

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

VIRGINIA INNOVATION SCIENCES, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD;
SAMSUNG ELECTRONICS AMERICA,
INC.; SAMSUNG
TELECOMMUNICATIONS AMERICA,
LLC

Defendants.

CIVIL ACTION NO.

2:12-CV-00548-MSD-DEM

DEFENDANTS' REPLY CLAIM CONSTRUCTION BRIEF

Pursuant to Paragraph 11(f) of the Court's Rule 16(b) Scheduling Order (D.I. 56), Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications, LLC (collectively "Defendants") submit this brief in reply to plaintiff Virginia Innovation Sciences, Inc.'s ("VIS") Opening Claim Construction Brief (D.I. 64) (hereinafter "Pl. Op. Br.").

I. INTRODUCTION

In Defendants' Opening Claim Construction Brief (D.I. 65) (hereinafter "Def. Op. Br."), Defendants presented constructions for the disputed terms in the six patents-in-suit¹ that were supported by detailed analyses of the claim language and specification of the patents-in-suit, the pertinent prosecution history, and relevant extrinsic evidence. Plaintiff's Opening Brief, on the other hand, suggests no construction for two of the terms, offers new "alternative" constructions

¹ The patents-in-suit include U.S. Patents Nos. 7,899,492 ("the '492 Patent"), 8,050,711 ("the '711 Patent"), 8,145,268 ("the '268 Patent"), 8,224,381 ("the '381 Patent"), 7,957,733 ("the '733 Patent") and 8,135,398 ("the '398 Patent").

for two others, and proposes constructions that include non-limiting language— “such as” and “or the like”— that do nothing but add confusion to already complex terms. In its discussion of these constructions, VIS fails to analyze any of the intrinsic evidence beyond the specification and claims in the patents, and advances arguments directly contrary to those that it made to the Patent Office. For reasons set forth more fully below, VIS’s proposed constructions are erroneous and should be rejected.

II. DISPUTED TERMS

1. “a multimedia content item . . . destined for a destination device” - ’733 Patent Family

<p>Defendants’ Proposed Construction: “a multimedia content item that uniquely identifies the destination device on which it is to be displayed”</p>	<p>Plaintiff’s Proposed Construction: Plain and ordinary meaning. No construction required.</p>
---	--

VIS claims it “is readily comprehensible” how one of skill in the art would have understood “a multimedia content item . . . destined for a destination device.” Pl. Op. Br. at 13. Yet as Defendants explained in their Opening Brief, the intrinsic record dictates that “destined for a destination device,” in the context of the ’733 and ’398 Patents, means more than the multimedia content item merely being fit for eventual delivery to *any* device. *See e.g.*, ’733 Patent at 21:15-44; *see also* Def. Op. Br. at 7-10. This understanding of one of skill in the art would not be “readily comprehensible” to a lay jury, and VIS’s proposed construction would provide no guidance as to how a multimedia content item “destined for a destination device” differs from any other multimedia content item.

VIS’s argument appears to rest on the theory that “[a]dopting Defendants’ proposal would improperly narrow the preferred embodiment to exclude [a] scenario” described in

connection with Figure 20 of the '733 Patent. Pl. Op. Br. at 13-14.² This argument fails on several fronts.

First, the particular embodiment VIS identifies would not be excluded by Defendants' proposed construction. The cited passage *does not* describe "a situation where instructions transmitted from a cellular phone identify the destination device for the multimedia content item," as VIS asserts. *See* Pl. Op. Br. at 13. Rather, a portion of this passage (that VIS omits) describes that "*an initial step*" may involve a cellular phone making "*various types of requests*," such as a call to another user's cellular phone or a request to obtain information such as current news stories, not providing address information for a destination device. '733 Patent at 28:12-21 (emphasis added). After this "initial step":

Corresponding format and addressing information is then provided to the MC/CHS. For example, the MC/CHS may be instructed that the IP address of the user's PC is the destination address for the requested cellular phone call, and the cable port address of the user's television may be the destination address for the requested news.

Id. at 28:22-27.³ The specification does not suggest that a user provides an IP address or cable port address for multimedia content "destined for a destination device" from a cellular phone. Indeed, in the context of the '733 Patent, the most likely way that such information would be provided is from the data itself uniquely identifying the destination address. *See, e.g.*, '733 Patent at 21:15-44 and 27:5-9. VIS's reading of the above-quoted passage of the specification

² Defendants note that it is not the "embodiment" that is construed, but the claims.

