

EXHIBIT 29

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

3RD EYE SURVEILLANCE, LLC

Plaintiff,

v.

**THE CITY OF FORT WORTH and
e-WATCH CORPORATION**

Defendants.

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No. 6:14-cv-00725

JURY DEMANDED

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant e-Watch Corporation’s Motion for Summary Judgment of Indefiniteness. (Doc. No. 99). Plaintiff 3rd Eye Surveillance, LLC filed a Response (Doc. No. 102) and Defendant filed a Reply (Doc. No. 105). On May 12, 2016, the Court held a hearing and heard argument on the Motion. Having considered the parties’ arguments and for the reasons stated below, the Court **DENIES** Defendant’s Motion for Summary Judgment (Doc. No. 99).

BACKGROUND

Plaintiff contends that Defendant literally infringes U.S. Patent No. 7,323,980 (“the ’980 Patent”). The ’980 Patent is the only patent in suit, and is entitled “Security System and Method with Realtime Imagery.” ’980 Patent. The disclosure of the ’980 Patent relates generally to “provid[ing] secure, realtime video and/or other realtime imagery of a secured location to one or more emergency response agencies over a high-speed communications link, such as the internet.” ’980 Patent Abstract. The stated objective of the invention is to allow emergency response agencies and their personnel to be better informed and prepared in responding to and

preventing emergencies. '980 Patent at 2:1–3. The '980 Patent contains four independent claims, claims 1, 11, 21, and 31, which recite as follows:

1. A security system comprising:

an imaging device positioned at a secured location;
a computer system associated with a security system central monitoring station, said computer system configured to:
receive real-time imagery data from said secured location;
process the received imagery data;
generate additional information associated with the received imagery data;
identify an appropriate response agency from amongst a plurality of response agencies based on at least one of the additional information and the imagery data; and
transmit the received imagery data and the additional information to a computer system associated with a response agency.

11. A method of securing a location comprising the steps of:

generating real-time imagery data at a secured location;
transmitting the real-time imagery data to a security system central station over a network connection;
processing the received imagery data at the security system central monitoring station;
generating additional information associated with the received imagery data; and
transmitting the received imagery data and the additional information to response agency over a network connection, wherein the response agency is identified from among a plurality of response agencies based on at least one of the additional information and the imagery data by a computer system at the security system central monitoring station.

21. A method for providing real-time data to a response agency:

receiving real-time data from a secured location;
accessing additional information associated with the data;
identifying at least one response agency from amongst a plurality of response agencies based on the data; and
transmitting the data and the additional information to at least one computer system associated with the selected response agency, wherein said receiving, accessing, identifying, and transmitting are performed by a computer system at a security system central monitoring station.

31. A method of securing a location comprising the steps of:

generating real-time imagery of a secured location;
transmitting the real-time imagery to a security system central station over a network connection;
processing the real-time imagery at the security system central station;
transmitting the real-time imagery from the security system central station to a response agency over a network connection; and
displaying the real-time imagery at the response agency, wherein the response agency is identified from amongst a plurality of response agencies by a computer system at the security system central station.

Defendant moves for summary judgment, arguing that claims of the '980 Patent are invalid because the following phrases fail to comply with the definiteness requirement of 35 U.S.C. § 112, ¶ 2: (1) “associated with”; (2) “. . . based on at least one of the additional information and the imagery data . . .”; (3) “process” and “processing” as related to “received imagery data” and “real-time imagery”; (4) “realtime imagery” and “real-time imagery”; (5) “real-time data”; (6) “real-time imagery data”; (7) “generating additional information”; and (8) “assessment of the data” and “automatically generating the additional information.”

LEGAL STANDARD

I. Summary Judgment Standard

“Summary judgment is appropriate in a patent case, as in other cases, when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Nike Inc. v. Wolverine World Wide, Inc.*, 43 F.3d 644, 646 (Fed. Cir. 1994); FED. R. CIV. P. 56(c).

II. Indefiniteness

Indefiniteness is a question of law. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 723 F.3d 1363, 1368 (Fed. Cir. 2013). “[D]etermination of claim indefiniteness is a legal conclusion that

is drawn from the court’s performance of its duty as the construer of patent claims.” *Exxon Research & Eng’g Co. v. United States*, 265 F.3d 1371, 1376 (Fed. Cir. 2001) *abrogated on other grounds by Nautilus v. Biosig Instruments, Inc.*, 134 S.Ct. 2120, 2130 n. 9 (2014). Indefiniteness is a challenge to the validity of the patent that must be established by clear and convincing evidence. *Nautilus*, 134 S.Ct. at 2130, n. 10 (citing *Microsoft Corp. v. i4i Ltd. Partnership*, 131 S.Ct. 2238, 2242 (2011) for the clear-and-convincing standard applicable to challenges to invalidity and declining to alter this standard).

Under 35 U.S.C. § 112 ¶ 2, “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” “A lack of definiteness renders invalid ‘the patent or any claim in suit.’” *Nautilus*, 134 S.Ct. at 2125 (citing 35 U.S.C. § 282, ¶ 2(3)). Until recently, a claim was indefinite “only when it [was] not amendable to construction or insolubly ambiguous.” *Id.* at 2127. The Supreme Court rejected this standard as too imprecise. *Id.* at 2130.

Under the new standard, “a patent is invalid for indefiniteness if its claims, read in light of the specification . . . , and the prosecution history, fail to inform, with *reasonable certainty*, those skilled in the art about the scope of the invention.” *Id.* at 2124 (emphasis added). In rejecting the prior standard, the court found it insufficient “that a court [could] ascribe *some* meaning to a patent’s claims.” *Id.* at 2130. Reasonable certainty is something more precise than insolubly ambiguous, but short of absolute precision. *Id.* at 2129–30. In describing the new standard the court “mandates clarity.” *Id.* at 2129.

The Supreme Court noted the “delicate balance” to the indefiniteness analysis. *Id.* at 2128. In summarizing this balance *post-Nautilus*, the Federal Circuit explained that “[t]he definiteness standard ‘must allow for a modicum of uncertainty’ to provide incentives for

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