

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

PROFECTUS TECHNOLOGY LLC

~~SEALED~~

UNSEALED 11-09-2015 PER #481 ORDER

v.

Case No. 6:11-cv-474
(Consolidated—Lead Case)

HUAWEI TECHNOLOGIES
CO., LTD., et al.

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MEMORANDUM OPINION AND ORDER

Now before the Court is Defendants’ Motion for Summary Judgment of Noninfringement Regarding the Mountable Limitation (Doc. No. 408). The Court previously entered a summary order granting the motion (Doc. No. 441). The Court now issues this memorandum opinion and order setting forth the Court’s reasoning.

I. BACKGROUND

Plaintiff filed this action alleging that Defendants infringe U.S. Patent No. 6,975,308 (the ’308 Patent). The ’308 Patent issued on December 13, 2005 and is titled “Digital Picture Display Frame.”

Plaintiff accuses the following products of infringing Claims 1, 2, 4–9, and 29 of the ’308 Patent: Apple’s iPad, Microsoft’s Xoom, HP’s TouchPad, Dell’s Streak, and Samsung’s Galaxy Tab.¹ Each of the asserted claims includes the limitation “a mountable picture frame.”² The Court previously construed the term “mountable” to mean “having a feature for mounting” (Doc. No. 320).³ In adopting this construction, the Court rejected

¹ It is unclear from the current state of the pleadings, including the summary judgment briefing, what accused products remain in the case. The products listed herein are those listed in Plaintiff’s summary judgment response (Doc. No. 4032 at 3).

² Claims 1 and 29 are independent claims that include the term. Claims 2 and 4–9 are dependent claims that incorporate the limitations in independent Claim 1.

³ In its Provisional Claim Construction Order, the Court originally construed the term to mean “having a feature

Plaintiff's request that the Court broadly define "mountable" to include anything capable of being mounted, but the Court also rejected additional limitations requested by Defendants that would have required a support or limited the construction to wall or tabletop mounting.⁴ The Court further elaborated that "the picture frame or display must have some intrinsic mounting feature—not just a feature that could potentially render the frame or display *capable of being mounted*" (Doc. No. 320).

II. SUMMARY JUDGMENT STANDARD

The Court should grant a motion for summary judgment if no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986); *Norwegian Bulk Transp. A/S v. Int'l Marine Terminals P'ship*, 520 F.3d 409, 411 (5th Cir. 2008). A fact is material if it might affect the outcome of the suit under the governing law. *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 326 (5th Cir. 2009). Issues of material fact are "genuine" only if they require resolution by a trier of fact and if the evidence is such that a reasonable jury could return a verdict in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Sossamon*, 560 F.3d at 326. When ruling on a motion for summary judgment, the Court must view all inferences drawn from the factual record in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986); *Sossamon*, 560 F.3d at 326.

Under Rule 56, the party moving for summary judgment must "demonstrate the absence of a genuine issue of material fact." *Duffie v. United States*, 600 F.3d 362, 371 (5th Cir. 2010) (internal quotation omitted). If the moving party fails to meet this initial burden, the motion must

designed for mounting," but removed the term "designed."

⁴ As noted by the Court in the claim construction opinion, Defendants did not object to the Court's refusal to include the additional limitations (Doc. No. 320 at 9 n.2).

be denied regardless of the nonmovant's response. *Id.* (internal quotation omitted). If the movant meets the burden, however, Rule 56 requires the opposing party to go beyond the pleadings and show by affidavits, depositions, answers to interrogatories, admissions on file, or other admissible evidence that specific facts exist over which there is a genuine issue for trial. *Anderson*, 477 U.S. at 256; *U.S. ex rel. Farmer v. City of Hous.*, 523 F.3d 333, 337 (5th Cir. 2008); *EEOC v. Tex. Instruments, Inc.*, 100 F.3d 1173, 1180 (5th Cir. 1996). The nonmovant's burden may not be satisfied by argument, conclusory allegations, unsubstantiated assertions, metaphysical doubt as to the facts, or a mere scintilla of evidence. *Matsushita*, 475 U.S. at 586–87; *U.S. ex rel. Farmer*, 523 F.3d at 337; *Duffie*, 600 F.3d at 371.

