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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 ONE-E-WAY, INC., a California
15 corporation,

16 Plaintiff,

17 v.

18 APPLE INC., a California corporation,

19 Defendant.
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Case No.

2:20-CV-06339-JSK-PD

**ONE-E-WAY'S OPENING
CLAIM CONSTRUCTION
BRIEF**

Honorable John A. Kronstadt

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Pursuant to the Court's Order Setting Pretrial Deadlines, Dkt. No. 60, Plaintiff One-E-Way, Inc. ("One-E-Way" or "OEW") hereby submits its Opening Claim Construction Brief.^{1,2}

I. INTRODUCTION

The parties presently dispute the construction of nine claim terms from the three asserted patents in this case. Eight of the nine disputed claim terms have been proposed by Apple. These eight terms consist mainly of short, straightforward words—such as receiver, transmitter, headphone, audio player and audio source—for which the heavy presumption of plain and ordinary meaning is clearly warranted. Nevertheless, Apple seeks, including with multiple last-minute and untimely changes in its proposals, to improperly import limitations to narrow these simple terms in ways unsupported by black letter claim construction law.

The sole term proposed by both parties, "direct conversion module," was previously construed during ITC proceedings, and Apple relied on the ITC construction in its IPR petitions filed against the asserted patents. The ITC construction is supported by the intrinsic evidence, confirmed by the extrinsic evidence, and remains the appropriate construction for this term. Apple's attempt to now modify the meaning of that term is unsupported and should be rejected.

II. BACKGROUND OF THE INVENTION

Earl Woolfork is the named inventor on the asserted patents. Mr. Woolfork first conceived of his wireless audio inventions in the late 1990's while exercising outdoors at the popular Santa Monica Steps in Los Angeles. Mr. Woolfork noticed that many people were having trouble with the wires connecting their audio players to their headsets, which often frustrated and interrupted their exercise routines. Mr. Woolfork set out to create a solution that would allow people to exercise free

¹ Exhibits citations are to the Declaration of Douglas B. Wentzel ("Wentzel Decl.") unless indicated otherwise.

² All emphasis is added unless indicated otherwise.

1 of wires, while still enjoying high quality music. Mr. Woolfork conceived of a
 2 mobile audio transmitter and separate mobile receiver that could communicate
 3 using radio signals to provide high quality audio data.

4 The three asserted patents in this case, U.S. Patent Nos. 8,131,391,
 5 10,129,627, and 10,468,047, are generally directed to wireless digital audio
 6 systems, including a transmitter and a receiver. The asserted patents disclose
 7 techniques to improve listening quality while reducing interference in order to
 8 provide private listening. The patents' common specification explains that, even
 9 when multiple such systems operate in a shared space, "[e]ach receiver headphone
 10 user may be able to listen (privately) to high fidelity audio music, using any of
 11 the audio devices listed previously, without the use of wires, and without
 12 interference from any other receiver headphone user, even when operated
 13 within a shared space." Ex. 2 ('391 Patent) at 3:32-36. This is achieved through a
 14 series of disclosed components in the system's claimed transmitter and/or receiver.

15 **III. BACKGROUND ON PRIOR CLAIM CONSTRUCTIONS**

16 **A. Prior Constructions From The Federal Circuit And ITC Litigation**

17 In 2014, One-E-Way brought an action in the ITC against several
 18 international electronics companies, including Sony and GN Netcom, based on two
 19 of One-E-Way's wireless digital audio patents, including the '391 Patent asserted
 20 here. *Certain Wireless Headsets*, Inv. No. 337-TA-943. That ITC Investigation
 21 progressed through claim construction, resulting in a 44-page claim construction
 22 order issued by the ALJ. Ex. 9.

23 The ITC claim construction order addressed seven claim terms, and issued
 24 following a two-day claim construction hearing, after having the benefit of
 25 multiple briefs and supplemental briefs provided by One-E-Way, five Respondent
 26 parties, as well as the ITC Staff attorneys. *Id.* The final claim constructions
 27 adopted by the ITC aligned with One-E-Way's proposals and agreements on all
 28 terms except one. On the lone term in which the ALJ did not adopt a

1 construction either proposed or agreed-to by One-E-Way, the ALJ found that term
2 (“virtually free from interference”), indefinite. Because that lone claim term
3 appeared in all asserted claim, the ITC litigation came to a halt, and One-E-Way
4 appealed to the Federal Circuit. The Federal Circuit, in *One-E-Way, Inc. v. Int’l*
5 *Trade Comm’n*, 859 F.3d 1059 (Fed. Cir. 2017), reversed the ITC’s decision,
6 instead agreeing with One-E-Way’s claim construction.

7 The term “virtually free from interference” is now listed as an “agreed-
8 upon” claim term between the parties in this matter, based on the Federal Circuit’s
9 construction. Additionally, three other constructions based on the ITC claim
10 construction order are included in the parties’ “agreed-upon” constructions – those
11 relating to “reduced intersymbol interference coding,” “independent” CDMA
12 communication, and “unique user code.” The lone construction from the ITC that
13 Apple disputes here is for the term “direct conversion module.”

14 **B. Claim Construction During Apple’s IPRs**

15 As the Court is aware from the stay of this matter, Apple filed five *inter*
16 *partes* review petitions with the PTO. Dkt. No. 49. Those five petitions
17 challenged the patentability of every claim of every asserted patent in this case.
18 IPR2020-00283-87. In presenting those five petitions, Apple offered voluminous
19 testimony from a technical declarant who, in the span of several hundred pages of
20 declaration testimony, purported to read the prior art onto every claim limitation of
21 the asserted patents in this case. In so doing, Apple presented no claim terms for
22 construction to the PTO, save five terms—“reduced intersymbol interference
23 coding,” “independent” CDMA communication, “unique user code,” “virtually
24 free from interference,” and “direct conversion module.” For those terms, Apple
25 requested the PTO construe them as they had been construed by the ITC, with the
26 exception of the “virtually free from interference,” which the Federal Circuit had
27 already construed. In opposing those five petitions, One-E-Way did not dispute
28 those constructions.

IV. THE DISPUTED CLAIM TERMS AND PHRASES

A. Law of Claim Construction

The Court is readily familiar with claim construction law, and thus One-E-Way addresses the applicable law below in discussing the disputed claim terms.

B. Disputed Claim Terms

With the exception of “direct conversion module,” which the ITC has already construed, each of the disputed claim terms below was proposed by Apple as a term for construction. Ex. 12 (Apple’s S.P.R. 3.2 Disclosure).

1. “audio player” (’391: 3-5; ’627: 5); “audio source” (’047: 1, 8, 17; ’627: 1, 2)

Term	OEW’s Proposed Construction	Apple’s Proposed Construction
“audio player”/ “audio source”	Plain and ordinary meaning	a device for [playing]/[providing] audio that has an analog headphone jack

With regard to “audio source” and “audio player,” the asserted patents state the following: “Referring to FIG. 1, a wireless digital audio system 10 may include an audio transmitter 20 connected to *an audio player or audio source 80.*” See, e.g., Ex. 1 ¶ 11. Apple approaches these terms similarly, as (1) Apple’s proposed construction for “audio source” is essentially identical to its proposal for “audio player,” (2) Apple seeks to import the same “analog headphone jack” into both terms, and (3) Apple relies on the same evidence for “audio player” and “audio source.” Dkt. No. 63, Ex. A at 1-2. Accordingly, One-E-Way addresses these terms together.

Apple seeks to narrow both claim terms by importing the requirement to have “an analog headphone jack.” Thus, Apple seeks *two* narrowing limitations, first by requiring the “audio player/audio source” to have a headphone jack, and second by requiring that jack to be “analog.” Such a departure from the plain meaning of these terms is unsupported and should be rejected.

///

1 First, Apple’s proposal to add layers of unrecited restriction ignores that the
 2 claim construction inquiry “begins and ends in all cases with the **actual words of**
 3 **the claim.**” *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1248
 4 (Fed. Cir. 1998). Nothing about the term “audio player,” nor anything in the
 5 surrounding claim language, discusses, relates to, or requires an “analog
 6 headphone jack.” See Ex. 2 (’391 Patent) at Claims 3-5; Ex. 3 (’627 Patent) at
 7 Claim 5. The same is true for “audio source.” See Ex. 3 (’627 Patent) at Claims 1-
 8 2; Ex. 4 (’047 Patent) at Claims 1, 8. And Apple’s overly narrow proposals do not
 9 change the “heavy presumption” that these terms should be given their plain and
 10 ordinary meaning. See *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359,
 11 1366-67 (Fed. Cir. 2002).

12 The asserted patents’ specification broadly discloses an exemplary
 13 embodiment of the claimed invention usable with any suitable “audio player or
 14 audio source 80,” and like the claims, it does not limit the “audio player” or “audio
 15 source” to having an “analog headphone jack.” Ex. 1 (original patent application
 16 specification) ¶ 11; see, e.g., *id.* ¶ 5, FIG. 1. The specification identifies “radio,
 17 tape players, CD players” as examples of “audio player” devices. *Id.* ¶ 2. The
 18 specification then explains such systems “**usually** incorporate an audio source
 19 having a headphone jack.” *Id.* And Figure 2 of the asserted patents illustrates an
 20 exemplary embodiment with an “audio player or audio source 80” that has no
 21 headphone jack. *Id.*, FIG. 1. This intrinsic evidence thus confirms that the “audio
 22 player” and “audio source” are not limited to devices with an “analog headphone
 23 jack.” Accordingly, Apple’s proposal to require the claimed “audio player” and
 24 “audio source” to also include an “analog headphone jack” is inconsistent with the
 25 intrinsic evidence and should be rejected.

26 Apple offers no evidence that the plain meaning of these terms is necessarily
 27 limited to an audio player or source having an “analog headphone jack.” Dkt. No.
 28 63, Ex. A at 1-2. There is thus no dispute that Apple’s proposal is narrower than—

1 and departs from—the plain meaning that is heavily presumed to apply. *See CCS*,
 2 288 F.3d at 1366-67. And, “[t]here are only two exceptions to th[e] general rule”
 3 of giving terms their plain meaning: lexicography and disavowal. *Thorner v. Sony*
 4 *Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). Apple’s
 5 proposals are thus improper unless it can show one of these exceptions applies.

6 But Apple cannot do so. Apple identifies no intrinsic evidence of the
 7 applicant acting as his own lexicographer and expressly assigning special meaning
 8 to these terms. Dkt. No. 63, Ex. A at 1-2. Apple relies on statements in the
 9 intrinsic record discussing an exemplary “audio player” or “audio source” with a
 10 headphone jack, *see id.*, but such passing discussion does not “‘clearly set forth a
 11 definition of the disputed claim term’ other than its plain and ordinary meaning.”
 12 *Thorner*, 669 F.3d at 1365 (internal citation omitted). Apple also points to no
 13 instances where the asserted patents’ “specification [or prosecution history] makes
 14 clear that the invention does not include a particular feature” or otherwise shows “a
 15 clear disavowal of claim scope.” *Id.* at 1366 (internal citations and quotation
 16 marks omitted); Dkt. No. 63, Ex. A at 1-2.

17 Apple’s primary argument for its proposals appears to be that the
 18 embodiment disclosed in the asserted patents describes an exemplary “audio player
 19 or audio source 80” in connection with a headphone jack. *See, e.g.*, Ex. 1 ¶ 11.
 20 But this argument is a prime example of “‘one of the cardinal sins of patent law—
 21 reading a limitation from the written description into the claims.’” *Phillips v. AWH*
 22 *Corp.*, 415 F.3d 1303, 1319-20 (Fed. Cir. 2005) (internal citation omitted). That
 23 the asserted patents disclose an exemplary embodiment of a claimed feature (the
 24 “audio player” or “audio source”) in connection with an unclaimed feature (a
 25 “headphone jack”) does not warrant importing the unclaimed feature into the
 26 claims. *JVW Enters., Inc. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1335 (Fed.
 27 Cir. 2005) (“We do not import limitations into claims from examples or
 28 ///

1 embodiments appearing only in a patent’s written description, even when a
2 specification . . . describes only a single embodiment[.]”).

