

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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

REPORT AND RECOMMENDATION

In this action filed by Plaintiff Techno View IP, Inc. (“Techno View” or “Plaintiff”) against Oculus VR, LLC (“Oculus”) and Facebook, Inc. (“Facebook” and collectively with Oculus, “Defendants”), Plaintiff alleges infringement of United States Patent Nos. 7,666,096 (the “’096 patent”) and 8,206,218 (the “’218 patent” and collectively with the ’096 patent, “the asserted patents”). Presently before the Court is the matter of claim construction. The Court recommends that the District Court adopt the constructions as set forth below.

I. BACKGROUND

A. The Parties

Plaintiff is a California corporation, and the exclusive licensee of the asserted patents. (D.I. 8 at ¶¶ 1-2) Defendant Oculus is a Delaware limited liability company with its principal place of business in Menlo Park, California. (*Id.* at ¶¶ 3, 6; D.I. 12 at ¶¶ 3, 6) Defendant Facebook is a Delaware corporation with its principal place of business in Menlo Park, California. (D.I. 8 at ¶¶ 8, 10; D.I. 12 at ¶¶ 8, 10)

Defendants are in the business of making, using, and selling the Oculus Rift product. (D.I. 8 at ¶ 30; D.I. 17 at 1) In this action, Plaintiff alleges that Defendants directly and

indirectly infringe the asserted patents by the manufacture, use, sale, and offers to sell of products, including their Oculus Rift product. (D.I. 8)

B. The Asserted Patents

The '096 patent is entitled “Method for Generating the Left and Right Perspectives in a 3D Videogame[,]” and was issued on February 23, 2010. (D.I. 8, ex. A (hereinafter, the “’096 patent”)) The '218 patent is entitled “3D Videogame System” and was issued on June 26, 2012. (*Id.*, ex. B (hereinafter, the “’218 patent”)) The '218 patent is a continuation of the '096 patent, and the patents therefore share a specification. (*See* '218 patent; D.I. 53 at 1) Both patents claim priority to application No. PCT/MX03/00112, filed on December 19, 2003. ('096 patent; '218 patent; D.I. 56, Slide 1)

The patents relate to “the display of three-dimensional [hereinafter, ‘3D’] television images, more specifically to a hardware and software design for viewing [] 3D[] images, easy to be integrated to the existing television, personal computer and videogame system equipment.” ('096 patent, col. 1:14-18; *see also* D.I. 73 at 8 (Plaintiff’s counsel explaining that the patents “describe ways to efficiently process information for the generation and display of 3D images used in video game applications, whether on [personal computers], televisions, or virtual and augmented reality systems”)) The Abstract of the patents describes the invention as a “3D videogame system capable of displaying a left-right sequences through a different, independent VGA or video channel, with a display device sharing a memory in an immerse manner.” ('096 patent, Abstract)

C. Procedural History

Plaintiff filed the instant case on April 6, 2017. (D.I. 1) The case was assigned to the Vacant Judgeship docket on April 12, 2017, and referred to the Court on that date “for handling through case-dispositive motions[.]” including “making recommendations as to the resolution of dispositive matters[.]”

The parties filed simultaneous opening claim construction briefs on April 20, 2018 and simultaneous responsive briefs on May 18, 2018. (D.I. 52, 53, 57, 59) The Court held a *Markman* hearing on June 19, 2018. (D.I. 73 (hereinafter, “Tr.”)) Following the hearing, Plaintiff submitted a supplemental letter brief to address caselaw newly disclosed by Defendants during the *Markman* hearing. (D.I. 69)

II. STANDARD OF REVIEW

It is well-understood that “[a] claim in a patent provides the metes and bounds of the right which the patent confers on the patentee to exclude others from making, using, or selling the protected invention.” *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989). Claim construction is generally a question of law, although subsidiary fact finding is sometimes necessary. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 837-38 (2015).

The Court should typically assign claim terms their “ordinary and customary meaning[.]” which is “the meaning that the term[s] would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (citations omitted). However, when determining the ordinary meaning of claim terms, the Court should not extract and isolate those terms from the context of the patent; rather it should endeavor to

reflect their “meaning to the ordinary artisan after reading the entire patent.” *Id.* at 1321; *see also Eon Corp. IP Holdings LLC v. Silver Spring Networks, Inc.*, 815 F.3d 1314, 1320 (Fed. Cir. 2016).

In proceeding with claim construction, the Court should look first and foremost to the language of the claims themselves, because “[i]t is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude.” *Phillips*, 415 F.3d at 1312 (internal quotation marks and citations omitted). For example, the context in which a term is used in a claim may be “highly instructive.” *Id.* at 1314. In addition, “[o]ther claims of the patent in question, both asserted and unasserted, can . . . be valuable” in discerning the meaning of a particular claim term. *Id.* This is “[b]ecause claim terms are normally used consistently throughout the patent, [and so] the usage of a term in one claim can often illuminate the meaning of the same term in other claims.” *Id.* Moreover, “[d]ifferences among claims can also be a useful guide[,]” as when “the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim.” *Id.* at 1314-15.

In addition to the words of the claims, the Court should look to other intrinsic evidence. For example, the Court should analyze the patent specification, which “may reveal a special definition given to a claim term . . . that differs from the meaning [that term] would otherwise possess” or may reveal an intentional disclaimer of claim scope. *Id.* at 1316. Even if the specification does not contain such revelations, it “is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.” *Id.* at 1315 (internal quotation marks and citation omitted). That said, however,

the specification “is not a substitute for, nor can it be used to rewrite, the chosen claim language.” *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004). And a court should also consider the patent’s prosecution history, if it is in evidence, because it “can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution[.]” *Phillips*, 415 F.3d at 1317.

Extrinsic evidence, “including expert and inventor testimony, dictionaries, and learned treatises[.]” can also “shed useful light on the relevant art[.]” *Id.* (internal quotation marks and citations omitted). Overall, while extrinsic evidence may be useful, it is “less significant than the intrinsic record in determining the legally operative meaning of claim language.” *Id.* (internal quotation marks and citations omitted); *accord Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 981 (Fed. Cir. 1995).

In utilizing these resources during claim construction, courts should keep in mind that “[t]he construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.” *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998).

III. DISCUSSION

The parties currently have disputes regarding eight terms or sets of terms (hereafter, “terms”).¹ This Report and Recommendation addresses the first four terms, in the order in which the parties addressed them at the *Markman* hearing. The other four terms will be addressed in a forthcoming Report and Recommendation.

¹ The parties originally submitted an additional term for claim construction:

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