

# Exh. K

**UNITED STATES DISTRICT COURT**  
Northern District of Indiana  
South Bend Division

HEARTLAND RECREATIONAL	)	
VEHICLES, LLC,	)	
Plaintiff,	)	
v.	)	CASE NO.: <u>3:08-cv-490 RLM CAN</u>
	)	
FOREST RIVER, INC.,	)	JURY DEMAND
Defendant.	)	

**AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS**

Defendant, Forest River, Inc. ("Forest River"), herein further responds to the Complaint of Heartland by answering the allegations of the Complaint and setting forth its defenses to the claims of Heartland based upon information and belief. Forest River then presents three Counterclaims against Heartland herein, also by allegations based upon information and belief:

**ANSWERS TO HEARTLAND'S ALLEGATIONS:**

1. Heartland is a company organized and existing under the laws of the State of Indiana and has its principle place of business at 1001 All-Pro Drive, Elkhart, Indiana 46514.

**Response:** Admitted.

2. Heartland is the assignee of record of United States Patent No. 7,278,650.

**Response:** Admitted that the face of the patent states that assertion, but Forest River is without knowledge or information sufficient to form a belief as to the present ownership of the patent.

3. Heartland is a leading manufacturer of travel trailers.

**Response:** Admitted that Heartland is a manufacturer of travel trailers. However, the term “leading” is self laudatory and imprecisely defined. Forest River is without knowledge or information sufficient to form a belief as to what the actual status of Heartland is in terms of “leadership” within the industry.

4. Upon information and belief, Defendant Forest River, Inc. (“Forest River” or “Defendant”) is a corporation, organized and existing under the laws of the State of Indiana and has its principle place of business at 55470 County Road 1, Elkhart, Indiana 46514.

**Response:** Admitted.

5. This Court has original jurisdiction over the subject matter of this action pursuant to the provisions of Title 28, United States Code (“U.S.C.”) §§ 1331 and 1338(a), because the action arises under the Patent Laws of the United States, Title 35 U.S.C. § 100, et seq.

**Response:** Admitted.

6. Upon information and belief, Forest River is subject to personal jurisdiction in this district because, *inter alia*, it directly and through its agents regularly does, solicits, and transacts business in the Northern District of Indiana.

**Response:** Admitted.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and c) and § 1400(b).

**Response:** Admitted.

8. Heartland hereby incorporates by reference the allegations set forth in paragraphs 1 through 7 as if fully set forth herein.

**Response:** That Heartland has so incorporated its prior allegations is admitted, but the response of Forest River to the content of those prior allegations remains as stated above and need not be repeated here.

9. On October 8, 2007, United States Patent No. 7,278,650 (the "650 Patent"), entitled "Travel Trailer Having Improved Turning Radius" was duly and legally issued to Heartland, as assignee. A copy of the '650 patent is attached hereto as Exhibit A.

**Response:** Forest River denies that the '650 Patent was duly and legally issued. That the '650 Patent was issued on that date, that Heartland was indicated to be the assignee on the face of the patent, and that Heartland attached a copy of the patent as Exhibit A are admitted.

10. Possessing all substantive rights to the '650 Patent and the '650 patent being in full force and effect, Heartland has the right to sue for any infringement thereof.

**Response:** Forest River is without sufficient knowledge or information sufficient to form a belief as to who presently owns the '650 patent and/or rights to any actions for infringement. Forest River denies that the '650 Patent is in full force and effect. Forest River denies that Heartland has the right to sue for infringement of the '650 since, among other things, Heartland's fraudulent conduct in obtaining the patent preclude enforcement of the patent by Heartland.

11. Upon information and belief, Forest River is infringing upon the '650 patent, either directly or contributorily, by making, using, selling, offering for sale, or supplying travel trailers, including Forest River's Silverback product, all in violation of 35 U.S.C. §271 et seq., and will continue to do so unless enjoined by this Court.

