

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PEGASUS DEVELOPMENT)
CORPORATION and PERSONALIZED)
MEDIA COMMUNICATIONS, L.L.C.)

Plaintiffs,)

v.)

DIRECTV, INC., HUGHES)
ELECTRONICS CORPORATION,)
THOMSON CONSUMER)
ELECTRONICS, INC., and PHILIPS)
ELECTRONIS NORTH AMERICA)
CORPORATION,)

Defendants.)

C.A. No. 00-1020 (GMS)

ORDER

At Wilmington this 15th day of May 2013, having considered the plaintiffs' Motion for Reargument (D.I. 707) and the defendants' responsive filing (D.I. 711), IT IS HEREBY ORDERED THAT the Motion for Reargument (D.I. 707) is GRANTED IN PART.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, as used in the asserted claims of U.S. Patent No. 4,965,825 (the "825 Patent"), the term "decrypting [an encrypted information transmission]" is construed to mean "using a digital key in conjunction with a set of associated mathematical operations to decipher digital data. This term does not include mere descrambling of an analog television transmission. The decrypting must be of the entire information transmission that is recited in step (b) of claim 14."¹

¹ While motions for reconsideration or reargument are granted only "sparingly," *Tristrata Tech., Inc. v. ICN Pharms., Inc.*, 313 F. Supp. 2d 405, 404 (D. Del. 2004); *see also* D. Del. LR 7.1.5, such requests are appropriate when the court has made an error not of reasoning, but of apprehension, *see, e.g., Shering Corp. v. Amgen, Inc.*, 25 F.Supp.2d 293, 295 (D. Del. 1998); *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990). During claim construction briefing and oral argument, the plaintiffs failed to present their "digital only" construction of this



CHIEF, UNITED STATES DISTRICT JUDGE

term as a product of prosecution disclaimer. (D.I. 655 at 4–6; D.I. 664 at 3–4; D.I. 675 at 41–44, 59–62.) It has now been properly framed as such, and the court agrees with the plaintiffs that the patentee’s statements before the Board of Patent Appeals and Interferences (the “BPAI”) represent an unambiguous disavowal of claim scope. (D.I. 707 at 8.) The Federal Circuit has observed that “[w]hen a patentee makes a ‘clear and unmistakable disavowal of scope during prosecution,’ a claim’s scope may be narrowed under the doctrine of prosecution disclaimer,” and has made clear that “[s]tatements made during reexamination can also be considered in accordance with this doctrine.” *Grober v. Mako Prods., Inc.*, 686 F.3d 1335, 1341 (Fed. Cir. 2012). Here, the court finds that the patentee explicitly disavowed the decryption of analog signals, (Reexam 90/006,536, Oct. 24, 2007 Reply Brief at 18–19; JA001500–01), and the BPAI appears to have relied upon that disclaimer in reversing the rejection of Claims 15 and 17, (Reexam 90/006,536, Dec. 19, 2008 Decision on Appeal at 53–54; JA001592–93). As an aside, the court notes that the defendants’ failure to directly address the plaintiffs’ disclaimer argument is telling and only underscores the significance of the disavowing statements. (D.I. 711 at 4–5.)

The court believes it correctly weighed the claim language, specification language, and the plaintiffs’ earlier proposed construction in reaching its initial conclusion regarding this term. (D.I. 693 at 3 n.3.) Nevertheless, with its attention now properly directed to the disavowal argument discussed above, the court will grant in part the plaintiff’s Motion for Reargument. *See Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003) (“[W]here the patentee has unequivocally disavowed a certain meaning . . . the doctrine of prosecution disclaimer attaches and narrows the ordinary meaning of the claim congruent with the scope of the surrender.”).

The court, however, will deny the plaintiffs’ request that it revisit the portion of its construction noting that “[t]he decrypting must be of the entire information transmission that is recited in step (b) of claim 14.” (D.I. 693 at 3.) Motions for reargument are granted only where it appears that the court has patently misunderstood a party, has made a decision outside the adversarial issues presented by the parties, or has made an error not of reasoning, but of apprehension. *See, e.g., Shering Corp.*, 25 F.Supp.2d at 295. Such motions “should not be used to rehash arguments already briefed or to allow a ‘never-ending polemic between the litigants and the Court.’” *Dentsply Int’l, Inc. v. Kerr Mfg. Co.*, 42 F. Supp. 2d 385, 419 (D. Del. 1999) (quoting *Oglesby v. Penn Mut. Life Ins. Co.*, 877 F. Supp. 872, 892 (D. Del. 1995)). With respect to this latter portion of its construction, the court neither misunderstood nor misapprehended the parties’ arguments, and it certainly did not render a decision outside the adversarial issues presented by the parties. Rather, the plaintiffs simply disagree with the court’s reasoning. Even if such a disagreement were an appropriate basis for a motion for reargument, the court believes its analysis of the claim language, the patentee’s reexamination statements, and the examiner’s statements was correct and that this portion of its construction remains proper. (D.I. 693 at 3 n.3.)