

ESTTA Tracking number: **ESTTA584600**

Filing date: **01/29/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

| | |
|---------------------------------------|--|
| Name | Clear View West, LLC |
| Granted to Date of previous extension | 01/29/2014 |
| Address | 1718 Stone Avenue San Jose, CA 95125 UNITED STATES |

| | |
|---------------------------------------|--|
| Name | Steinberg, Hall & Associates Inc. d/b/a Home Improvement Specialists |
| Granted to Date of previous extension | 01/29/2014 |
| Address | 2121 Chablis Court Suite 110 Escondido, CA 92019 UNITED STATES |

| | |
|----------------------|--|
| Attorney information | Thomas W. Brooke Holland & Knight LLP 800 17th Street, NW Suite 1100 Washington, DC 20006 UNITED STATES thomas.brooke@hklaw.com, ptdocketing@hklaw.com Phone:202 663-7271 |
|----------------------|--|

Applicant Information

| | | | |
|------------------------|--|------------------------|------------|
| Application No | 85836387 | Publication date | 10/01/2013 |
| Opposition Filing Date | 01/29/2014 | Opposition Period Ends | 01/29/2014 |
| Applicant | ClearView MotionScreens, Inc. Suite 190 Jacksonville, FL 32218 FL | | |

Goods/Services Affected by Opposition

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| Class 006. First Use: 2007/03/02 First Use In Commerce: 2007/03/02 All goods and services in the class are opposed, namely: Insect screens of metal; Metal window screens |
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Grounds for Opposition

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|--------------------------------|--|
| The mark is merely descriptive | Trademark Act section 2(e)(1) |
| Other | Naked license, lack of quality control and fails to function as a source indicator |

| | |
|-------------|---|
| Attachments | clearviewopposition.pdf(22306 bytes) cleaviewoppserve_01_29_2014_18_50_10_019.pdf(14024 bytes) clearviewexA_C_01_29_2014_18_25_12_659.pdf(1255445 bytes) clearviewexD_01_29_2014_18_26_29_919.pdf(1877893 bytes) |
|-------------|---|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|--------------------|
| Signature | /Thomas W. Brooke/ |
| Name | Thomas W. Brooke |
| Date | 01/29/2014 |

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|------------------------------------|---|------------------------------|
| Clear View West, LLC | : | |
| 1718 Stone Avenue | : | |
| San Jose, CA 95125, | : | |
| | : | |
| And | : | |
| | : | |
| Hall, Steinberg & Associates, Inc. | : | |
| d/b/a Home Improvement Specialists | : | |
| 2865 Progress Place | : | |
| Escondido, CA 92029 | : | |
| | : | |
| | : | Opposers, |
| v. | : | OPPOSITION NO. _____ |
| | : | (U.S. Serial No. 85/836,387) |
| | : | |
| ClearView MotionScreens, Inc. | : | |
| 13920 Alvarez Road | : | |
| Suite 190 | : | |
| Jacksonville, Florida 32218 | : | |
| | : | |
| | : | Applicant. |

NOTICE OF OPPOSITION

Clear View West, LLC, a California Limited Liability Company and Hall, Steinberg & Associates ("Hall, Steinberg"), a California Corporation (hereinafter "Opposers") submit this Notice of Opposition against Application No. 85/836,387 for the mark **CLEARVIEW MOTIONSCREEN & DESIGN** applied for by ClearView MotionScreens, Inc. (hereinafter "Applicant"), a Florida Corporation.

Opposers believe they will be damaged by registration of the mark **CLEARVIEW MOTIONSCREEN & DESIGN** by Applicant, and therefore oppose registration on the Principal Register of the United States Patent and Trademark Office.

GROUNDS FOR OPPOSITION

As grounds for this Notice of Opposition, Opposers state as follows:

1. Opposers and Applicant all sell retractable screens, including retractable door, insect and window screens under the name and mark **CLEARVIEW**.

2. Opposer Hall, Steinberg first began use of the **CLEARVIEW** name and mark at least as early as 2005, as evidenced by the creation of the website found at www.clearviewscreens.net

3. The President of Applicant is Darryl Grubb, who is also President of Clearview Products Southeast, Inc. ("CVSE"), owner of U.S. Trademark Reg. No.3,272,079

CLEARVIEW RETRACTABLE SCREENS.

4. Applicant and Clearview Products Southeast, Inc. are parties to a Consent Agreement, attached hereto as Exhibit A, whereby CVSE. consented to Applicant's use and registration of the instant mark.

5. CVSE and Opposer Clear View West, LLC are parties to a "Master Assignment and Assumption Agreement" attached hereto as Exhibit B.

6. Opposer Clear View West, LLC assumed the rights of Prime-Line Products Company under an earlier "Manufacturing and Distribution Rights Agreement" attached as Exhibit C.

7. The relationship between Opposers and Applicant has been marked with disagreements and disputes. Clear View West, LLC eventually filed a demand for arbitration which was heard and decided upon in 2012 and ratified by the Superior Court of California, County of Los Angeles on April 4, 2012. A copy of the Court's Order and Corrected Final Award in the JAMS Arbitration Case is attached hereto as Exhibit D.

8. Applicant has not exercised any quality control over Opposers, their predecessors-in-interest or others in many years, if it ever did at all. Opposers developed and have had independent rights to the **CLEARVIEW** mark for many years. Applicant cannot claim nationwide rights to the mark **CLEARVIEW** alone or in combination with other terms.

9. The words "Motion Screen" are descriptive terms of art in the industry. Applicant may not claim trademark rights to the words "Motion Screen" or "MotionScreen," alone or in combination with other terms, especially including **CLEARVIEW**.

For all the foregoing reasons, Opposers respectfully requests that the Trademark Trial and Appeal Board deny registration of the **CLEARVIEW MOTIONSCREEN & DESIGN** mark on the Principal Register of the United States Patent and Trademark Office.

Respectfully submitted,

Clear View West, LLC and
Hall, Steinberg & Associates, Inc.

Date: January 29, 2014

By: /Thomas W. Brooke/
Thomas W. Brooke
HOLLAND & KNIGHT LLP
800 17th Street, NW, Suite 100
Washington, DC 20006
Telephone: 202-663-7271
Facsimile: 202-955-5564
Email: Thomas.brooke@hklaw.com

CERTIFICATE OF SERVICE

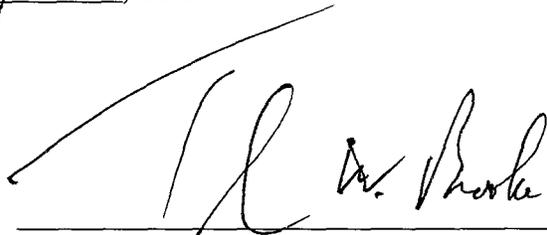
The undersigned certifies that a true copy of the foregoing **NOTICE OF OPPOSITION** was sent by first class mail, postage pre-paid, to:

ClearView MotionScreens, Inc.
13920 Alvarez Road
Suite 190
Jacksonville, Florida 32218

And

Debra Hil, Esa.
Fisher Broyles, LLP
4600 Touchton Road East
Suite 150
Jacksonville, Florida 32246-8299

on this 29 day of January, 2014



A handwritten signature in black ink, appearing to read "R. W. Brooke", is written over a horizontal line. A diagonal line also extends from the top left of the signature area towards the top right of the page.

TTAB EXHIBIT A

CONSENT AGREEMENT

THIS CONSENT AGREEMENT is made and entered into on August 15, 2013 by and between ClearView Products Southeast, Inc., (hereinafter "CVSE") a Florida corporation and Clearview MotionScreen, Inc., (hereinafter "MotionScreen") a Florida corporation.

WHEREAS the Parties have been simultaneously using the trademark "CLEARVIEW" in connection with different goods within the United States; and

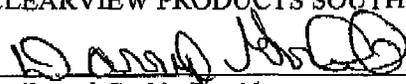
WHEREAS the Parties believe that their respective marks as applied to their respective goods are not likely to be confused as to source, sponsorship, affiliation or association.

NOW THEREFORE, the Parties hereby acknowledge and agree:

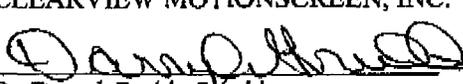
1. That CVSE has been using the trademark CLEARVIEW RETRACTABLE SCREENS in connection with retractable screen system in the United States, and that CVSE is the owner of U.S. Federal Trademark Registration No. 3272079 for the mark "CLEARVIEW RETRACTABLE SCREENS" in connection with "metal window screens."
2. That MotionScreen has been using the trademark CLEARVIEW MOTIONSCREEN in connection with "insect screens of metal; metal window screens" and has sought registration of the mark "CLEARVIEW MOTIONSCREEN", serial number 85836387.
3. That CVSE's and MotionScreen's respective use of the word CLEARVIEW for their respective goods has occurred simultaneously without confusion.
4. CVSE consents to MotionScreen's use and registration of the trademark CLEARVIEW MOTIONSCREEN in connection with "insect screens of metal; metal window screens".
5. CVSE will not take any action against MotionScreen's use and registration of the trademark CLEARVIEW MOTIONSCREEN in connection with "insect screens of metal and metal window screens".
6. MOTIONSCREEN will not take any action against CVSE's use and registration of the trademark CLEARVIEW RETRACTABLE SCREEN in connection with "metal window screens".
7. The parties agree that if any instances of confusion are discovered, the parties will cooperate to resolve the confusion, and will cooperate in filing any documents with the United States Patent and Trademark Office.
8. The parties agree and recognize that CVSE use of the mark CLEARVIEW has priority.

Agreed to on this 15 day of August, 2013.

CLEARVIEW PRODUCTS SOUTHEAST, INC.


By Darryl Grubb, President

CLEARVIEW MOTIONSCREEN, INC.


By Darryl Grubb, President

TAB EXHIBIT B

MASTER ASSIGNMENT AND ASSUMPTION AGREEMENT

Clear View Products Southeast, Inc., a Florida corporation ("Clear View Southeast"), Clear View West LLC, a California limited liability company ("Clear View West"), and Prime-Line Products Company, a California corporation ("Prime-Line"), enter into this Master Assignment and Assumption Agreement (this "Agreement") on March 24, 2010. Clear View Southeast, Clear View West, and Prime-Line are referred herein individually as a "Party", and collectively as the "Parties".

RECITALS

A. Pursuant to Article III, Section 11, of that certain Manufacturing and Distribution Rights Agreement, dated March 4, 2004, among Clear View Southeast and Prime-Line (the "Manufacturing Agreement"), Clear View Southeast and Prime-Line have agreed that Prime-Line shall assign its rights and responsibilities under the Manufacturing Agreement to Clear View West, except as otherwise indicated in Exhibit A of this Agreement.

B. The Manufacturing Agreement is attached hereto as Exhibit B.

C. Clear View Southeast has agreed to allow Prime-Line to assign its rights and obligations under the Manufacturing Agreement to Clear View West, subject to the terms of this Agreement, including, without limitation, Exhibit A, and Clear View West has agreed to assume Prime-Line's obligations under the Manufacturing Agreement, pursuant to the terms of this Agreement.

D. The owners of Clear View West shall be Daniel Lezotte, Mary Lezotte and/or Andrew Lezotte.

WHEREFORE, based upon the foregoing recitals and for good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. Assignment and Assumption.

Subject to the consummation of the transactions contemplated for the purchase of assets by Clear View West from Prime-Line, Clear View West shall assume all liabilities and contingent liabilities outlined in this Agreement and any and all liabilities and contingent liabilities outlined in the Manufacturing Agreement effective as of March 24, 2010. Prime-Line shall remain responsible for its obligations under the Agreement accruing on or before March 24, 2010. For each of the Prime-Line obligations outlined in the Manufacturing Agreement, and to the extent that such obligations have not accrued as of March 24, 2010, (a) Prime-Line assigns and Clear View West expressly assumes all covenants, agreements, obligations and liabilities of Prime-Line under the Manufacturing Agreement as if Clear View West was the original party thereto,

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including, without limitation, all indemnity, reimbursement and other payment obligations set forth therein, (b) Clear View West agrees to comply fully and completely with all covenants, terms and provisions set forth in the Manufacturing Agreement, and (c) Clear View West agrees that Prime-Line's obligations under the Manufacturing Agreement shall now constitute the legal, valid and binding obligation of Clear View West, enforceable against Clear View West in accordance with their terms and that the obligations are in full force and effect with respect to Clear View West. Clear View West and Prime-Line shall enter into a separate Asset Purchase Agreement in which Clear View West shall enter into certain payment and other obligations to Prime-Line (the "Asset Purchase Agreement").

2. Further Assurances.

From time to time after the date of this Agreement, without further consideration, the Parties will cooperate with each other and will execute and deliver such documents to the other Parties as such other Parties may reasonably request to carry out any of the matters contemplated by this Agreement.

3. Amendments to the Manufacturing and Distribution Rights Agreement.

- (a) Any future improvements to the current Clear View Southeast product line by Clear View West must be submitted to Clear View Southeast for its prior written approval. During the term of the Manufacturing Agreement, Clear View West shall have, and Clear View Southeast hereby grants to Clear View West, a first right of refusal, within its territory as herein described, for the manufacture and/or distribution of any New and Competing Products.
- (b) Upon any attempted sale or reassignment of the Manufacturing Agreement by Clear View West, Clear View Southeast shall have the right of first refusal for sixty (60) days to purchase the Manufacturing Agreement from Clear View West at the price of sale as presented in writing to Clear View West by a bona fide third party. If Clear View Southeast elects not to purchase the Manufacturing Agreement from Clear View West, Clear View Southeast shall have the right to pre-approve, in writing, the proposed transfer to the proposed acquirer of the Manufacturing Agreement.
- (c) Clear View West shall work with Clear View Southeast to develop marketing materials that are consistent with those of Clear View Southeast.
- (d) Clear View Southeast customers West of the Mississippi River shall remain the customers of Clear View Southeast. All such customers, who shall remain as dealers only, shall be identified and

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listed on Exhibit C to the Manufacturing Agreement prior to the execution of this Agreement. The list set forth on Exhibit C shall be comprehensive and complete as of the date of execution of this Agreement. Except as listed in Exhibit A, after the date of this Agreement, any customers/dealers that Clear View Southeast desires to sell to West of the Mississippi River must first be approved by Clear View West and Clear View Southeast must have written approval to sell to such customers. Similarly, Clear View West shall be permitted to retain and service its existing customers East of the Mississippi, identified in Exhibit C hereto.

