

The Honorable Tana Lin

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

IMMERSION CORPORATION,

Plaintiff,

v.

VALVE CORPORATION,

Defendant.

Case No. 2:23-cv-00712-TL

**DEFENDANT VALVE
CORPORATION'S
NONINFRINGEMENT AND
INVALIDITY CONTENTIONS**

1 **NON-INFRINGEMENT AND INVALIDITY CONTENTIONS**

2 Pursuant to the Order Setting Jury Trial Date and Related Dates (ECF No. 46) and Local
3 Patent Rule 121, Valve Corporation (“Valve”) hereby serves these Non-Infringement and
4 Invalidation Contentions (“Contentions”).

5 **I. PRELIMINARY STATEMENT AND RESERVATIONS OF RIGHTS**

6 In its Updated Preliminary Infringements dated October 30, 2023, Immersion
7 Corporation (“Immersion”) purports to allege infringement of the following asserted patents and
8 asserted claims (with independent claims identified in **bold**):

- 9 ● U.S. Patent No. 7,336,260 (*260 Patent): Claims **1, 2, 5, 6, 7**;
- 10 ● U.S. Patent No. 8,749,507 (*507 Patent): Claims **1-8**;
- 11 ● U.S. Patent No. 9,430,042 (*042 Patent): Claims **1, 2, 3, 7, 8, 9, 10, 11, 13, 14, 15, 16,**
12 **18, 19**;
- 13 ● U.S. Patent No. 9,116,546 (*546 Patent): Claims **1, 2, 3, 5, 6, 7**;
- 14 ● U.S. Patent No. 10,627,907 (*907 Patent): Claims **1-7, 8-14, 15-20**;
- 15 ● U.S. Patent No. 10,665,067 (*067 Patent): Claims **1, 2, 3, 5, 6, 7, 8, 11, 12, 15, 17-21**;
- 16 ● U.S. Patent No. 11,175,738 (*738 Patent): Claims **1, 2, 3, 6, 14, 15, 19**;

17 As set forth below, the accused instrumentalities, to the extent they are discernable, do not
18 infringe any asserted claim, and each asserted claim is invalid.

19 These Contentions are based on information currently available to Valve. Valve’s
20 investigation and analysis of prior art is, however, ongoing. Furthermore, Immersion’s
21 Infringement Contentions are vague and fail to sufficiently identify the Accused
22 Instrumentalities. Indeed, Immersion provides two classifications for the “Accused
23 Instrumentalities”: the “Accused Handheld Instrumentalities” and the “Accused VR
24 Instrumentalities,” the definitions for which mention the Steam Deck and Valve Index, then also
25 mention SteamVR and Steam Input, and also “game engines” including at least Steam VR and
26 Steam Input (which are not game engines). The definitions also mention “game titles.” The

1 definitions also refer to “corresponding software,” which is not defined, but at least includes
2 SteamVR and Steam. Each defined term also includes “game titles that provide examples of the
3 Asserted Claims.” Then, for each patent, Immersion references one or both defined terms, and
4 refers to “certain game titles that provide *non-limiting* examples of infringement” that
5 purportedly are in “the corresponding claim chart” for each patent. This vague and at times
6 circularly defined statement fails to identify what is being accused, for each asserted claim, as
7 required by Local Patent Rule 120(b). Valve reserves the right to seek appropriate relief,
8 including but not limited to striking any infringement theories or accused instrumentalities not
9 adequately disclosed. Valve also reserves the right to supplement or modify these Contentions
10 based on continued discovery, evaluation of the scope and content of the prior art, and/or to the
11 extent that Immersion is allowed to change its asserted claims or contentions.

12 In addition, because the Court has not yet issued a claim construction ruling, Valve
13 cannot provide complete and final invalidity contentions at this time. In the interim, Valve’s
14 Contentions may be based in part on the claim interpretations apparently underlying Immersion’s
15 Preliminary Infringement Contentions (“PICs”), to the extent that they are discernable. These
16 Contentions are not intended to, and do not necessarily, reflect Valve’s positions as to the proper
17 construction of the asserted claims. To the extent that the following Contentions reflect an
18 interpretation consistent with the interpretation adopted by Immersion’s PICs, no inference is
19 intended nor should any be drawn that Valve agrees with those claim constructions, and Valve
20 expressly reserves its right to contest such constructions. Further, no inference is intended nor
21 should any be drawn that the claim limitations satisfy 35 U.S.C. § 112, and Valve reserves the
22 right to contend otherwise.

