

United States District Court,
E.D. Texas, Marshall Division.

POSITIVE TECHNOLOGIES INC,
Plaintiff.

v.

TOSHIBA AMERICA CONSUMER PRODUCTS, L.L.C., et al,
Defendants.

Civil Action No. 2:07-CV-67

Aug. 15, 2008.

James Patrick Brogan, Ann Marie Byers, Carolyn Valerie Juarez, Chad Takashi Nitta, Cooley Godward Kronish LLP, Broomfield, CO, Collin Michael Maloney, Ireland Carroll & Kelley, Tyler, TX, Franklin Jones, Jr., Jones & Jones, Marshall, TX, Kevin J. Zimmer, Cooley Godward Kronish LLP, San Diego, CA, Thomas J. Friel, Jr., Cooley Godward Kronish LLP, Palo Alto, CA, Thomas F. Poche, Cooley Godward Kronish, LLP, Washington, DC, for Plaintiff.

ORDER

T. JOHN WARD, District Judge.

Before the court is Plaintiff's Request for Reconsideration of Disclaimer Finding Set Forth in the Claim Construction Memorandum Opinion and Order Issued by the Court on July 1, 2008 (Dkt. No. 400) and related briefing. The court issues this clarification to its Memorandum Opinion and Order (Dkt. No. 388) entered on July 1, 2008.

The plaintiff contends that the court's construction of the terms "drive signals," "driving means," and "direct voltages" excludes preferred embodiments from the scope of the claims. This was not the court's intention. After carefully considering the parties' arguments, the court agrees that the current construction inadvertently excludes preferred embodiments.

The plaintiff urges the court to reform its construction to include the limitation that the polarity of the drive signals are not "frequent and symmetric." Motion at 2. The court, however, concludes that this would also create an ambiguity. After carefully reviewing the intrinsic evidence, the court concludes that the distinguishing characteristic of this invention from the prior art, with respect to drives signals, is set forth in the Summary of the Invention section. Specifically, the "ability to selectively alter the drive signals and drive scheme in real time in response to the state of the display ... represents a significantly different approach to providing visual images on liquid crystal displays." '280 Patent at 7:56-61. The distinction here is not the resulting characteristics of the signal, but rather the manner in which the signal's characteristics are determined.

Though the plaintiff makes a distinction between passive matrix displays and active matrix displays, the independent claims containing these phrases do not. The scope of claim 1, for example, is broad enough to capture both types of displays. *See* '280 Patent at claim 32 (depending from claim 1 and adding the additional limitation of "wherein said pixels comprise active matrix displays"); and claim 39 (depending from claim 1 and adding the additional limitation of "wherein said pixels comprise passive matrix displays").

In light of the above, the previous construction of these terms by the court is hereby vacated. The court concludes that the terms "drive signals," "driving means," and "direct voltages" mean "a voltage signal that accounts for DC bias accumulation on the pixels by alterations to the signal made during operation."

IT IS SO ORDERED.

E.D.Tex.,2008.

Positive Technologies Inc. v. Toshiba America Consumer Products, L .L.C.

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