- (e) Clear View West shall not enter into any national or global negotiations or contracts for the manufacturing, distribution or sale of the Products without the written approval of Clear View Southeast.
- (f) Product standardization is highly desirable. Any and all product modifications made by Clear View Southeast to the Products that are the subject of the Manufacturing Agreement shall be incorporated into the Product design and manufacturing by Clear View West.
- (g) Upon any attempted sale or reassignment of the Manufacturing Agreement by Clear View Southeast, Clear View West shall have the right of first refusal for sixty (60) days to purchase the Manufacturing Agreement from Clear View Southeast at the price of sale presented in writing to Clear View Southeast by a bona fide third party with a qualified appraisal of Clear View Southeast.
- (j) The Parties will agree upon a Non-Competition Agreement that protects Clear View Southeast and Clear View West with respect to the markets that they service for a period of ten years from the date of this Agreement. The Non-Competition Agreement will include a confidentiality and non-disclosure provision that will protect from disclosure Clear View Southeast trade secrets and methods of operation. The Non-Competition Agreement will allow Prime-Line to service its markets if Prime-Line's customers ask Prime-Line to do so. Prime-Line currently sells a low-end retractable screen that Clear View Florida is well aware of and Clear View Florida does not contest Prime-Line's ability to continue to do so. The Non-Competition Agreement will reflect these terms.
- (k) Prime-Line agrees to provide written notice to Clear View Southeast of any defaults under this Agreement by Clear View West within thirty (30) days of the Default. If Clear View West fails to cure any default within its permitted cure period, Prime-Line shall offer, in writing, to Clear View Southeast the opportunity to cure the

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default ("Notice of Failure to Cure"). Clear View Southeast shall then have ten (10) days after receiving Prime-Line's Notice of Failure to Cure to cure the default. Upon Clear View Southeast's curing the default, all rights in and to the Manufacturing Agreement shall automatically be assigned to Clear View Southeast. If Clear View West defaults with respect to its obligations to Prime-Line under this Agreement and the Asset Purchase Agreement, and Clear View Southeast fails to cure Clear View West's default within ten (10) days of the Notice of Failure to Cure, then Prime-Line shall have the right to assume the rights under the Manufacturing Agreement that it assigns to Clear View West pursuant to this Agreement.

4. Miscellaneous.

- (a) Authorization. The Parties warrant that they have the corporate power and authority to execute this Agreement and that this Agreement has been duly authorized by the Parties.
- (b) Waivers and Amendments; Successors and Assigns. No term or provision of this Agreement may be waived, altered, modified, or amended except by a written instrument, duly executed by the parties hereto. This Agreement and all of the Parties' obligations herein are binding upon their respective successors and assigns, and together with the rights and remedies of the Parties under this Agreement, inure to the benefit of the Parties and their respective successors and assigns. No Party may assign or transfer any right or obligation under this Agreement without the prior written consent of all the Parties.
- (c) Successor in Interest. Nothing herein shall be construed as or is intended to make Clear View West a successor to Prime-Line's business or operations in any way. Except for those obligations being expressly assumed by Clear View West herein, and pursuant to the Manufacturing Agreement, no other obligations of Prime-Line, of any kind or nature, are being assumed by Clear View West.
- (d) Counterparts. This Agreement may be executed in any number of counterparts and by each Party on separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. For purposes of this Agreement, facsimile signatures shall also constitute originals.

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- (e) Entire Agreement. This Agreement, together with any other agreements and schedules referenced to herein or executed in connection with this Agreement, constitutes the entire understanding of the Parties in connection with the subject matter hereof. The Parties agree that the obligations of Clear View West under this Agreement are in addition to any other obligations which it may have to Clear View Southeast, including, without limitation, under applicable law, and the Manufacturing Agreement.
- (f) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, without regard to conflicts of law principles.

5. CONSULTATION WITH COUNSEL.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH COUNSEL BEFORE EXECUTING THIS AGREEMENT AND ARE EXECUTING SUCH AGREEMENT WITHOUT DURESS OR COERCION AND WITHOUT RELIANCE ON ANY REPRESENTATIONS, WARRANTIES OR COMMITMENTS OTHER THAN THOSE REPRESENTATIONS, WARRANTIES AND COMMITMENTS SET FORTH IN THIS AGREEMENT.

6. JURY TRIAL WAIVER.

THE PARTIES ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THIS RIGHT MAY BE WAIVED. THE PARTIES EACH HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT DURESS, INTIMIDATION, OR COERCION, WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR ANY OTHER AGREEMENTS BETWEEN THE PARTIES EXECUTED IN CONNECTION WITH THIS AGREEMENT. NO PARTY WILL BE DEEMED TO HAVE RELINQUISHED THE BENEFIT OF THIS WAIVER OF JURY TRIAL UNLESS SUCH RELINQUISHMENT IS IN A WRITTEN INSTRUMENT SIGNED BY THE PARTY TO WHICH SUCH RELINQUISHMENT WILL BE CHARGED.

7. Dispute Resolution. Except as otherwise indicated in this Agreement, any and all disputes arising pursuant to any of the terms of this Agreement or which relate in any manner whatsoever to this Agreement which cannot be resolved in a reasonable time by discussions between the Parties shall be submitted to arbitration in San Bernardino County, California, before a sole arbitrator (the "Arbitrator") selected from Judicial Arbitration and Mediation Services, Inc., San Bernardino, California, or its successor ("JAMS"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of the California Code of Civil Procedure §§ 1280 et seq. as the exclusive forum for the resolution of such dispute; provided, however, that provisional injunctive relief may, but need not, be sought by either Party in a court of law while arbitration proceedings are pending, and any provisional injunctive relief granted

by such court shall remain effective until the matter is finally determined by the Arbitrator. Final resolution of any dispute through arbitration may include any remedy or relief which the Arbitrator deems just and equitable, including any and all remedies provided by applicable state or federal statutes. At the conclusion of the arbitration, the Arbitrator shall issue a written decision that sets forth the essential findings and conclusions upon which the Arbitrator's award or decision is based. Any award or relief granted by the Arbitrator hereunder shall be final and binding on the Parties hereto and may be enforced by any court of competent jurisdiction. The Parties acknowledge and agree that they are hereby waiving any rights to trial by jury in any action, proceeding or counterclaim brought by either of the Parties against the other in connection with any matter whatsoever arising out of or in any way connected with this Agreement. The Arbitrator shall determine the allocation of associated fees and costs in accordance with applicable law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CLEAR VIEW PRODUCTS SOUTHEAST, INC.

By: [Signature]
Its: CEO

CLEAR VIEW WEST LLC

By: [Signature]
Mary Lezotte
Its: Manager/President

PRIME-LINE PRODUCTS COMPANY

By: [Signature]
Its: President 3/29/12

Contingent upon loan release, please see cover letter.

EXHIBIT A
EXCLUSIONS FROM ASSIGNMENT

Prime-Line's assignment to Clear View West shall not include the rights granted to Prime-Line to sell to retail accounts enumerated in Article 1, Section 1.(b), of the Manufacturing Agreement as:

- Home centers;
- Lumberyards;
- Hardware stores;
- Glass stores (retail and wholesale suppliers);
- Window and door screen stores (wholesale suppliers);
- Residential entrance door manufacturers; and
- As otherwise indicated in that Section of the Agreement.

These rights will be reassigned back to Clear View Southeast.

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EXHIBIT B
MANUFACTURING AND DISTRIBUTION RIGHTS AGREEMENT

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EXHIBIT C

CLEAR VIEW SOUTHEAST CUSTOMERS WEST OF THE MISSISSIPPI RIVER

Delaine James, Austin Texas
Northland Glass, Mason City, Iowa
Nolan Construction, Columbia, Missouri
Tri State, Shreveport, Louisiana
Mid-West Door, Midland, Texas
Tri State Aluminum, 645 S. Foster Dr., Baton Rouge, Louisiana

CLEAR VIEW WEST CUSTOMERS EAST OF THE MISSISSIPPI RIVER

Screen Mobile #116 Jack Kelly 2261 Cork Oak St. Sarasota, Florida

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MANUFACTURING AND DISTRIBUTION RIGHTS AGREEMENT

THIS MANUFACTURING AND DISTRIBUTION RIGHTS AGREEMENT (this "Agreement"), is made and entered into as of the 4th day of March, 2004 (the "Effective Date"), by and between PRIME-LINE PRODUCTS COMPANY, a California corporation ("Prime-Line"), and CLEAR VIEW PRODUCTS, INC., a California corporation ("CV California"), CLEAR VIEW PRODUCTS SOUTHEAST, INC., Florida corporation ("CV Florida"), DARRYL L. AND DENNIS A. GRUBB, individuals (the "Grubb Brothers"), and EMILIA DIKUNOVA-GRUBB, an individual (collectively, "Clear View").

WITNESSETH:

- A. Prime-Line is engaged in the business of manufacturing and distributing building products. Prime-Line's business is primarily focused on the United States, Mexico and Canada. Prime-Line's manufacturing and distribution is focused on the production and sale of its products to consumers through home improvement stores such as Home Depot and Lowe's, and through other retail and wholesale outlets.
- B. Clear View is engaged in the business of manufacturing and distributing specialty building products. At present, Clear View's product line is limited to a retractable screen door and window screen system (the "Product").
- C. Clear View focuses its distribution on sales through a network of independent building improvement contractors (the "Clear View Dealers") who sell the Product as an installed home improvement (contractors and other dealers who now or in the future sell the Product only as an installed device and include the installation services as part of the price to the consumer are referred to herein as "Improvement Contractors"). Many of the Clear View Dealers sell and install the Product as their exclusive or primary enterprise. Some of the Clear View Dealers operate under a limited exclusive wholesale distributorship agreement between such dealers and Clear View (the "Existing Distributorship Agreements").
- D. The Product is distinguishable from competing retractable screen systems because it incorporates a proprietary device (the "Speed Reducer") marketed as *"the original Safe Glide Speed Reducer"* which causes the screen to be withdrawn into its housing in a controlled manner instead of rapidly snapping back when the screen is closed. The Speed Reducer is a patented device, Patent No. 6,591,890 (the "Patent"). Clear View represents and warrants that the Patent and all other intellectual property rights relating to the Product and/or the Speed Reducer (including without limitation one or more pending patent applications) (collectively referred to as the "CV Intellectual Property") are owned by Clear View.

E.D. [Handwritten initials and signatures]

- E. The Product (including the Speed Reducer component) is presently manufactured by Clear View at its corporate office, manufacturing and warehouse facility located at 3845 East Miraloma, Suite B, Anaheim CA 92806 (the "CV West Coast Facility")
- F. The owners and principal officers of Clear View are the Grubb Brothers and Emilija Dikunova-Grubb.
- G. CV Florida is engaged in the same business as Clear View, except that CV Florida's activities are focused on Florida and the Eastern United States.
- H. CV Florida will manufacture the Product (including the Speed Reducer component) at a new office and manufacturing facility located in Jacksonville, Florida ("CV Southeast").
- I. Clear View has granted a non-exclusive perpetual license to CV Florida to manufacture, sell, distribute, market, establish dealerships and otherwise deal in any way whatsoever with the Product (including the Speed Reducer component) and the right to use the CV Intellectual Property to accomplish the preceding; subject, however, to the restrictions in this Agreement.
- J. Clear View and Prime-Line intend to enter into one or more agreements whereby Prime-Line will (i) take over the manufacture of the Product except for the Speed Reducer component, (ii) purchase certain of the assets and inventory of CV California now situated at the CV West Coast Facility, (iii) assume the lease of the CV West Coast Facility and obtain the release of Clear View from liability thereunder, (iv) service the supply needs of the existing Clear View customers, (v) be appointed the exclusive manufacturer and distributor of the Product with respect to all sales in Mexico, Canada and the entire United States except to improvement contractors in the eastern United States, (vi) agree to purchase all of the Speed Reducers it requires for Prime-Line's manufacture of the Product from CV Florida, all as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intended to be legally bound hereby, Prime-Line and Clear View agree as follows:

ARTICLE I

MANUFACTURING AND DISTRIBUTION RIGHTS AGREEMENT

Section 1. Grant of Rights.

Subject to the terms and conditions of this Agreement, Clear View hereby grants to Prime-Line:

(a) An exclusive right to act as the manufacturer and distributor of the Product to the Clear View customers specified in Schedule I attached hereto.

(b) An exclusive right to act as the manufacturer and distributor of the Product and related or derivative products in the United States, Canada and Mexico (the "Territory") to all other customers, including, but not limited to, home centers, lumber yards, hardware stores, glass stores (including both retail and wholesale suppliers), window and door screen stores (including wholesale suppliers) and residential entrance door manufacturers, except:

[Handwritten initials and scribbles]

- (i) Existing Clear View customers with respect to the fulfillment of any orders for the Product placed prior to the Effective Date;
- (ii) Sales of the Product by CV Florida (directly or indirectly) to Improvement Contractors, other than to the Clear View customers specified in Schedule II attached hereto;
- (iii) Manufacturing and distribution of the Speed Reducer for sales to Prime-Line, for use by CV Florida and for all uses unrelated to or not derivative of the Product; and
- (iv) Manufacturing and distribution of the Product by CV Florida for sales of the Product permitted in Article I, Section 1.(b)(i), (ii) and (iii) above, and for all other sales not subject to Prime-Line's exclusive rights under this Agreement.