**Response:** Denied.

12. By reason of Forest River's acts of infringement, Heartland has suffered and is suffering damages, including impairment of the value of the '650 patent, in an amount yet to be determined.

**Response:** Denied.

13. Forest River's acts of infringement are causing irreparable harm to Heartland and will continue to cause irreparable harm unless enjoined by this Court.

**Response:** Denied.

14. Upon information and belief, Forest River's continued infringement of the '650 Patent is willful and justifies a trebling of damages pursuant to 35 U.S.C. §284. Further, this is an exceptional case supporting an award of reasonable attorneys' fees pursuant to 35 U.S.C. §285.

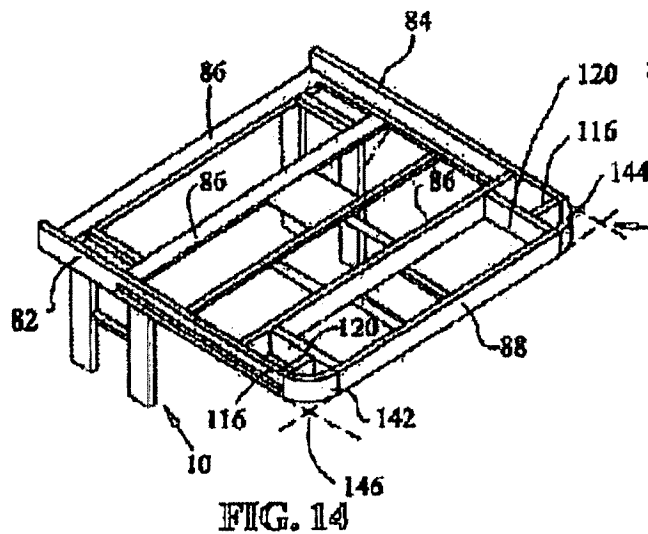
**Response:** As to the first sentence, denied. As to the second sentence, agreed to the extent that attorneys' fees should be awarded to Forest River on account of the conduct of Heartland described herein below.

**DEFENSES AGAINST PATENT INFRINGEMENT AND BASES FOR COUNTERCLAIMS:**

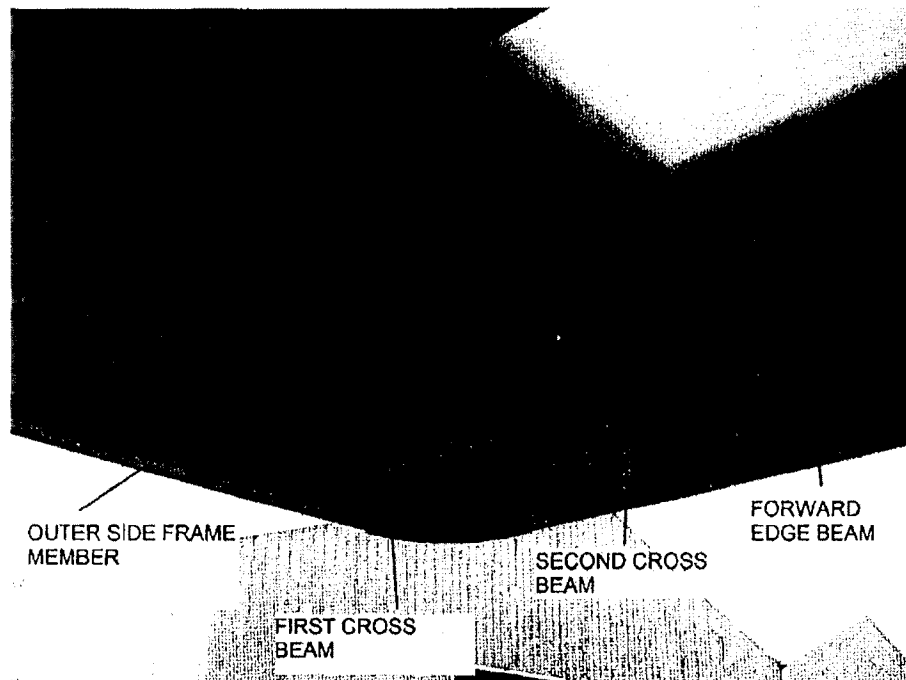
15. Using the reference numbers of the patent for illustration, the claims of the '650 Patent require at least the following elements in a travel trailer chassis:

