

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PERCEPT TECHNOLOGIES, INC.,

Plaintiff,

v.

MAGIC LEAP, INC.,

Defendant.

No. 1:22-cv-0025-RGA

PLAINTIFF’S OPENING CLAIM CONSTRUCTION BRIEF

Under Paragraph 8 of the Scheduling Order in this case (Dkt. 14), Plaintiff Percept Technologies, Inc. (“Plaintiff”) hereby provides its opening claim construction brief.

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I. REPRESENTATIVE CLAIMS

Plaintiff submits that Claim 1 of U.S. Patent No. 8,696,113 (the “’113 Patent”) is representative for the terms in dispute from the ’113 Patent. Claim 1 of the ’113 Patent provides:

1. A wearable optics device comprising:

a lens; and

a dynamic eye tracking mechanism in communication with the lens; wherein the dynamic eye tracking mechanism utilizes optical parameter measurements; wherein the optical parameter measurements include any of ciliary measurements, pupil measurements, corneal measurements, eye lens measurements, iris measurements, eye lid measurements, retina measurements; wherein an optical/perceptual parameter based operating system is utilized, wherein the wearable optics device is controlled by the optical/perceptual based operating system.

(disputed terms with emphasis).

Plaintiff submits that Claim 7 of U.S. Patent No. 9,010,929 (the “’929 Patent”) is representative for the terms in dispute for the ’929 Patent. Claim 7 of the ’929 Patent provides:

7. Eyewear comprising:

a frame member;

a lens;

circuitry within the frame member for enhancing the use of the eyewear; and an eye sensor coupled to the frame member, the eye sensor activating the circuitry responsive to eye motion of a user wherein the circuitry provides any of a cell phone, media focals, and an MP3 player.

(disputed terms with emphasis).

II. AGREED-UPON CONSTRUCTIONS

The parties have agreed on the construction of the following term.

Claim Term	Agreed Construction
“dynamic eye tracking mechanism” (’113 Patent: claims 1, 12)	mechanism for dynamically tracking the characteristics of the eye, including, for example, ciliary, pupil, corneal, retina, lens, iris, or eye lid measurements, blinks, squints, gaze direction, or eye movement (<i>e.g.</i>, ’113 Patent: 4:28-35; 7:18-29; 8:51-53; 9:25-45; 12:27-28)

III. DISPUTED CONSTRUCTIONS

The parties dispute the constructions of the following terms.

Claim Term	Plaintiff’s Proposed Construction	Defendant’s Proposed Construction
“media focals” (’929 Patent: claim 7)	utilizing the eyewear for its intended purpose and enhancing that use by using imaging techniques to improve the vision of the user (<i>e.g.</i>, ’929 Patent: Abstract; 1:51-53; 2:25-27)	circuitry that uses imaging techniques to improve the vision of the user (<i>e.g.</i>, ’929 patent at Abstract, 1:51-53, 2:25-27, 2:39-47, Fig. 1)
“a lens” (’929 Patent: claims 7, 10; ’113 Patent: claims 1, 12)	plain and ordinary meaning (<i>e.g.</i>, ’113 Patent: Figures 1, 5C, 9-24; 1:57-2:15; 3:30-44; 6:59-67; 7:43-50; 9:4-6; ’929 Patent: Figures 1, 3-4; 1:44-45; 2:40-54; 3:62-66; 4:42-45)	a transmissive optical device which focuses a light beam by refraction (<i>e.g.</i>, ’113 patent at 4:19-22, Fig. 5C; ’929 patent at 3:28-31)

“optical/perceptual parameter based operating system” (’113 Patent: claims 1, 12)	plain and ordinary meaning (e.g., ’113 Patent: Figure 19; 8:13-26; 12:31-35; 13:14-25)	operating system, not including a conventional mobile operating system such as Android or iOS, in which optical parameters and perceptual parameters are measured and used as inputs, controls, or feedback elements (e.g., ’113 patent at 7:1-6, 8:13-24, 13:21-25, 14:1-11; Oct. 10, 2013 Non-Final Office Action response at 7-9; Oct. 10, 2013 Applicant-Initiated Interview Summary)
“the eye sensor activating the circuitry responsive to eye motion of a user” (’929 Patent: claims 7, 10)	plain and ordinary meaning (e.g., ’929 Patent: 3:4-27; 3:36-43)	the eye sensor making the inactive circuitry become active, in response to eye motion of a user (e.g., ’929 patent at 3:23-25; U.S. Patent Appl. No. 11/245,756, Nov. 2, 2007 Final Office Action response at 6-10)
“cell phone” (’929 Patent: claim 7)	plain and ordinary meaning (e.g., ’929 Patent: Figure 4; 1:54-56; 2:28-30; 4:59-5:14; 5:32-46)	circuitry that sends and receives telephone calls over a cellular network (e.g., ’929 patent at 4:41-46, 4:50-54, 5:19-21, 5:40-41, Figs. 4, 5)
“MP3 player” (’929 Patent: claim 7)	plain and ordinary meaning (e.g., ’929 Patent: Figures 3, 3a; 1:57-59; 2:31-33; 2:59-57; 3:62-4:21; 5:40-46)	circuitry that inputs a computer file in MP3 format and outputs an audio signal based on the computer file (e.g., ’929 patent at 3:62-4:3, 4:18-19)

IV. ARGUMENT

The parties dispute the construction of six terms in the '113 and '929 Patents. These disputes arise from Defendant's attempt to devise non-infringement arguments through proposed constructions that are motivated by impermissible hindsight and review of features of the infringing product rather than the intrinsic evidence of the patents. A party cannot, however, mold the claims through claim construction to suit its litigation strategy. *See Kimberly-Clark Corp. v. Tyco Int'l (US), Inc.*, 4 F. App'x 946, 951 (Fed. Cir. 2001) (holding that the public notice function of patents would be defeated if a party could "alter the meaning of his claims by a post-hoc, litigation-driven 'definition' unsupported by the specification"); *Thorn EMI N. Am. v. Intel Corp.*, 936 F. Supp. 1186, 1199 (D. Del. 1996) (rejecting the parties' proposed constructions that the court found to be litigation-driven).

By contrast, Plaintiff's proposed constructions strictly adhere to the intrinsic evidence, irrespective of features of the infringing product. There is a "heavy presumption" that a claim term should be accorded its plain and ordinary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). There are four possible exceptions. First, where a patentee "acted as his own lexicographer and clearly set forth a definition of the disputed claim term. *Id.* at 1366, citing *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 990 (Fed. Cir. 1999). Second, where a "patentee distinguished that term from prior art. . . ." *Id.* Third, where the term "so deprives the claim of clarity as to require resort to the other intrinsic evidence for a definite meaning. *Id.* at 1367. And fourth, where the claim is in means-plus-function format. *Id.* When the meaning of a term is readily apparent, even to a lay person, claim construction "involves little more than the application of the widely accepted meaning of commonly understood words." *Phillips v. AWH*

Corp., 415 F.3d 1303, 1314 (Fed. Cir. 2005), citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed Cir. 2001) (holding that claim terms did “not require elaborate interpretation”).

Aside from the term “media focals,” where the patentee set forth an explicit definition for the term, none of these exceptions apply to the other disputed terms. The terms are readily understood with their plain and ordinary meanings. Defendant’s litigation-driven proposed constructions unduly limit the scope of these terms and should be rejected.

A. “media focals” (’929 Patent)

Plaintiff’s proposed construction for the term “media focals” adopts an explicit definition of the term from the ’929 Patent specification:

A system and method in accordance with the present invention is directed to a variety of ways to enhance the use of eyeglasses. They are:

(1) Media focals, that is, utilizing the eyewear for its intended purpose and enhancing that use by using imaging techniques to improve the vision of the user.

’929 Patent, 1:48-53 (emphasis added).

Although there is a heavy presumption for courts to give a term its plain and ordinary meaning, one exception is where a patentee “has chosen to be his or her own lexicographer by clearly setting forth an explicit definition for a claim term.” *Johnson Worldwide Assocs.*, 175 F.3d at 990. The “use of ‘i.e.’ signals an intent to define the word to which it refers.” *SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187, 1201 (Fed. Cir. 2013), citing *Edwards Lifesciences LLC v. Cook Inc.*, 582 F.3d 1322, 1334 (Fed. Cir. 2009). Indeed, courts have repeatedly held that a patentee explicitly defined a term by using “i.e.” followed by an explanatory phrase. *E.g.*, *SkinMedica*, 727 F.3d at 1200; *Abbott Labs. v. Novopharm Ltd.*, 323 F.3d 1324, 1330 (Fed. Cir. 2003).

Here, the patentee explicitly defined the term “media focals” in the ’929 Patent specification by using “that is” (the English translation of “i.e.”) followed by a definition, “utilizing

the eyewear for its intended purpose and enhancing that use by using imaging techniques to improve the vision of the user.” This explicit definition from the patent specification should control.

