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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

E-VISION OPTICS, LLC AND E-VISION SMART OPTICS, INC., Plaintiffs, v. LUXOTTICA GROUP S.P.A. and LUXOTTICA OF AMERICA INC., Defendants.	Case No. 8:23-cv-02013-AB-(SHKx) **PLAINTIFFS' RESPONSIVE CLAIM CONSTRUCTION BRIEF**

Luxottica v. e-Vision
IPR2025-00216
Luxottica Ex. 1046

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I. INTRODUCTION

Pursuant to the Court's Order Scheduling Additional Dates and Correcting Scheduling Order, (Dkt. No. 58), Plaintiffs e-Vision Optics, LLC, and e-Vision Smart Optics, Inc. ("e-Vision" or "Plaintiffs") respectfully provide this Brief responding to the positions taken by Luxottica Group S.p.A. and Luxottica of America Inc. ("Defendants") in its Opening Claim Construction Brief (Dkt. No. 76). Defendants argued that six of the terms described in five separate patents require construction. Constructions proposed by the Defendants depart from the plain and ordinary meaning. The adoption of such an approach would unduly limit the scope of the claims as the claim language does not present any ambiguity to a lay jury. The Court should reject the Defendants' proposal to improperly limit the scope of the claims.

II. ARGUMENT

1. "application module" ('960 patent, claim 1)

Disputed Claim Term	Luxottica's Proposed Construction	e-Vision's Proposed Construction
"application module"	a replaceable device that can be docked to the eyewear to support an application	No construction necessary; Plain and ordinary meaning

Luxottica's proposed construction of this term is improper because it seeks to import the limitations "replaceable" and "docked" into the claims. None of these limitations are consistent with or required by the plain and ordinary meaning of "application module," which is readily understandable to a jury in the context of the claims. Instead, Luxottica again looks to exemplary specification embodiments and seeks to import them into the claims. The Federal Circuit has repeatedly rejected this tactic. *Weber, Inc. v. Provisur Techs., Inc.*, 92 F.4th 1059 (Fed. Cir. 2024).

Among the many benefits provided for by the multiple embodiments disclosed

in the ’960 patent is the option to provide an application that has one or more specialized functions. In the case of the claims at issue, they clearly specify that the application includes a virtual personal assistant capable of answering questions raised by someone wearing the claimed eyewear. Another *optional* benefit includes having interchangeable devices that can provide different functionality to the eyewear. The asserted claims, however, do not discuss interchangeability. Yet, Luxottica seeks to limit the scope of the claims to this second optional and unclaimed benefit. Dkt. 76 at 9-10. Indeed, by trying to force the claims to cover multiple different interchangeable functions, Luxottica frustrates the claim’s stated purpose of providing one specific function—a virtual personal assistant. *Google LLC v. EcoFactor, Inc.*, 92 F.4th 1049, 1058 (Fed. Cir. 2024).

Luxottica’s references to the specification further support that the embodiments of the ’960 patent are exemplary and not limiting. For instance, Luxottica cites to a portion of the ’960 patent that notes that an application “***can***” join with a docking station. Dkt. 76 at 9 (citing Ex. 5, 2:4-6). Notably, however, claim 1 of the ’960 patent does not recite a docking station. Ex. 5 cl. 1. Thus, Luxottica’s attempt to limit the term “application module” to require a docking station is not only directly contradictory to the express language of the intrinsic evidence, but it is also unsupported by the law. *Weber*, 92 F.4th at 1059.

Luxottica’s reliance on the supposed “prior art” fares no better. Dkt. 76 at 10. In fact, the ’960 patent notes that “there is a need for a single pair of fashionable eyewear capable of utilizing one or more of a multitude of different application devices while the wearer is wearing the eyewear.” Ex. 5, 1:59-62. Having an application module built into eyewear would serve that purpose. However, as noted above, Luxottica points to one potential benefit of the claimed eyewear and argues that the claimed eyewear should be limited to only that exemplary embodiment. Indeed, the concept of a replaceable application module is not just *an* exemplary embodiment, it is one of

several exemplary configurations of an exemplary embodiment. Ex. 5, 21:59-62. Accordingly, none of Luxottica's intrinsic evidence supports the notion that the application module necessarily must be "removable." They merely describe examples, that consistent with the specification, cover "any device when added to the inventive eyewear that provides one of an improvement, pleasure, or a benefit to or for a wearer of the eyewear." Ex. 5, 21:59-62. Luxottica tries to turn the specification disclosures on their head by arguing that e-Vision "ignores" the term "module." Not so. While application modules ***may be*** interchangeable and replaceable, ***they do not need to be***.

