declare:

1. I, ANNE-LEITH W. MATLOCK, am an attorney at law licensed to practice before the courts of the State of California, admitted in the Northern and Eastern Districts of California, and a Principle of the law firm Matlock Law Group, attorneys of record for The Tonytail Company, Inc.

2. Defendants, Conair and Rite Aid did not file their counterclaims until March 7, 2008. Given that the Proposed Order was drafted prior to Plaintiff's receipt of Defendants' Counterclaim, Defendants alone had knowledge of their intent to claim invalidity and therefore should have accounted for the "Invalidity Contention" requirement of Local P.R. 3-3 and 3-4 in the claim construction schedule. Plaintiff has timely served on all parties its "Disclosure of Asserted Claims and Infringement Contentions." Although the parties have exchanged a list of six claim terms, phrases or clauses which the parties contend should be construed by the Court, and have identified elements which the parties contend should be governed by 35 U.S.C. § 112 ¶ 6, the parties have not narrowed or resolved all differences which would facilitate the ultimate preparation of a Joint Claim Construction and Prehearing Statement.

3. Furthermore, opposing counsel has not yet submitted his Invalidity Contentions. Without opposing counsel's invalidity contentions and accompanying document production, the Plaintiff would be prejudiced in its April 11, 2008 requirement for Exchange of Preliminary Claim Construction and Extrinsic Evidence, for lack of knowledge as to opposing counsel's specific arguments. Plaintiff's counsel has made several in person and phone call requests of Defendants, Conair and Rite Aid to deliver their invalidity contentions and schedule.

4. Consequently, Plaintiff submits its motion for leave to amend the present order regarding the schedule for claim construction in the interests of justice and efficiency. Plaintiff further submits its amended schedule.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, if called upon to testify, I could or would competently testify thereto and that this declaration was executed this 8th of April 2008, at Walnut Creek, California.

DATED: April 8, 2008

Respectfully Submitted,

MATLOCK LAW GROUP

By: /s/
Anne-Leith W. Matlock

Attorneys for The Tonytail Company, Inc.