

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LENNON IMAGE TECHNOLOGIES,
LLC,

Plaintiff,

v.

TARGET CORPORATION,

Defendants.

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Case No. 2:20-cv-00362-JRG-RSP

CLAIM CONSTRUCTION MEMORANDUM OPINION AND ORDER

Before the Court is the Joint Claim Construction and Prehearing Statement Pursuant to P.R. 4-3 ("Joint Statement") filed by Plaintiff Lennon Image Technologies ("LIT") and Defendant Target Corporation ("Target") (collectively, the "Parties"). Dkt. No. 29. The Parties' Joint Statement notifies the Court that they have agreed on constructions for three terms and that there are no disputed claim terms requiring construction. Id. at 1-2.

The Parties' Joint Statement includes under Section V, P.R. 4-3(a)(5) - Other Issues, a dispute regarding what claims are asserted. Id. at 2-4. LIT's January 6, 2021 Infringement Contentions state that "Plaintiff contends Defendant has infringed and continues to infringe at least claims 5 and 18 of U.S. Patent No. 6,624,843" Dkt. No. 29-1 at 2. Exhibit 1 to those contentions charts claims 1, 5, 6, 9, 14, 17, 18, 21, 22, 24, 26, and 27. Id. at 11-34.

Target states that LIT's 3-1(c) disclosures "did include claim charts for claims other than claims 5 and 18, but those charts include claims that Plaintiff can't be asserting—claims that have been invalidated by the PTAB, claims from the reexamination patent—and nowhere does it say that these additional claims are being asserted against Defendant." Dkt. No. 29 at 2-3. The Parties dispute whether Target confirmed in writing on four separate occasions that it understood LIT to

only be asserting claims 5 and 18. *Id.* at 3–4. Target states that at the Local Patent Rule 4-2 meet and confer LIT indicated that it intended to assert claims other than just 5 and 18 and that Plaintiff discussed seeking leave to amend its disclosures. *Id.* at 3.

LIT states that at the Local Patent Rule 4-2 meet and confer LIT did not agree to seek leave to assert additional claims nor agree that such leave was necessary, but rather reiterated its position that it has asserted the claims listed in its January 6, 2021 Infringement Contentions and Exhibit 1 to said contentions. *Id.* at 3–4. LIT further states “[t]hese claims include claims originally present in the ’843 patent and those arising from reexamination. Some claims being asserted depend on claims that have been invalidated at the United States Patent Office. Those invalidated claims were thus charted as well to allow charting of the asserted claims.” *Id.* at 4.

LIT’s Infringement Contentions assert infringement of “at least claims 5 and 18” Dkt. No. 291 at 2. “At least” is a non-exclusive statement that allows for additional claims to be asserted. This does not permit assertion of claims for which LIT did not give notice of but does permit assertion of the claims in Exhibit 1 that are clearly charted to provide notice of the infringement theories of those claims. Accordingly, the Court finds that LIT has properly provided notice and that claims 1, 5, 6, 9, 14, 17, 18, 21, 22, 24, 26, and 27 are asserted, excepting those which have been finally invalidated, and that plaintiff does not need to amend its infringement contentions to assert them.

The Court **ORDERS** that the following terms mean the following agreed upon constructions:

Term	Agreed Upon Construction
“controller”	“one or more computers or servers capable of executing software instructions stored in memory (e.g., volatile or non-volatile digital storage devices) via a suitable processor (e.g., microprocessor, microcontroller, digital signal processor or the like or combinations thereof)”
“apparel style image”	“an image of a style of clothing, accessories, or any other items for which customer purchase decisions are typically based, in part, upon how the item appears when used by the customer”
“composite image”	“the combination of a customer image and at least one apparel style image”

SIGNED this 2nd day of August, 2021.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE