

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

BLITZSAFE TEXAS, LLC,

Plaintiff,

v.

**VOLKSWAGEN GROUP OF AMERICA,
INC. and VOLKSWAGEN GROUP OF
AMERICA CHATTANOOGA
OPERATIONS, LLC,**

Defendants.

No. 2:15-cv-01278-JRG-RSP

CONSOLIDATED INTO

No. 2:15-cv-01274-JRG-RSP

JURY TRIAL DEMANDED

**DEFENDANTS VOLKSWAGEN GROUP OF AMERICA, INC. AND VOLKSWAGEN
GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC'S OBJECTIONS TO
THE COURT'S CLAIM CONSTRUCTION OPINION AND ORDER (D.E. 146)**

INTRODUCTION

Pursuant to the Federal Rules of Civil Procedure and this court's local rules, parties may file objections to a non-dispositive, pretrial order issued by a magistrate judge within fourteen days after being served with a copy of the order. Fed. R. Civ. P. 72(a); E.D. Tex. L.R. CV-72(b); *see also* E.D. Tex. L.R. CV-6(a). Defendants VWGoA and VWGoA Chattanooga ("VWGoA/VWGoA Chattanooga") accordingly respectfully object to the rulings in the September 13, 2016 Memorandum Opinion and Order (D.E. 146) of Magistrate Judge Payne construing the claims of U.S. Patent Nos. 7,489,786 and 8,155,342 asserted by plaintiff ("Blitzsafe") against VWGoA/VWGoA Chattanooga, as follows.

Term 1: The Claimed "Interface" Must Be "Functionally And Structurally Separate" From The Car Stereo

Consistent with the claim language, the specification, the prosecution history, and the prior arguments and rulings in the New Jersey district court, the court construed the claimed "interface" as including "a microcontroller and that is a *functionally and structurally separate* component from the car stereo." *See* D.E. 146 at 18–23 (emphasis added). The court also ruled that this construction "does not require the interface to be external to the 'car stereo,' or physically separate from the 'physical devices' that make-up the 'car stereo.'" *Id.* at 21.

VWGoA/VWGoA Chattanooga object to the court's ruling that the proper construction of this term "does not require the interface to be external to the 'car stereo,' or physically separate from the 'physical devices' that make-up the 'car stereo.'" There is no support in the intrinsic evidence for drawing a distinction between "structurally" separate and "physically" separate (as in the court's ruling). The intrinsic evidence cited by the court only describes the properties of the claimed car stereo. It does not mention the interface or its relationship to the car stereo components. *See id.* (citing '786 patent, col. 5:1–13). The court also has not

considered intrinsic evidence from relevant IPR proceedings in which Blitzsafe argued that the '786 patent is valid because the claims describe “three components: a car stereo, an interface, and a portable device/MP3 player,” whereas the prior art described only “two components.” *See* D.E. 133 at 11–12 & nn. 14–16 (“Petitioner’s arguments fail when the claims are construed to require an interface functionally and structurally separate from **both** the car stereo and after-market audio device.”). An interface that is “structurally separate” from the car stereo must also be “external” to, and “physically separate” from, the car stereo components, and the Opinion and Order should be overruled to the extent it rules otherwise.

Term 2: “Integration Subsystem” Is A Microprocessor Programmed To Perform The Method Of Figure 24

The court ruled that the term “integration subsystem” is properly construed as “a subsystem that includes a microcontroller configured to integrate an external device with a car audio/video system.” D.E. 146 at 23–31.

VWGoA/VWGoA Chattanooga object to this ruling. The specification identifies the “integration subsystem” as “a discrete structure comprised of multiple structural components” including a microcontroller “programmed in accordance with the flowchart discussed below with respect to FIG 24.” *See id.* at 29–30 (quoting '342 patent, col. 34:63–35:1). The claims should be construed accordingly, and the court should adopt the alternate construction proposed by the defendants: “a microprocessor programmed to perform the method of FIG. 24.”