Section 2. Restrictions on Prime-Line.

Notwithstanding the foregoing, the rights granted to Prime-Line under this Agreement (i) exclude any rights already granted under that certain Agreement for Exclusive Right to Manufacture Products by and between Alumco, Inc., a Washington corporation, and CV California, dated July 18, 2003, a copy of which is attached hereto as Schedule II (the "Alumco Agreement"); (ii) exclude the right to manufacture and distribute the Speed Reducer component of the Product or the right to distribute the Speed Reducer except as part of an assembled Product, or in warranty replacement for a defective Product (except as provided in Article I., Section 9., of this Agreement); and (iii) do not transfer ownership of the CV Intellectual Property to Prime-Line. Notwithstanding anything to the contrary herein, Clear View does grant the right to Prime-Line under this Agreement

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[Handwritten signature and scribbles]

to enter into research and development on plastic molded/injected compc ents for competitive pricing of the Product. Furthermore, in return for this development right, Prime-Line will authorize Clear View to purchase new molded Products at Prime-Line's new lower cost including direct expenses, if applicable.

Section 3. Restrictions on Clear View.

Clear View shall not grant any new rights or licenses to any third party or otherwise permit any third party to manufacture, develop, promote and/or distribute the Product, and/or use the Patent or the Trademark (hereinafter defined in Article I, Section 4., of this Agreement) in violation of this Agreement without the prior written consent of Prime-Line, which shall not be unreasonably withheld or delayed. Clear View represents and warrants to Prime-Line that Schedule IV attached hereto includes all previous agreements that Clear View has granted to third parties in this respect.

Section 4. Trademarks; Logos.

Clear View hereby grants and licenses to Prime-Line to use the trademarks, sales marks, trade names, service marks, trade addresses and logos set forth on Schedule V attached hereto (collectively the "Trademarks") in connection with the sales, marketing, manufacturing and distribution of the Product as permitted in this Agreement.

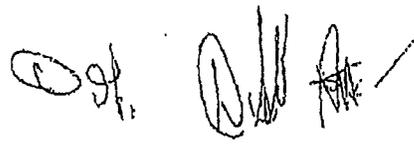
(a) Prime-Line acknowledges that Clear View is the owner of the Trademarks. Prime-Line also acknowledges that nothing in this Agreement shall give Prime-Line any right, title or interest in the Trademarks other than the right to use the Trademarks in accordance with this Agreement.

(b) Prime-Line and Clear View shall register and maintain, or cause to be registered and maintained, in consultation with Prime-Line, the Trademarks during the term of this Agreement at Prime-Line's and Clear View's joint expense. If Prime-Line or Clear View learns of an actual, alleged or threatened unauthorized use or other infringement of the Trademarks or the Patent by others, such party agrees to promptly notify the other party of such unauthorized use or other infringement of the Trademarks. Clear View and Prime-Line shall, at their joint expense, use reasonable efforts to retain, enforce or defend the Trademarks.

Section 5. Ownership of New Products.

(a) Any "Development" to the extent relating to the Product, whether or not in conjunction with Prime-Line, shall be jointly shared by Clear View and Prime-Line and shall be owned by Clear View. The term "Development" shall include new or useful process, manufacture, improvements, discoveries, claims, formulae, processes, trade secrets, technologies and know-how.

(b) Any Development to the extent unrelated to the Product and developed solely by Clear View and/or the Grubb Brothers ("New Products") shall be the exclusive

E.D.-4- 

property of Clear View and/or the Grubbs, subject to the terms and limitations of Article I, Section 7., of this Agreement. Clear View and/or the Grubbs may sell such New Products to any other person or entity.

Section 6. Restrictions on Competing Products.

In the event that Prime-Line desires to manufacture, market, sell, deal in or distribute a retractable screen door or retractable window screen other than the Product, (the "New Device"), Prime-Line shall first notify Clear View and include with the notice sufficient details for Clear View to fully evaluate same. Clear View shall notify Prime-Line within thirty (30) days after receipt of the notice (or receipt of supporting information if not included with the notice) whether it deems the New Device to be competitive to the Product. If Clear View in its reasonable discretion does not deem the New Device to be competitive with the Product, then Prime-Line may manufacture, market, sell, deal in or distribute the New Device. If, however, Clear View does deem in its reasonable discretion the New Device to be competitive with the Product, then Prime-Line may not manufacture, market, sell, deal in or distribute the New Device except in accordance with this Agreement unless and until (i) the expiration of the Term of this Agreement as set forth in Article I, Section 13., of this Agreement; (ii) Prime-Line elects to terminate this Agreement prior to the end of the Term of this Agreement; (iii) Clear View gives its prior written consent, which shall not be unreasonably withheld; or (iv) Prime-Line successfully prevails in an arbitration or litigation proceeding to establish that the New Device is not competitive with the Product. If the New Device is substantially modified, then the modified New Device will be treated a new potentially competing item and shall be subject to the same notice and review procedure.

In the event that Clear View desires to manufacture, market, sell, deal in or distribute a retractable screen door or retractable window screen other than the Product, (the "New Device"), Clear View shall first notify Prime-Line and include with the notice sufficient details for Prime-Line to fully evaluate same. Prime-Line shall notify Clear View within thirty (30) days after receipt of the notice (or receipt of supporting information if not included with the notice) whether it deems the New Device to be competitive to the Product. If Prime-Line does not in its reasonable discretion deem the New Device to be competitive with the Product, then Clear View may manufacture, market, sell, deal in or distribute the New Device. If, however, Prime-Line does in its reasonable discretion deem the New Device to be competitive with the Product, then Clear View may not manufacture, market, sell, deal in or distribute the New Device except to its customers or to CV Florida's customers to whom sales of the Product are permitted under this Agreement unless and until (i) the expiration of the Term of this Agreement; (ii) Prime-Line gives its prior written consent, which shall not be unreasonably withheld; or (iii) Clear View successfully prevails in an arbitration or litigation proceeding to establish that the New Device is not competitive with the Product. If the New Device is substantially modified, then the modified New Device will be treated a new potentially competing item and shall be subject to the same notice and review procedure.

Section 7. First Right of Refusal on New and Competing Products.

~~During the period of time commencing on the Effective Date and ending on the termination date of this Agreement, Prime-Line shall have, and Clear View hereby grants to Prime-Line, a right of first offer to enter into a manufacturing and distribution rights agreement with Clear View with respect to any New and Competing Products.~~

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Section 8. Maintenance of the Patents.

Clear View shall have full responsibility for all patent applications and the maintenance of all patents relating to the Products, including, but not limited to, the Patent. In connection therewith, Clear View shall generally consult with Prime-Line on all future filings with respect to any patents or the Patent pertaining to the Product only and the prosecution and maintenance of such patents and the Patent, including where appropriate or reasonably requested by Prime-Line, providing copies to Prime-Line of any such filing made to, and written communications received from, any patent office relating, in whole or in part, to the patents. If Prime-Line or Clear View learns of an actual, alleged or threatened unauthorized use or other infringement of the patents of the Patent by others, such party agrees to promptly notify the other party of such unauthorized use or other infringement. Clear View shall, at its sole expense, use reasonable efforts to retain, enforce or defend the patents.

Section 9. Supply Agreement.

Clear View shall meet Prime-Line's production requirements at Eight and No/100 Dollars (\$8.00) per Speed Reducer. If Clear View should be unable to meet Prime-Line's production requirements for a period of thirty (30) days, Prime-Line is hereby granted the right to manufacture the Speed Reducer. Prime-Line must continue to pay to Clear View Eight and No/100 Dollars (\$8.00) for Speed Reducer unit manufactured (or other negotiated price) minus the direct costs of manufacturing the Speed Reducer. Prime-Line will cease production of the Speed Reducer after notification from Clear View that its production capacity is back to the agreed upon volume of Prime-Line's requirements. Prime-Line hereby agrees to pay Clear View Eight and No/100 Dollars (\$8.00) for each Speed Reducer unit. This price per unit is subject to change annually based upon the market value of the raw materials used in production of the Speed Reducer. Clear View will pass through to Prime-Line this cost without additional margins being added.

Section 10. Confidentiality Agreement.

As a condition precedent to any of the obligations provided for in this Agreement, Prime-Line and Clear View shall enter into that certain Confidentiality Agreement attached hereto as Schedule VI.

Section 11. Expense.

Prime-Line shall bear all expenses, including, but not limited to taxes, customs duties, tariffs and other governmental levies and charges, incurred by it, levied or assessed against it on account of sales of the Products.

Handwritten initials and signatures: E.D., O.S., R.V., and a signature.

Section 12. Technical Information.

Clear View will transfer to Prime-Line copies of any technical manuals, manufacturing guidelines and similar documentation; subject however, to Prime-Line's obligation (i) to return and cease using same upon expiration of the Term of this Agreement or earlier termination of this Agreement; and (ii) to use such information only in furtherance of this Agreement. Such data will remain Clear View's intellectual property and will be considered confidential information subject to the terms of the Confidentiality Agreement.

Section 13. Term and Termination.

The term of this Agreement will remain in effect as long as Prime-Line provides its "reasonable best efforts" in marketing, manufacturing and distributing the Product (the "Term of this Agreement").

ARTICLE II

ASSET TRANSFERS

Section 1. Transfers of Certain Assets.

Subject to the terms and conditions set forth in this Agreement, Clear View hereby agrees to transfer, assign, convey and deliver to Prime-Line at the Closing (as defined in Article II, Section 4., of this Agreement) free and clear of all liens, mortgages, security interests, encumbrances of every kind, character, and description whatsoever, the following assets (collectively, the "Transferred Assets"):

(a) all inventory of raw materials, work-in-progress, parts, scrap, and finished goods used or to be used in Clear View's business, whether they are located on, at or upon, or in transit to, Clear View's place of business in Anaheim, California (the "Inventory"); and

(b) all equipment and machinery located in Clear View's place of business in Anaheim, California, excluding those specified in Schedule VII attached hereto (the "Included Equipment").

During the Term of this Agreement, Prime-Line shall be authorized to use the molds and tooling owned by Clear View and kept at the various tool machine companies for use in manufacturing the Product; provided, however, that molds and tooling relating to the Speed Reducer are excluded from this license except as referred to in Article I, Section 9., of this Agreement.

-7- E.D. [Signature] [Signature]

Section 2. Purchase Price.

In full consideration for Clear View's sale of the Transferred Assets, Prime-Line shall pay as the "Purchase Price" the sum of (a) the cost of the Inventory determined by Clear View's vendor invoices and existing bills of material and based on a physical inventory count on the date of Closing (hereinafter defined); and (b) the cost of the Included Equipment, tools, dies and molds based on the original cost paid by Clear View. Prime-Line shall pay the Purchase Price in two equal installments: (1) one at time of the Closing (hereinafter defined); and (2) a second within ninety (90) days of the Closing.

Section 3. Taking of Inventory.

A complete physical count of the Inventory shall be taken on the date of the Closing. Such Inventory shall be conducted in a manner mutually acceptable to Clear View and Prime-Line including observation by Prime-Line officials and/or its CPA and the Inventory shall be valued at Clear View's cost, which shall be determined by Clear View's vendor invoices and existing bills of material. The Inventory shall be in writing and indicate the identity of each item and the value of each item, as well as the total cost value. A list of the completed Inventory shall be attached hereto as Schedule VIII.

Section 4. Closing.

The sale and purchase provided in this Agreement shall be consummated at a closing (the "Closing") to be held at the offices of Prime-Line in San Bernardino, California, on the 4th day of March, 2004, or at such place, time and date as the parties hereto shall mutually agree upon.

Section 5. Items to be Delivered at the Closing.

At the Closing, Clear View shall convey the Transferred Assets to Prime-Line and deliver to Prime-Line a bill or bills of sale warranting Clear View to be the owner of and covering all of the Transferred Assets free and clear of liens or encumbrances of any kind or nature.

Section 6. Transfer Taxes.

Clear View shall pay and promptly discharge when due the entire amount of any and all sales, transfer and use taxes in connection with the sale of the Transferred Assets by Clear View to Prime-Line.

Section 7. Assumption of Liabilities

PRIME-LINE SHALL NOT ASSUME OR AGREE TO ASSUME AND SHALL NOT ACQUIRE ANY LIABILITY OR OBLIGATION OF ANY KIND OR NATURE OF

E.D. *D.J.* *P.L.* *R.A.*

CLEAR VIEW, DIRECT, CONTINGENT OR OTHERWISE, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT.

Section 8. Termination of Existing Clear View Employees.

Clear View shall terminate the employment of its existing employees prior to the Closing. Caddo Hardware Company, Inc., a subsidiary of Prime-Line, or another affiliate of Prime-Line, shall offer employment to Clear View's existing employees as of the date of the Closing; provided, however, that nothing stated herein shall limit the right of Prime-Line and its affiliates to terminate the employment of any such employees or to reduce or otherwise modify the position, responsibilities, compensation or benefits of any such employees at any time.

Section 9. Assumption of Existing Clear View Lease.

Prime-Line shall assume Clear View's existing obligation under that certain lease agreement between Clear View and ~~Bebe Co~~, dated as of ~~September 20, 2001~~ for its remaining term of 7 months, and shall secure from the landlord of such lease a release from any post-Closing liability of (i) Clear View for such lease (other than environmental liabilities), and (ii) any personal guarantors of such lease.

ARTICLE III

GENERAL PROVISIONS

Section 1. Representations, Warranties and Covenants of Clear View and its Shareholders.

