

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

INGENIOSPEC, LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 1:25-cv-00867-ADA
(LEAD CASE)

JURY TRIAL DEMANDED

INGENIOSPEC, LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 1:25-cv-00877-ADA
(MEMBER CASE)

JURY TRIAL DEMANDED

**DEFENDANT APPLE INC.'S MOTION TO STRIKE PLAINTIFF'S INFRINGEMENT
CONTENTIONS THAT CONTRADICT THE COURT'S CLAIM CONSTRUCTIONS**

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I. Introduction

The Court should strike IngenioSpec’s final infringement contentions that contradict the Court’s claim constructions. Through its claim construction order and statements made on the record during the *Markman* hearing, the Court *excluded* in-ear devices from the scope of the “head-worn” and “proximate” terms. In contravention of the Court’s claim constructions, IngenioSpec has maintained its allegations that the accused in-ear devices infringe claims reciting the “head-worn” and “proximate” limitations in the ’901, ’355, and ’693 patents. These contentions are precluded by the Court’s claim constructions and should be struck.

The Court adopted a schedule where fact discovery opened after claim construction at least in part because the construction of “head-worn” could have a significant narrowing effect in this case. And after the Court did in fact construe “head-worn” and “proximate” in a manner that would exclude in-ear devices from the scope of the claims, IngenioSpec now ignores the Court’s constructions and wrongfully maintains infringement contentions that directly contradict them.

The Court should resolve this dispute now and strike IngenioSpec’s contentions that contradict the Court’s constructions so that the parties avoid litigating infringement positions that the Court has already rejected. Waiting until a later stage in the case to resolve this dispute would prejudice Apple and cause the Court and the parties to expend unnecessary resources litigating infringement positions as to the 106 patent claims that are legally foreclosed.

II. Factual Background

IngenioSpec accuses Apple of infringing six patents and identifies both in-ear and over-ear devices as accused products.¹ However, ever since the Court’s hearing on the Scheduling Order,

¹ IngenioSpec asserts U.S. Patent Nos. 8,112,104 (“the ’104 patent”); 8,582,789 (“the ’789 patent”); 11,644,693 (“the ’693 patent”); 11,921,355 (“the ’355 patent”); 12,044,901 (“the ’901

IngenioSpec has represented that this case is “focused on [] earbuds,” which are in-ear devices. Dkt. 37 at 32. And the parties and the Court have been aware that a disputed issue is whether Apple’s in-ear devices are “head-worn” or “proximate” to the user’s ear as required by claims of the ’901, ’355, and ’693 patents. *Id.* at 22, 23. Knowing claim construction would be central to resolving this dispute, the Court set fact discovery to commence after its completion. Yet, when the Court construed the “head-worn” and “proximate” terms and explained that those claims do not cover in-ear devices, IngenioSpec nevertheless persisted in accusing in-ear devices of infringing those claims.

A. Pre-*Markman* Events

IngenioSpec served initial infringement contentions on September 19, 2025, asserting 355 claims across six patents and accusing most of the Apple and Beats product lines, including in-ear and over-ear devices. Almost 200 of these asserted claims require the device be “head-worn” or “proximate” to the user’s ear.

The Court conducted a scheduling hearing on November 12, 2025, over which Judge Howell presided. Dkt. 37. One of the disputes Judge Howell resolved was whether fact discovery should open before or after the *Markman* Order. Dkt. 37 at 38:21-39:7; Dkt. 36 (Scheduling Order). The parties agreed this was a large case with numerous asserted claims and accused products, and therefore, discussed the need to narrow the case and mechanisms for doing so. *See* Dkt. 37 at 5:24-6:2, 21:8-18, 6:23-7:3, 7:22-8:10, 34:5-7, 35:23-36:17. During this discussion, Apple’s counsel explicitly noted that a construction for “head-worn” that excluded in-ear devices would limit the number of accused products and number of prior art references for some of the patents. *Id.* at

patent”); and 12,001,599 (“the ’599 patent) (collectively “the asserted patents”). The asserted patents were originally asserted across two separate cases, each of which was assigned to Judge Ezra, and were consolidated for pretrial purposes following a joint motion. Dkt. 24, 25.

