

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IRONBURG INVENTIONS LTD.

Plaintiff,

v.

COLLECTIVE MINDS GAMING
CO. LTD.

Defendant.

Civil Action No. 1:16-cv-04110-TWT

DEFENDANT'S OPPOSITION CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

With the single exception in which Ironburg seeks to wholly rewrite Claim 13 of the '525 Patent, the overriding theme of Ironburg's Opening Brief is that "the words of the claim should be left largely if not wholly undisturbed" because they "are easily understood in context by a person having ordinary skill in the art at the time of the invention (POSITA)." Dkt. No. 39, *Ironburg Brief* at 1. Yet not once does Ironburg actually explain what the disputed claim language means or why Collective Minds' clarifying constructions are incorrect. Instead, Ironburg argues that because a POSITA (e.g., the parties' experts) could discern some meaning from the claim language, we should just let the experts present conflicting views of the claim scope and leave the jury to sort things out. *See, e.g., Id.* at 9 (concluding a "**person of ordinary skill in the art would**, with reasonable certainty, **discern** from the claim language and the specification **the plain and ordinary meaning of "front" and top edge" without further embellishment**," but providing no actual explanation of what that meaning is).

Critically, the law does not permit setting aside the claim construction process whenever a party's expert *could* discern some meaning that benefits that party's claims. Instead, "[w]hen the parties raise an actual dispute regarding the proper scope of these claims, the court, not the jury, must resolve that dispute." *O2*

Micro Int'l Ltd. v. Beyond Innovation Tech. Co., 521 F.3d 1351, 1360 (Fed. Cir. 2008).

Here, Collective Minds has identified a number of terms and phrases whose plain meaning is either ambiguous on its face or has been applied by Ironburg in its infringement allegations in a manner totally divorced from the plain meaning of the claim language. To resolve the proper meaning, Collective Minds proposes straightforward and logical clarifying constructions directly tied to the intrinsic record. Ironburg objects to each of these clarifying constructions, repeatedly disputing the need to clarify the claim language without ever explaining what the actual meaning of the claim language is. This transparent attempt to maintain ambiguity in the claims is a common tactic by patentee plaintiffs that is routinely rejected by courts and should similarly be rejected here. *See Baxter Healthcare Corp. v. Mylan Labs. Ltd.*, No. CV 14-7094 (JBS/JS), 2016 WL 1337279, at *6 (D.N.J. Apr. 5, 2016) (“**a blanket resort to the ‘ordinary’ meaning** of the disputed claim terms would leave unresolved the parties' disputes, and **would largely negate the importance of the claims construction process**”); *United Const. Prod., Inc. v. Ivica*, No. 07-CV-00673-REB-CBS, 2009 WL 179886, at *2 (D. Colo. Jan. 26, 2009) (“**Plaintiff's tautological insistence that no claim construction is necessary** at all because the words used in the patent are clear and

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