The Court should reject Defendant’s proposed construction because it contradicts the express definition and contradicts the intrinsic evidence. Defendant’s inclusion of the word “circuitry” in the construction is also designed to manufacture a non-infringement argument. Defendant’s Magic Leap 1 headset includes three main components: a Lightwear (*i.e.*, a headset), a Lightpack (*i.e.*, a processor that drives the headset), and a Control (*i.e.*, a hand-held controller for interacting with the headset). See *Magic Leap 1 Overview*, MAGIC LEAP, <https://ml1-developer.magicleap.com/en-us/learn/guides/magic-leap-one-overview> (last accessed Nov. 20, 2022). Under Plaintiff’s current understanding of the Magic Leap 1, the circuitry in the Lightpack performs at least some of the imaging techniques to generate graphics that are transmitted to the Lightwear and then provided for display to the user.

The full claim element this term appears in is:

circuitry within the frame member for enhancing the use of the eyewear; and an eye sensor coupled to the frame member, the eye sensor activating the circuitry responsive to eye motion of a user wherein the circuitry provides any of a cell phone, media focals, and an MP3 player.

Defendant’s proposed construction would have the end of this element instead read “wherein the circuitry provides . . . circuitry that uses imaging techniques to improve the vision of the user” Defendant’s duplicative use of the word “circuitry” would seemingly narrow the claim to require that the specific portion of circuitry that performs the “imaging techniques to improve the vision of the user” be located on eyewear itself. As a result, this construction is setting up a non-infringement argument where the imaging techniques are performed by a portion of the circuitry in the Lightpack.

Defendant's proposed construction also contradicts to the intrinsic evidence. The word "circuitry" is absent from the explicit definition of "media focals" in the '929 Patent specification. The specification also explains how circuitry within the frame of the eyewear may provide media focals even where another portion of the circuitry may be remote from the eyewear. Claim 7, for example, does not specify that the circuitry for enhancing the use of the eyewear must be located *entirely* within the frame member. In one embodiment of the '929 Patent, circuitry for the media focals is located entirely in the eyewear:

In the preferred embodiment, the circuitry 106 would be located somewhere in the frame of the glasses to provide this functionality and as circuits became Smaller and devices became smaller it would be easier and easier to embed the circuitry that is well known for use for such functions directly within the device.

'929 Patent, 2:40-45. But in another embodiment, portions of the circuitry for the media focals may be located in the eyewear while other portions may be remote from the eyewear:

In a further embodiment, it would be possible for the eye glasses in accordance with the present invention to function within a client/server model or Bluetooth (wifi) model. Utilization of the client/server model and Bluetooth wifi would make possible, for example, the display of live news or special reports (such as financial reports) from the Internet or similar sources on the eyeglasses. This would also allow for portions of circuitry to be located remotely such that less circuitry in the eyewear is required.

'929 Patent, 3:44-52. Thus, Defendant's proposed construction for "media focals" should be rejected because it is litigation-driven and contradicts the intrinsic evidence.

B. "a lens" ('929 and '113 Patents)

The term "a lens" should be accorded its plain and ordinary meaning. This is a term with "so clear an ordinary meaning that a skilled artisan would not be looking for clarification in the specification." *See Ancora Techs. v. Apple, Inc.*, 744 F.3d 732, 738 (Fed. Cir. 2014). The meaning of "a lens" is readily understandable, both to a person skilled in the art and to lay jurors. It does not require elaborate interpretation. *See Phillips*, 415 F.3d at 1314; *see also Omni MedSci v. Apple*

Inc., No. 2:18-CV-00429-RWS, 2019 U.S. Dist. LEXIS 137560, at *16 (E.D. Tex. Aug. 14, 2019) (construing “lens” to have its plain and ordinary meaning). Nor did the patentee create his own definition.

Figure 5C of the '113 Patent and its corresponding description broadly define the non-limiting types of lenses contemplated by the patentee.

