UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

ARNOUSE DIGITAL DEVICES, CORP., Plaintiff,	)	
v.	)	Case No. 5:11-cv-155
MOTOROLA MOBILITY, INC. Defendant.	)	

ARNOUSE DIGITAL DEVICES, CORP.'S REPLY TO MOTOROLA MOBILITY'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

TABLE OF AUTHORITIES

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I. SUMMARY

Defendant Motorola Mobility, LLC's, formerly known as Motorola Mobility, Inc., ("Defendant") arguments rest on claims of "common sense" and a steady dose of hand waving around the prosecution history of U.S. Patent No. 7,516,484[1] ("the '484 patent"). Defendant's claim constructions, however, are not consistent with relevant case law and the facts at hand. Moreover, Defendant's characterization of the prosecution history fails to both elucidate the requirements under the law and explain how any statements made therein meet the standard of prosecutorial disclaimer. Accordingly, Plaintiff Arnouse Digital Devices Corp. ("Plaintiff") requests that the Court adopt its constructions for the reasons set forth below and in Doc. No. 47, Arnouse Digital Devices, Corp.'s Markman Brief Regarding Construction of the Disputed Claim Terms in U.S. Patent No. 7,516,484 ("Doc. No. 47") and reject the constructions proposed in Doc. No. 50, Motorola Mobility's Responsive Claim Construction Brief ("Doc. No. 50").

II. ARGUMENT

A. The Law Requires A Clear And Unmistakable Disavowal Of Claim Scope In Order For Prosecution Disclaimer To Apply.

Defendant's central argument rests on the proposition that certain statements made by the patentee of the '484 patent requires construction of disputed claim terms (referred to as prosecution disclaimer) in the manner asserted by Defendant. Yet, Defendant failed to discuss important requirements under the law for prosecution disclaimer and failed to apply the facts in this case to those requirements. A full and proper evaluation of the patentee's statements demonstrates that there has been no prosecution disclaimer that would alter the meaning of the disputed claim terms as asserted by Defendant.

[1] The '484 patent issued on April 7, 2009, and is based on U.S. Patent Application Serial No. 12/099,032, filed with the USPTO on April 7, 2008 ("the '032 application"). For the purposes of this brief and for clarity, "the '484 patent" will be used to refer to both the issued patent as well as the '032 application.

As Defendant surely is aware, prosecution disclaimer applies *only* when an applicant "clearly and unmistakably" disclaims claim scope or meaning during the prosecution of the patent. *See, e.g., Aventis Pharma S.A. v. Hospira, Inc.,* 675 F.3d 1324, 1331 (Fed. Cir. 2012); *Abbott Labs. v. Sandoz, Inc.,* 566 F. 3d 1282, 1289 (Fed. Cir. 2009); *Computer Docking Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1375 (Fed. Cir. 2008); *Purdue Pharma LP v. Endo Pharms., Inc.,* 438 F.3d 1123, 1136 (Fed. Cir. 2006). Statements made that "describe[] features of the prior art" but do "not distinguish the claimed invention based on those features," *see Computer Docking,* 519 F.3d at 1375, or lead to multiple interpretations are not enough to constitute prosecution disclaimer. *Id.* (citing *N. Telecom Ltd. v. Samsung Elec. Co.,* 215 F.3d 1281, 1293-95 (Fed. Cir. 2000) (holding that prosecution disclaimer did not "support the judicial narrowing of a clear claim term" because the inventors' statements were amenable to multiple reasonable interpretations). Similarly, prosecution disclaimer cannot be found if the "specification expressly defines a claim term and 'remarks made to distinguish claims from the prior art are broader than necessary to distinguish the prior art, [because] the full breadth of the remark is not 'a clear and unambiguous disavowal of claim scope as required to depart from the meaning of the term provided in the written description.'" *Id.* ((quoting *3M Innovative Props. Co. v. Avery Dennison Corp.,* 350 F.3d 1365, 1373 (Fed. Cir. 2003) and *Storage Tech. Corp. v. Cisco Sys., Inc.,* 329 F.3d 823, 833 (Fed. Cir. 2003)). Thus, the courts have insisted that the patentee's disavowal must be clearly unambiguous. *See Grober v. Mako Products, Inc.* (Fed. Cir. 2012) "while the prosecution history can inform whether the inventor limited the claim scope in the course of prosecution, it often produces ambiguities created by ongoing negotiations between the inventor and the PTO. Therefore, the doctrine of prosecution disclaimer *only* applies to unambiguous disavowals." (citing *Abbott Labs.,* 566 F.3d at 1289)(emphasis added).

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