

FILE UNDER SEAL¹

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

DIGITAL ALLY, INC.,

Plaintiff

v.

TASER INTERNATIONAL, INC.,

Defendant.

Case No. 16-2032-CM

MEMORANDUM AND ORDER

Plaintiff Digital Ally, Inc. filed this patent infringement case in 2016, originally alleging that technology used with body-worn camera products sold by defendant Taser International, Inc., infringes plaintiff’s patent, U.S. Patent No. 8,781,292 (“the ‘292 patent”). Highly generalized and summarized, plaintiff’s product is a recording system for police departments to record traffic stops from two or more different cameras at the same time, but from different vantage points. When there is a “trigger” like a police vehicle siren, lights, spotlight, crash event, or a certain vehicle speed, two or more recording devices will be activated—for example, a car camera and a body cam. All of this happens automatically, so the officer does not have to remember to manually activate his body cam or other recording device. The recording devices each independently record the event. Plaintiff claims that defendant’s technology, when used with certain cameras, infringes plaintiff’s patent.

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Plaintiff later amended its complaint to add another claim for patent infringement with respect to U.S. Patent No. 9,253,452 (“the ‘452 patent”). Plaintiff voluntarily dismissed the ‘292 petition infringement claim. Now only the ‘452 patent claims remain. Specifically, Claims 10, 14–16, and 20 of the ‘452 patent remain for review. Claim 10 is an independent claim and the others are dependent on Claim 10.

The case is before the court on a number of motions. But one argument in one motion disposes of the entire case, so the court addresses that argument below and denies all other arguments and motions as moot. That argument is found in defendant’s motion for summary judgment ([Doc. 306](#)), and it relates to the term “correlation data.” Specifically, defendant argues that it does not infringe plaintiff’s ‘452 patent because defendant’s Axon Signal Unit (“ASU”) does not broadcast “correlation data,” as required by Claim 10 of the patent.

I. Factual Background

The relevant, material, uncontroverted facts are as follows.

A. Claim 10 of the ‘452 Patent

Claim 10 of the ‘452 patent reads:

A system for recording multiple viewpoints of an event, comprising:

- a first recording device configured to be mounted on or configured to be carried by a law enforcement officer so as to record a first set of record data for the event;
- a second recording device, distinct from the first recording device, located so as to record a second set of record data for the event, said first set of record data being distinct from the second set of record [data]; and
- a recording device manager operable to:
 - receive a trigger signal,

said trigger signal being at least one of activation of a law enforcement vehicle's siren, activation of said law enforcement vehicle's signal lights, activation of said law enforcement vehicle's spotlight, a vehicle crash event, and a vehicle speed, and

broadcast, in response to receiving the trigger signal, at least one communication signal including correlation data to the first recording device and the second recording device instructing the first recording device to begin recording said first set of record data and instructing the second recording device to begin recording said second set of record data,

wherein the first recording device stores the correlation data as metadata for the first set of record data and the second recording device stores the correlation data as metadata for the second set of record data, such that the first set of record data and the second set of record data can be correlated back to the event,

wherein the first set of record data and the second set of record data are recorded beginning substantially simultaneously in response to the broadcast communication signal.

The other relevant claims are dependent on Claim 10.

B. Defendant's Technology

1. The ASU

a. What is the ASU?

Defendant's ASU has the following characteristics:

- Free-standing component that can be mounted in a vehicle.
- Includes a microprocessor with eight General Purpose Input/Outputs ("GPIO"). Each of the GPIOs can detect an output signal of an in-car sensor that is connected to the GPIO port on the microprocessor.
- Includes a Bluetooth Low Energy ("BLE") module that can wirelessly communicate with other devices, including the Accused Cameras, in accordance with the BLE communications protocol.

b. What does the ASU do?

When the microprocessor detects a state change to one of the GPIOs (e.g., a change in voltage), the microprocessor provides a status message to the BLE module. This status message includes the following information: [REDACTED]

[REDACTED] After receiving the status message, the BLE module forms a BLE advertisement message that includes the [REDACTED]
[REDACTED]
[REDACTED] in the BLE advertisement payload.

2. The Slate System

Dr. Scott Nettles is plaintiff's expert witness. Dr. Nettles agrees that using defendant's technology, two recordings from the same event can only be linked together using a separate technology called "Slate." Slate is not accused in this case, and Dr. Nettles has not evaluated it. Rather, defendant separately developed Slate to identify recordings from the same event. The Slate system has the following distinguishing characteristics:

- It works independently from the ASU and is functional regardless of the presence of an ASU.
- It is comprised of "Slate Beacons," which are non-connectable, non-scannable BLE advertisement beacons that are used to align video and audio tracks from multiple Body 2, Flex 2, and Fleet cameras.
 - Slate Beacons are transmitted and received when a Body 2, Flex 2, or Fleet camera is buffering.

[REDACTED]
[REDACTED]
[REDACTED]

- Slate Beacons are transmitted, received, and stored when a Body 2, Flex 2, or Fleet camera is recording.
- Slate Beacons are only transmitted and received between cameras.

C. “Correlation Data”

1. Agreed Claim Construction

The claim construction for “correlation data” is “data, including but not limited to serial number and timestamp, used to link together or otherwise associate record data.”