Luxottica's proposed construction will also introduce ambiguity and confuse the jury. For instance, included in Luxottica's proposed construction is "replaceable." This begs the question – to what extent would the application have to be "replaceable" to meet Luxottica's limitation? Although the term "docked" does not appear in the claims, what is the meaning of this imported limitation? What does it mean to "support" an application? The fact that these questions arise from Luxottica's proposed construction is precisely why courts caution against reading additional limitations into the claims. *Weber*, 92 F.4th at 1059; *Promptu Sys. Corp. v. Comcast Corp.*, 92 F.4th 1372, 1379 (Fed. Cir. 2024) ("Our case law has long recognized that particular features recited in the specification merely as aspects of embodiments, and not expressly or even implicitly identifying requirements of the invention, do not narrow a claim term that is otherwise broader in its ordinary meaning."). Accordingly, Luxottica's proposed construction must be rejected.

2. "verbal query" ('960 patent, claim 1)

Disputed Claim Term	Luxottica's Proposed Construction	e-Vision's Proposed Construction
"verbal query"	No construction necessary	Verbal question raised orally by a wearer of the eyewear

"Verbal query" has a plain and easily understood meaning, but requires construction to resolve a dispute between the parties because Luxottica seeks to read

the term well beyond its plain and ordinary sense. Unlike the previous terms, where Luxottica seeks to improperly narrow the constructions, here Luxottica wants to stretch "query" beyond its ordinary meaning of "question" to encompass commands, such as "a specific set of instructions." Dkt. 76 at 17-18. Not only does Luxottica provide no evidence to support such a usage, the '960 patent's specification contradicts it by differentiating between "commands," like a "specific set of instructions," and "queries." Dkt. 69 at 21-22 (citing Ex. 1, 20:27-34). It is black letter Federal Circuit case law that different terms in a patent are presumed to have different meanings and Luxottica's attempt to equate "query" with "command" should fail for this reason alone. *See CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000). To try and get around this, Luxottica argues that "commands" should be considered a subset of "query," Dkt. 76 at 18, but there is no support for this in the intrinsic evidence, the extrinsic evidence, or in the plain and ordinary meaning of "query."

Luxottica asserts that e-Vision's proposed construction lacks support in the intrinsic evidence. That is false. As explained in e-Vision's Opening Brief, a claim term does not need to be expressed in the specification *in haec verba*. *Purdue Pharma L.P. v. Faulding Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000). But the term needs to be described in the specification, which is the case in the '960 patent.

In the context of the '960 patent, a wearer of the inventive eyewear asks a question to a virtual personal assistant of an application module. Ex. 5, 19:64-20:21. In a separate embodiment, the wearer may expressly enter commands. *Compare id. with id.* at 20:27-34. This is an important distinction because a "question" seeks information. In contrast, a "command" provides instructions, much like Luxottica's argument that a "query" can include a "set of instructions." The patentee specifically chose to claim "query" (i.e., a question) rather than a command. This is further evident from claim 4, which indicates that the verbal query is a "query about the weather."

Ex. 5, cl. 4. The patentee's distinction between "query" and "command" should be honored under Federal Circuit precedent. *See CAE Screenplates Inc.*, 224 F.3d at 1317; *see also* Ex. 5 cls. 1, 7.

Luxottica's scenario equating "What is the weather today?" and "Tell me what the weather is today" exemplifies why a question and a statement are different, especially in the context of the '960 patent. An explicit goal of the '960 patent is to allow a user to communicate with a virtual personal assistant using natural language – not "a computer instruction to interrogate a data base." *See* Ex. 5, 19:64-20:42; *see also* Dkt. 77 (Lazama Decl.) Exs. 10, 11. And to communicate in natural language, words matter. From the perspective of a computer (e.g., the virtual personal assistant), "what" implies a request for information. In contrast, a direct statement requires further analysis to identify the subject and context of the statement, such as whether a question is being asked, and then how to answer that question. Thus, while a question is straightforward – ask a question, receive an answer – a statement needs further processing in order to identify whether a request for information exists within the statement.

The specification of the '960 patent accounts for the difference between a question and a statement (e.g., a command). For instance, the '960 patent provides:

> In certain other cases/embodiments all functionality (including electrical power, audio, voice recognition, Bluetooth capability) is provided by the application device module. ***Needless to say the diversity of various question*** [sic] ***such a personal assistant can address are almost limitless. In addition, the wireless enabled personal assistant device module docked within the docking station of the inventive eyewear can be used to provide direction by the wearer of the eyeglasses such that the wearer provides an oral command and the wireless enabled personal assistant communicates wirelessly to a remote wireless enabled device to perform a function***; such as by way of example only; change a TV station, Radio station, increase the temperature

> of a room, turn on the car, turn up or down a light, alter the tint of the inventive eyewear, alter the focus of the inventive eyewear. Finally, the invention (in certain embodiments) further contemplates that the wireless enabled personal assistant device module may require the wearer to ***orally enter a security code*** of some kind before the personal assistant device module will function properly for certain tasks or for all tasks.

Ex. 5, 20:22-42. Thus, in contrast to simply asking a question and receiving a response, a command requires identifying the nature of the command, identifying the device or devices, if any, required to carry out the command, and then interfacing with the device or devices. Thus, Luxottica's equating of a request with a command is a gross oversimplification not only of natural language, but also the claimed functionality.

Luxottica's concern that e-Vision's proposed construction improperly requires that the query be "oral" is also misplaced. The claim language is self-explanatory – it requires that the verbal query be received from the wearer by a microphone – that alone makes it clear that the query must be oral. e-Vision's proposed construction is therefore consistent with, and a further clarification of, the surrounding claim language.

3. "electronics module" ('174 patent, claim 1; '541 patent, claim 1)

Disputed Claim Term	Luxottica's Proposed Construction	e-Vision's Proposed Construction
"electronics module"	a housing or container with one or more electronic components disposed therein	No construction necessary; Plain and ordinary meaning

Luxottica again seeks to improperly import exemplary specification embodiments into the claims. As explained in e-Vision's opening brief, Luxottica's proposed construction of an electronics module is not inaccurate in that it aligns with

the specification's explanation that "electronics module" "***may***" refer to a housing or container, and it "***may***" comprise one or more electronic components disposed therein. (*See* Dkt. 76 at 7; Ex. 2, 8:8-10.) Luxottica ignores the specification's clear use of "may" when it points to the specification for tis supposed definition. This is improper. *See In re Lockwood*, 679 F. App'x 1021, 1027 (Fed. Cir. 2017); *see also Cadence Pharms. Inc. v. Exela PharmSci Inc.*, 780 F.3d 1364, 1369 (Fed. Cir. 2015); *see also Prolitec, Inc. v. Scentair Techs., Inc.*, 807 F.3d 1353, 1358 (Fed. Cir. 2015), *overruled on other grounds by*, *Aqua Prod., Inc. v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017). Nothing in the specification's description ***requires*** that "electronics module" be limited to such a definition. This language merely conveys non-limiting, exemplary embodiments sufficient to provide a POSITA with guidance as to what an electronics module may be.

The case law cited by Luxottica is also inapposite to its proposed construction. In *Parkervision, Inc. v. Vidal*, 88 F.4th 969 (Fed. Cir. 2023) the language found definitional within the patents in question did not include the permissive term "may." *Parkervision, Inc.*, 88 F.4th 969, 976; *Sinorgchem Co., Shandong v. Int'l Trade Comm'n*, 511 F.3d 1132, 1136 (Fed. Cir. 2007). Similarly, in *BMC Software, Inc. v. ServiceNow, Inc.*, No. 2:14-CV-903-JRG, 2015 WL 4776970 (E.D. Tex. Aug. 13, 2015), the plaintiff argued that this term needed construction given that "namespace" is not simple and readily understandable to a jury as. That is not the case here with "electronics module," which is easily understood. Further, in *BMC Software*, 2015 WL 4776970, the Court found an explicit definition where the patent in question recited "[t]he term 'namespace' generally refers to a set of names in which all names are unique." *BMC Software*, 2015 WL 4776970. The definition further elaborated that the defined "namespace" may refer to one of only two things that it could possibly have referred to: one memory, or a plurality of memories. *Id.* Thus, as opposed the situation here, in which the entire supposed "definition" is couched in permissive language, in

BMC Software, 2015 WL 4776970, the specification used definitional language to limit "namespace," which it further stated "may" be one of two options. *Id*. In *Infinity Headwear & Apparel, LLC v. Jay Franco & Sons, Inc.*, No. 15-CV-1259 (JPO), 2016 WL 5372843 (S.D.N.Y. Sept. 26, 2016), the court rejected the defendant's attempt to rewrite the supposed "definition" as a short paraphrasing of the language at issue in the specification. *Id.* Similarly, Luxottica seeks to truncate the long description of "electronics module" to a short, overly simplistic, limiting construction. *See, e.g.*, Ex. 2, 8:8-27. Thus, the Court should follow the court's lead in *Infinity Headwear* and reject Luxottica's proposed rewriting of the specification language.

Additionally, the prosecution history of the '541 patent does not support Luxottica's position. First, as the applicant noted in the prosecution history, it was apparent that the examiner did not adequately review the claims or specification when initially examining the application. For instance, the applicant had to point out several deficiencies in the examiner's findings, even going so far as to make a formal request to the examiner for "full examination." Dkt. 77-7 at 304.[1] Indeed, the applicant indicated that "[i]f the rejections of these claims are maintained after such full examination, Applicants request that the Office's statements of rejection be at least as complete and informative as to satisfy the applicable statutory and regulatory requirements for rejection. Presently, the Office's rejections of these claims do not meet these required standards. Specifically, the Office provides no support for the rejections of any of these claims." *Id.* The applicant further advised the examiner as to their statutory duty – "[t]he Office's failure to address *any* feature of these claims axiomatically does not 'clearly explain' the pertinence of any reference applied. . . [S]uch cursory rejections, lacking any supporting rationale, are invalid as arbitrary and capricious under the Administrative Procedure Act." *Id.* at 305. In the face of these

[1] References to page numbers of the Lezama Decl. (Dkt. 77) refer to "Decl. Page" numbers unless expressly stated otherwise.

arguments, the examiner withdrew the objections. *Id.* at 313.

Examples of the examiner's errors including rejecting "structural member" as indefinite under the ground that "it is not clear what is meant by the term 'structure member' [sic] whether that structural member is even part of the frame, or how it could be connected with part of the frame." *Id.* at 307. This rejection was made despite the clear language of, for example, claim 1, which indicates that "the frame comprises a housing module coupled to a structural member." *Id.* at 300. The examiner also failed to examine the term "controller," and the applicant had to point to the specification that showed that "it is clear from the specification that the controller is a component of the first device and that it has a particular function." *Id.* at 308. The Examiner also rejected then-pending claim 48 on the basis that "Claim 48 lacks the essential feature that the electronics module is connected with an electro-active lens." *Id.* at 309 (citing *id.* at 293). The applicant had to point out to the examiner that claim 48 did not even ***recite*** an electro-active lens, ***nor did any of the pending claims***. *Id.* Again, the examiner withdrew these rejections in the face of the applicants arguments. *Id.* at 313. In light of these many and subsequently withdrawn errors, reliance on the prosecution history as necessarily narrowing any claim terms, much less activating prosecution history estoppel, is improper.

Luxottica now attempts to support its limiting construction with yet another of the Examiner's many erroneous rejections during prosecution – namely, that the Examiner incorrectly found that "it is not clear which structure feature is means [sic] by term 'electronics module.'" *Id.* at 292-293. The applicant again had to point to the fact that the specification provides a clear, non-limiting, exemplary, and informative embodiment as to what an electronics module may include – a plurality of electrical components, such as a power source, sensing mechanism, and/or controller. *Id.* at 307.

Once these clear deficiencies in the examiner's review of the application were

pointed out to the examiner, the application was promptly allowed and issued as the '541 patent. *Id.* at 313. None of the terms the examiner initially found deficient—i.e., "electronics module" and "structural member"—were amended or limited. As a result, Luxottica's reliance on these clearly erroneous and subsequently withdrawn rejections by the examiner are entirely without merit.

4. "conductive path" ('174 patent, claim 1)

Disputed Claim Term	Luxottica's Proposed Construction	e-Vision's Proposed Construction
"conductive path"	a continuous path for which electrons (i.e. current) may flow from one point to another.	No construction necessary; Plain and ordinary meaning

Luxottica's Opening Brief does nothing more than parrot language from the specification without explaining why this term needs construction. As Luxottica notes, the '174 patent provides a list of definitions, including this one. And, importantly, it is defined consistent with its plain and ordinary meaning. Expressly construing this claim term, which is used in its ordinary sense, and where there is no potential for jury confusion is unnecessary and actually invites confusion. *Promptu Sys. Corp.*, 92 F.4th at 1380 ("Although '[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it,' courts 'are not (and should not be) required to construe every limitation present in a patent's asserted claims.'") (citing *O2 Micro International Ltd. v. Beyond Innovation Technology Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008)); *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1318 (Fed. Cir. 2016); *Function Media, L.L.C. v. Google, Inc.*, 708 F.3d 1310, 1326 (Fed. Cir. 2013). By Luxottica's logic, the Court should construe literally every single term in each of the Asserted Patents that even arguably is included in the Asserted Patents' lists of definitions. This is yet another example of Luxottica introducing disputed claim terms when it is not necessary. The Court should reject this here and now, lest Luxottica

raise further constructions in the future *ad nauseum*.

5. "couple the electronics module to the first temple to constrain the electronics module" ('174 patent, claim 1)

Disputed Claim Term	Luxottica's Proposed Construction	e-Vision's Proposed Construction
"couple the electronics module to the first temple to constrain the electronics module"	physically secure or provide a restraining force to the electronics module to retain the module in a fixed position within the temple	No construction necessary; Plain and ordinary meaning

Luxottica's proposed construction purports to rely on lexicography, while omitting much of the non-limiting definition of this term provided in the '174 patent. This is precisely why claim terms such as this need no construction – the claims and specification speak for themselves, yet Luxottica aims to speak for the '174 patent through its incomplete proposed construction.

The specification of the '174 patent provides several discussions of the term "constrain," one expressly exemplary discussion is below:

> ***In some embodiments***, the first electrical conductor may be configured to constrain or substantially constrain the electronics module. As used in this context, "constrain" ***may refer to*** when the first electrical conductor is configured to provide support (i.e. a restraining force) for the electronics module to retain the module in a fixed position within the temple. That is, the first electrical conductor ***may be*** configured to hold the electronics module in place. As noted above, the first electrical conductor may be integrally coupled to the temple (such as insert molded or otherwise affixed to the temple), and ***may be*** inserted through an opening of the electronics module and apply pressure to a surface or a component therein, which thereby restricts the module from being removed from the temple or moved within the temple. In this manner, the conductor ***may hold or restrain one end of the electronics module*** in place (or ***substantially in place)***. The term "substantially constrain" is used in this context to

> account for some minor movement of the electronics module within the temple, but the conductor may generally hold the electronics module within the temple in place (such that it remains in an operative position).

Ex. 2, 11:50-12:3 (emphasis added), *but see also* 2:13-14 ("couple (e.g. constrain)"), 13:41-67 (constrain can be removeable). Indeed, Luxottica ignores the fact that this entire discussion is set of by "in some embodiments," and that constrain may expressly hold just "one end of the [] module" "substantially in place," which expressly contradicts its "fixed position" construction. *Id*. So does the specifications statement that something that is constrained can be removeable. *Id*. at 13:41-67. Instead, Luxottica aims to ignore this by condensing the discussion of "constrain" to a single sentence of this passage, which is expressly permissive and conditioned on certain embodiments, without any of the context that further describes how an electronics module *may be* "constrained." *Id*. That is improper. *Google LLC*, 92 F.4th at 1058 (Fed. Cir. 2024) ("We normally do not interpret claim terms in a way that excludes embodiments disclosed in the specification."). And Luxottica is incorrect that e-Vision aims to "punt" the "issue" to a jury – there is no issue to punt. All the uses of "constrain" in the '174 Patent are easily within its plain and ordinary meaning and it is readily understandable to a jury, who is fully capable of knowing what the simple term "constrain" means in the context of the claims.

6. "coupling the capacitive touch switch to a partial enclosure to constrain the capacitive touch switch" (Ex. 2, claim 15)

Disputed Claim Term	Luxottica's Proposed Construction	e-Vision's Proposed Construction
"coupling the capacitive touch switch to a partial enclosure to constrain the capacitive touch switch"	physically securing or providing a restraining force to the capacitive touch switch to retain the capacitive touch switch in a fixed position relative to an enclosure that substantially surrounds the electronic components that are disposed on a surface of the capacitive touch switch	No construction necessary; Plain and ordinary meaning

Luxottica's tries a multilevel construction incorporating its construction of "constrain" that fails for multiple reasons. First, it fails for the same reasons that "constrain" fails above. Second, it fails because, while it purports to be based on a definition from the specification, it ignores a crucial aspect of that definition – that "the enclosure need not completely enclose or encircle the electronic components." Ex. 2, 23:43-54. This is consistent with the express language of the claims – a "partial enclosure" does just what the language implies and is readily understandable to a jury – it partially encloses. *Id.* Further, it partially encloses sufficient to constrain the capacitive touch switch.

Luxottica's proposed construction, while claiming to be the specification's "definition," is actually an out of context oversimplification of this term. Indeed, the specification of the '174 patent provides the following exemplary disclosure:

> As used in this context, a "partial enclosure" <u>*may*</u> refer to a component or components that <u>*may*</u> ***substantially surround the electronic components that are disposed on a surface of the capacitive touch switch***. That is, for instance, the enclosure <u>*may*</u> surround the portions of the electronic components that are not covered by the capacitive touch switch. However, the enclosure <u>*need not*</u> completely enclose

> or encircle the electronic components. *For example*, the enclosure *may* have one or more openings that allow external components to interact with the components disposed within the enclosure. This *may* enable electrical connections to be made to the components therein.

Ex. 2, 23:43-54. Luxottica's proposed construction reads out much of this explanation, including ignoring the multiple examples of permissive language, leaving only the portion left in bold. Critically, Luxottica purposefully excises the expressly permissive language from the specification in the form of multiple "may"s and "for example" underlined above. As the Federal Circuit has repeatedly held, the specification's use of "may" does not indicate a requirement and it would be improper to read out other specification embodiments. *Weber*, 92 F.4th at 1059; *Promptu Sys. Corp.,* 92 F.4th at 1379 ("Our case law has long recognized that particular features recited in the specification merely as aspects of embodiments, and not expressly or even implicitly identifying requirements of the invention, do not narrow a claim term that is otherwise broader in its ordinary meaning."). Instead, this term is plain on its face and used in its plain and ordinary manner, which is clear for the language of the claims themselves and the specification.

In light of the claim's self-explanatory language, which is used in its ordinary sense, there is no need to construe this term merely because Luxottica demands that it be construed, particularly where, as here, Luxottica's construction runs contrary to black letter Federal Circuit claim construction precedent.

III. CONCLUSION

As outlined in the Plaintiffs' Opening Claim Construction Brief, it is imperative for the Court to offer the jury precise instructions on the scope of the Asserted Claims. This clarity will allow the jury to effectively carry out their crucial task of determining infringement or non-infringement. Among the proposed constructions, only those put forth by the Plaintiffs offer this much needed clarity. The remaining claim terms are

well understood with reasonable certainty by a person having ordinary skill in the art and do not require further definition. Therefore, the Court should reject the Defendants' proposed constructions which improperly import limitations with regards to the specification or prosecution history.

Dated: September 27, 2024 KING & SPALDING LLP

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