

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AXON ENTERPRISE, INC.  
(f/k/a TASER International, Inc.)  
Petitioner

v.

DIGITAL ALLY, INC.  
Patent Owner

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Case IPR2017-00375  
Patent 8,781,292

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**PATENT OWNER'S REPLY TO PETITIONER'S  
OPPOSITION TO MOTION TO AMEND**

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## I. CLAIM CONSTRUCTION

### A. “record” and Variants Thereof

Digital proposes that “record” and variants thereof be construed as “storing captured data for future retrieval.” (Paper 23, 5). Axon instead proposes “generate or capture data for the purpose of storing.” (Paper 29, 2). Axon’s arguments for unpatentability of the substitute claims necessitate construing “record.” Applying Digital’s construction of “record,” Cilia’s (EX\_1030) personal transceiver device does not store, *i.e.*, preserve, data but rather buffers the data until it is successfully transmitted to the recording device. (EX\_1030, ¶ 8; *see also* EX\_2001, ¶ 41 (Dr. Madisetti opining “recorded” data, as claimed, is preserved)). Additionally, Cilia’s transceiver device does not store for the purpose of “future retrieval” but rather for immediate retransmission. (EX\_2009, ¶ 23). As such, the term “record” is in controversy, which construing it would resolve. Thus, Digital requests the Board construe the claim term. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 2000) (“Only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

Digital previously submitted that Axon’s implicit construction of “record” to mean “to transmit” resulted in a logical inconsistency when read in the context of the claims. (Paper 23, 6). Construing “record” as “generate or capture” does not resolve this contradiction. (EX\_2009, ¶ 7). By shoehorning “for the purposes of

storing” into its proposed construction to avoid a nonsensical read of the substitute claims, Axon appears to agree that “record” must include the concept of “storage.” However, Axon’s arguments in the Petition hinge on *Pierce*, which does not teach sending an instruction to the input devices to begin storing data. Thus, Axon is forced to propose a strained, results-driven construction that should be rejected.

**B. “recording device”**

The substitute claims recite additional structure in the “recording device,” and, even if the “input” recited in the Challenged Claims is insufficient to inform the structural character of the recording device, the claimed input in combination with the “included” computer-readable medium (CRM) does so. (EX\_2009, ¶ 8). Additionally, Axon’s own evidence supports a finding that a POSITA would understand the term “recording device” as sufficiently definite for structure; Cilia uses the term “recording device” no fewer than 37 times in describing both its invention and the prior art. (EX\_1030, ¶¶ 5-7, 14-15, EX\_2009 ¶ 9). Cilia describes the recording device as “includ[ing] an input/output module [...] and a mass-storage module.” *Id.* at ¶ 15. This, in combination with Dr. Madisetti’s testimony and the use of the term in the background references cited by Axon (*see* Paper 23, 8-9) support “recording device” being common parlance within the art and understood to a POSITA to include sufficiently definite structure.

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