23 Immersion “bears the burden of establishing that its claimed invention is entitled to an
24 earlier priority date than an asserted prior art reference.” *In re Magnum Oil Tools Int’l, Ltd.*, 829
25 F.3d 1364, 1376 (Fed. Cir. 2016). “To obtain the benefit of the filing date of a parent application,
26 the claims of the later-filed application must be supported by the written description in the parent

1 ‘in sufficient detail that one skilled in the art can clearly conclude that the inventor invented the
2 claimed invention as of the filing date sought.’” *Anascape, Ltd. v. Nintendo of Am., Inc.*, 601
3 F.3d 1333, 1335 (Fed. Cir. 2010) (quoting *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572
4 (Fed. Cir. 1997)). Valve reserves the right to challenge any priority date and any alleged date of
5 conception and to amend these contentions upon the Court’s claim construction order,
6 Immersion’s identification of asserted priority date(s), the Court’s findings concerning the
7 priority date(s) of the asserted claims, information learned through discovery, or otherwise.

8 **II. NON-INFRINGEMENT**

9 Immersion’s PICs fail to demonstrate a plausible basis on which Immersion can carry its
10 burden of proof to show that the accused products that Immersion has identified meet each of the
11 asserted claims. As an initial matter, Immersion’s PICs fail sufficiently to identify each
12 “Accused Device.” Immersion lists two classifications “Accused Handheld Instrumentalities”
13 and “Accused VR Instrumentalities,” the definitions for both of which refer to undefined
14 “corresponding software” and game titles “that provide examples of infringement of the Asserted
15 Claims.” (PICs at 2-3.) Immersion then states that it has identified “certain game titles that
16 provide *non-limiting* examples of infringement,” that purportedly are in “the corresponding claim
17 chart” for each patent. (*E.g.*, PICs at 3 (emphasis added).) The “corresponding claim chart,”
18 however, does not necessarily provide contentions for each game title with respect to each and
19 every element of the asserted claims. For example, the ’260 patent claim chart mentions *Half-*
20 *Life: Alyx* and *Aperture Hand Lab*, but does not provide contentions related to those games for
21 limitations [1.b] or [1.d]. Furthermore, as to various elements of each claim, Immersion’s
22 contentions fail to show a plausible basis on which the claim element can be satisfied for reasons
23 independent of the failure to identify the Accused Devices. Pursuant to Local Patent Rule 121(a),
24 the attached Exhibits AA, BB, CC, DD, EE, FF, and GG provide further detail, on a claim-by-
25 claim basis, of Valve’s response to Immersion’s PICs.

1 Immersion has not properly asserted infringement under section 271(f). 35 U.S.C. §
2 271(f). First, the Complaint lacks any well-pleaded facts relevant to section 271(f). The PICs,
3 meanwhile, assert only conclusions. Immersion fails to identify, for example, what components
4 Valve allegedly supplied from the United States, the purported manner in which they were
5 supplied, or what steps Valve purportedly took to actively induce their combination abroad.
6 Valve denies that Immersion has met its obligations under Local Patent Rule 120 to plead or
7 disclose infringement under section 271(f).

8 Immersion has not properly asserted a claim for indirect infringement under section
9 271(b). A disclosure of a claim of indirect infringement requires identification of any direct
10 infringement. L.P.R. 120(d). Immersion asserts that Valve indirectly infringes “to the extent that
11 Valve’s users are direct infringers.” (PICs at 5.) That does not disclose any act of direct
12 infringement—it merely asserts that *if* Valve users directly infringe, then Valve purportedly
13 indirectly infringes. Moreover, the contentions fail to offer more than conclusory assertions that
14 Valve induces the unidentified direct infringers. Instead, it offers only conclusions. For example,
15 it identifies no instances in which Valve has allegedly encouraged third parties to develop
16 features that allegedly practice each and every limitation of any asserted claim.

17 Immersion has not preserved a claim of infringement under the doctrine of equivalents,
18 other than for elements [1.d], [1.f], and [15.f] of the ’738 patent. Other than claims 1 and 15 of
19 the ’738 patent, Immersion’s cover pleading does not identify any claims as infringed under the
20 doctrine of equivalents. The exhibits to the PICs conclusorily refer to the possibility of
21 infringement under the doctrine of equivalents, but Local Patent Rule 120(e) requires an
22 element-by-element disclosure. With respect to claims 1 and 15 of the ’738 patent, Immersion
23 has provided element-by-element contentions in its claim charts under the doctrine of equivalents
24 only for elements [1.d], [1.f] and [15.f], and thus has not preserved a claim that any other
25 limitations are met under the doctrine of equivalents.

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