Term 3: An Audio Signal That Is Already “Decoded” Does Not Require Additional Decoding

The court construed the term “generated by the portable device . . .” as “produced by the portable device as decoded audio signals for playing on the car audio/video system” (*id.* at 31–35), but ruled that the “decoded audio signal” may be further decoded by the car audio/video system. *See id.* at 35.

VWGoA/VWGoA Chattanooga object to this ruling, because the portions of the intrinsic evidence relied on in the court’s Opinion and Order do not support this proposition. Instead, they describe processing data such as track and artist information for display by the car stereo, not further decoding of an already-decoded audio signal. *See id.* (citing ’342 patent, col. 34:31–38).

Term 4: A “Continuously Transmitted” Signal Cannot Be “Interrupted” Or Transmitted Only At “Intervals”

The court construed the term “device presence signal” as “a continuously transmitted signal indicating an audio device is present.” *See id.* at 35–40. The Opinion and Order, however, states that the “continuously transmitted signal” can be “interrupted at times,” or transmitted at any, unspecified “rhythmic or arrhythmic intervals.” *Id.* at 40.

VWGoA/VWGoA Chattanooga object to this ruling, because the cited intrinsic evidence states consistently that the device presence signal is transmitted “continuously” (*see, e.g., id.* at 38–39), and does not support the proposition that a signal can be “interrupted” or transmitted only at “intervals” and at the same time also be “continuously transmitted.”

Term 7: A Device Is “Capable Of Being Moved About” Even If It Cannot Be “Carried By A Person”

The court construed “portable” as “capable of being moved about” and specifically as capable of being “carried by a person.” D.E. 146 at 46–48.

VWGoA/VWGoA Chattanooga object to this ruling. Although the claims refer to specific portable devices that are capable of being carried by a person (*see id.* at 48 (quoting D.E. 101-4 at 26)), the construction improperly reads limitations into the claim term “portable.”

Term 8: The Court Should Construe The Term “Pre-Programmed”

The court construed the claim term describing a “pre-programmed” microcontroller/code portion as having its plain and ordinary meaning, which the Order characterizes as

“unambiguous” and “easily understandable by a jury.” *See id.* at 48–50.

VWGoA/VWGoA Chattanooga object to this ruling because it does not define what the plain and ordinary meaning is and does not resolve the parties’ disputes as to when or how the microcontroller/code must be “pre-programmed.” The ruling improperly leaves this determination for the jury to decide. *See O2 Micro Int’l Ltd. v. Beyond Innovation Technology Co., Ltd.*, 521 F.3d 1351, 1361–62 (Fed. Cir. 2008) (“A determination that a claim term ‘needs no construction’ or has the ‘plain and ordinary meaning’ may be inadequate when a term has more than one ‘ordinary’ meaning or when reliance on a term’s ‘ordinary’ meaning does not resolve the parties’ dispute.”). The court should adopt the construction proposed by the defendants.

Term 9: The Court Should Construe The Term “Car Audio/Video System”

The court declined to construe the term “car audio/video system,” ruling that it “is unambiguous, is easily understandable by a jury, and should be given its plain and ordinary meaning.” *See* D.E. 146 at 51–56.

VWGoA/VWGoA Chattanooga object to this ruling because it does not resolve the parties’ disputes. *See O2 Micro*, 521 F.3d at 1362. The term “car audio/video system” should be construed consistently with the construction adopted for the related term “car stereo.”

Term 10: The Court Should Construe The Term “Format Incompatible With . . .”

The court declined to construe the “format incompatible with . . .” claim terms because “the phrases are unambiguous, are easily understandable by a jury, and should be given their plain and ordinary meaning.” D.E. 146 at 56–59.

VWGoA/VWGoA Chattanooga object to this ruling because it does not resolve the parties’ disputes, *see O2 Micro*, 521 F.3d at 1362, and is not consistent with the ruling in the Order that the term “incompatible” has a specific meaning to a person of skill in the art.

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