- a. a forward edge beam (88) having a first end,
- b. an outer side frame member (84) substantially perpendicular to the forward edge beam and having a forward end,
- c. a first cross beam (116) substantially perpendicular to the side frame member and connected to the forward end of the side frame member at a location rearward of the forward edge beam, and
- d. a second cross beam (120) substantially parallel to the outer side frame member and connected to the first cross beam and the first end of the forward edge beam.

16. Figure 14 of the '650 Patent, shown below, illustrates a top perspective view of one embodiment of the invention claimed by that patent, as set forth in Claim 1.



17. The photograph below shows the underside view of the front of a type of travel trailer chassis made, used, and sold by Forest River more than one year before the priority date of the '650 Patent, March 29, 2004, and before the invention claimed by the '650 was conceived and reduced to practice by the named inventors of that patent.



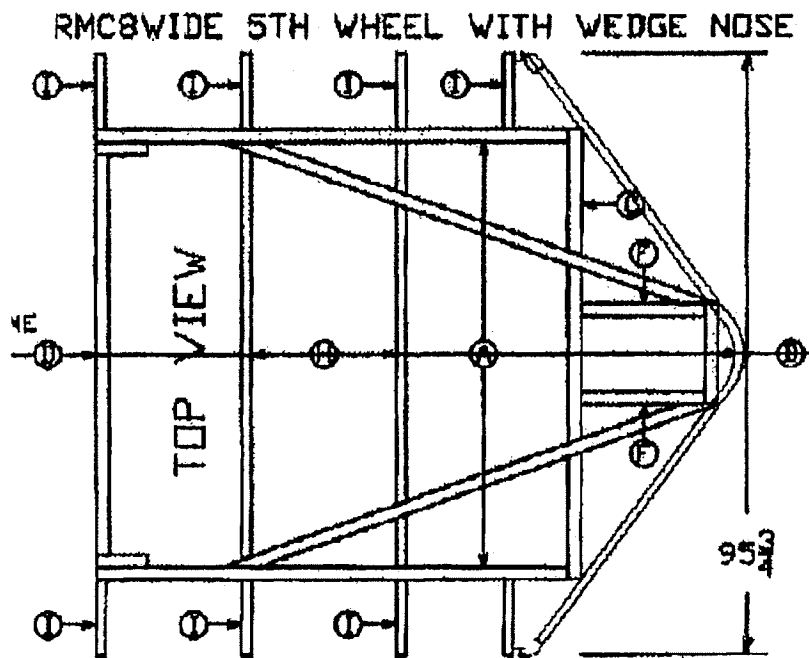
18. The travel trailer chassis type shown in the photograph of ¶17 is “prior art” with respect to the '650 Patent, as that term is meant under the Patent Laws of the United States.

19. After Heartland accused Forest River of infringing the '650 Patent, Forest River informed Heartland of the trailer chassis type of ¶17 and of Forest River's assertions of the significance of that chassis type as prior art, and provided specimens of that trailer chassis type which were inspected

by Heartland's attorneys at one of Forest River's production facilities more than a month before this lawsuit began. At that inspection, Forest River also provided those attorneys with sample invoices showing that this travel trailer chassis type was on the market several years before the priority date of the '650 Patent.

20. Each and every element and combination of Claim 1 of the '650 Patent is found in the prior art travel trailer chassis type of ¶17.

21. The drawing below shows a top view of a travel trailer chassis made, used, and sold by Roadmaster at least as of October, 2000.