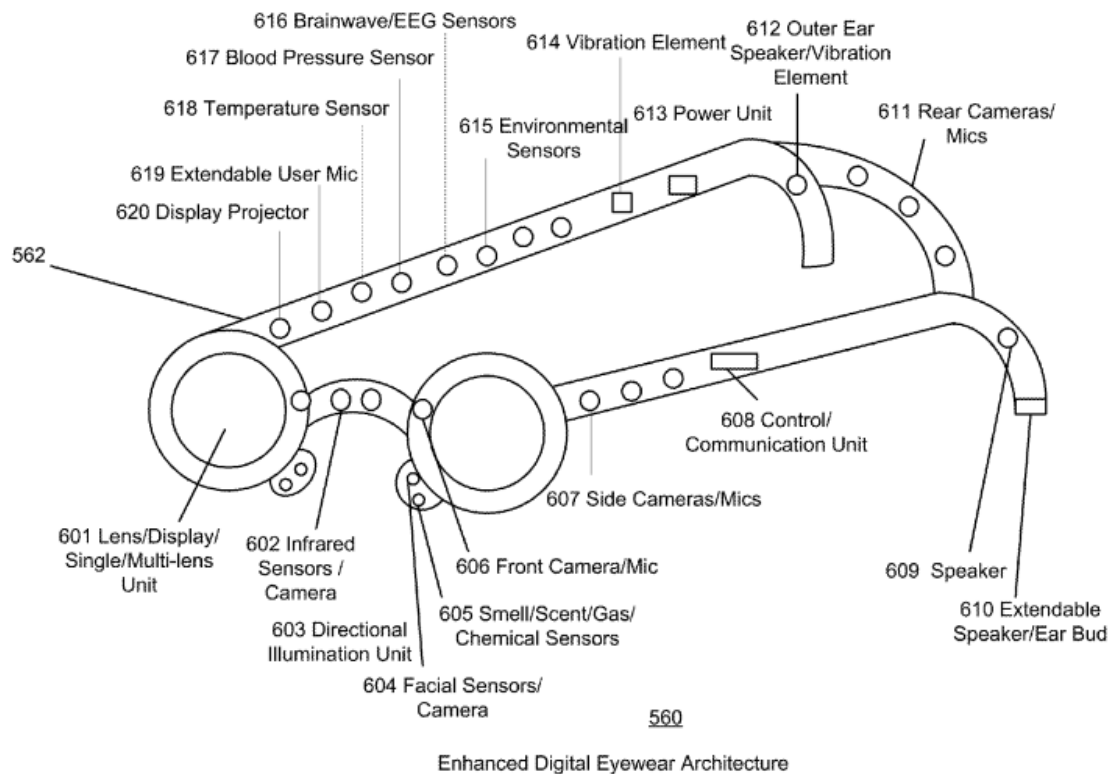


Figure 5C

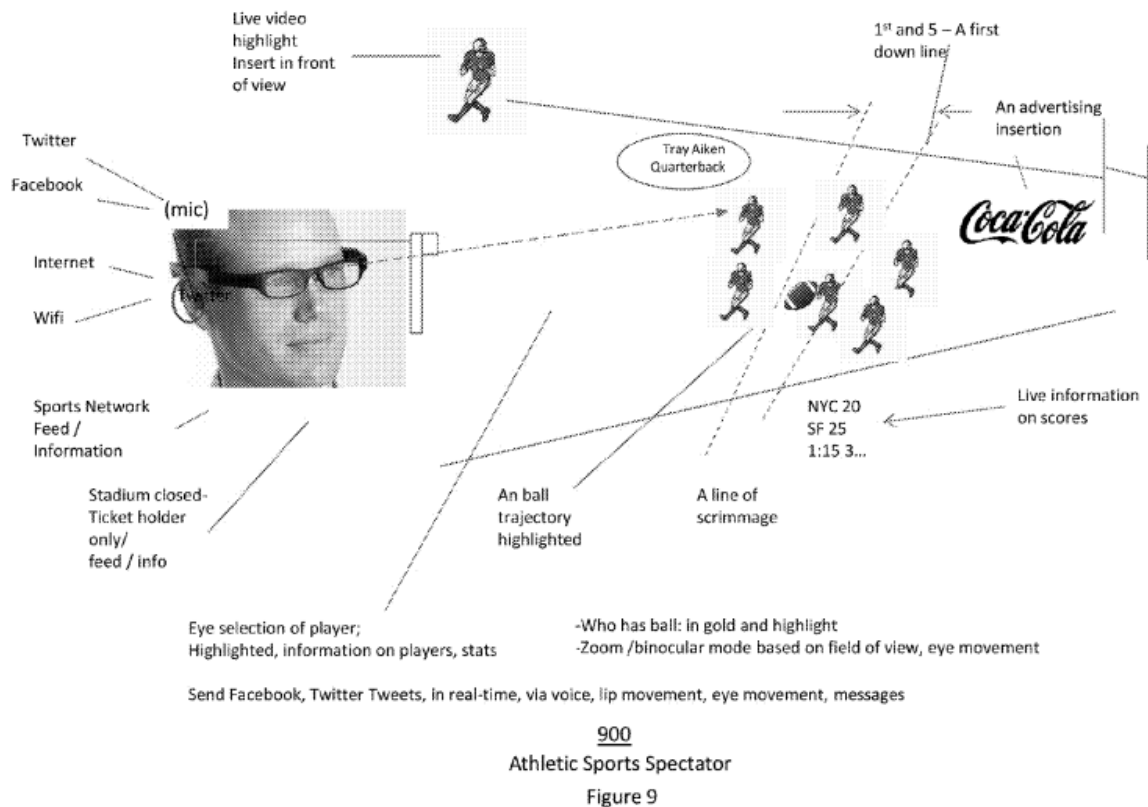
'113 Patent, Figure 5C.

With the introduction and use of new materials for lens and filter integration new enhancements and capabilities of the digital eyewear can be further realized. These materials include advances in OLED, LED, transparent LED, flexible LED, crystalline, prism, holographic, polarizing, and translucent material and the like to electrorefractive, electrodiffractive, electroreflective, composite refractive materials and the like, with one or more lens material layers and passive or active display or projection based implementations.

'113 Patent, 6:59-67.

The lenses of the wearable optics device can be controlled polarizing, transparent OLED, or projection and prism lenses.

'113 Patent, 9:4-6. Figure 9 provides another image of lenses on eyewear.



'113 Patent, Figure 9.

Defendant nevertheless improperly proposes a narrow definition, construing “a lens” as “a transmissive optical device which focuses a light beam by refraction.” This litigation-driven definition is not found anywhere in the patent specification and does not include the broader scope contemplated by the patents. Defendant will likely argue that its use of multi-layered waveguide lenses do not constitute a lens. Defendant may also argue that the Magic Leap 1 does not focus a light beam. Defendant may also argue that its lenses do not focus light by refraction. In any case, Defendant’s narrow construction of “a lens” is not supported by the intrinsic evidence and there is no clear reason to depart from the plain and ordinary meaning. *See Ancora*, 744 F.3d at 734. *See*

also *Omni MedSci*, No. 2:18-CV-00429-RWS, 2019 U.S. Dist. LEXIS 137560, at *19-20 (holding that the plain and ordinary meaning of “lens” is not limited to focusing lenses, but also encompasses diverging and collimating lenses). None of the portions of the specification cited by Defendant support their narrow construction or contain a definition by the patentee.

C. “optical/perceptual parameter based operating system” (’113 Patent)

The term “optical/perceptual parameter based operating system” should be accorded its plain and ordinary meaning. In its plain language, this term means an operating system that is based on optical or perceptual parameters. This meaning is readily understandable and does not require elaborate interpretation. *See Phillips*, 415 F.3d at 1314.

Defendant improperly proposes a narrow definition, construing “optical/perceptual parameter based operating system” as an “operating system, not including a conventional mobile operating system such as Android or iOS, in which optical parameters and perceptual parameters are measured and used as inputs, controls, or feedback elements.” Defendant’s narrow and negative construction is a litigation-driven effort to manufacture a non-infringement argument. This is made expressly evident by the fact that Defendant proposes such obviously exclusionary language: “not including [. . .].”

Both the Magic Leap 1 and the recently released Magic Leap 2 appear to be based at least in part on recent versions of the Android Open Source Project (AOSP). *See* Brandon Vigliarolo, *Magic Leap 1 augmented reality headset: A cheat sheet*, TECHREPUBLIC, <https://www.techrepublic.com/article/magic-leap-1-augmented-reality-headset-a-cheat-sheet/> (last accessed Nov. 20, 2022); *Magic Leap 2*, MAGIC LEAP, <https://www.magicleap.com/magic-leap-2> (last accessed Nov. 20, 2022). Defendant’s litigation-driven definition is not found anywhere in the patent specification and does not include the broader scope contemplated by the

patents. Although the patentee distinguished the “optical/perceptual parameter based operating system” from *conventional* Android or iOS operating systems, *see* ’113 Patent, 8:13-17, the basis for this distinction was that the conventional (unmodified) Android and iOS operating systems were not based on optical or perceptual parameters. But future versions of Android and iOS may be, or already are, based on optical or perceptual parameters. In addition, it is common practice to modify these operating systems for use in custom products like Magic Leap’s. Thus, the words “optical/perceptual parameter based” in the claim term adequately covers this distinction. There is no reason to explicitly define that the term does “not includ[e] a conventional mobile operating system such as Android or iOS,” as Defendant suggests. Defendant’s citation to the prosecution history lends no support to Defendant’s narrow construction.

There is no basis for requiring the operating system be based on both “optical parameters and perceptual parameters.” The claim term uses a forward slash between the words optical and perceptual, indicating that the operating system may be based on optical or perceptual parameters. The patentee mentions both “optical and perceptual parameters” and “optical or perceptual parameters” throughout the ’113 Patent specification. *See* ’113 Patent, 8:17-18, 12:66-67. In light of the patentee’s use of the forward slash used in the claim itself, this is not the sort of clear disclaimer that would warrant a narrowed claim scope. *See Ancora*, 744 F.3d at 734 (“A claim term should be given its ordinary meaning in the pertinent context, unless the patentee has made clear its adoption of a different definition or otherwise disclaimed that meaning.”).

