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

BLITZSAFE TEXAS, LLC, *Plaintiff*, v. HONDA MOTOR CO., LTD., AMERICAN HONDA MOTOR CO., INC., HONDA OF AMERICA MANUFACTURING, INC., HONDA MANUFACTURING OF ALABAMA, LLC, HONDA MANUFACTURING OF INDIANA, LLC, *Defendants*.	§ § § § § § § § § § § § §	Case No. 2:15-CV-01274-JRG-RSP (Lead Case)

ORDER ON TOYOTA'S MOTION *IN LIMINE* NO. 1 (DKT. 326)

Toyota moves *in limine* to preclude Blitzsafe from offering testimony or argument that is contrary to the Court's Claim Construction Order. Dkt. 326 at 2-6. First, Toyota argues that Blitzsafe should be precluded from arguing that the claimed "external" audio device must be a device that is not made to work in an automobile. *Id.* at 2-3. The Court agrees.

The Court construed the term "external" to mean "outside and alien to the environment of an OEM or after-market stereo system." Dkt. 146 at 45. This construction was based on the agreement of the parties—the parties agreed to the phrase "outside and alien." *Id.* at 43. The parties are now disputing what "outside and alien" means. Accordingly, the Court must resolve the dispute. *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008).

The phrase "outside and alien" does not limit the term "external" to devices that were not made to work in automobiles. *See* Dkt. 354 at 2 (Blitzsafe's Response Brief) (Blitzsafe's understanding of the Court's construction . . . means that the device was not made to work in 'the

environment of *an* OEM or after-market stereo system.'") (emphasis added). Blitzsafe cites no support in the intrinsic record for the contrary conclusion, and upon review of the record, the Court does not find a reason to limit the claims in the manner suggested by Blitzsafe.

Second, Toyota argues that Blitzsafe should be precluded from taking the position that "encoded audio sent over a wireless communication link can fall within the '342 patent claims so long as it was previously decoded by a portable device." Dkt. 326 at 3. The Court agrees with Toyota.

The Court construed the term "generated by the portable device" to mean "produced by the portable device as decoded audio signals for playing on the car audio/video system." Dkt. 146 at 33. This construction was based in part on Blitzsafe's argument during *inter partes* review that "the portable device has to send decoded audio signals" to the car audio or video system. *Id.* at 34. Accordingly, Blitzsafe is precluded from arguing that an accused system in which a portable device sends encoded audio or video data falls within the scope of the claims as long as the audio or video data has been decoded by a portable device at some point in the past.

Blitzsafe is not precluded, however, from arguing than an accused system falls within the scope of the claims even though the accused system further processes the audio or video data after the decoded data has been sent to the car audio or video system. *See id.* at 35 ("[T]he Court finds that Blitzsafe did not clearly and unambiguously state that no additional decoding can be done to the data 'before being output through the car audio/video system.'").

Finally, the parties are reminded that the claim construction phase of this case is over. The Court will be more inclined to find that a party waived a claim construction argument as the case gets closer to trial. *See Cent. Admixture Pharm. Servs. v. Advanced Cardiac Solutions, P.C.*, 482 F.3d 1347, 1356 (Fed. Cir. 2007) (affirming district court finding that claim construction

argument not raised during claim construction phase is waived); *see also Arthrex v. Smith & Nephew, Inc.*, 2:15-cv-1047-RSP, Dkt. 293 (E.D. Tex. December 9, 2016) (finding claim construction argument raised during the charge conference waived).

SIGNED this 16th day of January, 2017.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE