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

DEFENDANT SUBARU OF AMERICA, INC.'S REPLY IN SUPPORT OF ITS MOTION TO STRIKE EXPERTS OPINIONS REGARDING CLAIM CONSTRUCTION

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StratosAudio's Opposition to Subaru's Motion to Strike Expert Opinions Regarding Claim Construction (Dkt. No. 100 or "Motion") confirms that Dr. Moon's and Dr. Mangione-Smith's opinions are improperly arguing claim construction. The Court should strike these opinions.

Claim 9[c] of the '081 patent recites "*an* output of the first receiver module or the second receiver module." The plain language requires only one output, not two. If an accused product or the prior art has "an output of the first receiver module," for example, this limitation can be met, and no *second* output is needed. This Court has previously explained that an argument attempting to vary the plain meaning of a term to require "separate and distinct" structures requires claim construction. *See VLSI Technology LLC v. Intel Corp.*, No. 6:21-CV-057-ADA, 2022 WL 1477725, at *7 (W.D. Tex. May 10, 2022) (stating that "to the extent Intel contends the 'first master device' and 'programmable clock controller' must always comprise entirely separate and distinct circuits, Intel appears to be asking this Court for a new claim construction").

Similarly, "location information" is not the plain and ordinary meaning of the claim term "location." Claim 12 of the '405 patent recites "determining ***a location*** of the electronic receiving device …" and "transmitting … a response message comprising … ***the location*** of the electronic receiving device." The claim does not recite determining or transmitting location "information" of the electronic receiving device. That Dr. Mangione-Smith is attempting to import new meaning to this claim from elsewhere is apparent from his deposition testimony that he is "quite confident that [he] understand[s] what the inventors intended" and that "what the inventors intended is relevant" in construing the term "location." Ex. 3 to Mot., Mangione-Smith Dep. at 120:3-21.

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Only the Court can perform claim construction. *Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1337 (Fed. Cir. 2009); *CytoLogix Corp. v. Ventana Med. Sys., Inc.*, 424 F.3d 1168, 1172 (Fed. Cir. 2005). The experts' attempts to vary the construction must be prevented.

I. ARGUMENT

A. Dr. Mangione-Smith and Dr. Moon impose an additional, unstated limitation to claim 9 of the '081 patent, invoking special descriptions of the specification, which is an improper claim construction argument.

Dr. Mangione-Smith and Dr. Moon read "***an*** output" as meaning "there must be two outputs, and the claimed information is shown on only one of the outputs." This is not the plain meaning of "an output."

Paragraph 89 of the Mangione-Smith Report begins with the statement that "[c]laim 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.'" Paragraph 90 of the Mangione-Smith Report echoes that "for a system to infringe claim 9 of the '081 patent, the system must include ***two*** receiving modules, ***each with an output***." Similarly, Paragraph 100 of the Moon Report states that "[c]laim 9 requires ***two*** outputs, one output for the first receiver module and one output for the second receiver module, with at least one output configured to present both media content concurrently." But no limitation of claim 9 recites or requires ***two*** outputs under the plain and ordinary meaning of the phrase "***an*** output of the first receiver module ***or*** the second receiver module." Ex. 1, U.S. Patent No. 8,166,081 at claim 9. The literal meaning of the words of the claim is that the information can be shown on an output, whether it appears with the first receiver module ***or*** the second receiver module. Requiring "two" outputs to exist is an additional, unwritten limitation being imposed on the claim by Mangione-Smith and Moon to avoid prior art.

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