III. ANALYSIS

Defendants move for summary judgment of non-infringement on the basis (among others) that no genuine issue of material fact exists that the accused products are “mountable” as previously construed by the Court. Plaintiff sets forth two theories under which it claims a fact issue exists on the “mountable” requirement. First, Plaintiff argues that certain features, such as the flat back and light weight of the tablets, “facilitate the ability of the products to be mounted” (Doc. No. 432 at 6). Second, Plaintiff claims that the communications ports⁵ on the tablets (for example, the ports used to connect the tablets to a power source) are “features for mounting.” But each of Plaintiff's theories contradicts the Court's construction of “mountable”—the first because it is not a feature *for* mounting, and the second because the mounting feature is not intrinsic to the accused devices. Since the mountable limitation is a requirement of each asserted claim, Plaintiff's infringement claims fail as a matter of law.

⁵ The parties' dispute over what to call the port is a side issue that has no bearing on the Court's analysis, and the Court's use of the term “communication port” is not a comment on the issue.

a. Features that Facilitate Mounting

Plaintiff's first theory—that generic features such as the size, shape, thinness, and the lightweight nature of the tablets facilitate the mounting capabilities of the tablets—ignores the Court's unambiguous rejection of a nearly identical argument during claim construction.

During claim construction, Plaintiff urged the Court to construe “mountable” to mean “capable of being mounted” (Doc. No. 241 at 6). But the Court held that Plaintiff's proposed construction was “overly broad” and would render the term meaningless (Doc. No. 320 at 8). *See also Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“[C]laims are interpreted with an eye toward giving effect to all terms in the claim.”).

Plaintiff's current position is simply a revision of its claim construction argument: that “mountable” includes anything *capable* of being mounting. But Plaintiff has not directed the Court's attention to any “intrinsic mounting feature.” Instead, Plaintiff points to a list of generic features “that could potentially render the frame or display *capable of being mounted*,” which the Court previously held is insufficient to satisfy the “mountable” limitation (Doc. No. 320 at 9).

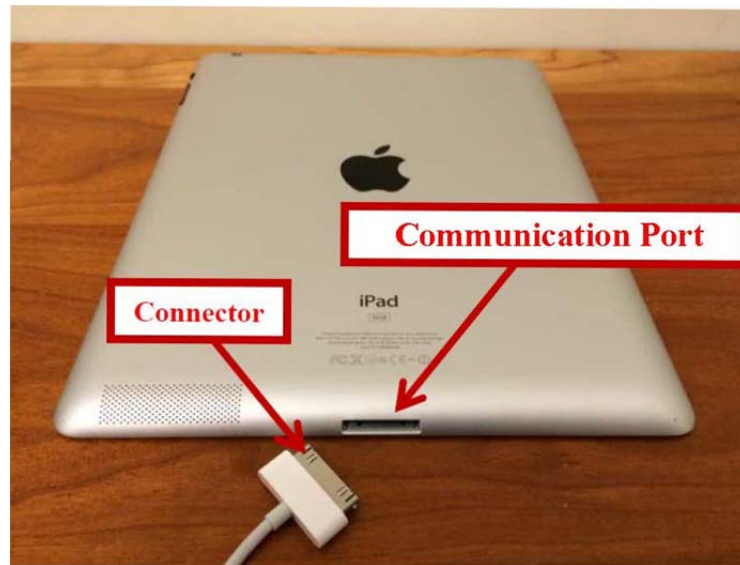
Claim Construction is a legal issue for the Court, and a dispute over the meaning of a term does not create a fact issue.” *Johnston v. IVAC Corp.*, 885 F.2d 1574, 1579 (Fed. Cir. 1989); *see also Lighting Ballast Control LLC v. Philips Elecs. N. Am. Corp.*, 744 F.3d 1272, 1284 (2014). Plaintiff's infringement position regarding generic features is precluded by the Court's construction, and thus is barred as a matter of law.

