

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

**PARKERVISION, INC.,**

Plaintiff,

v.

**LG ELECTRONICS, INC.,**

Defendant.

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

**JURY TRIAL DEMANDED**

**LGE'S REPLY TO PARKERVISION'S OPPOSITION TO LGE'S MOTION FOR  
LEAVE TO FILE A SUR-SUR-REPLY CLAIM CONSTRUCTION BRIEF**

Defendant LG Electronics Inc. (“LGE”) submits this Reply brief in support of its motion for leave to serve an additional claim construction brief. Dkt. Nos. 45, 46.

**ParkerVision does not dispute it raised a new argument in its Sur-Reply.** In its Opposition, ParkerVision does not dispute that the first time it raised dependent claims 16 and 17 to argue that the preamble of independent claim 1 is limiting was in its claim construction Sur-Reply. Nor does ParkerVision dispute that it could have raised this argument in its Responsive claim construction brief.<sup>1</sup>

**No prejudice to ParkerVision.** ParkerVision does not identify any harm or prejudice in allowing a sur-sur-reply. That is because no such harm or prejudice exists. Indeed, ParkerVision devotes most of its Opposition (Opp. 2-4) to responding to the arguments made in LGE’s proposed sur-sur-reply. ParkerVision, moreover, will have the opportunity to further respond to LGE’s arguments at the *Markman* hearing.

**ParkerVision’s case law discussion omits significant details.** LGE’s opening brief for the instant motion establishes that there is no bright-line rule that a preamble of an independent claim is always limiting when it provides antecedence for a dependent claim. ParkerVision’s attempt to distinguish LGE’s cases that establish this point omit significant details. ParkerVision, for example, argues that *SEVEN Networks* found the preambles of independent claims limiting

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<sup>1</sup> ParkerVision incorrectly states that LGE’s statement in its opening brief that “cable modem” does not provide an antecedence basis “for any later term” is misleading. Opp. 1. As LGE’s brief makes clear, this statement was made in the context of only claim 1 – not claims 16 and 17 – as claim 1 is the only claim that was before the court for construction of the preamble. LGE Op. Br. (Dkt. No. 31) at 10.

even though these preambles provided antecedent basis only for terms in dependent claims.<sup>2</sup> Opp.

4. ParkerVision, however, omits that the court also found that the preambles of the independent claims, unlike here, gave life, meaning and vitality to the claims. *SEVEN Networks* at \*32 (“Instead, the preambles of Claims 13 and 23 give “life, meaning, and vitality” to the interactions involving the first computer and the second computer recited in the bodies of Claims 13 and 23.”). ParkerVision, as another example, notes that the court in *TQ Delta* stated that neither party at the *Markman* hearing objected to the notion that a preamble could be limiting as to a dependent claim but not an independent claim. ParkerVision, however, omits that the Court also stated that it did not believe that the Federal Circuit created a bright-line rule that a preamble in an independent claim is always limiting when it provides antecedent basis for a dependent claim. *TQ Delta, LLC v. 2WIRE, Inc.*, No. 1:13-CV-01835-RGA, 2018 WL 4062617, at \*5 (D. Del. Aug. 24, 2018) (“I do not read *Pacing Techs.* as creating a bright-line rule that a preamble is limiting whenever it provides antecedent basis for a term in a dependent claim.”). In addition, ParkerVision argues that “nowhere in *Pacing Techs.*, *Bondyopadhyay*, or *In re Fought* does the Federal Circuit suggest that the preamble of an independent claim can be limiting *only* with respect to the dependent claim but not the independent claim too.” Opp. 4. But ParkerVision omits that this was not at issue in any of these three cases.

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<sup>2</sup> ParkerVision incorrectly argues (Opp. 2) that LGE misrepresented *SEVEN Networks, LLC v. Apple, Inc.*, No. 2:19-CV-00115-JRG, 2020 WL 1536152 (E.D. Tex. 2020). LGE cited to *SEVEN Networks* to support its argument that there is no bright-line rule that a preamble of an independent claim is limiting merely because it appears in the body of a dependent claim. That is precisely what *SEVEN Networks* says. *See id.* at \*8 (“In some cases, the preamble of the independent claim may be limiting as to a dependent claim but *not* as to the independent claim from which it depends.”).

Because ParkerVision raised a new argument in its Sur-Reply that it could have raised in its Responsive brief and because there is no prejudice to ParkerVision by allowing a sur-sur-reply, LGE respectfully submits that its motion should be granted.

Dated: May 6, 2022

Respectfully submitted,

/s/ Melissa R. Smith

Melissa R. Smith  
**GILLAM & SMITH, LLP**  
TX State Bar No. 24001351  
303 S. Washington Avenue  
Marshall, Texas 75670  
Telephone: (903) 934-8450  
Facsimile: (903) 934-9257  
[melissa@gillamsmithlaw.com](mailto:melissa@gillamsmithlaw.com)

Steven Pepe  
Matthew Shapiro  
James Stevens  
Michael Morales  
**ROPES & GRAY LLP**  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Tel: 212.596.9000  
Fax: 212.596.9090  
[Steven.Pepe@ropesgray.com](mailto:Steven.Pepe@ropesgray.com)  
[Matthew.Shapiro@ropesgray.com](mailto:Matthew.Shapiro@ropesgray.com)  
[James.Stevens@ropesgray.com](mailto:James.Stevens@ropesgray.com)  
[Michael.Morales@ropesgray.com](mailto:Michael.Morales@ropesgray.com)

David S. Chun  
Stepan Starchenko  
**ROPES & GRAY LLP**  
1900 University Ave., 6th Floor  
East Palo Alto, CA 94303-2284  
Tel: 650.617.4000  
Fax: 650.617.4090  
[David.Chun@ropesgray.com](mailto:David.Chun@ropesgray.com)  
[Stepan.Starchenko@ropesgray.com](mailto:Stepan.Starchenko@ropesgray.com)

Scott Taylor  
(Admission application forthcoming)  
**ROPES & GRAY LLP**

Prudential Tower  
800 Boylston Street  
Boston, MA 02199-3600  
Tel: 617.951.7000  
Fax: 617.951.7050  
[Scott.Taylor@ropesgray.com](mailto:Scott.Taylor@ropesgray.com)

*Attorneys for Defendant LG Electronics Inc.*

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