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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

STRATOSAUDIO, INC.,

Plaintiff,

v.

SUBARU OF AMERICA, INC.,

Defendant.

Case No. 6:20-cv-1128-ADA

[redacted]

DEFENDANT SUBARU OF AMERICA, INC.'S MOTION TO STRIKE EXPERT OPINIONS ARGUING CLAIM CONSTRUCTION

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Defendant Subaru of America, Inc. hereby moves to strike certain plainly improper and incorrect claim construction arguments of Plaintiff StratosAudio Inc.'s infringement and validity experts, Dr. Mangione-Smith and Dr. Moon respectively.

I. INTRODUCTION

StratosAudio's infringement and validity experts, Dr. Mangione-Smith and Dr. Moon respectively, improperly present incorrect claim construction arguments for the terms which this Court did not construe. The Opening Expert Report of William Mangione-Smith Regarding Infringement of the '405 and '081 Patents, dated May 23, 2022 ("Mangione-Smith Report"); the Rebuttal Expert Report of Todd K. Moon Regarding Validity of the '405 and '081 Patents, dated June 21, 2022 ("Moon Report"); Dkt. 65 (Claim Construction Order). Their arguments go far beyond simply elucidating the plain and ordinary meaning of any term – instead, they completely change the meanings of terms using arguments from the specifications and elsewhere. The case law clearly holds that experts cannot argue claim construction to the jury. Accordingly, the improper (and incorrect) claim construction arguments proffered in Dr. Mangione-Smith and Dr. Moon's expert reports and testimony should be stricken.

II. LEGAL STANDARD

Expert testimony regarding the plain and ordinary meaning of a phrase as understood by one skilled in the art is permitted, so long as the evidence does not amount to arguing claim construction to the jury. *YETI Coolers, LLC v. RTIC Coolers, LLC*, Case No. 1:15-CV-597, 2017 WL 404519, at *3 (W.D. Tex. Jan. 27, 2017) (quoting *Apple, Inc. v. Samsung Elec. Co., Ltd.*, 2014 WL 660857 at *3 (N.D. Cal. Feb. 20, 2014) and *Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1337 (Fed. Cir. 2009)). But "[t]he court has the power and obligation to construe as a matter of law the meaning of language used in the patent claim." *Markman v. Westview Instr., Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995), *aff'd*, 517 U.S. 370 (1996). Experts therefore may

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not offer different claim constructions and attorneys may not argue the competing constructions to the jury. *CytoLogix Corp. v. Ventana Med. Sys., Inc.*, 424 F.3d 1168, 1172 (Fed. Cir. 2005). It is improper to argue claim construction to the jury because the risk of confusing the jury is high when experts opine on claim construction. *Cordis Corp.*, 561 F.3d at 1337.

III. PLAINTIFF'S EXPERTS' REPORTS MAKE ARGUMENTS THAT ARE PLAINLY CLAIM CONSTRUCTION

A. The Mangione-Smith Report

Claim limitation 9[c] of the '081 patent requires "an output system configured to present concurrently the first media content and the second media content on ***an output of the first receiver module or the second receiver module.***" The Court did not construe this term (and Plaintiff did not request construction), so the term has its plain and ordinary meaning to a person of skill in the art. But the Mangione-Smith Report ignores the plain and ordinary meaning and provides the following plainly improper claim construction of this term:

> 89. Claim 9 recites a structural limitation of the claimed system: ***the system must have an "output" of the "first receiver module" and an "output" of the "second receiver module."*** "[A]n output" of a receiver module is the means of outputting the media content, e.g., speakers and/or displays. '081 patent at 18:28-30, 21:28-31. Each output must have the capability of presenting—audibly, visibly, or otherwise. The specification explains that the primary device 4 and the ancillary device 5 must each individually have the capability to present the first and second media content, and describes a system in which either the primary device can present both media content, the ancillary device can present both media content, or each device can present one of the media content. '081 patent at 14:27-31. The system can choose to output both the first and second media content on the output of the ancillary device (containing the second receiver module), for example because it has better display capabilities, or because it would be safer to do so.
>
> 90. Claim 9 requires that each receiving module have an output in order to achieve these benefits. ***Using the term "or,"*** I understand that claim 9 requires at least one of these outputs must be capable of presenting both media content concurrently. Therefore, in my opinion, for a system to infringe claim 9 of the '081 patent, the system must include two receiving modules, each with an output, where at least one of the receiving modules has the capability to present both the first and second media content concurrently.

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