b. Communication Ports

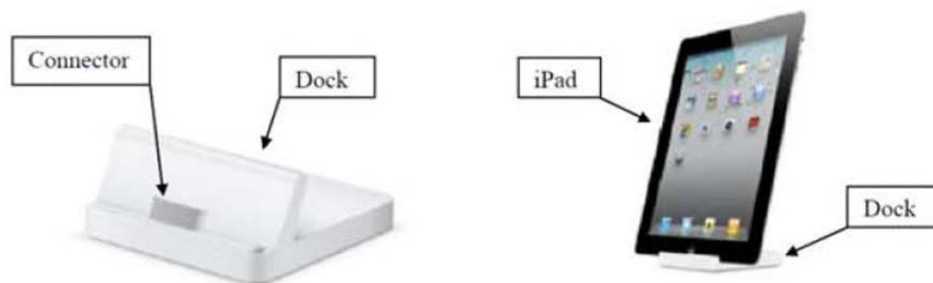
Plaintiff also argues that the communication ports on the accused tablets⁶ are “features

⁶ Defendant notes that Plaintiff's position as to the communications ports is limited to the accused Apple, Samsung, and Dell tablets. But Plaintiff argues that its infringement theory is “common to all of the products at issue” and

for mounting,” but this position is also inconsistent with the Court’s claim construction opinion. Thus, this theory also fails as a matter of law. *See id.* The following image illustrates the feature Plaintiff claims is an intrinsic feature for mounting.



Plaintiff claims that the communication ports can “mate” the tablets to a dock, and since the dock holds the tablets upright, the mountable limitation is met. For example, the following shows an Apple iPad and an iPad dock:



Apple iPad

discusses Motorola’s Xoom product. The Court’s opinion applies equally to all of the tablets discussed in the parties’ briefing.

But the mountable requirement cannot be satisfied by placing an accused tablet in a completely extrinsic accessory that cradles the tablet and holds it upright. While *all* components needed to mount the frame do not have to be intrinsic to the accused products, the mounting feature itself cannot be an extrinsic accessory (Doc. No. 320 at 9 (citing a nail as an example of a needed extrinsic feature that would not preclude the accused device from meeting the mountable limitation)).

It is undisputed that the communications interfaces pointed to by Plaintiff can be used without the docks. It is further undisputed that the docks can be used to hold the tablets without connecting to the communications interfaces. Plaintiff also points to evidence that Defendants even contemplated use of the docks when positioning the interfaces on the tablets (*see, e.g.*, Doc. No. 432 at 8–11). But that is not enough. Connecting the accused device to an external accessory does not import the mounting features of the accessory to the accused device, nor does it convert the dock accessory into an *intrinsic* feature.

Plaintiff relies again on its argument that any feature that makes mounting the tablets *possible* or *easier* satisfies the mountable requirement. But that is not consistent with the meaning of the term “mountable.” Instead, Plaintiff must point to some intrinsic feature for mounting. And none of the features Plaintiff cites satisfy this limitation.

IV. CONCLUSION

For the forgoing reasons, no genuine issues of material fact exist as to Plaintiff’s allegations that each of the accused products infringe Claims 1, 2, 4–9, and 29 of the ’308 Patent. Accordingly, Defendants are entitled to judgment as a matter of law as to these claims.

In view of the rulings stated above, Defendants must file a notice within three (3) days stating whether they intend to pursue their counterclaims challenging the validity of the ’308

Patent, or alternatively, dismiss the claims without prejudice.

It is SO ORDERED.

SIGNED this 8th day of September, 2014.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE