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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 EAGLE HARBOR HOLDINGS, LLC,
7 and MEDIUSTECH, LLC,

8 Plaintiffs,

9 v.

10 FORD MOTOR COMPANY,

11 Defendant.

CASE NO. C11-5503 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
FORD'S MOTION FOR
SUMMARY JUDGMENT

12 This matter comes before the Court on Defendant Ford Motor Company's
13 ("Ford") motion for summary judgment. Dkt. 373. The Court has considered the
14 pleadings filed in support of and in opposition to the motion and the remainder of the file
15 and hereby grants in part and denies in part the motion for the reasons stated herein.

16 **I. PROCEDURAL HISTORY**

17 On February 24, 2012, Plaintiffs Eagle Harbor Holdings, LLC, and MediusTech,
18 LLC (collectively "Medius") filed a second amended complaint alleging Ford infringes
19 numerous patents. Dkt. 61.

20 On July 29, 2013, the Court-appointed Special Master, Lawrence Graham, issued
21 an order construing disputed terms of the asserted patents. Dkt. 167. On November 13,
22 2013, the Court adopted that order as an order of the Court. Dkt. 184. On February 26,

1 2014, Ford filed a motion to strike Medius’s undisclosed infringement theory. Dkt. 239.
2 On March 17, 2013, the Court granted the motion in part and denied the motion in part
3 and ordered further claim construction regarding the movement of applications with the
4 system of processors. Dkt. 267. On August 8, 2014, the Special Master issued an order
5 construing additional limitations. Dkt. 333. On September 22, 2014, the Court adopted
6 the constructions as an order of the Court. Dkt. 345.¹

7 On December 17, 2014, Ford filed the instant motion for summary judgment. Dkt.
8 373. Ford contends that (1) U.S. Patent No. 6,615,137 (the “‘137 Patent”) is not
9 infringed or is invalid as anticipated; (2) U.S. Patent Nos. 7,146,260 (the “‘260 Patent”),
10 7,778,739, 7,793,136, 8,006,117, 8,006,118, 8,006,119, 8,020,028, and 8,027,268
11 (collectively “Processor Patents”) are not infringed or are invalid for lack of written
12 description; (3) damages should be limited for failure to mark; and (4) Medius fails to
13 submit sufficient evidence of willful infringement. *Id.* On January 14, 2015, Medius
14 responded. Dkt. 404. On January 23, 2015, Ford replied. Dkt. 427.

15 II. FACTUAL BACKGROUND

16 With regard to the ‘137 Patent, Medius asserts that Ford induces its customer to
17 infringe the patent by using Ford’s Active Park Assist (“APA”) system. The ‘137 Patent
18 discloses a collision avoidance technology. *See* Dkt. 404 at 16–19 (overview of
19 technology). Ford contends that “APA is a parking assistance system that is designed to
20 automatically steer a car into a parallel parking space.” Dkt. 373 at 15. Medius asserts

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22 ¹ For purposes of clarity, the Court will refer to the Special Master’s reports and the
Court orders adopting those reports collectively as actions of the Special Master.

1 that Ford induces its customers to use the APA with owner’s manuals and other
2 instructive materials. Medius’s expert, Dr. Paul Min, asserts that APA directly infringes
3 the ‘137 Patent. Dkt. 404-3 (expert report).

4 With regard to the Processor Patents, Medius contends that Ford’s SYNC system
5 infringes these patents. The SYNC system is an “infotainment system . . . designed for
6 simplicity, reliability, and cost-effectiveness” Dkt. 373 at 31. Ford asserts
7 numerous non-infringement contentions and asserts that the patents lack a proper written
8 description of the claimed subject matter.

9 With regard to the marking issue, the facts are set forth in the Court’s order
10 denying Medius’s motion on this issue. Dkt. 483.