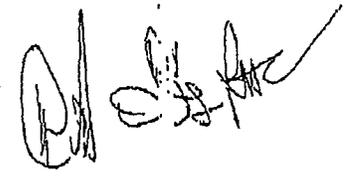
Clear View and the Grubbs, as Clear View's sole shareholders: (the "Shareholders"), jointly and severally represent, warrant and agree as follows:

(a) ~~CV~~ California is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

(b) Clear View's other corporations are duly organized, validly existing and in good standing under the laws of the state in which their physical headquarters are located.

(c) This Agreement is, and the documents referred to herein will be upon execution and delivery, the legal, valid and binding obligation of Clear View and enforceable against Clear View in accordance with their respective terms.

(d) To the best knowledge of the Grubb Brothers and Clear View, Clear View has good and marketable title to all of the Transferred Assets and the Transferred

ED. 

Assets are free and clear of all pledges, mortgages, liens, encumbrances and security interests of any kind.

(e) Clear View is not in default with respect to any order, writ, injunction, or decree of any court or federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

(f) Clear View has performed and abided by all obligations required to be performed by it to the date hereof and will continue to abide and perform such obligations, and Clear View is not in default under any license, permit, order, authorization, grant, contract, agreement, lease, or other document, order, or regulation to which it is a party or by which it is bound.

(g) Clear View has full power to execute and perform this Agreement and to convey the Transferred Assets as herein provided, and such execution and performance does not and will not violate, conflict with or result in the breach of any term, condition or provision of (i) any provisions of its Articles of Incorporation or bylaws, (ii) any contract to which it is a party or to which it is subject, (iii) any material existing law, ordinance, or governmental rule or regulation to which Clear View is subject or (iv) any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority which is applicable to Clear View. The execution, delivery and performance of this Agreement by Clear View have been duly authorized by all necessary corporate action (including, but not limited to, Shareholders' and Board of Directors' approval).

(h) To the best knowledge of the Grubb Brothers and Clear View, nothing in this Agreement, any statements delivered to Prime-Line attached hereto, any schedule or exhibit attached hereto which has been supplied by or on behalf of Clear View, or by any of Clear View's directors, Shareholders, agents or officers in connection with the transactions contemplated by this Agreement, contains any untrue statement of a material fact, or omits any statement of a material fact necessary in order to make the statements contained herein or therein not misleading.

(i) Clear View has filed and paid all taxes with respect to the Transferred Assets. There are no tax deficiencies or claims outstanding with respect to the Transferred Assets.

(j) Attached hereto as Schedule IX are true and complete copies of Clear View's financial statements as of December 31, 2003 (the "Financial Statements"). The Financial Statements (including the notes thereto) present fairly Clear View's financial condition and results of operations Clear View at and for the periods indicated, and have been prepared in accordance with standard accounting principles applied on a consistent basis. Clear View has no material liabilities contingent or otherwise, except as disclosed in the Financial Statements or as incurred as a result of the normal and ordinary operation of its business since December 31, 2003.

Handwritten signatures and initials, including "B.D." and "D.J. Bick".

(k) Attached hereto as Schedule X is a complete and accurate listing of Clear View's current vendors and creditors. There are no current or past vendors or creditors to whom any law, rule or regulation requires the delivery of notice or from whom any form of consent is required in connection with the undertaking of the transactions contemplated by this Agreement. In addition, Clear View is not engaged in or is a party to any legal action, investigation, arbitration or other proceeding before any court, administrative agency or arbitrator with any of these vendors and/or creditors. Clear View and the Shareholders shall jointly and severally indemnify Prime-Line against all claims made by these vendors and/or creditors against Prime-Line. This representation shall survive the Closing.

(l) Any and all actions of any kind against Clear View are described in Schedule XI attached hereto.

Section 2. Representations, Warranties and Covenants of Prime-Line

Prime-Line represents and warrants to Clear View as follows:

(a) Prime-Line is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

(b) Prime-Line has the corporate power, authority and legal right to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Prime-Line have been duly authorized by all necessary corporate action. Upon execution of this Agreement by Prime-Line and delivery of this Agreement by Prime-Line to Clear View, this Agreement will constitute the legal, valid and binding obligation of Prime-Line, enforceable against Prime-Line in accordance with its terms.

(c) To its best knowledge, the execution, delivery and performance of this Agreement by Prime-Line does not and will not violate, conflict with or result in the breach of any term, condition or provision of: (i) any material existing law, ordinance, or governmental rule or regulation to which Prime-Line is subject or (ii) any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority which is applicable to Prime-Line.

(d) The execution, delivery and performance of this Agreement by Prime-Line does not and will not violate, conflict with or result in the breach of any term, condition or provision of Prime-Line's articles of incorporation and/or bylaws.

Section 3. Survival of Representations and Warranties.

The representations, warranties and covenants set forth in this Agreement shall survive the Closing Date and shall not be affected by any investigation, verification or approval by any party hereto or by anyone on behalf of any of such parties.

Section 4. Prime-Line's Indemnification Obligations.

Prime-Line agrees to indemnify and hold Clear View harmless from and against all damages to and liabilities resulting from or relating to demands, claims, actions or causes of action, assessments or other losses, costs and expenses relating thereto, including reasonable out-of-pocket attorneys' fees and expenses by reason of or resulting from (a) a breach of any material representation or warranty of Prime-Line contained in or made pursuant to this Agreement, (b) the failure of Prime-Line to perform or observe any material term, provision or covenant or agreement to be performed or observed by it pursuant to this Agreement, or (c) any actions, lawsuits or proceedings (actual or threatened and relating to activities of Prime-Line) that relate to any breach by Prime-Line of the representations, warranties and covenants made by Prime-Line hereunder.

Section 5. Clear View's Indemnification Obligations.

Clear View hereby agree to jointly and severally indemnify, defend and hold Prime-Line harmless from and against all damages to and liabilities resulting from or relating to demands, claims, actions or causes of action, assessments or other losses, costs and expenses relating thereto, including reasonable out-of-pocket attorneys' fees and expenses by reason of or resulting from (a) a breach of any material representation or warranty of Clear View and the Shareholders contained in or made pursuant to this Agreement, (b) the failure of Clear View to perform or observe any term, provision or covenant or agreement to be performed or observed by it pursuant to this Agreement, (c) any actions, suits or proceedings (actual or threatened and relating to activities of Clear View or the Shareholders) that relate to any breach by Clear View or the Shareholders of the representations and warranties made by Clear View and the Shareholders hereunder, (d) any third-party claims, actions, lawsuits or proceedings (actual or threatened and relating to activities of Clear View) arising as a result of or in connection with the manufacture, use, handling and sale of the Inventory, and ~~(e) any and all claims that this Agreement violates the Existing Distributorship Agreements and/or the Atumco Agreement.~~

Section 6. Limitation on Obligations.

No claim for indemnification will be made by a party to this Agreement with respect to any individual item of liability or damage unless the aggregate of all such claims by such party shall be in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the "Basket"). In the event the aggregate of claims asserted by one party to this Agreement against another party to this Agreement exceeds the Basket, the claiming party, upon proof of entitlement to recovery, shall be entitled to recover from the first dollar of such claims.

E.D. [Signature]

E.D. [Signature]

Section 7. Dispute Resolution.

Any dispute relating to this Agreement between the parties shall be determined as follows:

(a) The parties to this Agreement will first use their best efforts to resolve any dispute by agreement or mediation.

(b) If any controversy or claim arising out of this Agreement cannot be settled by the parties to this Agreement within thirty (30) days by agreement or mediation after the first written notice invoking this Article III, Section 7., of this Agreement, the controversy or claim shall be settled by arbitration in San Bernardino County, California. Within twenty (20) days after written request for arbitration shall be made by a party on one side to the party on the other, the parties shall jointly select an arbitrator. If the parties are unable to agree upon an arbitrator, an arbitrator shall be appointed as provided by the American Arbitration Association in accordance with its Commercial Arbitration Rules or such other law as may be effective concerning arbitration of disputes. The arbitrator shall hear and decide the dispute, adhering to the American Arbitration Association Commercial Dispute Resolution Procedures or such other law as may be effective concerning arbitration of disputes. The hearing on the dispute shall be held no later than sixty (60) days after the request for appointment of an arbitrator. The party to this Agreement on the prevailing side in the arbitration shall be awarded its expenses of the arbitration, including the reasonable cost of experts, evidence and legal counsel. Any award made by a majority of such arbitrators shall be final, binding and conclusive on all parties to this Agreement hereto for all purposes, and judgment may be entered thereon in any court having jurisdiction thereof. Whenever any action is required to be taken under this Agreement within a specified period of time and the taking of such action is materially affected by a matter submitted to arbitration, such period shall automatically be extended by ten (10) days plus the number of days that are taken for the determination of the matter by arbitration.

Section 8. Expenses.

Except as otherwise expressly provided in this Agreement, each party to this Agreement shall pay its own expenses in connection with the authorization, preparation, execution, and performance of this Agreement, including, without limitation, all fees and expenses of agents, representatives, counsels, accountants, consultants, and fiduciaries.

Section 9. Entire Agreement.

This Agreement, (and all Schedules attached hereto), any loan agreements entered into prior to the Effective Date and/or attached hereto as Schedule XII and the Consulting Agreements attached hereto as Schedule XIII, sets forth the entire agreement between the parties with respect to its subject matter hereof, merges all prior discussions as of the Closing. Oral explanation or information by either party to this Agreement to the other shall not alter the meaning or interpretation of this Agreement.

[Handwritten signatures and initials]

Section 10. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to the conflict of laws principles thereof.

Section 11. Modifications.

This Agreement may only be modified by a written document executed by both parties. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

Section 12. Notices.

All notices required or permitted to be given hereunder shall be in writing and shall be delivered by hand, by facsimile if the party to whom the notice is being sent has a receiving device in his office, or if dispatched by prepaid air courier or by registered or certified airmail, postage prepaid, addressed as follows:

If to Prime-Line, to:

Prime-Line Products Company
5405 North Industrial Parkway
San Bernardino, California 92407
Attn: President
Facsimile: (909) 379-0188

with a copy to:

Johanson Berenson LLP
1792 Second Street
Napa, California 94559
Attn: David R. Johanson, Esq.
Facsimile: (707) 226-6881

If to Clear View, to:

Clear View Products, Inc.

Attn: President
Facsimile: _____

Notices shall be deemed served when received by addressee, or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Either party may change its address for notices by giving the other party notice of such change pursuant to this Article III, Section 12., of this Agreement.

Section 13. Severability.

If any provision of this Agreement is determined by a court to be unenforceable, the parties shall deem the provisions to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will

E.D. O.S. [Handwritten initials]

be severed from this Agreement, and the remainder of the Agreement will continue in effect.

Section 14. Attorneys' Fees and Costs.

In the event that any party to this Agreement takes any action to enforce the terms of this Agreement, the party prevailing in any such action shall have the right to recover from the other party all of its reasonable attorneys' fees, court costs and expenses incurred in connection with such action.

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E.D. O.S. [Signature]

Section 15. Counterparts.

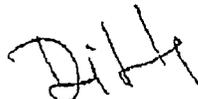
This Agreement may be executed in counterparts, each of which shall be an original of the party whose signature appears on such counterpart and both of which together shall constitute one instrument. The parties agree that a signature by facsimile shall be treated as an original signature.

IN WITNESS WHEREOF, the undersigned duly authorized representative of each party has executed this Manufacturing and Distribution Rights Agreement as of the date first written above.

CV CALIFORNIA: CLEAR VIEW PRODUCTS, INC.

By: 
Emilia Dikunova-Grubb
Its: President

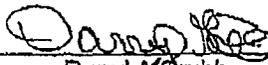
CV FLORIDA: CLEAR VIEW PRODUCTS SOUTHEAST, INC.

By: 
Emilia Dikunova-Grubb
Its: President

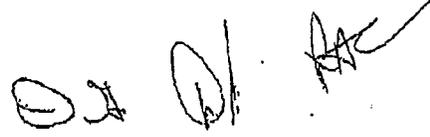
CLEAR VIEW'S SHAREHOLDERS: DENNIS A. GRUBB


Dennis A. Grubb

DARRYL A. GRUBB


Darryl A. Grubb

[Signatures continued on next page]

- 16 - E.D. 

EMILIA DIKUNOVA-GRUBB

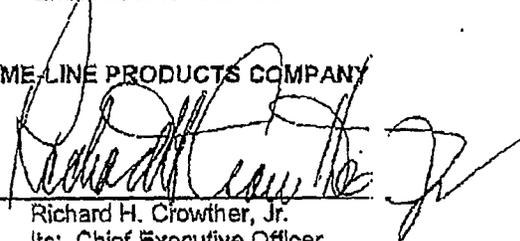


Emilia Dikunova-Grubb

PRIME-LINE:

PRIME-LINE PRODUCTS COMPANY

By:



Richard H. Crowther, Jr.
Its: Chief Executive Officer



Handwritten initials or signature

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TIMOTHY A. LUNDELL, ESQ. (#66651)
Lundell & Spadafore
1065 Asbury Street
San Jose, CA 95126
(408)292-1717

Attorney for Petitioner
CLEAR VIEW WEST, LLC

FILED
LOS ANGELES SUPERIOR COURT
APR 04 2012
John Ciarka, Executive Officer/Clerk
By CHER MASON, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

| | | |
|-------------------------------------|---|---------------------|
| Clear View West, LLC |) | Case No. BS136138 |
| |) | |
| Petitioner, |) | STIPULATION FOR |
| |) | ORDER GRANTING |
| vs. |) | PETITION TO CONFIRM |
| |) | ARBITRATION AWARD; |
| Clear View Products Southeast, Inc. |) | AND ORDER AND |
| |) | JUDGMENT THEREON |
| |) | |
| Respondent. |) | |

IT IS HEREBY STIPULATED, by and between Petitioner Clear View West, LLC, and Respondent Clear View Products Southeast, Inc., by and through their respective counsel, as follows:

1. Respondent Clear View Products Southeast, Inc. hereby enters general appearance in the within proceeding.

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RECEIVED: 03/22/12 09:05:26 AM
RECEIPT #: CCH47728002
DATE PAID: 03/22/12 09:05:26 AM
PAYMENT: \$115.00
CHECK#: 415.00
CASE#: 415.00
CHANGE:
CASH:

STIPULATION FOR ORDER CONFIRMING ARBITRATION AWARD AND ORDER AND JUDGMENT THEREON

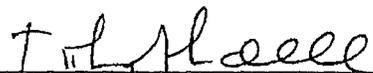
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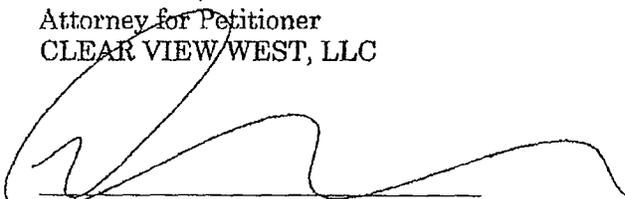
2. The Court may, and the Court is hereby requested to, make its order granting petitioner's Petition to Confirm Contractual Arbitration Award, and to enter judgment thereon.

3. Petitioner hereby waives the recovery of the attorney's fees to which it would otherwise be entitled in connection with the confirmation of the arbitration award only.

Dated: 3/12/12


TIMOTHY A. LUNDELL
Attorney for Petitioner
CLEAR VIEW WEST, LLC

Dated: 3/9/2012


Dimitri Panagopoulos
Attorney for Respondent
CLEAR VIEW PRODUCTS
SOUTHEAST, INC.

ORDER AND JUDGMENT

The Court having read and considered the foregoing Stipulation of the parties, and Petitioner and Respondent having stipulated, on the terms set forth therein, to the granting of Petitioner's Petition to Confirm Contractual Arbitration Award, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the Corrected Final Award in JAMS Arbitration Case Reference Number 1110013618, dated February 8, 2012, a true and correct copy of

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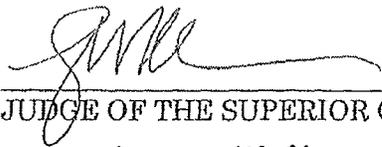
which is attached hereto and made a part hereof by this reference, be, and the same is hereby, confirmed in every respect.

2. That Petitioner Clear View West, LLC shall recover from Respondent Clear View Products Southeast, Inc. the sum of \$84,972.82, together with pre-judgment interest thereon from February 8, 2012, to the date of entry of judgment herein;

3. That Petitioner has waived the attorney's fees to which petitioner would otherwise be entitled in connection with the confirmation of the arbitration award only; and

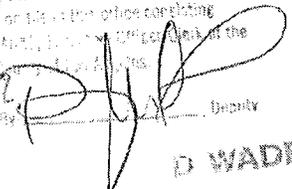
4. Petitioner shall recover its costs of suit herein incurred.

Dated: APR 04 2012



JUDGE OF THE SUPERIOR COURT
Gregory W. Alarcon



I certify that this is a true and correct copy of the
of Stipulation or file in the office containing
in 34 County of Los Angeles, State of California, filed at the
County Clerk's Office on MAY 17 2012.
Date _____ By  Deputy
D WADE

31/05/12

JAMS ARBITRATION CASE REFERENCE NO. 1110013618

CLEAR VIEW WEST, LLC, a California limited liability company,

Claimant,

and

CLEAR VIEW PRODUCTS SOUTHEAST, INC., a Florida corporation,

Respondent.

CORRECTED FINAL AWARD

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Arbitrator:

Hon. Candace D. Cooper, Ret.
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Place of Arbitration: Los Angeles, California

Date of Final Award: January 22, 2012

Date of Corrected Final Award: February 8, 2012

PROCEDURAL HISTORY

On February 15, 2011, Clear View West, LLC ("CVW"), filed a Demand for Arbitration before JAMS against Clear View Products Southeast, Inc. ("CVSE") (the "Demand"). The Demand requested: 1) A determination and declaration of the respective territorial rights and restrictions of CVW and CVSE for manufacture and distribution of the Screens under the terms of the Manufacturing Agreement and the Assignment Agreement; 2) A determination and declaration of the permissible manufacturing characteristics of the Clear View Retractable Screens as manufactured by CVW, under the terms of the Manufacturing Agreement and the Assignment Agreement; 3) A determination declaration of the liability of CVSE for failing to take adequate steps, or any steps, and to enforce its patent rights under the '890 and the '506 patents; 4) A determination and declaration of the rights of CVW to: a) purchase Speed Reducers and other components necessary for the manufacture of the Screens from the respective manufacturers thereof, and b) secure a second source for the purchase of Speed Reducers, subject to the payment of royalties to CVSE, as well as other molded parts during the suspension of sale of such products to CVW; 5) The award of damages owing to CVW for the violative conduct of CVSE arising under items 1, 3, and 4 above; 6) The award of attorney's fees and costs to CVW under the terms of the Agreements.

CVSE filed a Response and Counterclaim for a declaratory judgment and other relief against CVW and specifically requested that the arbitrator: 1) grant judgment in respondent CVSE's favor and against CVW on CVW's Claim and relief; 2) declare CVW willfully materially breached the Assignment Agreement and Manufacturing Agreement by *inter alia*, failing to incorporate CVSE's product standardization features into the Clear View product line; 3) dissolve CVW's rights under the Assignment Agreement and

Manufacturing Agreement; 4) declare CVW false advertised that it is the owner of the Clear View product line as well as the '505 and '890 patents; 5) declare CVW has willfully infringed CVSE's trademark and patent rights; 6) declare CVW is in material breach of at least one of the Manufacturing and Assignment Agreements for, inter alia, failing to procure a new distributor agreement with a non-compete agreement and credit application before Lorge Fabrication, Inc. switched from the Clear View product line to the Stoett Industries, Inc. product line; 7) declare CVW made defamatory statements to the public regarding validity and/or enforceability of the '505 and '890 patents; 8) declare CVW fraudulently induced Respondent to enter into the Assignment Agreement by knowingly entering into a separate agreement with Prime Line that is in conflict with at least one of the Manufacturing and Assignment Agreements; 9) declare CVSE's territorial rights extend west of the Mississippi River, independent of the Assignment Agreement and Manufacturing Agreement; 10) dismiss CVW's Claim for Relief with prejudice for failing to provide a copy of the agreement between Claimant and Prime Line, which is set forth in the Assignment Agreement; 11) award CVSE monetary damages for CVW's unlawful conduct arising under items 1-8 hereinabove; 12) treble the award of monetary damages to CVSE for CVW's continued and willful patent and trademark infringing activities; 13) award CVSE reasonable attorney fees and costs; and 14) grant such other and further relief to CVSE as the Arbitrator deems appropriate.

An Arbitration hearing was held on September 14, 15, and 16. The following witnesses testified in person at the hearing: Daniel Warren Lezotte, Samuel Steinberg, Kristin Michelle Stewart, Mary Lezotte, Lewis Kasner, Andrew Lezotte, James Dennis Bailey, Jr., Jeffrey Williams, Robert Dias, Barbara Cadmus. The deposition of Darryl Grubb was received in evidence. Trial Exhibits 1 through 88 were received into evidence.

FACTUAL HISTORY

The following is a statement of those facts found by the Arbitrator to be true and necessary to the Award. This statement of facts does not cite all facts or evidence considered by the arbitrator, but references specifically those facts most pertinent to the resolution of the dispute. To the extent that this recitation differs from any party's

position, that is the result of determinations as to credibility, determinations of relevance, burden of proof considerations, and the weighing of the evidence, both oral and written.

In 2002, Darryl Grubb started Clear View Products, Inc. ("CVP"), a California corporation, which produced and sold retractable screens and related products, including motorized screens in California¹. CVP owns three US patents relating to a hydraulic speed reducer for retractable screens². This device was an innovation that "provides a smooth, slow retraction of the screen, instead of a sudden unrestrained retraction that occurs with a snap without the speed reducer." (Respondent's Pre-Arbitration Brief, p. 2) The patents are valid and subsisting³. One of CVP's customers in California was Prime Line Products Company ("Prime Line")⁴.

CVP decided to change its business model and expand nationally. On October 24, 2003, Clear View Products, Southeast, Inc. ("CVSE") was incorporated in Florida where it began manufacturing operations "to increase distribution and open Florida and the east coast up." (Grubb Depo., p. 20). CVSE owns the federally registered trademark CLEARVIEW RETRACTABLE SCREENS, Registration Number 3272079, Registered July 31, 2007. ("Trademark") (Ex. 38) All CVSE retractable screen products are sold under the Trademark.

On or about March 4, 2004, CVSE entered into a Manufacturing and Distribution Rights Agreement ("Manufacturing Agreement") with Prime Line. (Ex. H) The Manufacturing Agreement granted manufacturing and distribution rights for the "Product" to Prime Line⁵. The description of the "Product" is contained in the following paragraphs of the "Witnesseth" portion of the document:

¹ Clear View Products is owned by Darryl L. Grubb, Dennis A. Grubb and Emilia Dikunova-Grubb.

² US Patent numbers: D502, 203 (Ex. D); 6, 591,890 (Ex. E); 6, 854,505 (Ex. F).

³ Two of the three patents (Ex.'s E, F) are currently being reexamined by the US Patent & Trademark Office, pursuant to a petition for Reexamination filed by Stoett Industries, Inc., a defendant in a patent infringement lawsuit (United States District Court, Middle District of Florida, Civil Action No.: 3:10-cv-775-J-32JBT) filed by CVSE. (Ex. G.)

⁴ The record is not clear as to the precise corporate relationship between Prime Line and Screen Pro's. The arbitrator will refer throughout this award to Prime Line and has assumed that the corporate distinction between the two entities is not relevant to the outcome of this dispute.

⁵ At the time of the execution of the Manufacturing Agreement, CVSE had no registered trademarks.

B. Clear View is engaged in the business of manufacturing and distributing specialty building products. At present, Clear View's product line is limited to a retractable screen door and window screen system (the "Product")⁶.

¶¶¶

D. The Product is distinguishable from competing retractable screen systems because it incorporates a proprietary device (the "Speed Reducer") marketed as "*the original Safe Glide Speed Reducer*" which causes the screen to be withdrawn into its housing in a controlled manner instead of rapidly snapping back when the screen is closed.

The Manufacturing Agreement contains the following additional relevant provisions:

Section 1. Grant of Rights.

Subject to the terms and conditions of this Agreement, Clear View hereby grants to Prime-Line.

- (a) an exclusive right to act as the manufacturer and distributor of the Product to the Clear View customers specified in Schedule 1 attached hereto.
- (b) An exclusive right to act as a manufacturer and distributor of the Product and related for derivative products in the United States, Canada and Mexico (the "territory") to all other customers, including, but not limited to home centers, lumber yards, hardware stores, glass stores (including both retail and wholesale suppliers wholesale suppliers window and door screens stores and residential entrance door manufacturers, except [certain limitations not relevant to this proceeding]:

¶¶¶¶¶

Section 8. Maintenance of the Patents.

Clear View shall have full responsibility for all patent applications and the maintenance of all patents relating to the Products, including, but not limited to, the Patent. ... If Prime-Line or Clear View learns of an actual, alleged or threatened unauthorized use or other infringement of the patents or the Patent by others, such party agrees to promptly notify the other party of such unauthorized use or other infringement. Clear View shall, at its sole expense, use reasonable efforts to retain, enforce or defend at the patents.

In 2003, the Lezotte family established Clear View of the Bay Area, Inc., ("Bay Area") as the northern California distributor for the Clear View Retractable Screen⁷.

⁶ The product in 2004 did not have any of the features described below as "Standardization Features." There is no document that describes the specifications for the current screen as manufactured by CVSE. (Barbara Cadmus Testimony "BC-T")

⁷ Bay Area and CVW are owned and operated by Dan Lezotte, Mary Lezotte and their son, Andrew Lezotte.

Initially, Bay Area purchased their screens from CVP. In 2004, the Lezottes learned that CVP had sold the manufacturing rights for the screens to Prime Line and Bay Area began purchasing from them. (Daniel Lezotte Testimony "DL-T")

By 2009, the screens manufactured by Prime Line did not contain any of the disputed Standardization Features⁸. Although Prime Line initially used the heat-welded spline, because of reported problems, Prime Line engaged a consultant and modified the configuration of the spline sometime in 2006 to 2007.

On January 23, 2009, Prime Line had a booth at the International Builders trade show in Las Vegas. The display at the booth introduced new logos for the Prime Line screen product and a new color scheme. CVSE had split the cost and provided materials for the booth. Barbara Cadmus, Daniel Grubb and Robert Dais of CVSE, attended the Trade Show and worked the booth together with the Prime Line representatives. They noticed the logo and color scheme changes as well as the differences between the Prime Line screen and the screen manufactured by CVSE. They were angry about the changes but elected not to address the issue while on the floor at the show. The final evening of the trade show, the Prime Line and CVSE representatives met for a very contentious dinner where CVSE raised their concerns. Lewis Kasner of Prime Line recalls an objection being raised to the new logos and the color scheme, but recalls nothing was said about the Standardization Features. Dias, Cadmus and Grubb recall the Standardization Features being part of the discussion.

The CVSE representatives returned to Florida and contacted attorneys to discuss what action to take regarding the changes made by Prime Line. Ultimately no legal action was taken against Prime Line and there is no evidence regarding what discussions, if any, occurred between Prime Line and CVSE about incorporating the Standardization Features. However the evidence does establish that shortly after the Las Vegas trade show, Prime Line advised CVSE they intended to sell their Clear View retractable screen operations.

Over the course of several months, Prime Line engaged in discussions with several prospects including Lorge Fabrications, Inc. and HIS [Home Improvement Specialists] regarding their possible acquisition of the retractable screen portion of

⁸ A more detailed description of the "Standardization Features" is included below.

Prime Line's business. There was also a discussion between CVSE and Prime Line about the possibility that CVSE would buy back Prime Line's rights under the Manufacturing Agreement. However, none of these discussions progressed.

On November 10, 2009 Debra S. Hill, General Counsel for CVSE, wrote to Prime Line:

"Prime Line has engaged in various improper actions in regards to the trademarks, trade dress and proprietary product. While we first noticed this in our Las Vegas meeting, we permitted the behavior to facilitate your sale of the business."

As you are aware, the success of market a product through a dual distribution method relied on consistency. The customer must get the same product, under the same marks at any location.

Please be advised from this day forward Clear View demands strict compliance with the Manufacturing and Distribution Agreement ... and its federally protected trademark, trade dress and copyrights.

¶¶¶¶

You have made the following unauthorized changes:

1. Use of unauthorized spline.
2. Failure to use Super Slick.
3. Failure to properly reinforce the screen material.

We recognize that this will take time and money for this transition. Therefore, we grant you thirty days from the date of this letter to make all the necessary changes to bring the product back in line with the authorized trade dress of Clear View's proprietary product." (Emphasis added) (Exhibit 3)

Sometime in November/December 2009, Prime Line approached Dan Lezotte and offered their retractable screen business for sale. (LT-D) The Lezottes agreed to the transaction and formed CVW in 2010 to carry out the purchase. A February 16, 2010 letter to CVSE from Richard H. Crowther, President of Prime Line memorialized discussions with CVSE and stated, "As we discussed, Prime Line will assign its rights and responsibilities under the Agreement to Clear View West LLC, a California limited liability company in formation." (Ex. 4)

On March 24, 2010, Prime Line, CVSE and CVW entered into a "Master Assignment and Assumption Agreement" ("Assignment Agreement") whereby CVW received an assignment from Prime Line of its rights under the Manufacturing Agreement. (Ex. 1) Prime Line and CVW also entered into an asset purchase agreement whereby CVW acquired the equipment and inventory utilized by Prime Line

in the manufacture of the Screens.

The Assignment Agreement contained the following relevant provisions:

A. Pursuant to Article III Section 11, of that certain Manufacturing and Distribution Rights Agreement, dated March 4, 3004, among Clear View Southeast and Prime Line (the "Manufacturing Agreement"), Clear View Southeast and Prime Line have agreed that Prime Line shall assign its rights and responsibilities under the manufacturing Agreement to Clear View West, except as otherwise indicated in Exhibit A of this Agreement.

3. Amendments to the Manufacturing and Distribution Rights Agreement.

(a) Any future improvements to the current Clear View Southeast product line by Clear View West must be submitted to Clear View Southeast for its prior written approval. ...

¶

(c) Clear view Southeast customers West of the Mississippi River shall remain the customers of Clear View Southeast. All such customers, who remain as dealers only, shall be identified and listed on Exhibit C to the Manufacturing Agreement prior to the execution of this agreement. The list set forth on Exhibit C shall be comprehensive and complete as of the date of execution of this Agreement. Except as listed in Exhibit A, after the date of this Agreement, any customers/dealers that Clear View Southeast desires to sell to West of the Mississippi River must first be approved by Clear View West and Clear View Southeast must have written approval to sell to such customers.

(d) "... Except as listed in Exhibit A, after the date of this Agreement, and customer/dealers that Clear View Southeast desires to sell to West of the Mississippi River must first be approved by Clear View West and Clear View Southeast must have written approval to sell to such customers."

¶

(f) Product standardization is highly desirable. Any and all product modifications made by Clear View Southeast to the products that are the subject of the Manufacturing Agreement shall be incorporated into the product design and manufacturing by Clear View West.

(Emphasis in original)

Exhibit A of the Assignment Agreement provided in it's entirety:

"Prime-Line's assignment to Clear View West shall not include the rights granted to Prime-Line to sell to retail accounts enumerated in Article I, Section 1. (b) of the Manufacturing Agreement as:

- Home centers;
- Lumberyards';
- Hardware stores;
- Glass stores (retail and wholesale suppliers);
- Window and door screen stores (wholesale suppliers)

Residential entrance door manufacturers; and
As otherwise indicated in that Section of the Assignment. [All East of the
Mississippi]
These rights will be reassigned back to Clear View Southeast. "

On May 25, 2010, Grubb sent an email to CVW requesting that they eliminate the word "invisible" from all sources. (Ex. 9) Prime Line had added the word "invisible" to their screens and marketing material. Dan Lezotte agreed to the request, but testified this was the first indication he received from CVSE raising any objections to the Prime Line version of the Clear View retractable screen.

A May 25, 2010 letter from Grubb to Dan Lezotte stated:

I also want to address the implementation of a uniform Clear View Retractable Screen System product line. As the initial sale negotiations progressed between Clear View West and The Screen Pros, there were numerous conversations regarding Clear View West bring the Clear View Retractable Screen System manufacturing current to the design specifications that are mandatory. The following is a list of product line implementations that need to be made, no later than August 1, 2010.

- All Clear View Retractable Screen System Product line must be built with the spline that has been designed for our product.
- All Clear View Retractable Screen System Product line must have edge welding on the top and bottom of the screen panel. (Ex. 64)

Dan Lezotte does not recall receiving this communication.

A June 9, 2010, email from Lezotte to Grubb informed that CVW was "moving forward with changing the corporate website back to 'retractable' screen as well as going back to the original blue and yellow colors and the 'wave' logo. This will just take us some time." (Ex. 30) The overall tone of the email from Lezotte is cordial and casual and does not mention the May 25, 2010 letter from Grubb.

On August 6, 2010, Lezotte received a letter sent as "on final attempt to rectify the situation of your continued use of an unauthorized hidden magnet system in the manufacturing and distribution of all Clear View Retractable Screen System French Doors." (Ex. 10)

An undated letter from the Lezotte's to Grubb informs him that CVW offer the internal magnets as an option, but "some customers don't want to pay the extra money so they get external magnets." The letter continued:

"We have no idea about the spline, sealing, and rail issues you raise. And since you won't talk to us, it's no wonder we don't know about these things. We bought all equipment from Screen Pros the way it was set up, and hired their crew for a few weeks and brought them to San Jose to help get us up and going. The screens we have been installing for the past 7 years are doing great and we just don't get service calls. We are baffled as to why you are raising these issues now." (Ex. 11)

On September 16, 2010, CVSE caused a "Notice of Termination of the Master Assignment and Assumption Agreement" to be sent to counsel for CVW. (Ex. 35). The stated basis for the termination was CVW's alleged failure to incorporate the "Standardization Features" into the screen it manufactured and distributed per the Assignment Agreement.

DISCUSSION

The "Standardization Features"⁹

The Standardization Features are certain features in the construction of the Clear View Retractable Screen that have not been incorporated into CVW's product. The "Standardization Features" are central to this dispute. The features and the differences between the CVSE screen and the CVW screen are as follows:

Edge Welded Spline.

The CVSE spline is a ½ " wide spline that is heat welded to a free side of the screen that attached to a pull bar. A heat-welding machine with a wider heating element is used to achieve the welding width. The spline is bonded to the screen throughout the entire width of the screen overlapping the spline. The temperature of the heating element is sufficient to cause the overlapping portions of the screen and spline to melt together into a relatively smooth integral strip. After proper heat welding, the screen is no longer a separate layer that can be peeled away. Once installed, there is a small portion of the spline visible along the edge of the screen. (Robert Dias Testimony) CVSE started using the edge-welded spline in approximately 2003 – 2003.

⁹ The "Speed Reducer," the innovative patent-protected device owned by CVSE, is not one of the disputed standardization features. Both CVSE and CVW use the product.

In 2007, because of reported problems with the edge-welded spline, Prime Line developed a fiberglass rod spline. In this system, a pocket or "hem" is created in the screen edge and a solid fiberglass rod inserted the length of the screen. (Ex. 15) After installation, the pocket spline leaves a visible edge along the length of the screen. This visible edge is wider and more noticeable than the portion visible with the CVSE edge-welded spline.

Reinforced taped edges

CVSE welds a proprietary Teflon tape to the top and bottom edges of the screens. The tape reinforces the edges, resists fraying and facilitates sliding motion. The tape is heat bonded to the edge of the screen and the heat-welding machine has a heating element of sufficient width to melt the entire width of the tape into the screen. The temperature of the heating element is sufficient to cause the tape and screen to melt together into one relatively integral band. CVSE began using the Teflon tape in approximately 2005.

CVW applies a different type of tape to the edges of their screens. After attachment the tape used by CVW does not "melt" into the screen.

"Super Slick" rails.

CVSE applies a custom-formulated powder coat on its rails. The powder, called "Super Slick", a proprietary product manufactured by Spraylat, comes in various colors to match the colors of its pull bar and housing. The powder contains a special additive that provides a lubricous finish, which reduces friction between the screen edges and the rails, requiring less silicon spray to facilitate sliding motion. Because the Super Slick finish creates less drag on the screen, it helps prolong the life of the screen, especially in windy climates. Super Slick was introduced by CVSE around 2005.

CVW does not use the "Super Slick" product on the rails. They continue to use the original powder coat process, which requires providing the end user with a silicone spray to occasionally lubricate the rails.

"Hidden Magnet" system.

CVSE uses a hidden magnet in its French doors. The hidden magnet is an internal magnet system which is pressure fitted inside the pull bar. Because it is an enclosed component, it withstands the elements, thus providing many years of

continued maintenance free use. A third party owns the patent and CVSE purchased the rights to use the product East of the Mississippi River. CVSE modified the retractable screen after March 24, 2010 to include the recessed magnet system on all French doors. (Grubb Depo, pg. 111)

CVW offers a hidden magnet as an option to the end users. The end users pay extra for the feature. They do not get their magnets from the same manufacturer/vendor.

CONTRACT ISSUES

The threshold question to be decided is whether the terms of the Assignment Agreement (which incorporated the Manufacturing Agreement) requires CVW to incorporate the above Standardization Features into the Clear View Retractable Screen it manufactures. We begin the evaluation with a summary of some of the basic rules of contract interpretation. "The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties." (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.) "The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (Civ.Code, § 1638; *Segal v. Silberstein* (2007) 156 Cal.App.4th 627, 633.) "Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. [Citation.] Such intent is to be inferred, if possible, solely from the written provisions of the contract. [Citation.] The "clear and explicit" meaning of these provisions, interpreted in their "ordinary and popular sense," unless "used by the parties in a technical sense or a special meaning is given to them by usage" [citation], controls judicial interpretation. [Citation.] Thus, if the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning. [Citations.] [Citation.]" (*Santisas v. Goodin* (1998) 17 Cal.4th 599, at p. 608; *Gil v. Mansano* (2004), 121 Cal.App.4th 739, at p. 743.)

"The mutual intention to which the courts give effect is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject

matter of the contract; and the subsequent conduct of the parties." (*Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912; see also *Manufactured Home Communities, Inc. v. County of San Luis Obispo* (2008) 167 Cal.App.4th 705, 714.)

In the event of an ambiguity, extrinsic evidence is admissible to explain the meaning of a contract if "the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." (*Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37.) In order to determine whether the extrinsic evidence is admissible, the trial court first makes "a preliminary consideration of all credible evidence offered to prove the intention of the parties." (*Id.* at pp. 39-40.) "If the court decides, after considering this evidence, that the language of a contract, in the light of all the circumstances, 'is fairly susceptible of either one of the two interpretations contended for...' [citations], extrinsic evidence relevant to prove either of such meanings is admissible." (*Id.* at p. 40.)

The court must explain the contract "by reference to the circumstances under which it was made, and the matter to which it relates." (Civ.Code, § 1647.) Any uncertainty or ambiguity, "must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it." (*Id.*, § 1649.) The court may also look to the acts of the parties that show what they believed the contract to mean. (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 749, p. 838.) That is, "the construction given [a contract] by the acts and conduct of the parties with knowledge of its terms, and before any controversy has arisen as to its meaning, is admissible on the issue of the parties' intent." (*Southern Cal. Edison Co. v. Superior Court* (1995) 37 Cal.App.4th 839, 851) This rule is not limited to the joint conduct of the parties. " 'The practical interpretation of the contract by one party, evidenced by his words or acts, can be used against him on behalf of the other party, even though that other party had no knowledge of those words or acts when they occurred and did not concur in them. In the litigation that has ensued, one who is maintaining the same interpretation that is evidenced by the other party's earlier words, and acts, can introduce them to support his contention.' " (*Ibid.* quoting 3 Corbin on Contracts (1960) § 558, p. 256.) (*DVD Copy Control Ass'n, Inc. v. Kaleidescape, Inc.* (2009) 176 Cal.App.4th 697, 712-713)

Failure to Adopt Standardization Features

CVSE's position is that section 3(f) of the Assignment Agreement requires CVW to immediately incorporate the standardization features. As noted above, the section provides:

"Product standardization is highly desirable. Any and all product modifications made by Clear View Southeast to the products that are the subject of the Manufacturing Agreement shall be incorporated into the product design and manufacturing by Clear View West."