3 Further, Apple’s proposals are not supported by the prosecution history it
4 relies on. *See* Ex. 8 (Examiner’s Notice of Allowance and Interview Summary
5 from ’047 Patent File History); Dkt. No. 63, Ex. A at 1-2 (Apple relying on same).
6 The only mention of a headphone jack in the prosecution history Apple relies on is
7 the **Examiner’s** statement that “[t]he transmitter is depicted as a portable battery
8 powered transmitter operably connected to the music audio source through the user
9 of a plug/jack configuration (see Fig. 1, elements 20 and 80).” Ex. 8 at
10 OEW_APPLE-0008661. This statement by the Examiner is irrelevant to the
11 narrow constructions Apple seeks, first because only statements **by the applicant**
12 can limit the scope of a claim. *See, e.g., 3M Innovative Props. Co. v. Avery*
13 *Dennison Corp.*, 350 F.3d 1365, 1373-74 (Fed. Cir. 2003) (“[P]rosecution history .
14 . . cannot be used to limit the scope of a claim unless the **applicant** took a position
15 before the PTO.”). Second, this statement merely concerns the Examiner’s view of
16 what is “**depicted**” in the patent and falls far short of construing the disputed terms
17 as requiring an “analog headphone jack” or somehow limiting the terms to only
18 what is “depicted” in the patent. Ex. 8 at OEW_APPLE-0008661. And even if
19 Apple could credibly argue that the Examiner intended to limit these terms to what
20 is disclosed (or “depicted”) in the patents—which it cannot—that would not
21 support Apple’s proposals because it is improper to import limitations from the
22 disclosure into the claims, even if the specification only describes a single
23 embodiment. *JVW Enters.*, 424 F.3d at 1335.

24 In sum, Apple’s narrow proposal is contradicted—not supported—by the
25 intrinsic evidence, and there is no basis for departing from the plain meaning of
26 “audio player” and “audio source” as Apple seeks. Thus, the Court should reject
27 Apple’s proposals and adopt the plain meaning of both terms.

28 ///

2. “transmitter” (’391: 1, 3-6, 10; ’047: 1, 8, 12, 17-20; ’627: 1, 3, 5, 6, 12)

OEW’s Proposed Construction	Apple’s Proposed Construction
Plain and ordinary meaning	a device that can be connected into an analog headphone jack to wirelessly transmit an audio signal

Apple seeks to encumber this straightforward, single-word term with multiple limitations unwarranted by the intrinsic record, including by once again importing a “headphone jack” that is “analog.” Apple again identifies no evidence showing that One-E-Way assigned a special meaning to the term “transmitter” or clearly and unmistakably disavowed claim scope such that importing “an analog headphone jack” into the claim language could be warranted. And again, nothing about the term “transmitter,” nor anything in the surrounding claim language, discusses, relates to, or requires an “analog headphone jack.” See Ex. 2 (’391 Patent) at Claims 1, 3-6, 10; Ex. 3 (’627 Patent) at Claims 1, 3, 5, 6, 12; Ex. 4 (’047 Patent) at Claims 1, 8, 12, 17-20. Thus, the plain meaning should apply. *Thorner*, 669 F.3d at 1365.

First, many of the asserted claims recite that the claimed “transmitter” is “operatively coupled” to an “audio player” or “audio source.” See Ex. 2 (’391 Patent) at Claims 3-5; Ex. 3 (’627 Patent) at Claim 5; Ex. 4 (’047 Patent) at Claims 1, 8, 17. But the claimed “audio player” and “audio source” do not require a headphone jack. *Supra* Section V.B.2. Accordingly, the claimed “transmitter” is also not required to “be connected into an analog headphone jack,” because the “audio player” or “audio source” to which it is “operatively coupled” may or may not have such a jack. Apple’s overly narrow proposal to the contrary thus contradicts the claim language and should be rejected.

Second, Apple’s proposal ignores the asserted patents’ specification, which plainly states that the “transmitter **may** be connected to the music audio source 80 analog headphone jack 82,” thereby confirming that a physical connection into

1 a headphone jack is optional, not necessary like Apple contends. Ex. 1 ¶ 11; *see*
 2 *id.*, Abstract (“An audio transmitter . . . *may* be connectable to a headphone jack of
 3 an audio source.”), ¶ 5 (same), ¶ 12 (“The audio transmitter 20 may be a compact
 4 device that *may* be connected to the audio source 80”). Thus, the
 5 specification also confirms that the claimed “transmitter” is not required to be, nor
 6 have the capability of being, “connected into an analog headphone jack.” Apple’s
 7 contrary proposal thus also contradicts the specification and should be rejected.

8 Further, Apple again relies on the same comments from the Examiner as
 9 somehow supporting its proposal, Dkt. No. 63, Ex. A at 2, but that argument fails
 10 for the reasons explained above for the “audio player” and “audio source” terms.

11 Thus, nothing in the intrinsic record warrants departing from the plain
 12 meaning of “transmitter.” Apple has identified no extrinsic evidence to the
 13 contrary. At best, Apple’s extrinsic references merely show commercial
 14 embodiments of certain transmitters, which do not warrant ignoring the intrinsic
 15 evidence nor impact the heavy presumption that this term should have its plain
 16 meaning. *See N. Telecom Ltd. v. Samsung Elecs. Co.*, 215 F.3d 1281, 1295 (Fed.
 17 Cir. 2000) (internal citation omitted). Apple’s proposal should thus be rejected.

18 3. “receiver” (’391: 1, 3-6, 10; ’047: 1-6, 8-15; ’627: 1-5, 10, 11)

OEWS Proposed Construction	Apple’s Proposed Construction
Plain and ordinary meaning	Original Proposal: “a device that receives and decodes signals” New Proposal: “a device that receives and converts signals” ³

23 Apple’s proposals for “receiver” are another example of it seeking to
 24 encumber a straightforward, single-word term with two restrictions—i.e., requiring
 25 that “receiver” be construed as a device that (1) “receives” and (2) “decodes” or

27 ³ Apple provided a new proposed construction for this term on December 2, 2021,
 28 Wentzel Decl. ¶ 14, over six weeks after the deadline for exchanging proposed constructions. Dkt. No. 60.

1 “converts” signals. As an initial matter, the notion that the term “receiver” must be
2 construed to include the words a “device that receives” is unnecessary and
3 unhelpful. *See, e.g., Atticus Rsch. Corp. v. VMware, Inc.*, No. CIV.A. H-11-1741,
4 2013 WL 3938516, at *15 (S.D. Tex. July 30, 2013) (rejecting proposed
5 construction that largely repeated claim language as “not helpful”). And as for the
6 second limitation it seeks to add (“a device . . . that decodes [or converts] signals”),
7 Apple identifies nothing in the intrinsic record showing that One-E-Way assigned
8 that express meaning to the term “receiver,” or of a clear disavowal requiring the
9 importation of that limitation. Dkt. No. 63, Ex. A at 3-4. Indeed, no such
10 lexicography or disavowal occurred, and thus the plain meaning should apply.
11 *Thorner*, 669 F.3d at 1365.