11 With regard to willful infringement, Ford asserts that Medius has failed to support
12 its claim as a matter of law. Dkt. 373 at 76–82. Medius responds citing numerous facts
13 evidencing an ongoing business relationship that began in early 2001. Dkt. 404 at 68.
14 The relationship appears to have broken down sometime in 2008. Dkt. 404-44 at 45.
15 After that, Medius’s counsel sent multiple emails to Ford alleging patent infringement.
16 *Id.* at 46–48.

17 III. DISCUSSION

18 A. Summary Judgment Standard

19 Summary judgment is proper only if the pleadings, the discovery and disclosure
20 materials on file, and any affidavits show that there is no genuine issue as to any material
21 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
22 The moving party is entitled to judgment as a matter of law when the nonmoving party

1 fails to make a sufficient showing on an essential element of a claim in the case on which
2 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
3 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
4 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.
5 Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
6 present specific, significant probative evidence, not simply “some metaphysical doubt”).
7 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
8 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
9 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
10 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
11 626, 630 (9th Cir. 1987).

12 The determination of the existence of a material fact is often a close question. The
13 Court must consider the substantive evidentiary burden that the nonmoving party must
14 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
15 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
16 issues of controversy in favor of the nonmoving party only when the facts specifically
17 attested by that party contradict facts specifically attested by the moving party. The
18 nonmoving party may not merely state that it will discredit the moving party’s evidence
19 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.
20 Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
21 nonspecific statements in affidavits are not sufficient, and missing facts will not be
22 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

1 **B. Induced Infringement**

2 Under 35 U.S.C. § 271(b), “[w]hoever actively induces infringement of a patent
3 shall be liable as an infringer.” To establish liability under section 271(b), a patent holder
4 must prove that “the alleged inducer knew of the patent, knowingly induced the
5 infringing acts, and possessed a specific intent to encourage another’s infringement of the
6 patent.” *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304 (Fed. Cir. 2006) (en banc).

7 In this case, Medius asserts that Ford induces infringement of claim 29 of the ‘137
8 Patent by encouraging its customers to use Ford’s APA system. The parties do not
9 dispute Ford’s knowledge of the patent. Ford, however, does dispute whether Medius has
10 submitted evidence of Ford’s specific intent to encourage its users to infringe, whether
11 APA generates a “steering queue” as required by the patent, and, if APA does infringe,
12 whether the patent is invalid over prior art. Dkt. 373 at 20–30.

13 **1. Specific Intent**

14 Evidence that a defendant “instructed its . . . customers about how to use [the
15 claimed invention] . . . is sufficient to create a genuine issue of material fact as to whether
16 [the defendant] had the requisite specific intent to induce infringement.” *Advanced*
17 *Software Design Corp. v. Fiserv, Inc.*, 641 F.3d 1368, 1376 (Fed. Cir. 2011).

18 In this case, there is no dispute that Ford supplies owner’s manuals and
19 instructions on how to use APA. Such evidence is sufficient to create a question of fact
20 on the issue of specific intent. Ford argues that more evidence is required, but fails to
21 cite a binding case for this proposition. Therefore, the Court denies Ford’s motion on this
22 issue.

1 **2. Direct infringement**

2 Infringement is a question of fact. *Absolute Software, Inc. v. Stealth Signal, Inc.*,
3 659 F.3d 1121, 1129-31, 1135 (Fed. Cir. 2011). To determine infringement, the fact-
4 finder compares the construed claims to the allegedly infringing device and determines
5 whether every limitation is present. *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*,
6 520 U.S. 17, 29 (1997). Application of the Court’s constructions to the accused product
7 is a fact question for the jury, even where the parties agree on how the accused product
8 works. *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1301–02 (Fed. Cir. 2011).
9 A conflict between the parties’ experts on a material issue constitutes a fact question that
10 defeats summary judgment. *Crown Packaging Tech., Inc. v. Ball Metal Beverage*
11 *Container Corp.*, 635 F.3d 1373, 1384 (Fed. Cir. 2011).

12 In this case, Ford moves for summary judgment arguing that Medius’s “new”
13 theory of infringement is procedurally improper and, even under the allegedly new
14 theory, APA does not actually infringe. Dkt. 373 at 20–24.

15 **a. Disclosure**

16 The Local Patent rules require Medius to provide Ford with a “chart identifying
17 specifically where each element of each Asserted Claim is found within each Accused
18 Device.” Local Patent Rule 120(c). “Each method or process must be identified by
19 name, if known, or by any product, device, or apparatus which, when used, allegedly
20 results in the practice of the claimed method or process.” *Id.* 120(b). “These rules are
21 designed to streamline the pre-trial and claim construction process, and generally to
22 reduce the cost of patent litigation.” *Id.* 101.

1 In this case, the Court recognizes that an ambiguity may exist in Medius's
2 infringement contentions on the issue of when the APA calculates a steering queue.
3 Those contentions disclosed that "[t]he APA System's onboard computer generates a
4 trajectory or path for the vehicle to travel for parking in the identified parking space that
5 avoids collision with the identified objects defining the space." Dkt. No. 375-1, Exhibit
6 15 at 3. Ford reads this sentence to disclose only an initial trajectory. Dkt. 373 at 24.
7 Medius, on the other hand, argues that its theory was never constrained to an initial
8 trajectory and that Dr. Min's report adequately discloses an iterative process of
9 determining the kinematic state of objects, evaluating collision conditions, and then
10 instructing the driver. Dkt. 403-3 at ¶¶ 86–88. The Court finds that any ambiguity
11 should have been brought to the Court's attention before this stage of the proceeding so
12 that the ambiguity could have been resolved during the second claim construction.
13 Moreover, the case Ford cites in support of its request to strike is distinguishable because
14 it involved a new contention under the doctrine of equivalents that was asserted, in a
15 footnote to a summary judgment response, with a motion to amend the previously
16 asserted contentions. *See Microscan Sys., Inc. v. Cognex Corp.*, No. C08-833RSM, 2010
17 WL 3584448, at *6 (W.D. Wash. Sept. 10, 2010). Here, the alleged ambiguity does not
18 rise to the level of prejudice that would justify restriction, as a matter of law, to the
19 calculation of only an initial trajectory. Therefore, the Court denies Ford's motion on this
20 issue.

1 **b. Actual Infringement**

2 In this case, the parties submit expert reports with competing theories of whether
3 APA infringes the ‘137 Patent. Issues exist mainly because the ‘137 Patent discloses a
4 dynamic collision avoidance system that Medius contends is infringed by a parking
5 assistance feature. While there will be significant issues for cross-examination, the Court
6 is unable to conclude that, taking the facts and inferences in the light most favorable to
7 Medius, no reasonable juror could accept Dr. Min’s theory.² Therefore, the Court denies
8 Ford’s motion for summary judgment on this issue.

9 **3. Invalidity**

10 In this case, Ford asserts the alternative argument that, if APA infringes, then the
11 ‘137 Patent is invalid in light of U.S. Patent No. 4,931,930 (“Shyu Patent”). Dkt. 373 at
12 25–29. Patents, however, are presumed valid. 35 U.S.C. § 282. Ford can only overcome
13 this presumption if it shows invalidity by clear and convincing evidence. *State*
14 *Contracting & Eng’g Corp. v. Condotte Am., Inc.*, 346 F.3d 1057, 1067 (Fed. Cir. 2003).
15 Anticipation of a patent is “a question of fact.” *Enzo Biochem, Inc. v. Applera Corp.*, 599
16 F.3d 1325, 1331 (Fed. Cir. 2010) (citation omitted)

17 Ford has failed to meet its burden on this issue. When a question of fact exists
18 whether a feature infringes a patent, then a question of fact almost necessarily exists
19 whether a patent is invalid if it infringes. Regardless, Ford has failed to show an absence

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21 ² It may be that there is confusion on how APA actually works. For example, it seems
22 that Dr. Min’s report is based off an analysis of Ford’s engineering documents. Such analysis,
however, could potentially be easily disproven with a video showing a Ford vehicle running over
a cardboard box while performing a complete APA maneuver.

1 of questions of material facts regarding anticipation. Therefore, the Court denies Ford's
2 motion on this issue.

3 **C. The Processor Patents**

4 Ford argues that SYNC does not infringe Medius's Processor Patents and, if it
5 does, some of Medius's patents are invalid for a lack of written description. Dkt. 373 at
6 30–69.

7 **1. Infringement**

8 Ford asserts seven non-infringement contentions, which the Court will address
9 individually.

10 **a. Configuration Managers**

11 Ford argues that SYNC does not include the required configuration managers set
12 forth in claim 9 of the '260 patent. Dkt. 373 at 39–41. First, Ford asserts that claim 9
13 includes a specific limitation based on the prosecution history and “proposed
14 interpretations.” Dkt. 427 at 20–21. To the extent that Ford requests additional claim
15 construction, the Court declines to engage in any such exercise. The parties, the Special
16 Master, and the Court have engaged in two separate claim constructions, and Ford's
17 attempt to narrow the claims as a matter of law at this point of the proceeding is
18 improper.

19 With regard to whether Ford's product infringes claim 9, Ford argues that
20 Medius's expert has failed to identify a configuration manager in the SYNC system. Dkt.
21 373 at 41. Dr. Min, however, identified this feature in his opening report. Dkt. 404-6 at
22 48. Ford counters that Dr. Min failed to explicitly identify the actual code comprising a

1 configuration manager. Dkt. 373 at 41. But, in his deposition, Dr. Min stated that a
2 configuration manager need not be composed entirely of code. These statements are
3 sufficient to create questions of fact for the jury. Moreover, Ford has failed to show that
4 a limitation of the patent claim is that the configuration manager must be composed
5 entirely of software code. Therefore, the Court denies Ford’s motion on this issue.

6 **b. Distributed Processing System**

7 Ford argues that SYNC is not a “distributed processing system” as required by
8 five of the asserted claims. Dkt. 373 at 41–44. The problem with Ford’s argument is
9 that, although the Special Master’s discussion of this claim limitation covers the
10 requirement of distributed tasks, Ford’s proposed construction included the term “can be
11 distributed” Dkt. 165 at 42–45. Thus, Ford requested and the Special Master
12 adopted a construction that is permissive, not mandatory. This is fatal to Ford’s motion
13 for summary judgment on this issue, which is based *completely* on the requirement of the
14 distribution of software between processors. Moreover, the Court declines Ford’s
15 attempt to limit the claims based on the deposition of the named inventor.³ Dkt. 427 at
16 22–23. Therefore, the Court denies Ford’s motion on this issue.

17 **c. Loading Applications**

18 Ford argues that SYNC does not infringe some asserted claims because SYNC
19 loads applications at initial boot whereas the asserted claims require loading applications

20
21 ³ Ford repeatedly relies on the concept of what “the inventors came up with.” *See, e.g.*,
22 Dkt. 373 at 44–45. This is irrelevant because “[n]o inquiry as to the subjective intent of the
applicant or PTO is appropriate or even possible in the context of a patent infringement suit.”
Markman v. Westview Instruments, Inc., 52 F.3d 967, 985 (Fed. Cir. 1995).

1 | some time after boot when a new device is connected to the system. Dkt. 373 at 44–49.
2 | For example, claim 1 of US patent 7,778,739 provides the limitation that the claimed
3 | system must “automatically move the second software application from the memory in
4 | the multiprocessor network to the particular one of the on-board processors selected by
5 | the data manager.” ‘137 Patent, col. 9, ll. 25–28; *see also* Dkt. 333 at 2 (listing seven
6 | independent claims). The Special Master construed this limitation to mean “make the
7 | second software application from the memory in the multiprocessor network available in
8 | an address space for execution by the particular one of the on-board processors selected
9 | by the data manager.” Dkt. 333 at 21. Ford argues that SYNC does not meet this
10 | limitation. Ford, however, simply rehashes arguments that were presented to the Special
11 | Master and explicitly rejected as questions of fact pertinent to an infringement analysis.

12 | First, Ford asserts that, at initial boot, SYNC makes every application available for
13 | use by any on-board processor. Dkt. 373 at 45–46. This is accomplished via the memory
14 | management concept of virtual memory and demand paging. *Id.* The Special Master
15 | addressed these arguments as follows:

16 | Both parties devote considerable attention to the use of “demand
17 | paging,” including whether demand paging is a process for running an
18 | application that has already been loaded or whether some part of demand
19 | paging also includes downloading or moving pages or instructions into a
20 | working memory or a processor. While I have reviewed these arguments
21 | and the related materials, I form no opinion regarding whether demand
22 | paging, in the abstract, fits within the scope of any of the asserted claims.
Likewise, I offer no opinion regarding whether Ford’s particular use of
demand paging (if indeed Ford actually does employ demand paging) fits
within the scope of the claims. **This issue is a matter of infringement to
be decided by the finder of fact**, and in any event the task at hand is to
interpret the claims from the perspective of a person of ordinary skill in the

1 relevant art, not to craft an interpretation that reads on (or around) specific
2 concepts.

3 Dkt. 333 at 19 (emphasis added). The Court adopted this finding as a part of the Special
4 Master's order but also recognizes that Dr. Min has provided a plausible explanation on
5 this issue. Dkt. 404-7 at 65–70. It is improper for a court to disagree with experts at the
6 summary judgment stage. *Crown Packaging*, 635 F.3d at 1384. Therefore, the Court
7 denies Ford's motion on this issue.

8 Ford's other argument is based on what constitutes an application. Dkt. 373 at 48–
9 49. The Special Master addressed the parties' dispute as follows: "it is ultimately a
10 question for the finder of fact to decide whether a sufficiently large portion of an
11 application has been moved or downloaded such that the application has been moved or
12 downloaded, either literally or by equivalents." Dkt. 333 at 19. Although the Court
13 agrees that a question of fact exists, Ford cites the Special Master's order wherein he
14 stated that "[i]n every case, the claims expressly require downloading or moving an
15 application, not instructions, threads, or some other indicator of a subset of an
16 application." Dkt. 33 at 18. The term "application" was not construed by the Court or
17 the Special Master, and there is no basis to categorically exclude threads as applications
18 under the current scope of the asserted patents.⁴ While Dr. Min contends that what Ford
19 and Microsoft identify as a thread, he considers an application, Dr. Min also admits that
20 the issue is due to "two different terminolog[ies]." Dkt. 404-35, Min Dep. at 615–616.

21 ⁴ The Court recognizes that, in light of the Special Master's statement, this issue may be
22 subject to determination as a matter of law. At this time, however, due process precludes the
Court from ruling on the issue based solely on the briefs.

1 Usually, such a conclusory statement is insufficient to overcome a motion for summary
2 judgment. However, accepting Dr. Min’s testimony, his “terminology,” and construing
3 all inferences in favor of Medius, the Court finds that a question of fact exists on the issue
4 of whether this minimal amount of code constitutes downloading or moving an
5 application.⁵ Therefore, the Court denies Ford’s motion on this issue.

6 **d. Reconfiguration Process**

7 Ford argues that claims 33, 35, and 39 of the ‘118 Patent are not infringed because
8 SYNC does not implement a reconfiguration process configured to terminate an
9 application. Dkt. 373 at 49–51. Medius counters with two arguments. First, Medius
10 contends that, through a convoluted series of cross citations, Dr. Min disclosed a theory
11 of infringement based on the termination of a single thread. Dkt. 404 at 49–50. Ford
12 objects to this theory because it was never properly disclosed. Dkt. 427 at 26–27. The
13 Court agrees. Unlike the issue in the previous section, this theory is more than a mere
14 ambiguity. Medius’s theory is based on an elaborate combination of what was disclosed
15 for infringement of other claims and is essentially a new theory of infringement.
16 Disclosure of such a theory for purposes of defeating summary judgment unduly
17 prejudices Ford this late in the proceedings. Therefore, the Court will not allow or
18 recognize this theory of infringement.