Lastly there is no basis for requiring that the optical/perceptual parameters be measured and used only as “inputs, controls, or feedback elements,” as Defendant suggests. The term “optical/parameters based operating system” by its plain language only requires that the operating system be “based” on such parameters and does not specify how these parameters are used.

For these reasons, Defendant’s narrow construction of an “optical/perceptual parameter based operating system” is not supported by the intrinsic evidence and there is no clear reason to depart from the plain and ordinary meaning. *See Id.*

D. “the eye sensor activating the circuitry responsive to eye motion of a user” (’929 Patent)

The term “the eye sensor activating the circuitry responsive to eye motion of a user” should be accorded its plain and ordinary meaning. This meaning is readily understandable and does not require elaborate interpretation. *See Phillips*, 415 F.3d at 1314. Nor did the patentee create a definition for the term.

Defendant improperly proposes a narrow definition, construing “the eye sensor activating the circuitry responsive to eye motion of a user” as “the eye sensor making the inactive circuitry become active, in response to eye motion of a user.” Defendant’s narrow and negative construction is, again, a litigation-driven effort to manufacture a non-infringement argument. Significantly, defendant adds that the circuitry must initially be “inactive.” However, the word “inactive” does not appear in the ’929 Patent Specification. Defendant’s proposed construction also departs from the plain and ordinary meaning of the term “activate.” Dictionary.com defines “activate” as “to make active; cause to function or act.” *Activate*, DICTIONARY.COM, <https://www.dictionary.com/browse/activate> (last accessed Nov. 20, 2022) (with emphasis). Merriam-Webster Dictionary defines “activate” as “to make active or more active.” *Activate*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/activate> (last accessed Nov. 20, 2022) (with emphasis). Neither of these definitions presumes that the subject being activated must be “inactive,” as Defendant’s construction would require of the circuitry.

Defendant’s citation to the prosecution history of abandoned parent application 11/245,756 is unavailing. Defendant will likely focus on the patentee’s statement regarding the Anderson

reference that “the circuitry [in Anderson] must already be activated before the eye sensing device ‘156’ detects movement and before the feedback device ‘158’ instructs the fluid dispensers 14, 16 to administer fluid to the user’s eye” to imply that the circuitry in the ’113 Patent must initially be inactive. *See* October 25, 2007, Response to Final Office Action for U.S. Patent Application No. 11/245,756. However, in this statement, the patentee was merely referring to the fact that the eye-positioning system in Anderson uses a feedback mechanism to continually detect the positioning of an eye and that this “is not for ‘activating the circuitry responsive to a movement of an eye of the user,’” The main thrust of the patentee’s argument, as explained in the succeeding paragraphs, is that the eye sensing device with the feedback mechanism that must be activated prior to use does not actually activate the circuitry. Rather, the circuitry is activated by controllers that are separate from the circuitry and the eye sensing device. This one-off statement during the prosecution history of a distant and eventually abandoned parent application is far from the “clear and unmistakable” disclaimer required to limit the meaning of a claim term. *See Opticurrent, LLC v. Power Integrations, Inc.*, No. 2021-1712, 2022 U.S. App. LEXIS 4771, at *14 (Fed. Cir. Feb. 23, 2022).

Thus, Defendant’s narrow construction of an “the eye sensor activating the circuitry responsive to eye motion of a user” is not supported by the intrinsic evidence and there is no clear reason to depart from the plain and ordinary meaning. *See Ancora*, 744 F.3d at 734.

E. “cell phone” (’929 Patent)

The term “cell phone” should be accorded its plain and ordinary meaning. This is a term with “so clear an ordinary meaning that a skilled artisan would not be looking for clarification in the specification.” *See Ancora Techs. v. Apple, Inc.*, 744 F.3d 732, 738 (Fed. Cir. 2014). The

meaning of a “cell phone” is readily understandable, both to a person skilled in the art and to lay jurors. It does not require elaborate interpretation. *See Phillips*, 415 F.3d at 1314.

The Court should reject Defendant’s proposed construction because it is clearly litigation-driven and contradicts the intrinsic evidence. Similar to Defendant’s inclusion of the word “circuitry” in its proposed construction of the term “media focals,” discussed *supra*, Defendant’s inclusion of the word “circuitry” is designed to manufacture a non-infringement argument. As described above, Defendant’s Magic Leap 1 headset includes three main components: a Lightwear (i.e., a headset), a Lightpack (i.e., a processor that drives the headset), and a Control (i.e., a hand-held controller for interacting with the headset). The circuitry in the Lightpack for the Magic Leap 1 includes at least a portion of the Wi-Fi/Bluetooth circuitry that enables the cell phone functionality in the Lightwear headset.

