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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GENUINE ENABLING TECHNOLOGY
LLC.,

Plaintiff,

v.

NINTENDO CO., LTD. and NINTENDO OF
AMERICA INC.,

Defendants.

Case No. C19-351RSM

ORDER RE: CLAIM CONSTRUCTION
AND GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on the Defendants Nintendo Co., Ltd. and Nintendo of America, Inc. (“Nintendo”)’s Motion for Summary Judgment on the grounds of noninfringement and invalidity. Dkt. #90. Plaintiff Genuine Enabling Technology (“GET”) opposes Nintendo’s Motion. Dkt. #98. Parties submitted briefs regarding Claim Construction, Dkts. ## 85, 86, 92, 93, and oral argument was held on February 24, 2020 pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995). Having reviewed the parties’ briefing, the appropriate portions of the records, and the relevant law, and having considered the

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1 arguments and evidence presented in the *Markman* Hearing, the Court GRANTS Nintendo's
2 motion for summary judgment.¹

3 II. BACKGROUND

4 A. The '730 Patent

5 GET brings this action against Nintendo claiming that five Nintendo products infringe
6 U.S. Patent No. 6,219,730 (the '730 patent): (1) the Wii Remote and Wii Remote Plus; (2) the
7 Nunchuk; (3) the WiiU Game Pad; (4) the Switch Joy-Con Controllers' and (5) the Nintendo
8 Switch Pro Controller. The patent, owned by inventor Nghi Nho Nguyen, is entitled "Method
9 and Apparatus for Producing a Combined Data Stream and Recovering Therefrom the Respective
10 User Input Stream and at Least One Input Signal" and was issued by the United States Patent and
11 Trademark Office on April 17, 2001. Dkt. #86-1. GET claims that Nintendo's controllers and
12 console systems contain features and/or functionality that infringe claims 10, 14, 15, 16, 17, 18,
13 21, 22, 23, and 25 of the '730 patent.
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16 The patented technology involves how a user-input device (UID) may communicate
17 remotely with a computer so that different input signals are received and transmitted via the same
18 link. Typical UIDs, as identified in the patent, include a mouse, trackball, or keyboard. *Id.* at col.
19 1, lines 16-18. Computers also use "various kinds of input/output ("I/O") cards or devices to
20 handle I/O signals or information." *Id.* at col. 1, lines 16-17. Typical I/O cards include a "sound
21 card handling I/O speech signals and the fax/modem device transferring information over the
22 telephone line." *Id.* at 19-21. Because the devices and cards share common computer resources,
23 the proliferation of cards and devices that offer new functions creates a problem of how to
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28 ¹ Parties have requested oral argument on the summary judgment motion, *see* Dkt. #90 at 1; Dkt. #98 at 1,
but the court finds oral argument unnecessary to its disposition of the motion, *see* Local Rules LCR
7(b)(4).

1 efficiently use limited computer resources shared between them. *Id.* at 22-23; 33-36 (“As
2 computer technology advances, more types of cards and devices are offered for richer sets of
3 functions; efficient use of computer resources becomes critical.”)

4 In light of this computer resource problem, Mr. Nguyen designed the claimed invention
5 to “offer[] a new kind of UID utilizing the computer resources efficiently and enabling a mode
6 of remote interaction between the computer and its user.” *Id.* at 42-44. GET explains that Mr.
7 Nguyen devised the ‘730 patent to solve a “collision problem” created by the transmission of
8 slow-varying and fast-varying user input signals to a computer. *See Markman Hrg. Tr.*, 02/24/20,
9 at 6:14-15. Normally, when these slow and fast signals are transmitted together, they collide
10 with one another and corrupt the data. The ‘730 patent purportedly solves this problem through
11 a user interface and novel framer that synchronizes the two data streams and encodes them into
12 a combined data stream for transmission to the computer. *Id.* at 7:14-15. The computer can then
13 receive the combined data stream uncorrupted, which creates the ability to receive the data from
14 multiple input sources, as depicted below:
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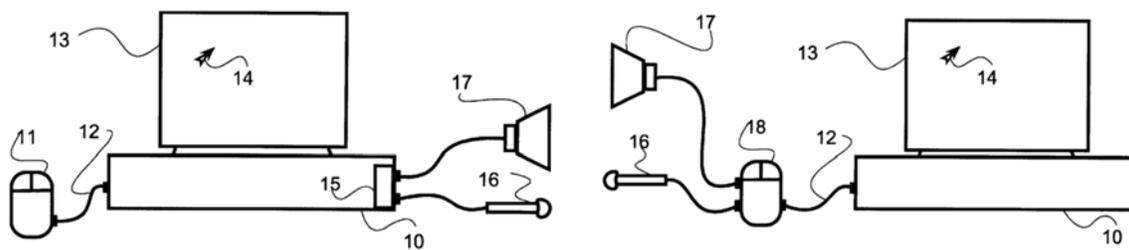


