IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ARNOUSE DIGITAL DEVICES CORP.,
               Plaintiff,

    v.

MOTOROLA MOBILITY, INC.,
               Defendant.

Case No. 5:11-cv-155-CR

Jury Trial Demanded

DEFENDANT MOTOROLA MOBILITY'S SUR-REPLY CLAIM CONSTRUCTION BRIEF

I.   SUMMARY

Defendant Motorola Mobility LLC, formerly known as Motorola Mobility, Inc., ("Motorola") respectfully submits its Sur-Reply Claim Construction Brief addressing the disputed claim terms in U.S. Patent No. 7,516,484 ("patent-in-suit" or "the '484 patent"). Plaintiff Arnouse Digital Devices Corp. ("Arnouse") has alleged that Motorola lapdocks that can be paired with certain Motorola smartphones infringe claims 1, 3, 7, 15, 16, 18, and 20 of the patent-in-suit. (Compl. D.E. 4 at ¶ 6, 12-13; D.E. 31).

The primary issue in dispute here is the meaning of "a portable computer without input and output means for interacting directly therewith" as recited by claim 1, and similar language recited by claim 15. Arnouse argues that its claims, which require a portable computer without input and output means, cover a portable telephone that has input and output means (e.g. buttons, speakers, and a touch-screen). Arnouse's contention ignores the plain meaning of the phrase "without input and output means," the statements Arnouse made to the patent Office to obtain its patent, and black letter claim construction law. Thus, Arnouse's proposed construction of this claim term should be rejected, and Motorola's proposed constructions should be adopted.

II.   ARGUMENT

A. *Input/Output Related Terms*

1. *The Plain Meaning of "Without Input and Output Means" Supports Motorola's Claim Construction*

Arnouse contends that Motorola's central argument is that Arnouse disclaimed claim scope by presenting arguments during prosecution. (D.E. 51 at p. 4). While this is indeed one of the arguments Motorola presented, it is not the only one. First, Motorola notes that the plain meaning of "a portable computer without input and output means for interacting directly

therewith" is a portable computer that by itself is not capable of receiving information from or providing information to a user because it lacks input and output means. Thus, even without recourse to the prosecution history Motorola's construction is correct. *See Computer Docking Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1373 (Fed. Cir. 2008) ("Claim terms are generally given their ordinary and customary meaning, which is 'the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.'") (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc) (citations omitted)).

Second, the prosecution history makes clear that the reader is configured to interact with a portable computer that by itself is not capable of receiving information from or providing information to a user because it lacks input and output means. Specifically, as Arnouse stated during prosecution, "***[i]n other words, the portable computer needs the reader for the user to interact with the <u>computer</u>***." Response to Office Action filed February 11, 2009, at 9 (emphasis added). Arnouse's statements during prosecution should be used in interpreting the claim terms in dispute, regardless of whether they arise to the level of a disclaimer. In interpreting a claim, "the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Computer Docking Station*, 519 F.3d at 1373 (quoting *Vitronics Corp. v. Conceptronic, Inc.,* 90 F.3d 1576, 1582 (Fed. Cir. 1996)). The Federal Circuit has also recognized that, "the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." *Phillips*, 415 F.3d at 1317 (citations omitted). Thus, even if there were no disclaimer, this Court should not adopt any construction

that allows the portable computer to have input and output means since the prosecution history supports a contrary meaning.

2. *Arnouse Disclaimed Portable Computers with Input or Output Means*

In addition, Arnouse has disclaimed coverage of any portable computer that has input and output means. Statements made during prosecution of an application can affect the scope of the claims. *See Computer Docking Station,* 519 F.3d at 1374; *Rexnord Corp. v. Laitram Corp.,* 274 F.3d 1336, 1343 (Fed. Cir. 2001). In particular, "a patentee may limit the meaning of a claim term by making a clear and unmistakable disavowal of scope during prosecution." *Computer Docking Station*, 519 F.3d at 1374 (quoting *Purdue Pharma L.P. v. Endo Pharms., Inc.,* 438 F.3d 1123, 1136 (Fed. Cir. 2006)). For example, an Applicant limits the scope of a claim term by "clearly characterizing the invention in a way to try to overcome rejections based on prior art." *Computer Docking Station*, 519 F.3d at 1374; *see, e.g., Microsoft Corp. v. Multi-Tech Sys., Inc.,* 357 F.3d 1340, 1349 (Fed. Cir. 2004) (limiting the term "transmitting" to require direct transmission over telephone line because the patentee stated during prosecution that the invention transmits over a standard telephone line, thus disclaiming transmission over a packet switched network); *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1372 (Fed. Cir. 2003) (finding the patentee expressly disavowed floor paneling systems without "play" because the applicant cited the feature during prosecution to overcome prior art); *Bell Atl. Network Servs. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1273-75 (Fed. Cir. 2001) (limiting operation of the "transceiver" to the three stated modes because of clearly limiting statements made by the applicant to try to overcome a prior art rejection).

Computer Docking Station is particularly relevant here, and not just because it relates to similar technology. 519 F.3d 1366. In *Computer Docking Station* the court found that "portable computer" as recited in the preamble means "a computer without a built-in display or keyboard" due

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