22:16-23:3. IngenioSpec’s counsel also emphasized that the “focus[]” of this case was the in-ear AirPods devices. *Id.* at 32. Based on the parties’ representations, Judge Howell adopted Apple’s proposed schedule with fact discovery opening after the *Markman* Order. Dkt. 37 at 38-39; Dkt. 36.²

B. *Markman* Briefing and Hearing

As expected, two key terms in dispute during the *Markman* briefing and hearing were the “head-worn” and “proximate” terms as recited in the ’901, ’355, and ’693 patents. Dkts. 36, 50-52, 55. At the *Markman* hearing, the Court construed both “head-worn” and “proximate” in a manner that would exclude in-ear devices from the scope of the claims.

1. “Head-Worn” Terms

During claim construction, the parties disputed whether the “head-worn” terms (“head-worn personal electronic apparatus” / “head-worn wearable electronic device” / “head-worn electronic personal audio apparatus” / “head-worn electronic device”) exclude standalone in-ear devices, like the accused ear pods. Dkt. 37 at 23-24; Dkt. 71 at 42:21-43:4 (recognizing that the dispute was whether “head-worn” “excludes standalone in-ear devices” and that IngenioSpec’s “plain meaning” construction would “capture” “standalone in-ear devices”); *id.* at 41:7-18 (acknowledging that “the fight here . . . is over whether or not this claim would extend to the Apple products that are . . . like the ear pods”). Apple argued that “head-worn” should be construed as “electronic eyewear or headwear,” which would *exclude* standalone in-ear devices. Dkt. 50 at 8-15; Dkt. 52 at 3-7. IngenioSpec argued that “head-worn” should be given its plain and ordinary meaning, which it contended would *include* standalone in-ear devices. Dkt. 51 at 8-14; Dkt. 55 at 5-7.

² Judge Howell signed the Scheduling Order the same day the case was transferred to Judge Albright. Dkt. 35, 36.

The Court’s preliminary construction before the *Markman* hearing was “plain and ordinary meaning.” Ex. 1 (Court’s Preliminary Constructions). During the *Markman* hearing, the Court acknowledged that Apple’s proposed construction—“electronic eyewear or headwear”—was intended to “limit the coverage of the patent in a way that would not include the ear pods” but initially expressed skepticism about whether the inclusion of “headwear” in Apple’s construction “would exclude the ear pods.” *See* Dkt. 71 at 43:20-44:15, 45:18-20. Apple explained that under its interpretation, “headwear” would not include an “ear bud” because the only other embodiments in the patents aside from eyewear are nightcaps, a form of headwear. *Id.* at 45:23-46:2. The Court then questioned IngenioSpec about whether there were any additional embodiments to support its position that “head-worn” would cover in-ear devices, but IngenioSpec confirmed the only illustrations were for eyeglasses and a night cap. *Id.* at 54:16-55:16. Based on the argument, the Court reversed course from its preliminary construction and adopted Apple’s construction, “electronic eyewear or headwear,” which was understood to exclude in-ear devices. *Id.* at 56:16-19; *see also* Dkt. 69 at 2 (Term 3).

2. “Proximate” Terms

The “proximate” terms (“[a/the] speaker[s] . . . proximate to an ear of the user” / “the first speaker . . . proximate to a first ear of the user” / “the second speaker . . . proximate to a second ear of the user”) were briefed and argued directly after “head-worn,” and the dispute again centered on whether the claimed “speakers . . . proximate to an ear of the user” includes speakers in an ear, like those in the accused in-ear devices. Dkt. 71 at 56:20-57:16.