12 Further, Apple ignores that claim construction “begins and ends” with the
13 actual claim language. *Renishaw*, 158 F.3d at 1248. Here, for each receiver
14 claimed, the asserted patents recite many related limitations that are actually
15 required. These limitations include, for example, being “capable of mobile
16 operation and configured for direct digital wireless spread spectrum
17 communication with a mobile digital audio transmitter,” *see* Ex. 2 (’391 Patent) at
18 Claim 1, “configured to receive a unique user code,” *see* Ex. 3 (’627 Patent) at
19 Claim 1, “wherein said portable spread spectrum audio receiver is further
20 configured to perform at least one of a plurality of demodulations,” *see* Ex. 4 (’047
21 Patent) at Claim 1, and more. As such, the patentee readily knew how to recite,
22 and did recite, the specific aspects of the receivers it wished to claim, rendering
23 unneeded and unlikely Apple’s position that another limitation (i.e., “decodes [or
24 converts] signals”) must be expressly imported into the claimed “receiver.” Thus,
25 Apple’s proposal to add a “decoding” or “converting” limitation to “receiver” is
26 redundant, unnecessary, and should be rejected. *See, e.g., Jack Guttman, Inc. v.*
27 *Kopykake Enters., Inc.*, 302 F.3d 1352, 1357 (Fed. Cir. 2002) (rejecting
28 construction which rendered other terms redundant).

Further, Apple again relies on the same comments from the Examiner as somehow supporting its proposal, Dkt. No. 63, Ex. A at 3, but that argument fails for the reasons explained above for the “audio player” and “audio source” terms.

Moreover, Apple’s reliance on dictionary definitions of the term “receiver” is insufficient to alter the heavy presumption that the plain meaning should apply, and such “extrinsic evidence ‘*may not* be used to vary or contradict the claim language’ as discerned from the intrinsic record.” *Northern Telecom*, 215 F.3d at 1295. Rather than supporting Apple’s position that “receiver” must be confined to the narrow meaning it seeks, Apple’s dictionary definitions establish that “receiver” is a term entitled to a broader plain meaning as refined by the express claim limitations.

Accordingly, there is no basis warranting such an unduly narrow construction of “receiver” in place of its plain meaning, and thus Apple’s proposal should be rejected.

4. “headphone” (’391: 1, 3, 6, 10; ’047: 6, 15)

OEWS’s Proposed Construction	Apple’s Proposed Constructions
Plain and ordinary meaning	“a device with speaker(s) secured by a band placed over the head”

For the single term “headphone,” Apple seeks to restrict that term to “a device with speaker(s) secured by a band placed over the head.” As with its other attempts to improperly import limitations into one- or two-word terms, Apple cites no intrinsic evidence of a lexicographic redefinition of “headphone” or a “clear and unmistakable disavowal” that would require replacing “headphone” with Apple’s very specific definition. Dkt. No. 63, Ex. A at 4-5. Instead, Apple merely cites portions of the intrinsic record showing headphones in a manner similar to its proposed definition. *See id.* But as stated repeatedly, courts “do not import limitations into claims from examples or embodiments appearing only in a patent’s written description, even when a specification . . . describes only a single

embodiment” *JVW*, 424 F.3d at 1335. The plain meaning of this readily understood term should thus apply. *Thorner*, 669 F.3d at 1365.

Moreover, Apple’s proposal ignores that the term “headphone” was not known in the art in only the limited fashion Apple proposes. Rather, headphones were described in contemporaneous patents as including various forms, including forms that did not include a “band placed over the head.” *See, e.g.*, Ex. 16 (filed in 1999) at Fig. 1, 2:14-18 (“While many configurations for the headset (100) are possible, a preferred embodiment is a headset in which *the headphones (101) are hung on or lodged in the user’s ears without being connected by a headband that rests atop a user’s head.*”); Ex. 17 (filed in 1996) at FIG. 7, 8:6-10 (explaining that “[o]ther types of headphone sets, such as model LT-2xx headphones from LabTec, contain *earbuds*” and have no head band). Indeed, Apple’s own marketing materials identify their AirPods, which operate without a band over the head, as “in-ear *headphones*.” Ex. 18 at OEW_APPLE-0027227. Thus, Apple’s own marketing materials confirm the long-known understanding in the art that the claimed “headphone” is not restricted to embodiments containing a “band placed over the head.” Apple’s attempt to add limitations into this well-known term fails.

5. “direct” communication / “directly” communicable (’391: 1, 3-6, 10)

OEW’s Proposed Construction	Apple’s Proposed Construction
Plain and ordinary meaning	“direct” communication: one-to-one communication / “directly” communicate: in one-to-one communication

For the terms “direct” communication / “directly” communicable, Apple seeks to import limitations requiring the phrase “one-to-one.” Nothing Apple cites from the patent specification or claims warrants importing these limitations, as the term “one-to-one” is not used therein. *Cf.* Dkt. No. 63, Ex. A at 5.

Apple relies on statements made during prosecution as justification for importing its “one-to-one” limitation. In particular, Apple cites to the patentee’s

following statement explaining the difference between the claimed invention and the “Li” reference:

Additionally, Li clearly discloses a *cellular communication system* (Li column 1 lines 57 - 63 “CDMA digital cellular communications system . . . IMT 2000, IS95 and CDMA 2000 are all cellular (i.e., cell phone) standards and each *requires the centralized control of a base station* for operation. Li’s *centralized control base station* system does not teach or suggest a *direct one-to-one transmitter-to-headphone communication link*.

Ex. 6 (’391 Patent File History) at OEW_APPLE-0002322. Here, as the emphasized language from the passage shows, the patentee merely explained that the claimed invention is unlike the Li reference’s cellular communication structures, which require a centralized base station (e.g., a cell tower) in order to manage the communication process. But while this statement indicates that the claimed inventions operate using “one-to-one” communication, it does not rise to the level of showing a lexicographer’s redefinition of the dispute terms (“direct” or “directly”) or the meet the “similarly exacting” standard of showing a clear and unmistakable disavowal that requires importing the “one-to-one” into these terms. *Thorner*, 669 F.3d at 1365. Furthermore, Apple’s reliance on only the “one-to-one” language in this prosecution history passage ignores its full context, which establishes that this particular “one-to-one” aspect of the invention is to be understood as distinguished from, for example, the “*centralized control base station*” characteristic of a “*cellular communication system*,” as described in Li. Apple’s proposals should thus be rejected.

