

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

CYWEE GROUP LTD.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO. LTD. and
SAMSUNG ELECTRONICS AMERICA,
INC.,

Defendants.

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Case No. 2:17-CV-140-WCB

ORDER

Before the Court is a submission styled “Defendants’ Objections to Magistrate Judge Payne’s Claim Construction Memorandum and Order,” Dkt. No. 125. In his Claim Construction Opinion and Order in this case, Dkt. No. 117, Judge Payne construed certain disputed terms in the patents in suit, U.S. Patent Nos. 8,441,438 (“the ’438 patent”) and 8,552,978 (“the ’978 patent”). Plaintiff CyWee Group Ltd. (“CyWee”) has filed a response to the defendants’ objections, Dkt. No. 128. At the invitation of the Court, Dkt. No. 131, defendants Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc., (collectively, “Samsung”) have filed a reply, Dkt. No. 134, and CyWee has filed a sur-reply, Dkt. No. 139. The Court heard oral argument on the defendants’ objections to Judge Payne’s claim construction order on August 10, 2018. After reviewing the claim construction record and considering the parties’ oral arguments, the Court finds no part of the claim construction order to be “clearly erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A); *see* Fed. R. Civ. P. 72(a). The defendants’ objections to Magistrate Judge Payne’s claim construction opinion and order are therefore overruled.

Because the Court agrees with Judge Payne’s claim construction analysis, the Court will comment only briefly on most of the issues raised by the defendants; the Court will address in detail only the defendants’ arguments that the asserted claims are invalid for indefiniteness.

1. “three-dimensional (3D) pointing device”/“3D pointing device” (’438 patent, claims 1, 3, 4, 5, 14, 15, 16, 17, and 19; ’978 patent, claim 1)

Judge Payne concluded that these terms require no construction and should be accorded their plain and ordinary meaning. Samsung argues that the terms must be construed in order to resolve the parties’ dispute about their meaning. According to Samsung, the term “3D pointing device,” as used in the patents, should be construed to mean “a device that detects the motion of the device in three-dimensions and translates the detected motions to control the movement of a cursor or pointer on a display.” Dkt. No. 125, at 3. The dispute between the parties focuses on the requirement of a “cursor or pointer on a display” in Samsung’s proposed construction, which CyWee argues is unduly restrictive.

The Court agrees with Judge Payne that the 3D pointing device recited in the claims is not required to control a “cursor or pointer on a display.” Even though a 3D pointing device may be associated with a cursor or pointer, and even though cursors are mentioned in some of the embodiments discussed in the specifications, nothing in the patents supports such a restrictive reading of the term “3D pointing device.” A device practicing the patents may indicate movement in a variety of ways, including displaying “some video effect on the display screen” to “exhibit a movement pattern on the display screen.” ’438 patent, col. 17, ll. 36-37; ’978 patent, ll. 61-62.

As to the risk that the failure to construe the claim will result in an unresolved dispute between the parties as to the meaning of the term, the Court will deal with that issue by prohibiting the defendants from arguing to the jury that the 3D pointing device requires a cursor or pointer on a

display. If it appears at trial that there is some risk that the jury will understand the term to require a cursor or pointer, the Court will deal with that risk by issuing an appropriate instruction.

2. “six-axis motion sensor” (’438 patent, claims 1, 5, 14, 15, 16, 17, and 19)

Judge Payne ruled that this term needs no construction and should be accorded its plain and ordinary meaning. Samsung argues that the term should be construed to mean “a module consisting of two types of sensors: (i) a rotation sensor and (ii) one or more accelerometers.” Dkt. No. 125, at 3. By virtue of the use of the phrase “consisting of,” Samsung seeks to limit the term to a structure containing only those two types of sensors, thus excluding any device containing those sensors but also containing a magnetometer, as disclosed and claimed in the ’978 patent.