22. The travel trailer chassis of ¶21 is also prior art with respect to the '650 patent.
23. Using the reference letters shown in that drawing, the travel trailer chassis of ¶21 has:
- a. a forward edge beam (B) having a first end,
  - b. an outer side frame member (A) substantially perpendicular to the forward edge beam and having a forward end,
  - c. a first cross beam (C) substantially perpendicular to the side frame member and connected to the forward end of the side frame member at a location rearward of the forward edge beam, and
  - d. a second cross beam (F) substantially parallel to the outer side frame member and connected to the first cross beam and the first end of the forward edge beam.
24. Roadmaster is a competitor of Heartland and was a competitor of Damon Corporation when Brian Brady was President of Damon Corporation.
24. At least one of the named inventors of the '650 Patent, including Brian Brady (the president of Heartland), was aware of the travel trailer chassis of ¶21 prior to filing the application for the '650 Patent.
25. The alleged "invention" of the '650 Patent is for a travel trailer having an improved turning radius. The actual effort of the named inventors in creating this invention was to create a travel trailer having an improved turning radius by altering the configuration of the front, exterior cap of

a fifth wheel travel trailer. As originally filed, the application for the '650 Patent included claims directed toward that front, exterior cap configuration. However, the frame design for the chassis which supports the front, exterior cap was actually created by at least in part by employees of Lippert Components, and not by all of the named inventors. During prosecution of that application, Heartland deleted those cap claims and amended its application to include only claims directed to the chassis frame. The application did not originally include and was not amended to include the identity of the employees of Lippert Components who created the frame design.

26. Accordingly, the '650 Patent is invalid under 35 U.S.C. §102(a), (b), and (f) since the invention claimed by that patent was anticipated by the prior art, including the prior art of Forest River and others and does not meet the conditions of patentability. That invention was known and used by others in this country before the "invention" thereof by the applicants for the '650 patent. That invention was described in printed publications, in public use, and on sale in this country more than a year prior to the date of the application for patent in the United States. Moreover, all of the named inventors did not themselves invent the subject matter claimed in the '650 Patent.

27. In addition to the prior art of ¶s 17 and 21, more than a year before the priority date of the '650 Patent there were a large number of travel trailers made, used, and publically sold in this country which included "V," "bull nose," or otherwise tapered front ends which would prevent the travel trailer from adversely affecting the turning radius of the towing vehicles. Manufacturers of such trailers included Cobra, Bison, Aluminum Trailer Co., Roadmaster, Cherokee, and Sundowner. These travel trailers are also prior art with respect to the '650 Patent. At least one of the named

inventors of the '650 Patent was well aware of at least some of these prior art travel trailers before and during the prosecution of the application for the '650 patent. In addition, more than a year before the priority date of the '650 Patent, there were a number of travel trailers which included notched or cut out portions of the front, exterior cap which would prevent the travel trailer from adversely affecting the turning radius of the towing vehicles. One example of such is the Holiday Rambler, Crown Imperial model, made between 1990 and 1992, a photograph of which is shown below:



28. The travel trailer shown in the photograph of ¶27 is prior art with respect to the '650 Patent.

29. Accordingly, the '650 Patent is invalid under 35 U.S.C. §103 since even if the "invention" is not identically disclosed or described as set forth in 35 U.S.C. §102, the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the "invention" was made to a person having ordinary skill in the art of creating travel trailers. The improvement suggested by the applicants for the '650 patent was no more than the predictable use of prior art elements according to their established functions. *KSR Int'l. v. Teleflex, Inc.*, 550 U.S. 398, 127 S. Ct. 1727, 167 L. Ed 2d 705 (2007).