6. “module adapted to reproduce said generated audio output . . .”
(’391: 1, 3-6, 10)

OEW’s Proposed Construction	Apple’s Proposed Construction
Plain and ordinary meaning	Means-plus-function element <u>Function</u> : “reproduce said generated audio output in response to the unique user code bit sequence being recognized”; <u>Structure</u> : headphone speakers 75

1 Apple contends that “module adapted to reproduce said generated audio
 2 output” should be interpreted as a means-plus-function term. This term does not
 3 employ any means-plus-function terminology and thus the presumption is that 35
 4 U.S.C. § 112(6) “**does not apply.**” *Williamson v. Citrix Online, LLC*, 792 F.3d
 5 1339, 1348 (Fed. Cir. 2015). Apple ignores this presumption and instead assumes
 6 that using “module” necessarily invokes § 112(6) and requires a means-plus-
 7 function analysis. But, to rebut this presumption, Apple would have to show that
 8 this term, in view of the intrinsic evidence, would **not** be “understood by
 9 [POSITAs] to have sufficiently definite meaning as the name for structure.”
 10 *Williamson*, 792 F.3d at 1349. Apple has not done so, and its failure in this respect
 11 warrants rejecting its proposed construction. *See, e.g., M2M Sols. LLC v. Sierra*
 12 *Wireless Am., Inc.*, No. 1:12-CV-00030, 2015 WL 5826816, at *4 (D. Del. Oct. 2,
 13 2015) (“Defendants have not met their burden of overcoming the presumption that
 14 §112 ¶ 6 does not apply” to the term “processing module”) (citing *Williamson*, 792
 15 F.3d at 1349). The Court should adopt the plain and ordinary meaning for this
 16 term and reject Apple’s proposal, which the law and facts do not support.

17 First, many post-*Williamson* cases construing terms with the word “module”
 18 have found § 112(6) inapplicable and adopted the term’s plain meaning. For
 19 example, this Court recently found § 112(6) inapplicable to “an installation
 20 detection module” in view of the intrinsic evidence. *Jiaxing Super Lighting Elec.*
 21 *Appliance Co., Ltd. et al. v. MaxLite, Inc.*, No. LACV 19-4047, Dkt. No. 117 at 12-
 22 16 (May 27, 2021) (adopting plain meaning)) (attached as Ex. 19). Similarly, in
 23 *Microchip Tech. Inc. v. Nuvoton Tech. Corp. Am.*, the court found that the “claims
 24 and specification disclose adequate structure to sustain the presumption that
 25 § 112(6) does not apply to the term ‘interface module.’” No. 19-CV-01690-SI,
 26 2020 WL 978636, at *8 (N.D. Cal. Feb. 28, 2020) (adopting plain meaning).
 27 These cases and many others have found § 112(6) inapplicable to terms using
 28 “module” in view of the structure a POSITA would understand from the intrinsic

1 evidence. *See, e.g., Blast Motion, Inc. v. Zepp Labs., Inc.*, No. 15-CV-700 JLS,
 2 2017 WL 476428, at *15 (S.D. Cal. Feb. 6, 2017) (“[T]here is adequate structure in
 3 the specification to sustain the presumption that § 112(6) does not apply to the
 4 term ‘initial motion recognition module.’”).⁴ Apple’s apparent position that using
 5 the word “module” invokes § 112(6) is thus contrary to law and should be rejected.

6 Moreover, § 112(6) does not apply to this term because a POSITA would
 7 understand from the intrinsic evidence that the plain meaning of a “module adapted
 8 to **reproduce** said generated audio output” is consistent with the one or more
 9 speakers described in the specification. A POSITA would understand from the
 10 context of the claims alone, which are directed to wireless digital audio
 11 headphones, systems, or receivers, that this term is the only claim feature recited in
 12 the claims as reproducing audio after it has been transmitted to the headphone,
 13 system, or receiver. McAlexander Decl. ¶ 24. A POSITA would also understand
 14 that this term is consistent with one or more speakers because speakers were the
 15 structure for reproducing audio signals at the relevant time. *Id.* ¶ 25.

16 The specification confirms a POSITA’s understanding. This term is the last
 17 limitation in each claim of the ’391 Patent, and the prior limitation of each claim
 18 recites the structure—a “digital-to-analog converter (DAC) generating an audio
 19 output”—that provides the input (and antecedent basis) for the “module adapted to
 20 reproduce **said generated audio output.**” Ex. 2 (’391 Patent) at Claims 1-10. The
 21 specification tracks this relationship of structural features exactly, explaining that
 22 in the last “step” of the disclosed embodiment, a “digital-to-analog converter 70
 23 (DAC) may be used to transform the digital signal to an analog audio signal” that

24 ⁴ *See also Shure, Inc. v. ClearOne, Inc.*, No. 1:17-CV-03078, 2019 WL 4014231,
 25 at *5 (N.D. Ill. Aug. 25, 2019) (finding a POSITA would recognize “signal
 26 selection module” as structure “especially considered in the context of the []
 27 Patent as a whole”); *S3G Techology, LLC v. UniKey Techs., Inc.*, No. 6:16-CV-
 28 00400, 2017 WL 5178837, at *7 (E.D. Tex. July 7, 2017) (finding § 112(6) did not
 apply to “dialogue module” in view of disclosure in the specification).

1 can then be used by the “speakers” to “provide a high quality, low distortion audio
2 music for audible enjoyment. . . .” *Id.* at 4:17-28. Thus, a POSITA would
3 understand from the claims read in light of the specification that the plain meaning
4 of this term is consistent with a speaker. McAlexander Decl. ¶ 26. Accordingly,
5 Apple cannot overcome the presumption that § 112(6) does not apply to this term,
6 and its proposal should be rejected.

7 Additionally, in the electrical engineering arts, “module” is a well-known
8 term signifying a structural feature that is part of a larger device or system.
9 McAlexander Decl. ¶ 27. For example, Federal Standard 1037C (1996) defines
10 “module” as “[a]n interchangeable subassembly that constitutes part of, i.e., is
11 integrated into, a larger device or system.” Ex. 20 at M-14. And this definition
12 reflects the meaning of “module” to a POSITA at the time of invention in
13 December 2001. McAlexander Decl. ¶ 27. A POSITA would thus understand that
14 the plain meaning of the claim language is consistent with a speaker. *Id.*
15 Accordingly, the extrinsic evidence further confirms that § 112(6) should not apply
16 to this term, and that Apple’s contrary proposal should be rejected. *TEK Glob.,*
17 *S.R.L. v. Sealant Sys. Int’l, Inc.*, 920 F.3d 777, 786 (Fed. Cir. 2019) (considering
18 extrinsic evidence in finding § 112(6) inapplicable).