19
20 ⁵ This appears to be an issue of how many whiskers makes a beard. Once Dr. Min’s
21 terminology is further clarified as to how many instructions are actually downloaded, Ford may
22 move for judgment as a matter of law that either the term “application” can not be construed to
include this minimal amount of code or no reasonable juror could ever find that this amount of
code infringes the relevant patents.

1 Second, Medius argues that SYNC infringes because a system reboot would
2 necessarily terminate an application. Dkt. 404 at 50. In support of this argument, Medius
3 cites to the portion of Dr. Min’s report regarding claim 1 of the ‘118 Patent. *Id.* (citing
4 Exh. 3H at 9). This argument fares no better because Medius fails to cite facts in support
5 of its theory of infringement as opposed to attorney argument. It is undisputed that claim
6 1 of the ‘118 Patent discloses a different apparatus than claims 33, 35, and 39 of the ‘118
7 Patent, and Medius fails to show that an expert opinion in support of claim 1 also governs
8 claims 33, 35, or 39. Therefore, the Court grants Ford’s motion as to these claims.

9 **e. Selecting Processors**

10 Ford argues that the SYNC system does not “select a particular one of the on-
11 board processors for operating” an application, as required by claims 1, 3, 5, and 16 of
12 the ’739 Patent and claims 1, 3, 5, and 16 of the ’136 Patent. Dkt. 373 at 51–53. Ford’s
13 argument is based on the claims being construed to mean that selecting a processor means
14 selecting another or different processor than the one currently running an application. *Id.*
15 Ford has failed to show that the limitations were construed to include such a limitation.
16 Moreover, Dr. Min has provided sufficient opinion evidence that SYNC meets the
17 limitation as construed by the Special Master. Therefore, the Court denies Ford’s motion
18 on this issue.

19 **f. Security Limitations**

20 Ford argues that SYNC does not infringe certain asserted claims because SYNC
21 does not meet the security limitations of the claims. Dkt. 373 at 54–59. The claims
22 require a feature that prevents a connected device from accessing applications within the

1 multiprocessor system. *See, e.g.*, the 7,793,136 Patent, col. 7 ll. 18–21 (last limitation of
2 claim 1). On this issue, Medius has created a question of fact on the slimmest of facts.
3 While Ford is correct that the majority of Medius’s infringement theory is based on
4 security protocols before a communication link is established, Dr. Min did disclose one
5 plausible theory that security is established after a link is established. This particular
6 theory is that the device communicates with the system, the system searches the list of
7 stored profiles, and then either accepts the device or terminates all communication with
8 the device. *See* Dkt. 404-7 at 174. Although buried in a larger infringement analysis, the
9 theory was disclosed and creates a question of fact whether it is an embodiment that falls
10 within the scope of the claim. Therefore, the Court denies Ford’s motion on this issue.

11 The Court recognizes that apple devices may develop a secure connection in such
12 a way that they do not infringe the patents. Ford raised this issue in a footnote. Dkt. 373
13 at 59 n.17. Medius responded with a citation to a document Ford produced in discovery,
14 but that document only supports Ford’s contention that Apple devices connect differently
15 than Bluetooth devices. *See* Dkt. 427 at 34. This distinction appears to be irrelevant
16 because questions of fact exist on the issue of whether other devices infringe the asserted
17 claims.

18 **g. Control and Operation of Mobile Device**

19 Ford argues that SYNC does not infringe certain asserted claims because it does
20 not “take over control and operation” of a connected device. Dkt. 373 at 60–63. Ford
21 admits, however, that at the very least, certain legacy Apple devices are fully controlled
22 by SYNC when they are connected via a USB cable. *Id.* at 61. To overcome this

1 | infringement, Ford first argues that the patents are limited to wireless devices. *Id.* at 62.
2 | The Court declines to read such a limitation into the patents at this point of the
3 | proceeding. Ford’s other argument is essentially disputing the facts of what constitutes
4 | control and operation. However, it is a question of fact whether such control and
5 | operation falls within the scope of the patents. Therefore, the Court denies Ford’s motion
6 | on this issue.