Apple argued for an express construction that replaced “proximate” with “near” and that would *exclude* standalone in-ear devices. Dkt. 50 at 15-17; Dkt. 52 at 7-9; Dkt. 71 at 58:22-59:8. IngenioSpec argued that “plain and ordinary meaning,” which it contended would *include* in-ear devices, was the proper construction. Dkt. 51 at 14-16; Dkt. 55 at 7-8; Dkt. 71 at 56:20-61:22.

The Court construed the “proximate” terms to have their plain and ordinary meaning, because the Court determined that the plain meaning of the term was clear and did not require an explicit construction. Dkt. 71 at 58:5-62:3; *see also* Dkt. 69 at 3 (Term 4). During the hearing, the Court explained that the plain and ordinary meaning construction it was adopting for “proximate” would *exclude* standalone in-ear devices from the scope of the claims in the same way that its prior construction of “head-worn” excluded the same:

THE COURT: Well, let me say that given – I’m sorry. I didn’t mean to interrupt. I apologize. I was reading and I interrupted you. But let me ask you this. It seems to me, ***given what I just did with regard to the last construction, I don’t know how you would get in the ear out of proximate.***

MR. DECOSTA: Well, Your Honor, thank you.

THE COURT: I mean, I’m -- again, I can’t rule at this point about, you know, practical commercial embodiments of what it is. But it’s clear to me that the patent was designed to go after something that one wore like head glasses, leaving the hat example aside. And it would – ***it’d be very difficult to persuade at least me that this included devices of Apple’s that went inside the ear.***

Dkt. 71 at 58:5-21 (emphases added). When Apple then asked for an express construction that devices inside the ear are not covered by the “proximate” terms, the Court declined because that was already clear “on the record”:

MR. DECOSTA: And that’s our argument, Your Honor. And just to make it clear why ***we would like a construction that makes what you just said explicit*** now is because, you know, there’s six patents. This impacts three of the patents. There are 300 plus claims. This impacts half of those claims and the vast majority of products. So if we can have –

THE COURT: Well, you –
(Simultaneous conversation.)

MR. DECOSTA: -- that’ll get us pretty far along.

THE COURT: *You have me saying on the record, I think I'm pretty clear.*

Id. at 58:22-59:10 (emphases added).

C. Post-*Markman* Events

In accordance with the Scheduling Order, fact discovery opened on April 7, 2026, the day after the *Markman* Order issued. Dkt. 36. As required by the Scheduling Order, the parties met and conferred on April 27, 2026, to discuss case narrowing following the *Markman* Order. Dkt. 36. During the meet and confer, Apple inquired whether IngenioSpec would withdraw its allegations that in-ear AirPods and Beats products infringe claims with the “head-worn” and “proximate” terms in light of the Court’s constructions for those terms. IngenioSpec indicated that it did not intend to withdraw those allegations. Apple’s counsel sent IngenioSpec’s counsel a letter on May 11, 2026, detailing why IngenioSpec’s continued assertion of infringement of claims with the “head-worn” and “proximate” terms would contradict the Court’s constructions and should be withdrawn. Ex. 2.

IngenioSpec served its final infringement contentions on May 18, 2026, asserting approximately 250 total claims and maintaining that in-ear AirPods and Beats products infringe 106 claims with the “head-worn” and “proximate” terms. Specifically, and as relevant to this motion, IngenioSpec asserts infringement of the following claims by the following in-ear products:

Patent	Claims	Products
'901 patent	18-31, 34-50, and 52-58	Apple AirPods 1-4, AirPods 4 with ANC, AirPods Pro 1-3, Beats Fit Pro, Powerbeats Pro, and Powerbeats Pro 2
'355 patent	17-19, 21-54, 57-64, 77-82, and 85-86	AirPods 2-4, AirPods 4 with ANC, AirPods Pro 1-3, Beats Fit Pro, Powerbeats Pro, and Powerbeats Pro 2
'693 patent	30, 35, 38, 46-48, 51, 55, 57-58, and 72-76	AirPods 2-4, AirPods 4 with ANC, AirPods Pro 1-3, Beats Fit Pro, Powerbeats Pro, and Powerbeats Pro 2

IngenioSpec did not modify its infringement mappings for the in-ear devices in light of the Court's constructions and did not remove any accused in-ear products for the "head-worn" and "proximate" claims.

III. IngenioSpec's Final Infringement Contentions Contradict the Court's Claim Constructions for the "Head-Worn" and "Proximate" Terms and Should Be Struck

The Court should strike IngenioSpec's final infringement contentions alleging that certain in-ear Apple and Beats products infringe claims requiring devices be "head-worn" or "proximate" to an ear because they contradict the Court's constructions of those terms.³

A. The Court's Constructions Exclude In-Ear Devices

The Court's claim constructions and statements on the record at the *Markman* hearing made clear that such in-ear devices are outside the scope of the claims that recite "head-worn" or "proximate." During the *Markman* hearing, the Court expressed a clear understanding of the parties' dispute for both terms and construed them in a manner that would exclude standalone in-ear devices. *See Decisioning.com, Inc. v. Federated Dep't Stores, Inc.*, No. CIV.A.3:031924CMC, 2007 WL 951860, at *1, *5 (D.S.C. Mar. 27, 2007), *aff'd*, 527 F.3d 1300 (Fed. Cir. 2008) (relying on the Court's reasoning articulated on the record at the *Markman* hearing, including "[t]he intent of th[e] construction," in resolving subsequent dispute surrounding scope of that term).

For the "head-worn" terms, the Court acknowledged that Apple's construction for "head-worn" would *exclude* standalone in-ear devices like "ear pods," and subsequently adopted Apple's construction for "head-worn." *See* Dkt. 71 at 42:21-43:4 (recognizing that the dispute was whether "head-worn" "excludes standalone in-ear devices" and that IngenioSpec's "plain meaning"

³ While granting this motion would significantly narrow the case by 106 asserted claims, the motion is not fully dispositive of the asserted '901, '355, and '693 patents or the accused in-ear devices. IngenioSpec has accused the in-ear devices of infringement of other asserted patents and accuses over-ear devices of infringement of the '901, '355, and '693 patents.

construction would “capture” “standalone in-ear devices”); *id.* at 41:7-18 (acknowledging that “the fight here . . . is over whether or not this claim would extend to the Apple products that are . . . like the ear pods”); *id.* at 56:17-19 (“The Court is going to go with Apple’s construction on this. Electronic eyewear or headwear.”).

Similarly, the Court explained that the plain and ordinary meaning construction it was adopting for “proximate” would *exclude* standalone in-ear devices. For example, the Court explained that “given what I just did with regard to the last construction [of head-worn], I don’t know how you would get in the ear out of proximate” and that “it’d be very difficult to persuade at least me that this [proximate term] included devices of Apple’s that went inside the ear.” Dkt. 71 at 58:8-21.

When Apple asked for a specific construction reiterating the Court’s explanation of the plain meaning of “proximate” to exclude in-ear devices, the Court declined to do so because the record was already so clear, stating “[y]ou have me saying on the record, I think I’m pretty clear.” *Id.* at 58:22-59:10. And to the extent there was any ambiguity as to whether the Court believed that Apple’s construction for “head-worn” excluded in-ear devices, the Court provided clarity during the discussion of “proximate” when it stated “given what I just did with regard to [head-worn], I don’t know how you would get in the ear out of proximate.” Dkt. 71 at 58:8-11.

The Court’s constructions and statements on the record during the *Markman* hearing make clear that in-ear devices are not within the scope of the claims of the ’901, ’355, and ’693 patents that include the “head-worn” or “proximate” terms.

B. IngenioSpec’s Continued Assertions of Claims with the “Head-Worn” and “Proximate” Terms by In-Ear Devices Contradict the Court’s Constructions and Should Be Struck

Despite the Court’s claim constructions and statements on the record at the claim construction hearing, IngenioSpec has continued to assert infringement of 106 claims with the

“head-worn” and “proximate” terms by in-ear products. It is improper for IngenioSpec to advance infringement allegations that directly contradict the Court’s constructions. *See Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1321 (Fed. Cir. 2009) (“Once a district court has construed the relevant claim terms, and unless altered by the district court, then that legal determination governs for purposes of trial. No party may contradict the court’s construction to a jury.”). Courts, including this Court, routinely strike and/or exclude positions that contradict the court’s claim constructions. *See, e.g., Little Giant Ladder Sys., LLC v. Tricam Indus., Inc.*, No. 2024-2115, 2026 WL 305021, at *5 (Fed. Cir. Feb. 5, 2026) (affirming exclusion of expert’s infringement opinion that contradicted the court’s construction); *Treehouse Avatar LLC v. Valve Corp.*, 54 F.4th 709, 714-15 (Fed. Cir. 2022) (affirming striking expert’s infringement report that applied a contrary construction stipulated to by the parties and adopted by the court); *YETI Coolers, LLC v. RTIC Coolers, LLC*, No. A-15-CV-597-RP, 2017 WL 404519, at *1-3 (W.D. Tex. Jan. 27, 2017) (excluding expert testimony applying rejected construction); *ContentGuard Holdings, Inc. v. Amazon.com, Inc.*, No. 2:13-CV-1112-JRG, 2015 WL 4944514, at *4 (E.D. Tex. Aug. 19, 2015) (striking portions of expert reports that conflict with court’s construction), *aff’d*, 701 F. App’x 957 (Fed. Cir. 2017); *see also Innovation Scis., LLC v. Amazon.com, Inc.*, 842 F. App’x 555, 557 (Fed. Cir. 2021) (“We have also frequently held that a case is exceptional when a party continues to litigate claims that have become baseless in view of a district court’s claim construction opinion.”).

C. Efficiency and Equity Favor Resolving This Dispute Now

The Court should strike IngenioSpec’s infringement contentions that contradict the Court’s claim constructions now before the parties expend further resources on discovery relating to these untenable allegations. This Court has a history and practice of conducting claim construction prior to opening fact discovery because claim construction often has the effect of limiting the scope of the case and promoting more efficient discovery. Dkt. 37 at 16:1-20:3. It was this reasoning, and

the size and scope of this case, that persuaded the Court to enter a schedule with fact discovery opening after claim construction. In doing so, the Court specifically considered the potential for case narrowing if the Court adopted a construction for “head-worn” that would exclude in-ear devices. Dkt. 37 at 22-23.

IngenioSpec is now disregarding the Court’s constructions and attempting to proceed in discovery with directly contradicting infringement contentions. The Court should address this motion now and strike IngenioSpec’s infringement contentions to spare the Court and the parties from wasting further resources litigating precluded claims.

IV. Conclusion

For the foregoing reasons, Defendant respectfully requests the Court strike IngenioSpec’s contentions that Apple AirPods 1, AirPods 2, AirPods 3, AirPods 4, AirPods 4 with ANC, AirPods Pro 1, AirPods Pro 2, AirPods Pro 3, Beats Fit Pro, Powerbeats Pro, and Powerbeats Pro 2 products infringe claims 18-31, 34-50, and 52-58 of the ’901 patent, claims 17-19, 21-54, 57-64, 77-82, and 85-86 of the ’355 patent, and claims 30, 35, 38, 46-48, 51, 55, 57-58, and 72-76 of the ’693 patent.

Dated: June 10, 2026

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CERTIFICATE OF CONFERENCE

The undersigned certifies that counsel for Defendant conferred with counsel for Plaintiff,
and that Plaintiff is opposed to the relief requested herein.

/s/ Steven J. Wingard
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document
was served electronically on all counsel of record who are deemed to have consented to electronic
service via the Court's CM/ECF system on June 10, 2026.

/s/ Steven J. Wingard
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