On the face of it, this language is ambiguous. First of all "standardization" is not a defined term in the Agreement and there is no direct or indirect reference to any technical specifications that must be adopted to clarify the term and indeed no such specification exists¹⁰. Darryl Grubb, owner and President of CVSE, admitted in his deposition: "I don't – there is – in our agreements, nothing specifies a particular part. (Grubb Depo, pg. 83: 11-12) He also acknowledged that there was no type of specification sheet, plans or diagrams that showed how the retractable screen was manufactured including the Standardization Features. He was believed there was specification sheet that showed the "product with all of the items connected, related to it." (Grubb Depo, pg. 86)

Additionally, section 3(f) is internally inconsistent. The first clause says standardization is "highly desirable" while the second clause says that product modifications "shall be" incorporated by CVW. This ambiguous language does not provide any clarity or guidance as to what is required under the contract. A further ambiguity exists regarding whether the section operates prospectively or retroactively.

CVSE offers that extrinsic evidence proves "at the time of the Assignment Agreement all parties knew the features of the CVS retractable screen product. All parties also knew that CVS ... did not authorize any other product to be sold under the CLEARVIEW RETRACTABLE SCREENS trademark." (RPAB, pg. 6, 7) There is evidence to support the conclusion that CVW knew the features of the retractable

¹⁰ The "Clear View Specification Sheet" contains no reference to or description of any of the Standardization Features. (Exhibit 31)

screen manufactured by CVSE. However, the evidence necessary for this case is evidence proving that CVW knew and agreed that the Assignment Agreement required CVW to incorporate the Standardization Features into the screen it was producing pursuant to the Assignment Agreement.

The evidence presented does not support this conclusion. Robert Dias, CVSE Operations Manager, testified that in Las Vegas they tried to tell Louis Kasner, VP of Prime Line, about the compliance problems, but he would not listen. Dias did not know if Kasner communicated the concerns and issues raised in Las Vegas to CVW. Although the standardization language was added to the Assignment Agreement because of the fact that Prime Line was not in compliance with CVSE's demands, Dias did not personally speak to CVW regarding the Standardization Features. The evidence is that CVSE did not immediately demand that Prime Line adopt the Standardization Features because they were trying to sell their screen business. Dias also testified that Grubb was going to give CVW some time to get up and going before he hit them with the standardization. (RD-T)

Barbara Cadmus, Controller of CVSE, testified that CVSE offered to provide training or start up assistance, but CVW did not accept that help. CVSE did provide a proposal informing CVW what starting inventory they needed and information on how to set up their factory. However there was no contact between CVSE and CVW through the end of March, when they entered into the contract. (BC-T)

Grubb testified that he felt all of the information necessary to adopt the standardization features was provided by CVSE to CVW before November 12, 2010. (Grubb Depo, pg. 153) Grubb also testified that Dan Lezotte was advised of his obligation to incorporate all the Standardization Features in to his product before November 12, 2010. He identifies the Section 3(f) standardization text as the location in the contract is where the obligation is expressed. (Id., pg 153) It is Grubb's opinion that the language in the Assignment Agreement is "pretty self-explanatory" and "between the standardization of the product, and it's my product line and they don't have the option to pick and choose what they want to incorporate. (Pg. 154) Grubb was of the opinion that Dan Lezotte was "very much aware of" the product features. (Pg. 180)

Dan Lezotte testified that prior to the signing to the Assignment Agreement, there was no discussion with Prime Line or with CVSE about the Standardization Features or the need to change the Prime Line method of manufacturing the screens. He had never heard of "Super Slick" paint. Lezotte does use hidden magnets, but from a different vendor. Lezotte now provides hidden magnets as an option for the purchaser. Lezotte is now aware of the differences between the products, but prior to August 6, 2010 letter from Grubb, other than the hidden magnets there had been no discussion about the remaining Standardization Features or CVW's obligation to adopt them. (Ex. 10)

Andrew Lezotte testified that he does not recall any discussions about the Standardization Features with CVSE. Neither Prime Line nor Screen Pro ever told CVW about any objections to their screens raised by CVW. The objective when setting up CVW's manufacturing process was to duplicate the product created by Prime Line and the Prime Line staff came to do the training. CVSE did not ask them to incorporate the standardization features until four or five months after they opened. He also understood that Section (f) was to apply to future modifications.

Mary Lezotte testified that all of the actual manufacturing transition from Prime Line to CVW was accomplished after the deal was signed. CVSE was very helpful with the transition and provided lists of its vendors, recommended an accounting system and sent suggestions for the layout of the factory floor. However, the product they were planning to manufacturing was to be a duplicate of the product produced by Prime Line and they were unaware of any objections that CVSE had to the Prime Line screen.

Samuel Steinberg was a former customer/dealer for Prime Line and CVW. After the change of ownership, he received the same product from CVW that he had been getting for the past 8 years from Prime Line. He first saw the edge welded tape in 2005, He heard about the "Super Slick" rails at a round table meeting, but they were never part of the product delivered by Prime Line.

CVSE states and the evidence supports the argument that Section 3(f) was included in the Assignment Agreement "to address CVSE's concerns about its licensee's production and sales of nonconforming retractable screens under the ... trademark." (RPAB, pg. 7) Grubb testified that it was his personal belief that Section 3(f)

of the Assignment Agreement together with Exhibit 1 [the Manufacturing Agreement] required CVW to incorporate the standardization features. (Grubb depo, pg. 110) However, given the totality of the evidence, Grubb's testimony that Dan Lezotte was advised of the obligation to incorporate the standardization features prior to November 2010 is not credible.

The evidence in the hearing reflects the CVSE's representatives individual or subjective understanding and intent, but " "[t]he parties' undisclosed intent or understanding is irrelevant to contract interpretation." [Citation.]" (*Steller v. Sears, Roebuck and Co.*, (2010) 189 Cal.App.4th 175, 184-185; See also *Founding Members v. Newport Beach* (2003) 109 Cal.App.4th 944, 956.)

In this analysis my task is to construe the contract as it exists. " 'We do not have the power to create for the parties a contract that they did not make and cannot insert language that one party now wishes were there.' [Citation.]" (*Abers v. Rounsavell* (2010) 189 Cal.App.4th 348, 361; *Third Story Music, Inc. v. Waits* (1995) 41 Cal.App.4th 798, 809 [" 'The courts cannot make better agreements for parties than they themselves have been satisfied to enter into or rewrite contracts because they operate harshly or inequitably' ".]) If it was the intention of CVSE that the Standardization Features be incorporated into the CVW screen, they should have brought it to the attention of CVW and included clear and unambiguous language in the contract. The record in this case supports the conclusion that this intention was, perhaps intentionally, not brought to the attention of CVW until months after the Assignment Agreement was executed. The failure of CVW to incorporate the Standardization Features in the screen it was manufacturing was not a breach of the Assignment Agreement.

Exclusive License and Territory Issues

CVW alleged that CVSE has violated its "exclusive right to act as manufacturer and distributor of the Product." This contract interpretation issue was created by the modification of the territorial rights provisions of the Manufacturing Agreement by the Assignment Agreement and Exhibit A thereof. The analysis begins with Section 1(b) of the Manufacturing Agreement, which provided:

Section 1. Grant of Rights.

Subject to the terms and conditions of this Agreement, Clear View hereby grants to Prime-Line.

- (c) an exclusive right to act as the manufacturer and distributor of the Product to the Clear View customers specified in Schedule 1 attached hereto.
- (d) An exclusive right to act as a manufacturer and distributor of the Product and related for derivative products in the United States, Canada and Mexico (the "territory") to all other customers, including, but not limited to home centers, lumber yards, hardware stores, glass stores (including both retail and wholesale suppliers wholesale suppliers window and door screens stores and residential entrance door manufacturers, except [certain limitations not relevant to this proceeding]:

The Assignment Agreement modifies this provision as follows.

(c) Clear view Southeast customers West of the Mississippi River shall remain the customers of Clear View Southeast. All such customers, who remain as dealers only, shall be identified and listed on Exhibit C to the Manufacturing Agreement prior to the execution of this agreement. The list set forth on Exhibit C shall be comprehensive and complete as of the date of execution of this Agreement. Except as listed in Exhibit A, after the date of this Agreement, any customers\dealers that Clear View Southeast desires to sell to West of the Mississippi River must first be approved by Clear View West and Clear View Southeast must have written approval to sell to such customers.

(e) " ... Except as listed in Exhibit A, after the date of this Agreement, and customer/dealers that Clear View Southeast desires to sell to West of the Mississippi River must first be approved by Clear View West and Clear View Southeast must have written approval to sell to such customers."

Exhibit "C" lists six specific customers of CVSE located west of the Mississippi River.

Exhibit "A" adds the following additional language:

"Prime-Line's assignment to Clear View West shall not include the rights granted to Prime-Line to sell to retail accounts enumerated in Article I, Section 1 (b) of the Manufacturing Agreement as:

- Home centers;
- Lumberyards';
- Hardware stores;
- Glass stores (retail and wholesale suppliers);
- Window and door screen stores (wholesale suppliers);
- Residential entrance door manufacturers; and
- As otherwise indicated in that Section of the Assignment (all East of the Mississippi).

These rights will be reassigned back to Clear View Southeast. "

On July 1, 2010, CVSE entered into an agreement with Clear View of Texas ("Texas"), identified in the agreement as "Authorized Wholesale Door Supplier/Distributor¹¹." (Ex. 25) Pursuant to this agreement, CVSE granted Texas a license to "market and sell at wholesale the Clear View products within the territory described in the document attached hereto as Exhibit "A". The agreement also provided:

3. Territory. ... [Texas] must establish and maintain a dealer network consisting of at least 3 separate dealers within the territory.

3) [Texas] must avoid direct marketing activities outside the geographical boundaries of the territory specified in this agreement or be in breach of this agreement. Sales derived from a website do not violate the intent of this paragraph as long as [Texas] does not sell Clearview products outside the territory specified in this agreement.

"Exhibit A" describes the territory as, "The Greater Dallas & Fort Worth area of Texas, USA" and adds, "From time to time, there may be some Dealer crossover sales from pre-existing dealers. All disputes amongst any crossover Dealers must be settled amongst the participating parties" and "With consideration in 90 days of Oklahoma territory."

A second document entitled "Authorized Wholesale Product Distributor Information" was executed on August 30, 2010 between CVSE and Texas. (Ex. 26) Above the signatures is the following sentence: "I agree and accept these guidelines and restrictions. This agreement will remain in effect along side and for the period of the signed Wholesale Distribution Agreement. The agreement states that Texas should conduct itself at all times as a "Wholesale Distribution point."

The following were among the list of "Agreement Restrictions":

- o Clearview of Texas agrees not to solicit for or distribute to any customers east of the Mississippi River, United States of America.
- o Clearview Texas agrees not to solicit for or distribute to any customers in the state of California, United States of America, without the prior written consent from Clearview product Southeast, Inc.

¹¹ There was also evidence that CVSE licensed another distributor, Clear View of Maui, owned and operated by Dan Grubb, brother of Darryl Grubb.

- o Clearview of Texas may not solicit any active Clearview dealers that are under contract with Clearview West, the current owner of the manufacturing and distribution rights, west of the Mississippi River, United States of America.

Evidence was introduced at the hearing that some of CVW's dealers in California have received direct solicitations from Texas. (Ex.'s 21, 34) (Steve Steinberg testimony) CVW also has a dealer in Austin that has complained about running into Texas at home shows and other locations.

CVW claims that as a result of the contract with Texas, CVSE has "violated CVW's exclusive territorial rights for the manufacture and sale of Clearview retractable screens." (Claimant's Post Arbitration Brief, p. 2) ("CPAB")

CVSE denies that it has violated any territorial rights under any agreement with CVW because "Clear View of Texas undeniably falls within one or more of the categories of business set forth in Exhibit A of the Assignment Agreement" and "Clear View of Texas qualified as a window and door screen store, where retractable screens for windows and doors are sold to consumers." (CPAB, p. 11) CVSE argues, "CVSE regained the right to sell to any and all of the listed types of accounts, west of the Mississippi, without restriction. Under 3(d), CVS may rightfully sell to dealers/customers West of the Mississippi, so long as the dealers/customers fall within one of the several exceptions set forth in Exhibit A."

CVSE's authority to contract and/or sell to other parties west of the Mississippi River is defined by the provisions of the Assignment Agreement, which allows CVSE to sell to "retail accounts" of the listed variety. Within that list "Glass stores" has a bracket indicating "wholesale or retail" and "Window and door screen stores" has a bracket indicating "wholesale suppliers." CVSE argues that Texas falls in the category of "window and door screen stores" and the evidence allows that characterization. The bracket adding "wholesale suppliers" expands the limitation to "retail accounts" for window and door screen stores. Therefore, CVSE argues a sale to Texas will not violate the Assignment Agreement.

The agreement with CVSE not only granted Texas a "license to market and sell at wholesale the Clear View Products within the Territory described" but also stated that Texas "must establish and maintain a dealer network consisting of at least three

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separate dealers within the territory." In addition to the dealer network, according to CVSE, under any other dealer not under contract can purchase products from Texas. CVSE also maintains this dealer network requirement does not violate the Assignment Agreement and they further anticipate that Texas will begin manufacturing the Clear View screen.

The modification of the exclusive license granted to Prime Line caused by the Assignment Agreement returned significant rights to CVSE and allows the Texas contract. The evidence is that this interpretation of the Assignment Agreement differs materially from the rationale given to Lezotte around the time of the execution of the Assignment Agreement. Dan Lezotte was told the modification was intended to allow CVSE to sell to big box retailers around the country (and CVW would do the installations on those screens). Barbara Cadmus provided a similar rationale. (BC-T: Ex. 7) The sale to Clear View of Texas does not fit this description. However, the express language of the contract trumps this evidence and controls the result. The simple fact is that the Assignment Agreement significantly reduced the "exclusive" nature of the original license granted in the Manufacturing Agreement. The Texas agreement does not violate the Assignment Agreement.

From the evidence presented it appears possible that Texas is violating some of the provisions of its agreement with CVSE, however I do not feel that this issue was part of the issues to be resolved in the arbitration and a positive finding to that effect would not render the underlying Texas/CVSE contract violative of the Assignment Agreement¹².

Maintenance of the Patent

"Section 8. Maintenance of the Patents" of the Assignment Agreement provides:

Clear View shall have full responsibility for all patent applications and the maintenance of all patents relating to the Products, including, but not limited to,

¹² For example, Exhibit A of the Texas contract describes the "Territory" of the Texas agreement as "The Greater Dallas & Fort Worth area of Texas, USA." CVSE suggests that this means both the Dallas Fort Worth "area" and the United States "area". This is not the "ordinary and popular" interpretation of the above language. If the entire United States was intended, then the Dallas/Ft. Worth language would be redundant.

the Patent. ... If Prime-Line or Clear View learns of an actual, alleged or threatened unauthorized use or other infringement of the patents or the Patent by others, such party agrees to promptly notify the other party of such unauthorized use or other infringement. Clear View shall, at its sole expense, use reasonable efforts to retain, enforce or defend at the patents.

CVW requests a "declaration of the liability of CVSE for failing to take adequate steps, or any steps, and to enforce its patent rights under the '890 and the '506 patents." The evidence reflects that on August 13, 2010, CVW's counsel wrote Debra Hill requesting that CVW initiate "patent infringement litigation with Stoett immediately." (Ex. 87) On August 30, 2010, CVSE filed a complaint in the United States District Court for the Middle District of Florida, against Stoett Industries, Inc. and Lorge Fabrication, Inc. alleging patent infringement.

The evidence presented in the hearing does not establish a violation of the "Maintenance of the Patents" provision.

TRADEMARK INFRINGEMENT

The Lanham Act defines a trademark as including "any word, name, symbol, or device, or any combination thereof" used by a person "to identify and distinguish his or her goods ... from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown." (15 U.S.C. § 1127.) The purpose of the Lanham Act is two-fold: first, to protect consumers from confusion, mistake or deception regarding the nature and quality of goods and services, and second, to prevent impairment of the goodwill and reputation of trademark owners. (*Intel Corp. v. Terabyte Int'l, Inc.* (9th Cir. 1993) 6 F.3d 614, 618-19) ("The public relies upon the mark so that 'it will get the product which it asks for and wants to get.' ") (Citation omitted.).

CVSE alleges that CVW product infringes the CLEARVIEW RETRACTABLE SCREENS trademark because the CVW screens do not incorporate the Standardization Features. "To rightfully sell retractable screen under the CVS registered trademark, CVW should have sold the retractable screen products that were licensed for sale under the Manufacturing Agreement. ... The Manufacturing Agreement or the Assignment Agreement does not authorize the production and sale under CVSE's trademark of any

product other than CVS's Product." (RPAB, pg. 11) "Not only is protection of CVSE's good will involved, but CVSE owes an affirmative duty to the public to assure that in the hands of CVW, the trademark continues to represent the CVSE product. (RPAG, pg. 12)

An action for trademark infringement arises where a person, without the consent of the registrant, uses in commerce any registered mark in connection with the sale of any goods and where such use is likely to cause confusion. (15 U.S.C. § 1114(1)(a).) Distribution of a product that does not meet the trademark holder's quality control standards may result in the devaluation of the mark by tarnishing its image. If so, the non-conforming product is deemed for Lanham Act purposes not to be the genuine product of the holder and its distribution constitutes trademark infringement. (*Warner-Lambert Co. v. Northside Dev. Corp.* (2d Cir. 1996) 86 F.3d 3, 6)

In order to grant a trademark license, the licensor must maintain sufficient control over the licensee. That control is necessary to meet the public expectations of quality and source of the goods. (*See Miller v. Glen Miller Prods. Inc.*, (C.D. Cal. 2004) 318 F.Supp.2d 923, 937) ("A trademark owner has an affirmative duty to supervise and control the licensee's use of its mark, in order to protect the public's expectation that all products sold under a particular mark derive from a common source and are of like quality").

Consequently, where the licensor fails to exercise adequate quality control over the licensee a "naked license" may result and "a court may find that the trademark owner has abandoned the trademark, in which case the owner would be estopped from asserting rights to the trademark." (*Moore Business Form v. Ryu* (5th Cir, 1992) 960 F.2d 486, 489) (See also, *FreecycleSunnyvale v. Freecycle Network*, (9th Cir. 2010) 626 F.3d 509, 515, [quoting *Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, (9th Cir. 2002) 289 F.3d 589) A claimant may not advance an infringement claim after granting a naked license to his mark. (*Barcamerica*, 289 F.3d at 589; *Saul Zaentz Co. v. Wozniak Travel, Inc.* (N.D. Cal., 2008) 627 F.Supp.2d 1096, 1119)

Such abandonment "is purely an 'involuntary' forfeiture of trademark rights," for it need not be shown that the trademark owner had any subjective intent to abandon the mark. Accordingly, the proponent of a naked license theory "faces a stringent standard"

of proof. (*Moore*, 960 F.2d at 489.)

Independent of the contract analysis above, CVW contends the facts in this case support abandonment due to "naked" licensing in this case. Given the stringent standard of proof with respect to a "naked license" argument, and given the fact that CVSE has actively pursued infringement actions against third parties, I would not find that there has been an abandonment of the license in total, but rather that CVSE cannot pursue an infringement claim against CVW based on the facts of this dispute.

In this case as discussed above, there was no contractual obligation to include the Standardization Factors in the CSW screens. Additionally, there are no other quality control measures in either the Manufacturing Agreement, the Assignment Agreement, in practice or in the evidence produced at the hearing. There is no evidence that CVSE directly or indirectly controlled or supervised the manufacturing of the screens by CVW. CVSE did not even provide written specifications or any other writing identifying the Standardization Features and allowed the Prime Line version of the screens to be manufactured and distributed for years. The Agreements lack any provisions for routine inspections, requirements for the adoption of any particular design, or any other control related provisions.

The undisputed fact of the contentiousness that accompanied the demise of the business relationship between CVSE and Prime Line suggests that CVSE should have been much more precise and rigorous when drafting the contractual provisions requiring "standardization". This suggestion is true for both contractual and trademark protection. When a discrete product such as a drug, an automobile part, or a retractable screen is involved, it is not difficult to set specific standards or quality controls. CVSE failed to do so and now cannot maintain belated efforts to coerce compliance with their design standardization requirements. Their efforts can best be described as "too little, too late."

This holding is intended to be limited to the facts of this case and to the holding that CVSE cannot pursue an infringement action against CVW because of the failure to incorporate the "Standardization Features." It is not intended to hold that CVSE cannot maintain such an action in the future given the prospective application of Section 3(f). Contractually, CVSE has the authority to request that future modifications be incorporated into the screens produced under the license agreements. Provided CVSE

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employs the requisite control measures at that time, trademark protection may also be available. It is also not the intention of this ruling to compromise CVSE's ability to protect its patent and trademark rights against third parties that do not have any contractual relationship with CVSE.

REMAINING CONTENTIONS.

Additional demands by CVW not specifically addressed above were for a determination and declaration of the rights of CVW to: "a) purchase Speed Reducers and other components necessary for the manufacture of the Screens from the respective manufacturers thereof, and b) secure a second source for the purchase of Speed Reducers, subject to the payment of royalties to CVSE, as well as other molded parts during the suspension of sale of such products to CVW."

In this dispute, the arbitrator has found that CVW did not breach the Assignment Agreement. Therefore the contract remains in force and effect and CVSE's failure to perform its obligations under the contract will constitute a breach of that agreement. This includes the obligation under Section 9 of the Manufacturing Agreement to meet CVW's production requirements for Speed Reducers.

Additional demands by CVSE not addressed or otherwise resolved above were: 1) declare CVW is in material breach of at least one of the Manufacturing and Assignment Agreements for, inter alia, failing to procure a new distributor agreement with a non-compete agreement and credit application before Lorge Fabrication, Inc. switched from the Clear View product line to the Stoett Industries, Inc. product line; 2) declare CVW made defamatory statements to the public regarding validity and/or enforceability of the '505 and '890 patents; 3) declare CVW fraudulently induced Respondent to enter into the Assignment Agreement by knowingly entering into a separate agreement with Prime Line that is in conflict with at least one of the Manufacturing and Assignment Agreements; 4) dismiss CVW's Claim for Relief with prejudice for failing to provide a copy of the agreement between Claimant and Prime Line, which is set forth in the Assignment Agreement.

These demands were not proven and are denied.

ATTORNEY'S FEES AND COSTS

As directed by the Interim Award, the parties filed evidence and argument on the issue of attorney's fees and costs. On December 21, 2011, the parties submitted letter brief and a further in-person hearing was waived.

The parties were in agreement on the general legal principles that apply to the issue of prevailing party and the award of costs and fees. "In an action on a contract, section 1717 permits an award of attorney's fees to the prevailing party. "[T]he party prevailing on the contract shall be the party who recovered a *greater relief in the action on the contract*. The court may also determine that there is no party prevailing on the contract for purposes of this section." (§ 1717, subd. (b), italics added.) A declaratory relief action that seeks to establish the parties' rights under a contract is an action to enforce the contract. (*Excess Electronix v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 710-711.)

When a party obtains a " 'simple, unqualified win' " by completely prevailing on, or defeating, the contract claims in the action and the contract contains a provision for attorney's fees, the successful party is entitled to attorney's fees as a matter of right, eliminating the trial court's discretion to deny fees under section 1717. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 875-876 (*Hsu*)). "If neither party achieves a complete victory on all the contract claims, it is within the discretion of the trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees." (*Scott Co. of California v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1109 (*Scott*)). "Because the statute allows such discretion, it must be presumed the trial court has also been empowered to identify the party obtaining 'a *greater relief*' by examining the results of the action in relative terms: the general term 'greater' includes '[l]arger in size than others of the same kind' as well as 'principal' and '[s]uperior in quality.' [Citation.]" (*Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1151.)

When determining the prevailing party under section 1717, the trial court "is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial

Based on the above legal principles and an analysis of the outcome of the arbitration, CVW is the prevailing party in the arbitration. In arriving at this determination, I did not use the methodology of counting the claims presented for either side and assessing who was more persuasive on each issue. My evaluation of comparative litigation success was more concerned about the weight and importance of the issues raised in the litigation than the number of issues and/or claims presented. The principal issues in the case involved CVW's rights to manufacture and distribute the Clear View Screens and the scope of CVSE's right to further license the Clear View Screen under the Assignment Agreement. Viewing the case from a more global perspective, on the contract issues CVW was found not to have violated any of the provisions of the Assignment Agreement; which would have allowed CVSE to demand any alteration in their manufacturing or distribution practices. Because CVW was not in breach of the Manufacturing or Assignment Agreement, CVSE is required to continue to provide speed reducers in accordance with their obligations under the Assignment Agreement. The only material contractual issue that CVSE prevailed on was the interpretation of CVSE's territorial rights under the Assignment Agreement. Overall, CVW had greater comparative litigation success on the contract issues.

I also find CVW to be the prevailing party on the trademark infringement claims. CVSE requested a declaration that CVW had willfully infringed CVSE's trademark rights. This award holds that CVW's failure to incorporate the CVSE's "Standardization Features" does not infringe the CVSE's trademark. CVSE prevailed on the trademark issues to the extent that the award did not declare the trademark to be abandoned vis-à-vis other manufacturers and distributors who were not parties to this arbitration. Because fees will be awarded under section 1717, this award will not undertake the "exceptional case" analysis for an attorney's fees award under the Lanham Act. (15 U.S.C. § 1117)

With the exception of the CVSE's territorial rights under the Assignment Agreement, the remaining contentions decided in this award were not the primary focus of the litigation and were collateral to the principal issues decided in the arbitration. Individually or collectively, those remaining contentions do not change the evaluation of prevailing party. However, case law also provides that apportionment of fees can be

appropriate because of the unsuccessful pursuit of an issue. (*Boquilon v. Beckwith* (1996) 49 Cal. App. 4th 1697) In this regard, because the territorial question was a significant issue and CVW did not prevail on this claim, a 25% reduction of the total amount of attorneys fees awarded is warranted.

In determining the amount of the fee, an arbitrator may consider "the hourly billing rate of counsel, the nature of the litigation, the skill required, the attorney's experience, the success of the attorney's efforts and the time spent in preparation of the case for litigation. (*Niederer v. Ferreira* (1987) 189 Cal.App.3d 1485, 1507) The evidence submitted by CVW in support of the request for attorney's fees and costs is reasonable given these factors. CVW is entitled to attorney's fees in the amount of \$50,706.00 (75% of \$67,608.00), costs in the amount of \$4,153.96 and expert witness fees in the amount of \$6,659.85. Because the Assignment Agreement provided for reimbursement of "expenses incurred in connection with connection with such action," the award will include arbitration expenses in the amount of \$23,453.01.

FINAL AWARD

It is adjudged, decreed and ordered that:

1. Clear View West did not violate the terms of the Assignment Agreement by failing to incorporate the Standardization Features in the Clear View Retractable Screens it manufactured.
2. Clear View West did not infringe the trademark "CLEARVIEW RETRACTABLE SCREENS."
3. Clear View Southeast did not violate the terms of the Assignment Agreement by licensing Clear View of Texas to sell and distribute the Clear View Retractable Screens.
4. Clear View West is the prevailing party and due \$50,706.00 for attorneys' fees and \$34,266.82 for costs and expenses.

This Final Award resolves all claims submitted for decision in this proceeding.

Dated: February 8, 2012



Hon. Candace D. Cooper, Ret.
Arbitrator

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Clear View West, LLC vs. Clear View Products Southeast, Inc.
Reference No. 1110013618

I, Jo-El Fequiere, not a party to the within action, hereby declare that on February 08, 2012 I served the attached CORRECTED FINAL AWARD on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, CALIFORNIA on February 08, 2012.


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