2. Plaintiff’s Arguments

Plaintiff claims that the following constitute “correlation data”:

[REDACTED]

D. “Record Data”

Dr. Nettles opines that “record data” is “audio and video for an event.” Dr. Nettles agrees that none of the following can be used to link together recordings from two accused camera devices for a particular event: [REDACTED] Dr. Nettles further agrees that none of these same items can be used to associate recordings from two accused camera devices for a particular event. In sum, Dr. Nettles agrees that the alleged “correlation data” cannot be used to correlate recordings from different devices.

II. Discussion

The accused products are defendant’s ASU in combination with at least one particular body camera and a second particular in-car or body camera. To infringe, defendant’s “recording device manager” (the ASU) must broadcast a specific type of information to the cameras—correlation data. The agreed construction for “correlation data” is “data, including but not limited to unique serial number and time stamp, used to link together or otherwise associate record data.” According to this

construction, the correlation data must be data that is “used to link together or otherwise associate record data,” which is video or audio data. Defendant claims that the accused correlation data is not capable of being used to “link together or otherwise associate [video or audio] data.” The court agrees.

Defendant’s ASU sends four types of information to the cameras that plaintiff accuses of being correlation data: [REDACTED]

[REDACTED] But none of these types of data are capable of linking together or otherwise associating video or audio data. Instead, defendant uses its Slate technology to accomplish this task. Plaintiff does not accuse Slate of infringement. The four types of information therefore cannot meet the definition of “correlation data.” Because defendant’s ASU cannot meet this limitation of Claim 10, defendant is entitled to summary judgment on its defense of non-infringement.

Plaintiff argues that this issue is actually a claim construction dispute. According to plaintiff, defendant is seeking to rewrite the claims by importing embodiments from the specification. Plaintiff argues that the Asserted Claims require only one act of correlation—record data correlated to an event (“video-to-event” correlation)—not a “video-to-video” correlation.

Plaintiff focuses on a part of Claim 10 that is not at issue in defendant’s motion. Plaintiff focuses on the limitation expressed at the end of Claim 10—the limitation that recites storing correlation data as metadata “such that the first set of record data and the second set of record data can be correlated back to the event.” Defendant has not challenged this limitation. Defendant has challenged whether its technology can ever meet the agreed construction of “correlation data.” Again, correlation data is “data . . . used to link together or otherwise associate record data.” While this definition is not explicitly stated in Claim 10, the parties have agreed that the agreed construction for “correlation data” may be substituted for the words “correlation data” in the Claim. Regardless of what the specification says about correlation, this limitation therefore becomes part of the Claim. The court cannot ignore the

agreed construction of the terminology—which is what the court would have to do to accept plaintiff’s argument.

Plaintiff discusses “video-to-event” correlation and “video-to-video” correlation as if they are two mutually exclusive connections; that the record data cannot be both correlated to other record data and correlated to an event. Claim 10 does not read so restrictively. And the Claim does not require the act of video-to-video correlation (or, arguably, even an act of video-to-event correlation)—only that the data is capable of being “used to link together or otherwise associate record data.” It is uncontroverted that defendant’s accused correlation data cannot be used for that purpose. This fact is dispositive and requires a ruling of non-infringement.

The parties are each focusing on a separate limitation of two different limitations found in Claim 10. First, the ASU must broadcast “correlation data.” This is the limitation defendant focuses on. Second is plaintiff’s focus—the limitation relating to storing correlation data as metadata “such that . . . record data can be correlated back to the event.” To ascertain whether the ASU can and does broadcast correlation data, the agreed construction for the term must be examined. The type of data broadcast must meet this definition independently of meeting the separate limitation reading “such that . . . record data can be correlated back to the event.”

Because defendant does not infringe Claim 10, summary judgment is also appropriate on Claims 14–16 and 20, which depend on Claim 10. *See Wahpeton Canvas Co. v. Frontier, Inc.*, [870 F.2d 1546, 1553](#) (Fed. Cir. 1989) (noting that if an independent claim is not infringed, claims dependent on that claim also cannot be infringed). This disposes of all claims remaining in the case, and summary judgment is granted for defendant.

IT IS THEREFORE ORDERED that defendant’s Motion for Summary Judgment ([Doc. 306](#)) is granted.

IT IS FURTHER ORDERED that defendant's Objections to Magistrate Order ([ECF No. 277](#)) Denying Leave to Amend Invalidity Contentions to Add Plaintiff's System as Invalidating Prior Art ([Doc. 282](#)) is overruled as moot.

IT IS FURTHER ORDERED that the following motions are denied:

- Motion for Leave to File Under Seal ([Doc. 294](#));
- Plaintiff's Motion for Summary Judgment ([Doc. 298](#));
- Motion to Exclude Expert Testimony of Dr. Scott Nettles ([Doc. 301](#)); and
- Motion to Exclude Expert Testimony of Julie Davis ([Doc. 313](#)).

IT IS FURTHER ORDERED that this order will be sealed for seven days. During that time, the parties are to notify the court whether there is justification for keeping this document sealed. If the parties do not provide adequate justification, the court will unseal the order after seven days.

IT IS FURTHER ORDERED that the Clerk of the Court enter judgment in favor of defendant and against plaintiff.

The case is closed.

Dated this 17th day of June, 2019, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge