IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

DEFENDANTS OCULUS VR, LLC AND FACEBOOK, INC.'S
RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Defendants Oculus VR, LLC and Facebook, Inc. ("Defendants") have consistently proposed well-supported constructions for the disputed terms consistent with the intrinsic record and extrinsic evidence. Plaintiff Techno View IP, Inc. ("Plaintiff") in contrast has repeatedly and without warning altered its confusing and unsupported constructions, such that neither Defendants nor the Court can even determine what Plaintiff's position is or upon which evidence it now bases its allegations. Plaintiff has violated both the Court's scheduling orders and the parties' stipulations, and made no effort to inform Defendants or meet and confer regarding these new positions. In view of all the evidence and circumstances, Defendants respectfully request the Court adopt their proposed constructions.

II. PLAINTIFF'S REPEATED VIOLATIONS OF THE COURT'S SCHEDULING ORDER

Throughout the claim construction exchange process, Plaintiff's claim construction positions have been a moving target. Plaintiff belatedly introduced and then repeatedly changed its constructions, and has generally ignored deadlines in the Court's scheduling order, thus necessitating multiple extensions and frustrating the claim construction exchange process. As a result, it has been difficult for Defendants to know the constructions to which it should respond to help the Court understand the true disputes.

Plaintiff originally stated: "it is the position of Techno View that no terms require construction. All terms are believed to be clearly understood by one of ordinary skill in the art at the time of the invention." (Ex. 1, February 23, 2018 email from M. Botts to counsel for Defendants). In contrast, Defendants identified nine proposed constructions. (Ex. 2, February 23, 2018 email from J. Ying to counsel for Plaintiff). Notwithstanding Defendants' repeated follow ups, Plaintiff maintained that no terms needed construction, and offered no alternatives. (Ex. 3, March 14, 2018 email from M. Botts to counsel for Defendants.) On the same day the

Joint Claim Construction Chart was originally due, Plaintiff stated, for the first time, that it would now be providing constructions, which it did days later. (Ex. 4, March 16, 2018 email from M. Botts at 9:19 a.m. to counsel for Defendants; Ex. 5, March 20, 2018 email from D. Murray to counsel for Defendants.) The parties filed numerous extension requests in order to develop the Joint Claim Construction Chart required by the scheduling order, which reflected the new proposals as well as a number of agreements.

In its opening brief, however, Plaintiff unilaterally changed its proposed constructions for six out of nine claim terms in the Joint Claim Construction Chart, including one on which the parties had earlier agreed. Specifically, Plaintiff changed its constructions for: (1) the previously stipulated term "backbuffer"; (2) "buffer";[1] (3) "frontbuffer"; (4) "storing . . . image"; (5) the "coordinate" terms; and (6) the "calculating" step recited in claims 1 and 7 (including an entirely new proposal for means-plus-function). Even worse, when Defendants sought confirmation that Plaintiff would not further change positions in its responsive claim construction brief, Plaintiff refused to provide such confirmation. (Ex. 7, May 14, 2018 letter from K. Jacobs to counsel for Plaintiff; Ex. 8, May 16, 2018 email from M. Botts to counsel for Defendants.)

Defendants object to Plaintiff's "shifting sands" approach to claim construction, and believe that the new proposals are untimely, and should not be considered, but nevertheless have done their best to address these new proposals below. To the extent Plaintiff's untimely constructions are considered, they should still be rejected, for the reasons set forth below.

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[1] Defendants had informed Plaintiff that they could agree to Plaintiff's original proposed construction for "buffer." Rather than inform Defendants that it would be advancing a new construction, Plaintiff merely replied that it would "respond to you as soon as possible" to Defendants on its "offer." (Ex. 6, email chain between J. Ying and counsel for Plaintiff.) Plaintiff never responded further.

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