³ A separate portion of the specification that VIS cites in its argument discusses "[d]evices that are intended to work with the MC System" that conduct "communications with the MC System." *Id.* at 22:35-38. It states: "For example, a cellular phone may be equipped with software that provides the appropriately configured data package in initiating communications with the MC System that are directed to destination devices." *Id.* at 22:38-42. This disclosure appears to be directed to a cellular phone acting as a source for multimedia content sent to the MC System, and the specification makes clear that the "data packages" uniquely identify the destination device. *See id.* at 21:15-51 ("For example, if the data package contains the identifier DI₁ it is determined that the communication is intended for the main television in the household.").

would call for the user to instruct the MC/CHS of an IP address, an impractical and strained reading of the specification.

Furthermore, VIS's argument that a particular embodiment may be excluded is inapposite, because "the claims of the patent need not encompass all disclosed embodiments." *TIP Systems, LLC v. Phillips & Brooks/Gladwin, Inc.*, 529 F.3d 1364, 1373 (Fed. Cir. 2008). "[T]he mere fact that there is an alternative embodiment disclosed in the [asserted] patent that is not encompassed by district court's claim construction does not outweigh the language of the claim, especially when the court's construction is supported by the intrinsic evidence." *Id.* The portion of the specification that VIS cites discusses the last of twenty figures in the '733 Patent, and nothing indicates that this is the "preferred embodiment." See '733 Patent at 27:41-28:47. The '733 Patent describes this particular embodiment as an alternative embodiment with features distinct from those discussed in Defendants' Opening Brief.⁴ In short, even if VIS were correct that one embodiment would not include a multimedia content item "destined for a destination device," there is no basis for asserting that this is the "preferred embodiment."⁵

On the other hand, Defendants' proposed construction would give the jury the benefit of understanding that a multimedia content item "destined for a destination device" is so-"destined"

⁴ See, e.g., '733 Patent, at 27:41-47 ("According to still another aspect of the present invention, the MC System allows a user to remotely make orders for content using a cellular phone, wherein the content may come from a variety of different sources."). Also, unlike the embodiment upon which VIS focuses, Defendants' proposed construction considers embodiments that actually include the relevant claim language in an effort to interpret that language's meaning. See, e.g., '733 Patent at 26:66-27:1 ("multimedia content from a source outside the home location, to be directed to a destination device within the home location") and 27:29-33 ("multimedia content . . . destined for a second device within the home location").

⁵ This stands in stark contrast to the case VIS purportedly relies upon, *SynQor, Inc. v. Artesyn Techs., Inc.*, 709 F.3d 1365 (Fed. Cir. Mar. 13, 2013), where the defendant's expert witness conceded that adopting the defendant's construction "would prevent the claims from encompassing the preferred embodiment," *id.* at 1378-79.

because it uniquely identifies that device. Defendants’ proposed construction would also avoid rendering the words “destined for a destination device” meaningless, in view of other claim limitations reciting that the content is routed and sent to the destination device. *See, e.g.*, ’733 Patent at 29:20-23. As discussed in Defendants’ Opening Brief, a person of ordinary skill in the art having read the specification would understand that a multimedia content item is “destined for a destination device” when it uniquely identifies the destination device.

2. “establishing a predetermined channel” - ’733 Patent Family

<p>Defendants’ Proposed Construction: “specifying a selectable frequency band of an input on the destination device for receiving the multimedia content”</p>	<p>Plaintiff’s Proposed Construction: Plain and ordinary meaning. No construction needed.</p> <p>Alternative: “establishing a communication pathway, such as an HDMI connection or the like”</p>
--	--

In supporting its position for the term “establishing a predetermined channel,” VIS makes two conflicting arguments, neither of which can withstand scrutiny. First, VIS argues that the term does not require construction. Pl. Op. Br. at 15. Then, three sentences later, VIS proposes a new construction of the term, and argues that “[w]ithin the context of the patents-in-suit a ‘predetermined channel’ refers to the communication pathways, such as an HDMI or S-Video connection.” *Id.* VIS’s misguided incorporation of the patents’ *inapplicable* context for “channel” contradicts the assertion that no construction of this term is needed. *See, e.g., Info. Tech. Innovation, LLC v. Motorola, Inc.*, 391 F. Supp. 2d 719, 723 (N.D. Ill. 2005) (“The very fact that the meaning of a particular limitation is disputed suggests that the meaning is not entirely clear from the language used in the patent and that the Court must construe the term.”).

Furthermore, VIS’s proposed “alternative” construction includes confusing non-limiting language and is contrary to *all* of the intrinsic and extrinsic evidence. As Defendants discussed in detail in their Opening Brief, the specification of the ’733 Patent uses the term “channel” in

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.