FIG. 1A - PRIOR ART

FIG. 1B

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24 Dkt. #86-1 at 4. Figure 1B illustrates one embodiment of the invention, wherein a UID (11, Fig.
25 1A) and sound card (15, Fig. 1A) may be substituted with an “inventive apparatus” (18, Fig. 1B)
26 that “singly provides both functions.” *Id.* at col. 3, lines 30-41. In other words, the user may
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1 simultaneously use apparatus 18 as a conventional UID while speaking into the microphone
2 without requiring the use of a sound card and its computer resources.

3 **B. Rejection over Yollin**

4 During prosecution of the '730 patent, the U.S. Patent and Trademark Office ("PTO")
5 Examiner initially rejected Mr. Nguyen's patent based on prior art, U.S. Patent No. 5,990,866
6 ("Yollin") titled "Pointing Device With Integrated Physiological Response Detection Facilities,"
7 issued November 23, 1999. Dkt. #86-2 at 54. In rejecting the '730 patent, the Examiner cited
8 Yollin's teaching that "the controller generates a composite control signal" and discloses "a
9 framer receiving the user-input stream and the input stream to produce a combined data stream."
10 *Id.* In response, Mr. Nguyen distinguished his patent on the basis that Yollin did not address the
11 collision problem created by combining slow-varying and fast-varying signals. Instead, he
12 explained, while Yollin utilizes various configurations for receiving input from a motion
13 translation unit, user selection unit and physiological response sensor, and for processing their
14 information prior to communication to the host system, "Yollin only uses the configuration *to*
15 *receive the slow varying signal coming from the physiological response sensor(s).* Yollin is not
16 motivated and does not anticipate their use for receiving signals *containing audio or higher*
17 *frequencies in place of the physiological response sensor(s).*" *Id.* at 70 (emphases added). Thus,
18 the Yollin patent does not provide a solution to the inevitable collision problem that would occur
19 if such slow-varying signals are combined with a high-frequency signal.
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24 Mr. Nguyen asserted that his '730 patent, in contrast, addressed high-frequency signals
25 that "come[] from a source different from those of motion and selection units, will run
26 asynchronously relative to, and collide with, the other signals." *Id.* at 71. He further explained
27 that "[the] invention describes . . . how to combine the data from a UID (mouse) and . . . a
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ORDER RE CLAM CONSTRUCTION AND GRANTING DEFENDANT'S MOTION FOR

1 high-frequency signal, via a framer, which is unique and novel.” *Id.* Based on this patent
2 prosecution history, the parties agree that the “fast-varying” input signals covered by the ‘730
3 patent are signals that have “audio or higher frequencies.” *See* Dkt. 84-1 at 4. However, they
4 dispute whether Mr. Nguyen further disavowed the scope of “input signal” during prosecution
5 when he distinguished “fast-varying” frequencies addressed by his patent from the “slow-
6 varying” frequencies at issue in Yollin.
7

8 C. The Asserted Claims

9 The parties submitted a Joint Claim Construction and Prehearing Statement that identified
10 the top ten disputed claim terms. Dkt. #84. Claims 1, 14, 16, and 21 are independent claims.
11 Claims 10, 15, 17, 18, 22, 23, and 25 are dependent claims. Claim 10 depends on claim 1, claim
12 15 depends on claim 14, claims 17-18 depend on claim 16, and claims 22-25 depend on claim
13 21. The following are the relevant claims with disputed terms in bold:
14

15 1: A user input apparatus operatively coupled to a computer via a communication
16 means **additionally receiving at least one input signal**, comprising: user input
17 means for producing a user input **stream; input means for producing the at least**
18 **one input signal**; converting means for receiving the at least one **input signal** and
19 producing therefrom an input **stream**; and **encoding means for synchronizing the**
20 **user input stream with the input stream and encoding the same into a**
21 **combined data stream** transferable by the communication means.

22 10: The apparatus of claim 1 **wherein the input means is an input transducer.**

23 14: A programming method, executed by a computer communicatively coupled via
24 a communication link to a user input means having **means for synchronizing and**
25 **encoding a user input stream and at least one additional input signal into a**
26 **combined data stream**, comprising the steps of: initializing the communication
27 link; servicing a single resource service interrupt for receiving the **combined data**
28 **stream**; and recovering from the **combined data stream** respective information of
the user input means and of the at least one additional **input signal**.

15: The programming method of claim 14 further comprises transmitting, via the
communication link, output information, the output information being received
and converted by a converter residing in the **user input means** into at least one
output signal.

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