

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

VOCALIFE LLC) (
) (CIVIL ACTION NO.
) (2:19-CV-123-JRG
VS.) (MARSHALL, TEXAS
) (
AMAZON.COM, INC., ET AL.) (SEPTEMBER 24, 2020
) (9:03 A.M.

11:45:25 1 saw was the State of Texas and an arrow above it.

11:45:25 2 MR. RUBINO: Yes, Your Honor.

11:45:28 3 THE COURT: He's as good an artist as I am.

11:45:32 4 MR. RUBINO: Yes, Your Honor, that was the slide.

11:45:32 5 And so the question there is whether Mr. McAlexander had

11:45:32 6 some admission in his deposition, and Defendant put up a

11:45:38 7 slide with his deposition testimony.

11:45:38 8 If I could, Mr. Iturralde, are you able to put up

11:45:42 9 the depo testimony?

11:45:43 10 MR. ITURRALDE: Yes.

11:45:45 11 MR. RUBINO: And while Mr. Iturralde is putting up

11:45:45 12 the depo testimony, I would like to just mention -- and

11:45:47 13 this is in our briefs -- that Mr. McAlexander, on Page 189,

11:45:51 14 Lines 1 through 5 of his deposition, testified -- and

11:45:56 15 I'll -- I'll go back a second.

11:45:57 16 The citation that Defendants were putting up was

11:45:59 17 in the context of an invalidity discussion. When

11:46:04 18 Mr. McAlexander addressed this limitation, the spatial

11:46:06 19 location limitation in the context of infringement, he

11:46:10 20 clarified that the limitation requires estimating the

11:46:14 21 location of a target sound signal, which is not the

11:46:17 22 question that was asked to him earlier in his deposition

11:46:20 23 about estimating spatial location.

11:46:22 24 And when it comes to estimating a spatial

11:46:25 25 location -- or comes to estimating the location of the

11:46:30 1 target sound signal, Mr. McAlexander says that azimuth is
11:46:33 2 sufficient. It gives you an indication of where in space
11:46:36 3 it may be located along an azimuth, but it doesn't identify
11:46:39 4 the location. It just identifies direction for which sound
11:46:43 5 is launched, but it -- sorry, this is not the right -- this
11:46:46 6 is not the right citation.

11:46:48 7 189, please.

11:46:52 8 If we look at the question preceding -- 189.

11:46:58 9 MR. FABRICANT: 189.

11:46:58 10 MR. ITURRALDE: Sorry, I don't have -- I don't
11:46:59 11 have that.

11:47:00 12 MR. RUBINO: Oh, sorry.

11:47:02 13 Well, anyway, on Page 189 of Mr. McAlexander's
11:47:06 14 deposition, he indicates that spatial -- that azimuth is
11:47:10 15 sufficient for estimating the location of a target sound
11:47:14 16 signal. And that was specifically with regard to the
11:47:17 17 question of whether an azimuth is sufficient to meet that
11:47:19 18 limitation of -- of the claim for purposes of infringement.

11:47:24 19 And so here we have, if anything, a question of
11:47:28 20 whether Mr. McAlexander's statements were consistent across
11:47:30 21 his deposition, which just resolves into a question of
11:47:33 22 cross-examination for the trier of fact, Your Honor.

11:47:37 23 THE COURT: All right. What else, Mr. Rubino?

11:47:38 24 MR. RUBINO: That's it for me, Your Honor, unless
11:47:40 25 the Court has any further questions.

11:47:43 1 THE COURT: Anything further from the Plaintiff in
11:47:46 2 response to the Defendants' motion?

11:47:48 3 MR. RUBINO: No.

11:47:49 4 THE COURT: If not, I'll hear rebuttal from
11:47:51 5 Defendant.

11:47:53 6 MR. RE: I -- on the point on the spatial
11:47:55 7 location, I think even the deposition is replete with the
11:48:00 8 expert using location and direction in different ways. And
11:48:05 9 regardless of whether he opined on infringement with one
11:48:10 10 definition, he can't use another definition on invalidity.

11:48:13 11 So we do have this legal tussle of the expert
11:48:18 12 sometimes using one definition and sometimes using another.

11:48:20 13 And even the clip that Mr. Rubino was going to
11:48:23 14 show showed exactly that. He was distinguishing between
11:48:26 15 azimuth or direction versus location, Kansas/Canada versus
11:48:32 16 north. Those are two different things.

11:48:34 17 And the claim language controls. So regardless of
11:48:38 18 what he thinks, we still have two words in the claim that
11:48:41 19 are different words, and they should have different
11:48:44 20 meanings. And that's -- that's the legal problem.

11:48:45 21 The other legal problem I want to raise is on the
11:48:48 22 Doctrine of Equivalents. It's -- the opinion of the expert
11:48:53 23 really has no play when we're having a legal bar that the
11:48:58 24 amendment includes the words that are clearly part of their
11:49:03 25 Doctrine of Equivalents argument, which is digital signal