7 | **2. Lack of Written Description**

8 | “[I]n ruling on a motion for summary judgment, the judge must view the evidence
9 | presented through the prism of the substantive evidentiary burden.” *Anderson*, 477 U.S.
10 | at 254. “A patent shall be presumed valid.” 35 U.S.C. § 282. The party asserting
11 | invalidity carries “[t]he burden of establishing invalidity of a patent or any claim
12 | thereof.” *Id.* Invalidity, as a defense to infringement, must be proved by clear and
13 | convincing evidence. *Microsoft Corp. v. i4i Ltd.*, 564 U.S. ____, 131 S. Ct. 2238, 2242
14 | (2011).

15 | In this case, Ford argues that the Processor Patents should be declared invalid for
16 | lack of a sufficient written description. Dkt. 373 at 63–69. In asserting this defense, Ford
17 | bears the burden of showing invalidity with clear and convincing evidence. At most,
18 | Ford has submitted some evidence to support its defense, but the evidence in the form of
19 | an expert’s opinion is far from establishing by clear and convincing evidence that there
20 | are no questions of fact. Moreover, Medius has submitted its own expert’s opinion that
21 | the 2001 and 2002 patent applications sufficiently disclosed the subject matter of the
22 | continuation patents. Therefore, the Court denies Ford’s motion on this issue.

1 **D. Damages**

2 Ford argues that Medius’s claim for damages should be limited for failure to
3 properly mark products and that Medius’s claim for willfulness should be dismissed.
4 Dkt. 373 at 69–82.

5 **1. Marking**

6 Ford moves for summary judgment on the issue of whether Medius failed to
7 properly mark a prototype that fully embodied the ‘260 Patent. The Court has denied
8 Medius’s motion on this issue because a question of fact exists whether Takata ever
9 created a relevant prototype. Dkt. 483 at 7–8. Nothing related to this motion resolves
10 that question of fact. Therefore, the Court denies Ford’s motion on the issue of marking.

11 **2. Willfulness**

12 To establish willful infringement, “a patentee must show by clear and convincing
13 evidence that the infringer acted despite an objectively high likelihood that its actions
14 constituted infringement of a valid patent.” *In re Seagate Technology, LLC* (“*Seagate*”),
15 497 F.3d 1360, 1371 (Fed. Cir. 2007) (en banc). When an issue requires clear and
16 convincing evidence, “the appropriate summary judgment question will be whether the
17 evidence in the record could support a reasonable jury finding either that the [party] has
18 shown [willfulness] by clear and convincing evidence or that the [party] has not.”
19 *Anderson*, 477 U.S. at 255.

20 In this case, the parties dispute numerous issues regarding the law of willfulness
21 and its application to the issues in this case. Despite these disputes, it is Medius’s burden
22 to submit clear and convincing evidence of willful infringement. It has failed to do so.

1 The Court has ruled on this issue as a matter of law where the patentee submitted
2 evidence of more egregious acts of reckless infringement. *See Syntrix Biosystems, Inc. v.*
3 *Illumina, Inc.*, Cause No. 13-5870BHS (W.D. Wash.). The mere fact that Ford may have
4 known about Medius's patents and that the parties were engaged in some business
5 relationship does not constitute clear and convincing evidence of recklessness. Dkt. 404
6 at 67-69. Moreover, the fact that Medius's lawyers sent letters to Ford alleging
7 infringement does not establish the high likelihood of infringement. In any event, Ford
8 has substantial legitimate defenses to both non-infringement of APA and non-
9 infringement of SYNC. Therefore, the Court grants Ford's motion on Medius's claim for
10 willful infringement.

11 **IV. ORDER**

12 Therefore, it is hereby **ORDERED** that Ford's motion for summary judgment
13 (Dkt. 373) is **GRANTED in part** and **DENIED in part** as stated herein.

14 Dated this 26th day of February, 2015.

15 

16

BENJAMIN H. SETTLE
17 United States District Judge