

**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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NO. 2:17-CV-00140-RWS-RSP

P.R. 4-3 – JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to P.R. 4-3, all parties to the above-captioned action hereby submit their Joint Claim Construction and Prehearing Statement regarding U.S. Patent Nos. 8,441,438 (“’438 Patent”) and 8,552,978 (“’978 Patent”) (“patents-in-suit”).

A. The Construction Of Those Claim Terms On Which The Parties Agree

Pursuant to P.R. 4-3(a), the parties have reached agreement regarding the construction of the following claim terms, phrases, or clauses.

a. ’438 Patent

Claim Term	Agreed Construction
“calculating predicted axial accelerations Ax', Ay', Az' based on the measured angular velocities ω_x , ω_y , ω_z of the current state of the six-axis motion sensor module without using any derivatives of the measured angular velocities ω_x , ω_y , ω_z ” (Claims 14, 19)	Plain and ordinary.
“detecting and generating a first signal set” (Claim 1)	Plain and ordinary.
“detecting and generating a second signal set” (Claim 1)	Plain and ordinary.

Claim Term	Agreed Construction
“resulting deviation comprising resultant angles in said spatial pointer reference frame” “resulting deviation comprising said resultant angles in said spatial pointer reference frame of the 3D pointing device” (Claims 1, 14, 19)	Plain and ordinary.
“the measured state includes a measurement of said second signal set and a predicted measurement obtained based on the first signal set without using any derivatives of the first signal set” (Claim 1)	“the measured state includes a measurement of axial accelerations and predicted axial accelerations calculated using the angular velocities without computing derivatives of said angular velocities (i.e. angular accelerations)”
“spatial pointer reference frame” “spatial pointer reference frame of a three-dimensional (3D) pointing device” “spatial reference frame of the 3D pointing device” (Claims 1, 4, 14, 15, 19)	“frame of reference associated with the 3D pointing device, which always has its origin at the same point in the device and in which the axes are always fixed with respect to the device”

b. '978 Patent

Claim Term	Agreed Construction
“spatial reference frame” “spatial reference frame associated with the 3D pointing device” (Claim 10)	“frame of reference associated with the 3D pointing device, which always has its origin at the same point in the device and in which the axes are always fixed with respect to the device”

B. Each Party’s Proposed Construction Of Each Disputed Claim Term

Pursuant to P.R. 4-3(b), the parties have attached a claim chart hereto as Appendix 1, which shows each party’s proposed construction of each disputed claim term, phrase, or clause,

together with the intrinsic and extrinsic evidence upon which each party intends to rely to support its proposed constructions.

Where intrinsic and extrinsic citations have been made for a particular claim term, phrase, or clause they should be understood as applicable to each other instance where the same term, phrase, or clause appears elsewhere. Each party reserves the right to rely on any intrinsic or extrinsic evidence identified by the other party. Defendants reserve the right to rely on the positions of CyWee or its expert witnesses concerning claim construction in any other cases, including *CyWee v. Apple*, Case No. C 14-1853 HSG (N.D. Cal.).

C. Anticipated Length Of Time Necessary For Claim Construction Hearing

Pursuant to P.R. 4-3(c), the parties anticipate that they will need a combined total of 3-4 hours for presentation.

D. Witness Testimony At The Claim Construction Hearing

Pursuant to P.R. 4-3(d), Samsung reserves the right to call its expert, Dr. M. Ray Mercer to support Defendants' preliminary claim constructions, including Defendants' indefiniteness challenges, and to respond to any claim construction offered by Plaintiff.

Samsung disagrees with CyWee's objections detailed below. Under P.R. 4-2 and P.R. 4-3, Samsung properly reserved its right to rely on expert testimony regarding certain of the claim terms at issue. P.R. 4-3 does not require the disclosure of an expert declaration, only a detailed disclosure of the substance of the expert's testimony, which Samsung provided in Appendix 1 of this Joint Claim Construction Statement.

Further, CyWee did not raise the issue of the timing for exchanging expert declarations until the date this P.R. 4-3 statement was due. In response, Samsung proposed that the parties exchange declarations on January 26th, weeks before the deadline to complete claim

construction discovery (February 16, 2018) and the deadline for CyWee's opening brief (February 23rd, 2018.) Pursuant to this proposal, Samsung will serve its expert declaration on CyWee on January 26th.

Pursuant to P.R. 4-3(d), CyWee reserves the right to call its expert, Dr. Joseph LaViola to support Plaintiff's claim constructions, and to rebut Defendant's claim constructions and allegations of indefiniteness. CyWee also reserves the right to have Dr. LaViola answer any questions the Court may have regarding the technical tutorial in this case.

As a related matter, CyWee objects to Samsung's failure to provide an expert declaration on or before the date of this statement, and explicitly reserves the right to (1) move to strike any such declaration, (2) submit a responsive declaration, and/or (3) modify CyWee's current expert declaration accordingly.

CyWee further notes that Samsung has the burden of proof of establishing indefiniteness by clear and convincing evidence. Accordingly, CyWee expressly reserves the right to submit a responsive declaration and/or modify its current declaration in response to Samsung's arguments and/or testimony regarding indefiniteness.

E. Other Issues For A Prehearing Conference Prior To The Claim Construction Hearing

Pursuant to P.R. 4-3(e), the parties are unaware of any other issues that would be appropriate for a prehearing conference.

DATED: January 12, 2018

Respectfully submitted,

/s/ Ari Rafilson

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