30. Heartland is bound by the Patent Examiner's assessment of the level of ordinary skill in the art and "obviousness" under 35 U.S.C. §103 made during prosecution of the application for the '650 Patent and is barred under the Doctrine of File Wrapper Estoppel from now asserting a different level of ordinary skill in the art in defending against the allegations of ¶29. The Patent Examiner's assessment in that regard is reflected in the Office Action of July 24, 2007 when rejecting many of the claims under 35 U.S.C. §103. Heartland did not traverse that rejection in its Amendment of August 2, 2007. That failure to traverse was knowing and intentional by Heartland, made expressly "in order to passage quickly to issuance" so that Heartland could assert that patent against Forest River and attempt to divert sales from Forest River.

31. The '650 Patent was not validly issued in light of the requirements of 35 U.S.C. §112 (second

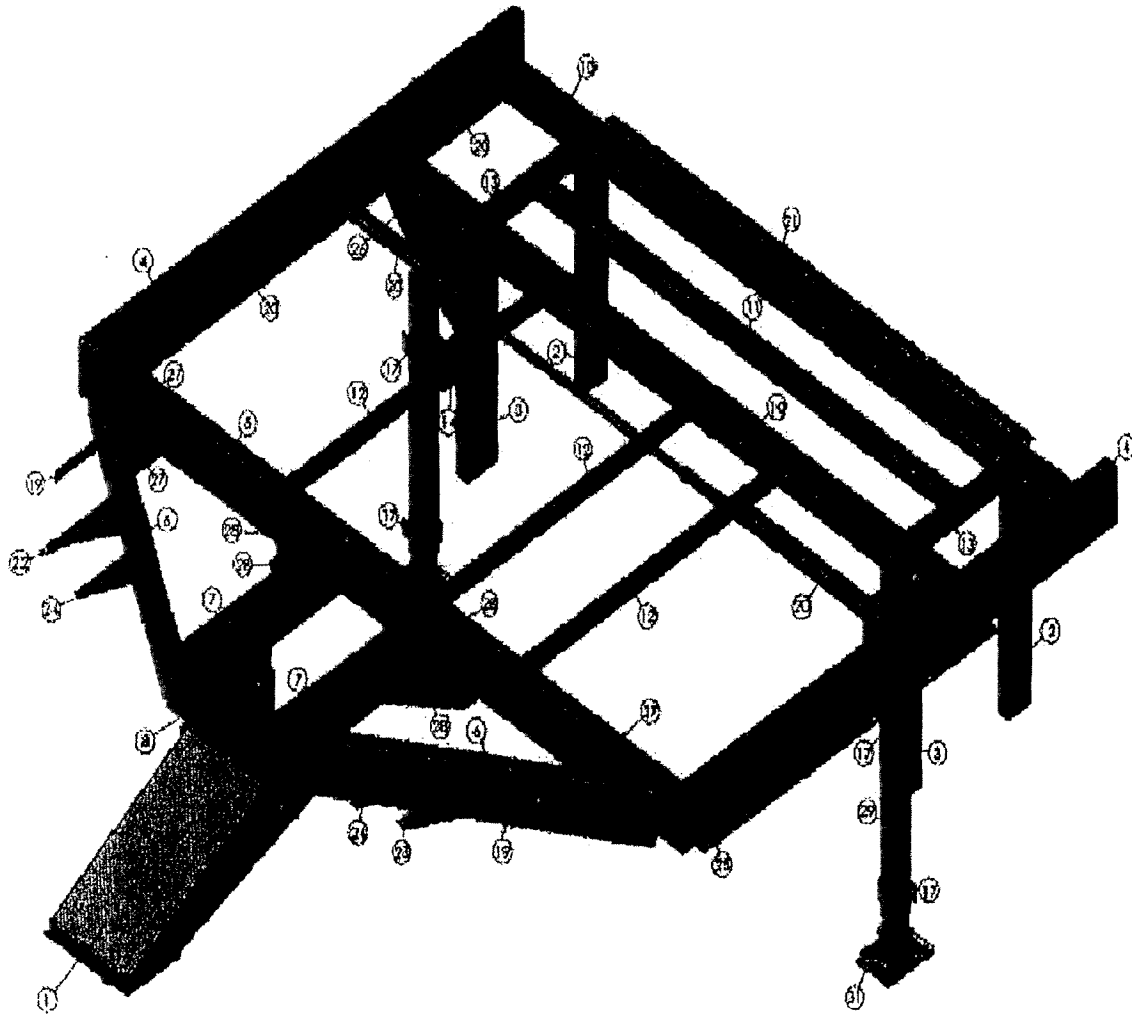
paragraph), in that one or more of the Claims do not particularly point out and distinctly claim the subject matter which the applicants regard as their invention. Instead, for example, certain terms and phrases in the Claims, such as “connected to the forward end” and “substantially” are made intentionally ambiguous. Further, the Claims are invalid under the “Missing Element” doctrine, as applied under §112.

32. The ‘650 Patent was not validly issued in light of the requirements of 35 U.S.C. §101 since the named inventorship is not accurate. No correction of that named inventorship was made during prosecution of the application for that patent as the scope and content of the claims sought was changed by Heartland’s amendments to the application. Incorrect named inventorship inherently causes increased cost in enforcement litigation. Heartland failed to comply with this requirement of the patent laws in willful or reckless disregard of its adverse impact on accused infringers.

33. The Complaint did not indicate which of the Claims in the ‘650 Patent that Forest River is considered to infringe. Accordingly, Forest River specifically litigates herein against all of those Claims. Under 35 U.S.C. §288 (second sentence), Heartland is not entitled to recover costs in this litigation even if it prevails on one or more of the Claims of the ‘650 Patent because one or more other Claims of the ‘650 Patent are not valid and Plaintiff has filed no disclaimer of the invalid Claims with the United States Patent and Trademark Office (“USPTO”) prior to commencing this lawsuit.

34. The Silverback travel trailer of Forest River was specifically designed by Forest River to avoid

infringement of the '650 Patent after Heartland informed Forest River of that patent. A top, perspective view of the chassis of the Silverback travel trailer is shown below:



35. Unlike with the '650 Patent, the Silverback trailer achieves a reduced turning radius not by an inward recess or notch in the frame, but rather by using outriggers (19), (22), (23), and (24) extending forward from the frame. The use of outriggers on travel trailers is very old in the art and well known. An example of prior art travel trailer chassis using outriggers is shown in the drawing of ¶21 (note elements I extending from the outer side frame members A). Forest River is not aware of any prior use of outriggers extending forward from the frame. However, that novel feature is not contemplated by '650 Patent.

36. Heartland alleges that the Silverback trailer infringes the '650 patent because that chassis has:

- a. a forward edge beam (8) having a first end,
- b. an outer side frame member (4) substantially perpendicular to the forward edge beam and having a forward end (25),
- c. a first cross beam (5) substantially perpendicular to the side frame member and connected to the forward end of the side frame member at a location rearward of the forward edge beam, and
- d. a second cross beam (7) substantially parallel to the outer side frame member and connected to the first cross beam and the first end of the forward edge beam.

37. To the extent that the Silverback trailer has the chassis elements and combination of elements which form the basis for Heartland's allegation of infringement, those same chassis elements in that same combination and for that same purpose are found in the prior art with respect to the '650 Patent. Examples of such are the Roadmaster trailer shown in the drawing of ¶21 and the Cherokee

trailer shown in the front end underside view below:



38. The trailer shown in the photograph of ¶37 was made on June 5, 2000, according to its VIN plate, by Cherokee Industries, Inc., of Oklahoma City, OK. That trailer is prior art with respect to the '650 patent.

39. Based upon the teachings of the unpatented prior art, Forest River has a right to use the chassis elements and combination of elements which form the basis for Heartland's allegations of infringement. Accordingly, Forest River does not infringe the '650 Patent.

40. Heartland has accused Forest River of "willful" infringement, and on that basis seeks to obtain treble damages and attorneys fees. However, Heartland has made that accusation in bad faith and