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

UNILOC USA, INC., UNILOC LUXEMBOURG, S.A. and UNILOC 2017 LLC, Plaintiffs, v. SAMSUNG ELECTRONICS AMERICA, INC. and SAMSUNG ELECTRONICS CO. LTD., Defendants.	Civil Action No. 2:18-cv-00040 (JRG-RSP)

UNILOC USA, INC., UNILOC LUXEMBOURG, S.A. and UNILOC 2017 LLC, Plaintiffs, v. HUAWEI DEVICE USA, INC. and HUAWEI DEVICE CO. LTD., Defendants.	Civil Action No. 2:18-cv-00074 (JRG-RSP)

PLAINTIFFS' REPLY CLAIM CONSTRUCTION BRIEF

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Plaintiffs, Uniloc USA, Inc., Uniloc Luxembourg, S.A., and Uniloc 2017 LLC (collectively, "Uniloc"), respectfully submit this Reply Claim Construction Brief for U.S. Patent No. 6,993,049 (the "'049 patent").

In the late 1990s, short-range communication between devices, such as between in-home speakers and amplifiers, or between mobile phones and headsets, was carried out by cables or wires. Because of the obvious limitations of this approach, the industry sought to develop some form of low-power short range *wireless* communication, and various individual companies were working on their own solutions, to be implemented in their own devices. In 1998, a group of mobile telephony and computing companies formed the Bluetooth Special Interest Group (SIG) to design a technology specification to develop a low-cost, low-power radio-based cable replacement, which specification, if accepted universally, would enable interoperability between devices of all manufacturers.

According to Bluetooth SIG's current website, the first Bluetooth products (mobile phone, PC card, headset) did not come out, and prototypes of other devices (mouse and laptop, dongle) were not publicly demonstrated, until some point in 2000. Competing technologies, such as IEEE 802.11b, HomeRF, and 3G slowed the acceptance of the proposed Bluetooth specification.

The application for the '049 patent was filed in June 2001, claiming priority to a foreign application, filed June 2000. The embodiment the inventor used to describe and illustrate his invention was one that used 2000 Bluetooth technology. But the inventor was careful to specify the invention could be implemented in other, competing technologies:

> Although the present invention is described with particular reference to a Bluetooth system, is applicable to a range of other communication systems. '049 patent, 1:6-8.

> As will be recognized, the general invention concept of polling HIDs via a broadcast channel is not restricted to Bluetooth devices and is applicable to other communications arrangements. *Id.*, 3:24-28.

Since 2000-01, Bluetooth technology has evolved. Although the general approach remains the same, some technical details will differ between the 2000-01 embodiment described in the specification, and the Bluetooth devices that Defendants currently import and sell.

As will be seen, the major claim construction issue as to the '049 patent is whether certain features of the disclosed 2000 Bluetooth embodiment *not mentioned* in the claims should be read into the claims, as limitations. Defendants want to do this to get off the hook for infringement.

Defendants' problem, however, is they cannot overcome the fundamental tenet of claim construction that limitations from an embodiment cannot be read into the claims. *Phillips v. AWH Corp., 415 F.3d 1303,* 1323 (Fed. Cir. 2005)("[A]lthough the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments." (citations omitted)).

And that is true even where the disclosed embodiment is the *only one* mentioned in the specification. The Federal Circuit has expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment. *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004). Probably no other tenet is better known or more frequently litigated.

There are rare exceptions, usually where the specification contains some language *expressly* limiting the invention or seemingly disclaiming embodiments that the language of the claims would otherwise cover. But the problem for Defendants is that this specification contains *no* such language, and thus their claim construction brief cites none.

The Wells declaration

Huawei did not state in prior filings it would rely upon an expert declaration. Samsung did so state, but its total disclosure for each claim term consisted of the statement it would submit:

> Expert testimony from Dr. Jonathan Wells that one skilled in the art would understand [claim term] to mean [Samsung's construction] based on a review of the intrinsic and extrinsic evidence.

As this was obviously no disclosure at all, Uniloc requested Samsung to produce the Wells declaration, so Uniloc could discuss it in its opening claim construction brief, but Samsung refused.

We do not know if the Court is willing to tolerate Samsung's flouting of its disclosure requirements, but Uniloc asks the Court to disregard the declaration.

As it happens, the declaration does not help Samsung on the issue of reading limitations from the specification into the claim. The legal principles section of the declaration (¶ ¶ 17-25) omits the above tenet, which omission allows Wells, after reading the claims on the disclosed 2000 Bluetooth embodiment, to conclude – mistakenly - a "POSITA would understand" that the [claim term] should be construed as [the corresponding feature of the 2000 Bluetooth embodiment].

Of course, the proper issue is not whether the claim term reads on the disclosure, but whether the claim term should be construed to *exclude* embodiments not in the disclosure. And if an expert is going to render that kind of testimony (which Wells did not because he could not), to be given credence he has to explain why, not simply testify "a POSITA would understand the claim excludes…."

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