Samsung bases its argument on a statement made by the applicants during the prosecution of the application that ultimately issued as the ’978 patent. In the course of that prosecution, the examiner rejected the claims of the application on double patenting grounds in light of the earlier application that ultimately issued as the ’438 patent. The examiner required the applicants to “either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications.” Dkt. No. 67-13, at 9. In response, the applicants amended the claims of the newer application to include new limitations regarding “a nine-axis motion sensor module” and to include the requirement that the orientation output be generated by the nine-axis motion sensor module, including by using “a plurality of measured magnetisms . . . and a plurality of predicted magnetisms.” *Id.* The changes, according to the applicants, served “to fully patentably differentiate and provide [a] clear line of demarcation” between the two applications. *Id.* The applicants then stated that the prior application “includes

the claimed subject matter of a six-axis motion sensor module without having and using measured magnetisms and predicted magnetisms.” *Id.* at 10.

Samsung seizes on the last sentence to support its contention that the applicants surrendered their right to argue that the ’438 patent covers any device containing more than six-axis sensors, such as the nine-axis sensor devices claimed in the ’978 patent. The Court agrees with Judge Payne that Samsung reads too much into that statement in the prosecution history. In context, it appears clear that the applicants were distinguishing between the two applications by pointing out that the earlier application, which became the ’438 patent, did not claim the use of measured and predicted magnetisms, unlike the later application, which became the ’978 patent.

Nothing in the prosecution history suggests that the applicants meant to suggest that the application that became the ’438 patent would not read on a device containing a six-axis sensor simply because that device also contained a three-axis magnetometer and thus could be characterized as having a nine-axis sensor. No such disclaimer would have been required to avoid the double patenting issue raised by the examiner, and even if the language used by the applicants was not as precise as it might have been, it did not constitute the kind of “clear and unmistakable” disclaimer that would be necessary to surrender claim scope that is otherwise supported by plain claim language, as is the case here. *See Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1063–64 (Fed. Cir. 2016); *Elbex Video, Ltd. v. Sensormatic Elecs. Corp.*, 508 F.3d 1366, 1371–72 (Fed. Cir. 2007). That conclusion is supported by the language of the asserted claims from the ’438 patent, which claim an apparatus or method “comprising” the recited components or steps, a term that means that the “device may contain elements in addition to those explicitly mentioned in the claim.” *In re Skvorecz*, 580 F.3d 1262, 1267 (Fed. Cir. 2009).

The Court therefore agrees with Judge Payne that no construction of “six-axis motion sensor” is necessary. The Court will prohibit Samsung from arguing to the jury that a device containing the claimed six-axis motion sensor does not infringe the ’438 claims if it contains any other sensors, such as a three-axis magnetometer. If it appears there is some risk that the jury will understand the term to foreclose the presence of a magnetometer, the Court will deal with that risk by issuing an appropriate instruction.

3. “global reference frame associated with Earth” (’978 patent, claim 10)

Judge Payne construed the “global reference frame” limitation to mean “reference frame with axes defined with respect to Earth.” Samsung argues that the proper construction of that phrase is “an Earth-centered coordinate system with an origin and a set of three axes defined with respect to Earth.” Dkt. No. 125, at 4. Samsung’s objection to Judge Payne’s construction is that under his construction, the claimed reference frame “can encompass *any* reference frame with axes defined with respect to Earth.” *Id.*

Samsung’s construction of this phrase is quite restrictive; it would require that the origin of the reference frame be at the center of the Earth. Although Samsung argues that its construction is supported by the extrinsic evidence cited by the parties, the Court disagrees. Both Samsung’s extrinsic evidence, Paul D. Groves, *Principles of GNSS, Inertial, and Multisensor Integrated Navigation Systems* §§ 2.1.1, 2.1.2 (2008), Dkt. No. 67-15, and CyWee’s extrinsic evidence, Aboelmagd Noureldin, et al., *Fundamentals of Inertial Navigation, Satellite-based Positioning and their Integration* §§ 2.2.1, 2.2.2 (2013), Dkt. No. 66-5, refer to reference frames having their origins at the Earth’s center as “Earth-centered” frames. The claim language in dispute does not use that terminology. Although Samsung argues that the term “global” must be given the same meaning as “Earth-centered” in this context, the ’978 patent contains nothing

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