The full claim element this term appears in is:

circuitry within the frame member for enhancing the use of the eyewear; and an eye sensor coupled to the frame member, the eye sensor activating the circuitry responsive to eye motion of a user wherein the circuitry provides any of a cell phone, media focals, and an MP3 player.

Defendant’s proposed construction would have the end of this element instead read “wherein the circuitry provides . . . circuitry that sends and receives telephone calls over a cellular network” Defendant’s duplicative use of the word “circuitry” in its proposed construction for “cell phone” would unnecessarily narrow the claim scope by requiring the circuitry for the “cell phone” to be *entirely* located on eyewear itself. As a result, this construction is setting up a non-infringement argument where the Wi-Fi/Bluetooth portion of the circuitry are in the Lightpack.

However, Defendant’s proposed construction contradicts the intrinsic evidence. Claim 7, for example, does not specify that the circuitry for enhancing the use of the eyewear must be

located *entirely* within the frame member. The '929 Patent specification describes the cell phone circuitry being located entirely in the eyewear only in a *preferred* embodiment:

Referring back to FIG. 3, the electronics for the cell phone in a preferred embodiment would be within the frame 308 of the eyewear.

'929 Patent, 5:19-21 (with emphasis). But in another embodiment, portions of the circuitry for the cell phone may be located in the eyewear while other portions may be remote from the eyewear:

Similar to the media focal and MP3 player environments, a digital client/server or Bluetooth/wifi model could be adapted to link the eyewear to external communication equipment.

'929 Patent, 5:32-34 (with emphasis).

Additionally, there is also no basis for limiting the meaning of the term “cell phone” to “send[ing] and receiv[ing] telephone calls over a cellular network.” The '929 Patent considers cell phones in a broad context of “telecommunications enhancements.” *See* '929 Patent, 1:48-56. The patentee described:

Circuitry 402 within the eyewear could be utilized to allow a telephone number or other visual information such as that provided by multimedia messaging services to be displayed on the lens 410 of the eyewear as shown in FIG. 3. [. . .]

[. . .]

Similar to the media focal and MP3 player environments, a digital client/server or Bluetooth/wifi model could be adapted to link the eyewear to external communication equipment. Such equipment could include digital cell phones, PDAs or wifi enabled PCs or other devices. Such an embodiment could enable review of voicemail, screen viewed emails, text to speech audio email conversions, multimedia messaging services, and other data sources.

'929 Patent, 4:46-5:39 (with emphasis). The intrinsic evidence demonstrates that the patentee intended a broad interpretation of “cell phone” that goes beyond merely “send[ing] and receiv[ing] telephone calls over a cellular network” to include other typical cell phone functions such as accessing voicemail, email, multimedia messages, and other data.

Thus, Defendant's proposed construction for "cell phone" should be rejected because it is litigation-driven and contradicts the intrinsic evidence.

F. "MP3 player" ('929 Patent)

The term "MP3 player" should be accorded its plain and ordinary meaning. This is a term with "so clear an ordinary meaning that a skilled artisan would not be looking for clarification in the specification." *See Ancora Techs. v. Apple, Inc.*, 744 F.3d 732, 738 (Fed. Cir. 2014). The meaning of an "MP3 player" is readily understandable, both to a person skilled in the art and to lay jurors. It does not require elaborate interpretation. *See Phillips*, 415 F.3d at 1314.

The Court should reject Defendant's proposed construction because it is clearly litigation-driven and contradicts the intrinsic evidence. Similar to Defendant's inclusion of the word "circuitry" in its proposed constructions of the term "media focals" and "cell phone," discussed *supra*, Defendant's inclusion of the word "circuitry" is designed to manufacture a non-infringement argument. The circuitry in the Lightpack of the Magic Leap 1 includes at least a portion of the Wi-Fi/Bluetooth circuitry that enables the MP3 player functionality of the Lightwear headset.

The full claim element this term appears in is:

circuitry within the frame member for enhancing the use of the eyewear; and an eye sensor coupled to the frame member, the eye sensor activating the circuitry responsive to eye motion of a user wherein the circuitry provides any of a cell phone, media focals, and an MP3 player.

Defendant's proposed construction would have the end of this element instead read "wherein the circuitry provides . . . circuitry that inputs a computer file in MP3 format and outputs an audio signal based on the computer file." Defendant's duplicative use of the word "circuitry" in its proposed construction for "MP3 player" would unnecessarily narrow the claim scope by requiring the circuitry for the "MP3 player" to be *entirely* located on eyewear itself. As a result, this

construction is setting up a non-infringement argument where the Wi-Fi/Bluetooth portion of the circuitry are in the Lightpack.

