EXHIBIT A

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

PARKERVISION, INC.,

Plaintiff,

v. **v.**

LG ELECTRONICS, INC.,

Defendant.

Case No. 6:21-cv-00520-ADA

JURY TRIAL DEMANDED

DEFENDANT'S SUR-SUR-REPLY CLAIM CONSTRUCTION BRIEF

I. "CABLE MODEM" IN DEPEDNENT CLAIMS 16 AND 17 DOES NOT RENDER THE PREAMBLE'S "CABLE MODEM" LIMITING

ParkerVision argues—belatedly and incorrectly—that "cable modem" in the preamble of claim 1 must be limiting because it serves as antecedent basis for "cable modem" in dependent claims 16 and 17 and improperly concludes that this "end[s] the inquiry." Dkt. 40 (PV Sur-Reply) at 6. ParkerVision is incorrect.

"[A] preamble of an independent claim need not be found limiting merely because it appears in the body of a dependent claim." *SEVEN Networks, LLC v. Apple Inc.*, No. 2:19-CV-00115-JRG, 2020 WL 1536152, at *32 (E.D. Tex. Mar. 31, 2020). Indeed, courts have consistently rejected any attempt to impose a "bright-line rule that antecedent basis for a dependent claim is always sufficient to render a preamble limiting." *TQ Delta, LLC v. 2WIRE, Inc.*, No. 1:13-CV-01835-RGA, 2018 WL 4062617, at *4 (D. Del. Aug. 24, 2018) (cleaned up; distinguishing *Pacing Technologies, LLC v. Garmin Int'l, Inc.*, which found a preamble limiting where the preamble provided antecedent basis for a limitation in a dependent claim, 778 F.3d 1021, 1024 (Fed. Cir. 2015)); *see also CreAgri, Inc. v. Pinnaclife Inc.*, No. 11:CV-06635-LHK, 2013 WL 1663611, at *8 (N.D. Cal. Apr. 16, 2013) ("[T]he Court is not persuaded that the preamble 'a dietary supplement' should be construed as limiting Claims 1 and 5 (or the Patent as a whole) simply because it appears in the preamble and the body of dependent Claim 3."); *Enpat, Inc. v. Shannon*, No. 6:11-CV-00084-GAP, 2011 WL 6010441, at *8 (M.D. Fla. Nov. 30, 2011) (finding preamble of independent claim limiting only as to dependent claim). "[S]uch a bright-line rule would create tension with the Federal Circuit's earlier observation that '[n]o litmus test defines when a preamble limits claim scope.'" *PersonalWeb Techs. LLC v. Int'l Bus. Machs. Corp.*, No. 16-CV-01266-EJD, 2017 WL 2180980, at *13 n.15 (N.D. Cal. May 18, 2017) (quoting *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002)).

Here, the mere fact that independent claim 1's preamble term "cable modem" appears in the body of two dependent claims does not render the preamble of claim 1 limiting. ParkerVision's new argument, predicated only on a misunderstanding of law, does not change the conclusion that the "cable modem" portion of the preamble is not limiting, for the reasons explained in LGE's Opening Claim Construction Brief (Dkt. 31 at 8-11) and Reply Construction Brief (Dkt. 37 at 5-7).

Dated: April __, 2022

Respectfully submitted,

/s/ DRAFT

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