19 Apple seeks to limit this term beyond its plain meaning to just the exemplary
20 “headphone speakers 75” described in the specification, but such a construction
21 should be rejected because § 112(6) does not apply for the reasons explained
22 above. And neither of the two exceptions to the general rule that claim terms
23 should receive their ordinary meaning apply because this term was neither assigned
24 a special meaning nor subject to a “clear and unmistakable” disavowal. *See*
25 *Thorner*, 669 F.3d at 1365. Thus, there is no basis for departing from the plain
26 meaning of this term like Apple seeks.

27 ///

28 ///

Further, Apple’s attempt to limit this term to “headphone speakers 75” ignores the intrinsic evidence. The specification explains that the analog audio signal from the digital-to-analog converter “may then be processed by a power amplifier 74 that may be optimized for powering a headphone speaker,” but also more broadly explains that the analog audio signal is “for use in powering *a speaker*.” Ex. 1 ¶ 18. And in light of the intrinsic evidence, a POSITA would understand the plain meaning of this term to be consistent with a speaker. McAlexander Decl. ¶ 28. Thus, Apple’s proposal contradicts the specification and should be rejected. Apple’s proposal to limit this term to the “headphone speakers 75” should also be rejected because courts “do not import limitations into claims” even if only a single embodiment is disclosed. *J/VW*, 424 F.3d at 1335.

Lastly, Apple relies on Figure 3 of the ’391 Patent (Ex. 2) and its parent publication (Ex. 1) for this term. Dkt. No. 63, Ex. A at 6. But Figure 3 illustrates an exemplary embodiment including an endpoint component 54 (or 75) that the specification of the original application (and ’391 Patent) describes as both a “speaker” and “headphone speaker.” Ex. 1 ¶ 18; Ex. 2 at 4:17-28. A POSITA would thus not understand Figure 3 as limiting the scope of this term to a headphone speaker, McAlexander Decl. ¶¶ 28-29, and thus the figure does not support Apple’s attempt to unduly limit this term’s plain meaning.

7. **“direct conversion module” (’391: 1, 3-6, 10; ’047: 1; ’627: 1, 3)**⁵

For this term, One-E-Way proposes that the Court adopt the construction previously adopted by the ITC—i.e., “module for converting radio frequency to baseband or very near baseband in a single frequency conversion without an intermediate frequency.” Ex. 9 at 43. This construction properly reflects the term’s ordinary meaning to a POSITA in view of the intrinsic evidence. The ITC

⁵ Due to the length of Apple’s proposed constructions, One-E-Way does not include a chart of the parties’ proposed constructions of this term. See, e.g., Dkt. No. 63, Ex. A at 6-13.

1 reached its construction through an extensive adversarial process that included
2 several rounds of opening, responsive, and supplemental briefing from One-E-
3 Way, five respondents, and a neutral ITC staff attorney team, as well as thorough
4 discussion during a two-day claim construction hearing. Wentzel Decl. ¶ 10. In
5 construing this term, the ITC considered the intrinsic record, including the relevant
6 statements during prosecution, as well as extrinsic references. Ex. 9 at 39-43.

7 The correctness of the ITC's construction of this term is also reflected in
8 Apple's IPR petitions challenging the asserted patents, where Apple requested that
9 the PTAB adopt the ITC's construction. *See, e.g., Apple Inc. v. One-E-Way, Inc.*,
10 IPR2020-00283, Paper 2 at 7-8 (P.T.A.B. Dec. 4, 2020) ("Petitioner respectfully
11 requests that the Board adopt the constructions rendered by the ITC," including for
12 "direct conversion module"). Apple's change in position regarding the proper
13 construction of this term is seemingly a reaction to the PTAB denying institution of
14 Apple's IPRs. Regardless, Apple's new position should be rejected.

15 a. **The ITC's construction is derived from the intrinsic**
16 **evidence and confirmed by extrinsic evidence.**

17 The specification refers to the claimed "direct conversion module" as "a 2.4
18 GHz direct conversion receiver or module." Ex. 2 ('391 Patent) at 2:64-66. The
19 terms "direct conversion" and "direct conversion receiver" are well-known to a
20 POSITA, as are 2.4 GHz direct conversion receivers. McAlexander Decl. ¶ 31.
21 Indeed, a POSITA would understand that a "direct conversion" receiver includes
22 near-zero intermediate frequency (NZIF) receivers that convert to very near
23 baseband in a single frequency conversion without an intermediate frequency. *Id.*

24 The intrinsic record confirms that the claim term "direct conversion module"
25 refers to direct conversion receivers (DCRs) that convert to baseband or very near
26 baseband. For example, during the prosecution of the asserted patents' parent
27 application, One-E-Way explained that:
28

1 *The DCR disclosed in the present invention*, among other things,
 2 *performs direct down conversion from radio frequency (RF) to*
 3 *baseband (or very near baseband)*, thus, omitting intermediate
 4 frequency (IF) down conversion components that
 5 are often used. *The invention utilizes the DCR for*, among other
 6 things, *down conversion from RF-to-baseband (or very near*
 7 *baseband)*, eliminating unnecessary IF components, which reduces
 8 the size and power consumption of the module.

9 Ex. 5 ('258 Parent Patent File History) at OEW_APPLE-0001832-39; *id.* at OEW-
 10 APPLE-0001777-84; *see also* Ex. 6 ('391 Patent File History) at OEW_APPLE-
 11 0002325-26 (twice explaining “direct down conversion from radio frequency (RF)
 12 to baseband (or very near baseband)”), OEW_APPLE-0002404-05) (same); Ex. 7
 13 ('294 Parent Patent File History). Based on this evidence, the ITC correctly found
 14 that “[t]he applicant expressly and repeatedly stated during prosecution of the
 15 asserted patents . . . that the ‘direct conversion module’ disclosed in the applicant’s
 16 invention ‘performs direct down conversion from [RF] to *baseband or (very near*
 17 *baseband).*’” Ex. 9 at 42 (emphasis in original). The ITC’s amply supported
 18 construction of this term reflects the plain meaning of the term to a POSITA in
 19 view of the intrinsic record, McAlexander Decl. ¶¶ 32-33, and should thus be
 20 adopted.

21 The extrinsic evidence confirms the propriety of One-E-Way’s statements
 22 regarding this term during prosecution. For example, a variety of
 23 contemporaneous references confirm that a direct conversion module may convert
 24 to *very near baseband*, and that the concept of *very near baseband* had a known
 25 meaning in the art. *See, e.g.*, Ex. 21 (U.S. Patent No. 7,024,172, filed June 2001)
 26 at 6:62-64; Ex. 22 (U.S. Patent No. 6,230,000, filed Oct. 1998) at 1:10-13 (“Direct
 27 conversion receivers are desirable in part because they convert signals of interest
 28 directly to baseband (or *near zero* hertz) from a radio frequency (RF) or an
 29 intermediate frequency (IF).”); Ex. 23 (U.S. Patent No. 7,447,286, filed Apr. 2002)
 30 at 1:31-37; McAlexander Decl. ¶ 31.

Such well-known direct conversion receivers were similarly described in a book by Daniel M. Dobkin. There, Dobkin explains that DCRs that convert to exactly baseband “encounter serious challenges” such as DC offset voltage. Ex. 11 (Dobkin) at 112. Dobkin explains that “[o]ne solution to some of these problems is *not to convert to zero [baseband] but to a very low frequency*, just big enough to allow the whole of the received signal to fit. For a WLAN signal, we would choose an IF of 8 MHz: *an NZIF [near-zero IF] receiver.*” *Id.* Dobkin then illustrates the near-zero example of a DCR as shown below (left):

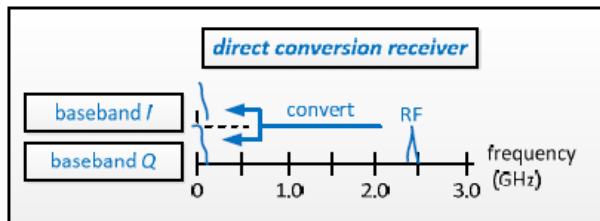


Figure 4-4: WLAN Direct Conversion Frequency Plan

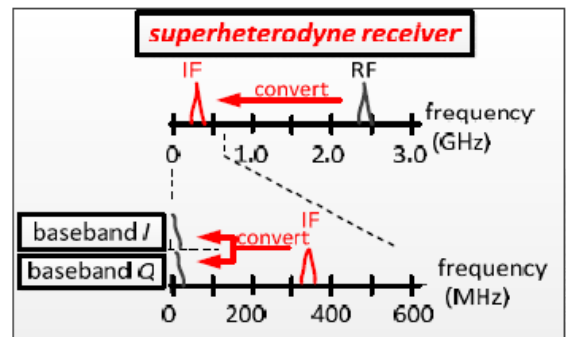


Figure 4-1: WLAN Superheterodyne Frequency Plan

Id. at Figures 4-4 (left), 4-1 (right) (sharpening and color added). Dobkin also explains that a DCR is distinct from a “superheterodyne” receiver, which performs a first down-conversion to an intermediate frequency (IF) before performing a second down-conversion to baseband. *Id.* at 109–112. In Figure 4-1 (above, right), Dobkin illustrates a superheterodyne receiver performing the first down-conversion to an IF between 300-400 MHz. And Dobkin’s discussion of DCRs is consistent with a POSITA’s understanding of this term—“direct conversion module”—based on the intrinsic record. McAlexander Decl. ¶¶ 31-32.

Thus, the ITC’s construction is amply supported by intrinsic evidence and confirmed by the extrinsic evidence. Accordingly, One-E-Way’s proposal for this term should be adopted.

///

///

b. Apple’s attempt to make “direct conversion module” a means-plus-function term fails.

After requesting the ITC’s construction of this term in its IPR petitions concerning the ’391 Patent, Apple now argues that this term is subject to § 112(6). Apple’s proposal should be rejected. First, there is a presumption § 112(6) does not apply because this term lacks the word “means.” *Williamson*, 792 F.3d at 1348. Further, as explained above, the specification refers to the claimed “direct conversion module” as “a 2.4 GHz direct conversion *receiver* or module,” Ex. 2 at 2:64-66, thereby confirming that this term is structural. *Supra* Section V.B.8.a. Moreover, a POSITA would understand the structure and operability connoted by this term—a DCR—from the intrinsic evidence for the reasons explained above. *Supra id.* Thus, Apple’s proposal should be rejected because “*all the intrinsic evidence supports that the term is structural.*” Ex. 19 (*Jiaxing*) at 16.

c. Apple’s attempt to narrowly construe the claimed DCR fails.

Aware of the inapplicability of § 112(6) to “direct conversion module,” and despite recently asking for the ITC’s construction of this term to be adopted, Apple proposed yet another new construction of “direct conversion module” shortly before the parties filed the Joint Claim Construction Statement.⁶ Apple argues that, “[a]lternatively, and to the extent not construed as a means-plus-function element, ‘direct conversion’ should be construed to mean ‘conversion from radio frequency to baseband in a single frequency conversion without an intermediate frequency.’” Dkt. No. 63, Ex. A at 10. Thus, Apple seeks to limit the claimed DCR to one in which the conversion is directly to baseband.

///

⁶ Apple proposed its alternative construction on November 21, 2021, Wentzel Decl. ¶ 14, almost five weeks after the deadline for exchanging proposed constructions. Dkt. No. 60.

1 The ITC considered the same the same overly narrow construction to the
 2 ITC, which was properly rejected as unsupported by the intrinsic evidence. Ex. 9
 3 at 40-43. Indeed, no intrinsic evidence supports this narrow construction for
 4 “direct conversion module,” as there is no lexicography or clear and unmistakable
 5 disavowal in the intrinsic record that could support such a departure from the
 6 above-explained plain meaning of this term. *See Thorner*, 669 F.3d at 1365. In
 7 fact, the opposite is true—the applicant repeatedly made clear that its claimed
 8 “direct conversion module” down-converted “to baseband *or very near baseband*,”
 9 as explained above. *Supra* Section V.B.8.a.

10 Moreover, Apple’s hodgepodge of extrinsic evidence does not warrant the
 11 narrow alternative construction it seeks. Apple cannot use extrinsic evidence to
 12 contradict the intrinsic record’s confirmation that the claimed DCR can also down-
 13 convert to *very near baseband*, especially because “extrinsic evidence is less
 14 reliable and must be considered ‘*in the context of the intrinsic evidence*.’”
 15 *Foundton, Co. v. Naschem Co.*, No. 2:14-CV-09829, 2015 WL 12860488, at *12
 16 (C.D. Cal. Oct. 13, 2015); *see also* Ex. 9 at 42 (declining to “ignore the intrinsic
 17 evidence in light of the extrinsic evidence” in rejecting the same proposed
 18 construction for this term). Further, while Apple may have extrinsic evidence that
 19 some DCRs were known to convert only to baseband, the literature more broadly
 20 confirms that DCRs were also known to convert to very near baseband. *See, e.g.*,
 21 Ex. 11 at 109-112. Accordingly, a POSITA would not understand from the
 22 extrinsic evidence that “direct conversion module” referred only to the narrower,
 23 directly to baseband DCR, especially when the applicant repeatedly refuted such
 24 an interpretation during prosecution.

25 8. “high quality audio signal representation” (’627: 1, 3)

OEWS Proposed Construction	Apple’s Proposed Construction
Plain and ordinary meaning	an uncompressed audio signal representation. Alternatively, indefinite.

1 Apple's proposed construction and alternative indefiniteness position for this
 2 term both fail. First, Apple's proposal should be rejected because it repeats almost
 3 all of the disputed claim language and is thus not helpful. *See, e.g., Atticus*, 2013
 4 WL 3938516, at *15 (rejecting proposed construction that ***"largely repeats the***
 5 ***claim language"*** as ***"not helpful"*** to the jury); *Network Appliance Inc. v. Sun*
 6 *Microsystems Inc.*, No. C-07-06053 EDL, 2008 WL 4193049, at *25 (N.D. Cal.
 7 Sept. 10, 2008) (same).

8 Second, none of the intrinsic record relied upon by Apple indicates
 9 lexicography or a clear disavowal of claim scope. Dkt. No. 63, Ex. A at 13-14.
 10 Because neither exception applies, this term is entitled to its plain meaning.
 11 *Thorner*, 669 F.3d at 1365; *see also CCS*, 288 F.3d at 1366-67 ("[The Federal
 12 Circuit] indulge[s] a '***heavy presumption***' that a claim term carries its ordinary and
 13 customary meaning.") (internal citation omitted). But Apple's proposal, yet again,
 14 ignores the record and improperly departs from this term's plain meaning.

15 The "high quality audio" claims recite:

16 A wireless digital audio spread spectrum receiver, capable of mobile
 17 operation, configured to receive a unique user code and a ***high quality***
 18 ***audio signal representation with a frequency range of 20 Hz to 20***
kHz from a digital audio spread spectrum transmitter . . .

19 . . . the wireless digital audio spread spectrum receiver is capable of
 20 processing ***the high quality audio signal having a frequency range of***
 21 ***20 Hz to 20 kHz*** . . .

22 Ex. 3 ('627 Patent) at Claim 1; *see also id.* at Claim 3. Thus, the claims recite that
 23 the "high quality audio signal" achieve a signal having a frequency range 20 Hz to
 24 20 kHz, which is the standard frequency range of human hearing. McAlexander
 25 Decl. ¶ 35; *see also* Ex. 24 (U.S. Patent No. 4,336,861) at 1:43-56, 5:47-49 ("The
 26 speakers selected cover the full audible range of sounds (i.e., 20 to 20,000 Hz).");
 27 Ex. 15 at 17. Consistent with those claims, the specification provides the
 28 following disclosure:

1 An analog low pass filter 72 may be used to filter the analog audio
 2 signal to pass a signal in the approximate **20 Hz to 20 kHz** frequency
 3 range and filter other frequencies. The analog audio signal may then
 4 be processed by a power amplifier 74 that may be optimized for
 5 powering a headphone speaker 54 to optimize a **high quality**, low
 6 distortion **signal** for hearing by a user wearing the headphones 55.

7 Ex. 1 ¶ 18. Accordingly, the intrinsic evidence expressly associates a “high
 8 quality” audio signal with an ability to achieve a signal with a frequency range of
 9 20 Hz to 20 kHz, which is well-known to be the standard frequency range of
 10 human hearing. McAlexander Decl. ¶ 36. And in view of this evidence, a
 11 POSITA would not understand the plain meaning of this term to refer to just any
 12 “uncompressed audio signal” as Apple broadly proposes. *Id.* Apple’s proposal is
 13 thus inconsistent with the intrinsic and extrinsic evidence, as well as the plain
 14 meaning of this term, and should be rejected.

15 Further, there is no need to construe this simple term because the portion of
 16 the term Apple apparently takes issue with, “high quality audio,” was well-known
 17 to those of skill in the art. McAlexander Decl. ¶ 37; Ex. 10 at 1 (defining
 18 requirements for distributing “high quality audio”). *See, e.g., UniRAM Tech., Inc.*
 19 *v. Monolithic Sys. Tech., Inc.*, No. C-04-1268 VRW’, 2006 WL 825460, at *10
 20 (N.D. Cal. Mar. 30, 2006) (“Because SRAM is a term well-known by persons of
 21 ordinary skill in the art, the court declines to construe it at this time.”). Thus,
 22 Apple’s proposed construction is unwarranted.

23 Apple’s alternative proposal of indefiniteness fares no better. The
 24 definiteness requirement, “while recognizing that absolute precision is
 25 unattainable,” requires that “a patent’s claims, viewed in light of the specification
 26 and prosecution history, inform those skilled in the art about the scope of the
 27 invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*,
 28 572 U.S. 898, 910 (2014). As explained above, the intrinsic evidence confirms
 that a POSITA would understand that the claimed “high quality audio signal” was

1 associated with the ability to achieve a signal within the full range of human
2 hearing. Further, as noted above, the term “high quality audio” had a well-known
3 meaning to a POSITA at the relevant time. McAlexander Decl. ¶ 37; Ex. 10 at 1.
4 Accordingly, a POSITA would understand the scope of the claimed “high quality
5 audio signal representation” with reasonable certainty, including that such a signal
6 is associated with achieving a signal within the frequency range of human hearing.
7 McAlexander Decl. ¶ 37; *see id.* ¶¶ 35-36; Ex. 3 (’627 Patent) at Claim 3 (reciting
8 “a high quality audio signal representation with a frequency range of 20 Hz to 20
9 kHz”). Thus, this term is not indefinite.

10 Thus, Apple’s proposed construction is an unsupported departure from the
11 intrinsic evidence, its indefiniteness argument is refuted by the intrinsic evidence,
12 and Apple’s proposals should be rejected.

13 Respectfully submitted,

14 KNOBBE, MARTENS, OLSON & BEAR, LLP

15
16 Dated: December 6, 2021

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