However, Defendant's proposed construction contradicts the intrinsic evidence. Claim 7, for example, does not specify that the circuitry for enhancing the use of the eyewear must be located *entirely* within the frame member. The '929 Patent specification describes the MP3 player circuitry as merely being incorporated in the eyewear, in a "wired or wireless environment":

What would be desirable would be to provide music glasses in which an MP3 player on an iPod or the like is incorporated in the eyewear, either in a wired or wireless environment.

'929 Patent, 3:67-4:3 (with emphasis). The patentee further explained how "MP3 player" could use the "client/server" model or "Bluetooth" technology, which would include a portion of circuitry that is remote from the eyewear:

It would also be possible to provide access to streaming audio media. Also, access can be provided to multimedia libraries, etc., via the client/server model.

Information could be received via a digital client/server model enabled to work with iPods or MP3 players. Similarly, bluetooth wireless technology could be utilized to provide access to music and live audio sources.

'929 Patent, 4:15-21 (with emphasis).

Additionally, there is no basis for requiring that the MP3 player "inputs a computer file in MP3 format and outputs an audio signal based on the computer file." This phrase does not appear anywhere in the '929 Patent specification. Nor do the terms "computer file" or "file." The plain and ordinary meaning of MP3 player is much broader. The patentee discussed MP3 players in the broad context of playing or downloading music generally and not being limited to MP3 files:

Through the use of this type of system, a plurality of users could be networked via an MP3 player type environment within a hotspot, or the like, which would allow one to have downloads of whatever music is required through the eyeglasses.

'929 Patent, 4:3-7. This broad context is in accordance with common dictionary definitions of the term. For example, PCMag defines the term “MP3 player” as a “digital music player that supports the MP3 audio format.” *MP3 player*, PCMag, <https://www.pcmag.com/encyclopedia/term/mp3-player> (last accessed Nov. 21, 2022). As another example, Oxford Languages (via Google) defines the term “MP3 player” as “a device for playing MP3s or other digital audio files.” *MP3 player*, OXFORD LANGUAGES, <https://www.google.com/search?q=mp3+player+definition> (last accessed Nov. 21, 2022).

Thus, Defendant’s proposed construction for “MP3 player” should be rejected because it is litigation-driven and contradicts the intrinsic evidence.

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Respectfully submitted,

Percept Technologies, Inc.

/s/William W. Flachsbart

Rolando Diaz (DE Bar #5845)

Tracy L. Pearson (DE Bar #5652)

DUNLAP BENNETT & LUDWIG PLLC

1509 Gilpin Avenue, Ste.2

Wilmington, DE 19806

Tel: (302) 273-4249

Fax: (855) 223-8791

tpearson@dbllawyers.com

rdiaz@dbllawyers.com

William W. Flachsbart (*pro hac vice*)

Robert P. Greenspoon (*pro hac vice*)

Mark Magas (*pro hac vice*)

DUNLAP BENNETT & LUDWIG PLLC

333 N. Michigan Ave.

Suite 2700

Chicago, IL 60601

Tel: (312) 551-9500

wflachsbart@dbllawyers.com

rgreenspoon@dbllawyers.com

mmagas@dbllawyers.com

Attorneys for Plaintiff

Percept Technologies, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 21, 2022, a copy of the foregoing document was served on the persons listed below in the manner indicated:

BY EMAIL

Anne Shea Gaza (No. 4093)
Samantha G. Wilson (No. 5816)
YOUNG CONAWAY STARGATT &
TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-6600
agaza@ycst.com
swilson@ycst.com

Bryan Wilson
MORRISON & FOERSTER LLP
755 Page Mill Road
Palo Alto, CA 94304
(650) 813-5600
bwilson@mofo.com

Diek O. Van Nort
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000
dvannort@mofo.com

Attorneys for Defendant Magic Leap, Inc.

DUNLAP BENNET & LUDWIG PLLC

/s/ Rolando Diaz

Tracy L. Pearson (No. 5652)
Rolando Diaz (No. 5845)
1509 Gilpin Avenue, Ste. 2
Wilmington, DE 19806
(302) 273-4249
tpearson@dbllawyers.com
rdiaz@dbllawyers.com

William W. Flachsbart
Robert P. Greenspoon
Mark A. Magas
333 N. Michigan Ave., Suite 2700
Chicago, IL 60601
(312) 551-9500
wflachsbart@dbllawyers.com
mmagas@dbllawyers.com

Attorneys for Plaintiff