IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TECHNO VIEW IP, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 17-386 (CFC)(CJB)
	)	
FACEBOOK TECHNOLOGIES, LLC and FACEBOOK, INC.,	)	
	)	
Defendants.	)	

DEFENDANTS FACEBOOK TECHNOLOGIES, LLC AND FACEBOOK, INC.'S RESPONSE TO PLAINTIFF TECHNO VIEW IP INC.'S OBJECTIONS TO THE AUGUST 15, 2018 REPORT AND RECOMMENDATION CONSTRUING DISPUTED CLAIM TERMS

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I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 72 and D. Del. LR 72.1, Defendants Facebook Technologies, LLC[1] and Facebook, Inc. provide the following response to Plaintiff Techno View IP, Inc.'s Objections (D.I. 75, "Objections") to the August 15, 2018 Report and Recommendation (D.I. 74, "Report") regarding disputed claim construction terms. For the reasons set forth below, Defendants respectfully request the Court adopt the Report in full.

II. ARGUMENT

A. "buffer"

The Report correctly recommends that the term "buffer" be construed to mean a "memory location for temporary storage of image-related data." (D.I. 74 at 11.) Plaintiff's primary contention in its Objections is that the "buffer" claimed in the patents-in-suit could "contain non-image data as well" as image-related data, and therefore requests that "buffer" be construed to mean "memory location for temporary storage of data." (D.I. 75 at 1.) But this contention is based on a faulty premise.

First, the shared specification of the patents-in-suit does not set forth any examples of a "buffer" storing any non-image related data. The Report specifically found that each of the specification citations set forth by the Plaintiff during the *Markman* hearing "did not support the notion that the 'buffer' recited in the claims stores something other than image-related data." (D.I. 74 at 10.) In its Objections, Plaintiff purports to cite to two new passages – Figure 5A and column 9, lines 26-30 of the '096 Patent – in support of its argument. (D.I. 75 at 1.) Not only are such new arguments improper,[2] they are unavailing. Neither of the citations refers to a

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[1] Facebook Technologies, LLC was previously known as Oculus VR, LLC. D.I. 77.

[2] Pursuant to paragraph 5 of the District of Delaware Standing Order for Objections Filed Under Fed. R. Civ. P. 72, Plaintiff failed to include a certification that "the objections do not raise new legal/factual arguments, or identifying the new arguments and describing the good

"buffer" – rather they refer to generic "memory." But even if these citations supported Plaintiff's argument (which they do not), the Report's recommended construction was not "memory location for temporary storage of only image-related data," rendering Plaintiff's request for a revised construction unnecessary. (*See* D.I. 73, 6/19/18 *Markman* Tr. at 41:17-23.) As such, the Report's recommended construction of "buffer" is correct, and Defendants respectfully request the Court adopt this construction.

B. "left backbuffer" and "right backbuffer"

The Report also correctly recommends constructions for the terms "left backbuffer" and "right backbuffer." (D.I. 74 at 17.) Plaintiff objects to the Report's recommended construction for "left backbuffer": "memory location where the left image is temporarily stored, and that, at a given point in time, stores a separate image from any stored in the right backbuffer." (D.I. 74 at 17.) Plaintiff's sole argument against this construction relies on an inaccurate reading of the Report's ruling, new argument, and a newly proposed construction.

Although, claim 1 of the '096 patent contemplates a scenario where no image is stored in the "right backbuffer," the Report's recommended construction for "left backbuffer" allows for such a scenario. This construction does not refer to "the image stored in the right backbuffer," as Plaintiff appears to argue, but rather, it makes clear that the image stored in the left backbuffer must be different from "any image stored in the right backbuffer" (emphasis added). (D.I. 74 at 17.) This is consistent with the language of claim 1 of the '096 patent. Plaintiff's new construction for "left backbuffer" adds no clarity to the Report's construction. As no change

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cause for failing to previously raise the new legal/factual arguments before the Magistrate Judge." Defendants have identified such new arguments and proposed constructions throughout this response, and respectfully request the Court disregard any such arguments. For example, here, Plaintiff's argument that Figure 5A and Column 9, lines 26-30 supports its construction of "buffer" is an argument that was neither made in its brief nor at the hearing. *See* D.I. 47, Ex. A at 15-16; D.I. 52 at 1-2 (citing '096 Patent, column 6:40-47), D.I. 59 at 1-2; D.I. 73 (6/19/18 *Markman* Tr.) at 20:13-22:1.

need be made to the construction for "left backbuffer," the construction for "right backbuffer" should also remain unchanged.

C. "frontbuffer"

Finally, the Report correctly recommends a construction for the term "frontbuffer": a "memory location for temporary storage of an image received from the backbuffer to be displayed." (D.I. 74 at 18.) As the Report explains, the parties did not dispute that an image arrives to the "frontbuffer" from a backbuffer. (*Id.* (citing D.I. 73, 6/19/18 *Markman* Tr. at 56-57, 61-62).) In particular, Plaintiff's counsel explained at the hearing that, for a "frontbuffer," "[t]he image also arrives from the corresponding back buffer." (D.I. 73, 6/19/18 *Markman* Tr. at 56-57.)

In contrast to that representation, Plaintiff now proposes an improper new construction that was neither briefed nor argued before the Court. Although Plaintiff is correct that dependent claim 14 refers to a "buffer" and a "frontbuffer," rather than a "backbuffer" and a "frontbuffer," this does not warrant any change from the Report's recommended construction. The "buffer" in claim 14 is consistent with the Report's recommended construction of "backbuffer": a "memory location for temporary storage of an image without it being outputted to the display, and before being transferred to a frontbuffer." As such, the "buffer" in claim 14 is acting as a "backbuffer," making Plaintiff's requested edit to the Report's construction unnecessary and inconsistent with its previous representations to the Court.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court overrule Plaintiff's objections, and adopt the Report in full.

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