IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JOE ANDREW SALAZAR,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	2:16-cv-01096-JRG-RSP
v.	)	
	)	
HTC CORPORATION,	)	**JURY TRIAL DEMANDED**
	)	
Defendant.	)	
	)	

**DEFENDANT'S SURREPLY TO PLAINTIFF'S REPLY TO DEFENDANT'S
RESPONSIVE CLAIM CONSTRUCTION BRIEF**

Jerry R. Selinger
State Bar No. 18008250
Trampas A. Kurth
State Bar No. 24055807
Susan E. Powley
State Bar No. 00784785
PATTERSON & SHERIDAN, LLP
1700 Pacific Ave., Suite 2650
Dallas, Texas 75201
(214) 272-0957 (Telephone)
(713) 623-4846 (Facsimile)
jselinger@pattersonsheridan.com

ATTORNEYS FOR DEFENDANT
HTC CORPORATION

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I.   Introduction

Salazar waited until his reply brief to abandon "no construction necessary - plain and ordinary meaning" and unveil his "capability" construction. His reply brief also includes characterizations of the intrinsic evidence that properly belonged in his opening brief, which would have allowed HTC to address the many errors and omissions. Salazar's gamesmanship compels HTC to file this focused surreply brief.

II.   "Base Station"

Salazar unfairly characterizes a minor change in HTC's proposed construction of "base station."   HTC's realignment followed a Stipulation in which Salazar abandoned several constructions, *e.g*., "communications … system." [Dkt. 89] Moreover, while acknowledging that HTC's construction was realigned, Salazar seeks to distract focus with arguments about aspects of a construction no longer pursued by either side.   Such arguments are irrelevant.

Claim 10 recites two different devices employed together in a "communications … system." Contrary to Salazar's arguments, Figures 4 and 5 identify specific structures in "the base station device … in accordance with the present invention," which are not included in Figures 2 and 3, which are "the handset device … in accordance with the present invention." '467 Patent, 6:13-22. *Compare with* Salazar Reply at 3 ("The patent does not discriminate between the components and functionality of the handset or base station.") In particular, the additional base station structure in Figures 4 and 5 "in accordance with the present invention" includes a telephone line interface 310, an AC line FM coupler 161, an AC power supply 116 and a battery charger 110 – none of which are present in the handset device (Figs. 2 and 3).

The "communications … system" of claim 10 and its dependencies need not employ all the functionality available from the base station, but the "base station" in the preamble must

include the required functionality. Contrary to Salazar's argument, dependent claim 12 expands the claimed system from one merely able to communicate "with a plurality of external devices," to one that is actually "coupled to at least one telephone line" by the "telephone line interface" of the base station.   Salazar's claim differentiation argument is inapposite because claim 12 expressly adds the "coupled to" limitation. *See, e.g., KKG, LLC v. The Rank Group PLC*, No. 2:11-cv-00012 (E.D. Tex. April 16, 2013) Slip Op. at 12-13 (claim differentiation is of limited weight because the dependent claim "recites other limitations") [Dkt. 178].

Salazar's reliance on *Microsoft Corp. v. Multi-Tech. Sys., Inc*., 357 F.3d 1340, 1348 (Fed. Cir. 2004) to elevate the summary snippet into lexicography also is misplaced. First, *Microsoft* used the summary and the specification to together limit all claims to include a "telephone line," even though several claims did not mention a telephone line. *Id*. at 1347-48. Second, the summary alone is merely a summary. Reading the summary in context with claim 10's requirements of "a base station and a handset employed in a communications … system," and Figures 2-5 and their corresponding descriptions, the Court should adopt HTC's construction, clarifying that the base station and handset are two different devices and identifying the differences explicitly required by the applicants.

III.   The "Microprocessor" Limitations

Salazar's reply brief for the first time asserts the "microprocessor" limitations define "capability," accusing HTC of seeking to improperly narrow the claims. Salazar pins his argument on a single appearance in the Notice of Allowability of the word "capability," ignoring the critical relevance of applicants' amendments and arguments responsive to the rejection of all claims over the *Krisbergh* patent. *See Howlink Global LLC v. Ventris Information Systems, LLC*,

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