

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AUTOCONNECT HOLDINGS, LLC

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendant.

Case No.: 1:24-cv-01327-CFC

JURY TRIAL DEMANDED

**DEFENDANT FORD MOTOR COMPANY'S REPLY
IN SUPPORT OF ITS MOTION TO DISMISS**

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I. INTRODUCTION

AutoConnect asserts claim construction is a prerequisite to an indefiniteness finding despite the Federal Circuit’s repeated instruction that the express definition in the patent specification governs the scope of the disputed term.

AutoConnect’s attorney interpretations of certain excerpts of the challenged claims ignore the confusion arising from the sporadic and repeated use of “and/or,” “and,” and “or” together throughout the claim. In fact, AutoConnect’s examples highlight ambiguity rather than clarity, and demonstrate how the use of the term “and/or” in this case differs from the ordinary “and/or” claims recited in *other* cases. Because the claims are insolubly ambiguous, the Court should find them invalid as indefinite.

With respect to the ’100 Patent, AutoConnect admits it has *never* had evidence that any Ford vehicle practices the AUTOSAR standard let alone the ’100 Patent (Ford vehicles do not practice the standard). AutoConnect blames Ford for failing to “prove a negative,” but AutoConnect bears the burden of meeting the Supreme Court’s pleading requirements and admits it cannot do so.

With respect to the ’491 Patent, AutoConnect asserts its allegation that Ford vehicles “analyz[e] information” meets the claimed requirement of “determin[ing] load.” AutoConnect’s allegation is plainly not plausible and does not satisfy the Supreme Court’s *Iqbal/ Twombly* pleading threshold.

For these reasons, and the reasons stated in Ford’s motion, the Court should dismiss Counts I, II, III, IV, VI, X, and XI of the Complaint.

II. ARGUMENT

A. The Challenged “and/or” Claims are Indefinite

AutoConnect’s arguments that the term “and/or” is sufficiently clear, and that claim construction is required to decide indefiniteness, are both undermined by the fact that the asserted patents *expressly define* the term “and/or” as “both” disjunctive “and” conjunctive—a definition AutoConnect confirms. (D.I. 13, at 6.) The indefiniteness of the challenged claims does not arise from the term “and/or” in a *vacuum*, or the use of that term in *other* patents. Indefiniteness arises here because of (i) the patents’ definition creating parallel but different (conjunctive and disjunctive) claim scopes, and (ii) the incoherent and sporadic usage of the terms “and/or,” “and,” and “or” *together* in the listings recited in the challenged claims.

The “numerous cases” AutoConnect identifies where an “and/or” limitation was deemed sufficiently clear do not concern the highly unique facts of *this case*. For example, AutoConnect’s statement that those cases found “the term [and/or] encompasses ‘any combination of one or more of the items in the series’” (*Id.*, at 7-8) is contrary to the patents’ definition—adopted by AutoConnect—that the term is “both” conjunctive “and” disjunctive.

Claim construction is not required because the “plain and ordinary meaning” of “and/or” does not apply in this case. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (“[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor’s lexicography governs.”).

In a simple example, a claim requiring “an apple and/or an orange” has two *different* claim scopes under the patent’s definition: (1) *both* an apple *and* an orange are required, and (2) *either* an apple *or* an orange are required. It is for this reason that the “and/or” claims “fail to inform, with reasonable certainty, those skill in the art about the scope of the invention,” rendering them indefinite. *Nautilus, Inc. v. Biosig Instruments*, 572 U.S. 898, 901 (2014).

AutoConnect points to the recitation in certain challenged claims of “at least one of” or “one or more,” asserting those limitations resolve any ambiguity over the subsequent use of “and/or.” (D.I. 13, at 8–9.) While in some *other* cases those terms may resolve ambiguity over usage of “and/or” in a clear listing of individual elements, these limitations do not resolve the ambiguity in *this* case. First, these limitations are subject to the *same* impossible conjunctive “and” disjunctive definition provided in the asserted patents. (*See e.g.*, D.I. 1-4, 15:58–65.) Second, as explained in Ford’s opening brief, the disparate uses of “and/or” in the claims together with the *separate* recitations of “and” and “or” render the claims hopelessly

ambiguous despite the recitation of “at least one of” or “one or more” earlier in the claim. (D.I. 12, at 11-13.)

AutoConnect attempts to demonstrate clarity in the claims with various attorney-elected font colors. (D.I. 13, at 8-9.) AutoConnect’s colors only *confirm* the ambiguity of the claims. For example, AutoConnect quotes and colors portions of claim 17 of the ’367 Patent:

the plurality of applications comprising a plurality of an application related to *at least one of a handicap and accessibility graphical user interfaces*, an email client, a web browser, a communications application, a game, an entertainment application, a satellite positioning system receiver application, *an automotive navigation application or a device*, a map application, a medical information application, an emergency service application, a noise suppression application, a news-related application, a vehicle manual related application, a weather information-related application, a biometric application, a travel application, a speech recognition application, *an application to read to an operator of the vehicle Really Simple Syndication (“RSS”) feeds, Twitter messages, email messages, and/or instant messages*, a social networking application, a streaming media application, *and* a utility application.

(D.I. 13, at 8–9 (coloring in original).) AutoConnect asserts “all items in the list are subject to the ‘at least one of’ clause.” (*Id.*, at 9.) But which “list” does “at least one of” apply to? The quoted claim recites several different lists joined (or separated) with “and,” “or,” “and/or,” and another “and.” (*Id.*) If “all” claimed items are subject

to the “at least one” limitation, why are both terms “and” and “or” recited in the list? And if the list is something less than all claimed items, how is a POSA to know which items are subject to the “at least one of” limitation?

AutoConnect asserts that the **red** claim limitation covers *two different* items, *i.e.*, a “handicap graphical user interface” and an “accessibility graphical user interface.” (*Id.*) Because an “and” is used in that limitation but not others, a POSA could equally conclude the limitation is directed to a “handicap *and* accessibility graphical user interfaces” as expressly claimed. The subsequent recitation of “or” and “and/or” would also indicate, under the doctrine of claim term differentiation, that the “and” in the red limitation refers to a unitary graphical user interface for “handicap and accessibility,” not two different user interfaces. Given the ambiguous way the claimed items are connected with “and,” “or,” and “and/or,” AutoConnect’s interpretation is just one of many.

AutoConnect’s **green** limitation is hopelessly ambiguous for a different reason. There, AutoConnect asserts the “and/or” limitation applies to *three* items *before* the term (*i.e.*, “Really Simple Syndication (“RSS”) feeds, Twitter messages, email messages”) and *one* item *after* the term (“instant messages”). There are two problems with this assertion. First, why would a POSA not apply the “and/or” to *all* items that precede the “and/or”? How would a POSA know to stop with only three items preceding the term? Second, later in its Response, in connection with a

different part of the same claim, AutoConnect states the “and/or” applies to *one* item *before* the term (“board hardware”) and *three* items *after* the term (“software resource, module, algorithm”). (*Id.*, at 9–10.) AutoConnect never explains how or why a POSA would allocate items to the “and/or” limitation differently here than the green limitation of claim 17 of the ’367 Patent addressed above.

Similar ambiguity exists in other claims AutoConnect raises in its Response, such as claims 1, 8, and 15 of the ’239 Patent. (*Id.*, at 10.) AutoConnect asserts “‘Internet browsing history and/or browsed content’ recited in those claims is another way of saying ‘Internet browsing history, browsed Internet content, or both.’” (*Id.* (citing D.I. 1-7, 125:8–9).) AutoConnect’s “or both” interpretation is directly contrary to the patent’s definition that expressly requires “both” the disjunctive (only one item) “and” the conjunctive (both items together). (D.I. 1-7, 15:63–16:3.) And like with claim 17 of the ’367 Patent, the sporadic recitation and placement of the terms “and” and “or” together with “and/or” renders the claims insolubly ambiguous.

The challenged claims were drafted in a manner that creates a “zone of uncertainty” that “enterprise and experimentation may enter only at the risk of infringement.” *Nautilus*, 572 U.S. at 909-910; *IQASR LLC v. Wendt Corp.*, 825 F. App’x 900 (Fed. Cir. 2020) (affirming the indefiniteness of the claims because the

“open-ended and non-limiting,” nature of the claims required “a skilled artisan [to] wade through a morass of uncertainty and contradiction”).

AutoConnect argues the Court should “decline Ford’s invitation to find the claim language indefinite without the benefit of claim construction.” (D.I. 13, at 11.) But here the ambiguity arises at the threshold from the patents’ *express definition* of “and/or,” “at least one of,” and “one or more.” For those terms, the patent definition governs and construction is inappropriate. *Martek Biosciences Corp. v. Nutrinova, Inc.*, 579 F.3d 1363, 1382 (Fed. Cir. 2009) (“When a patentee defines a claim term, the patentee’s definition governs, even if it is contrary to the conventional meaning of the term.”) (quoting *Honeywell Int’l, Inc. v. Universal Avionics Sys. Corp.*, 493 F.3d 1358, 1361 (Fed. Cir. 2007)); *Phillips*, 415 F.3d at 1316.

The Court “has discretion as to when to determine indefiniteness during patent case proceedings” and “may address indefiniteness . . . if the circumstances are appropriate.” *Indus. Tech. Rsch. Inst. v. LG Elecs. Inc.*, No. 3:13-CV-02016-GPC, 2014 WL 6907449, at *3 (S.D. Cal. Dec. 8, 2014). Here, the “circumstances are appropriate” at the pleading stage because (i) claim construction cannot change the patents’ definition, and (ii) the issue impacts more than half of the patents asserted in this case. Significant case efficiency can be achieved by addressing the

indefiniteness of the claims raised in Ford’s motion at this early stage of the proceedings.

B. AutoConnect Fails to Plausibly Plead Infringement of the ’100 Patent

AutoConnect *admits* it has zero evidence that Ford vehicles practice any aspect of the AUTOSAR standard, let alone the aspects AutoConnect relies on to allege infringement. (D.I., 13, at 2, 4–5, 13–19.) AutoConnect blames Ford for failing to prove non-infringement. But compliance with the pleading standards is AutoConnect’s burden, and Ford cannot “prove a negative.”

Contrary to AutoConnect’s contention, Ford does not assert that AutoConnect must “prove” infringement at the pleading stage. (*Id.*, at 15) But AutoConnect must present, has not presented, and cannot present, a plausible case of infringement of the ’100 Patent because Ford’s vehicles do not practice the third-party standard AutoConnect relies on. *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1353 (Fed. Cir. 2021) (“[A] plaintiff cannot assert a plausible claim for infringement under the *Iqbal/Twombly* standard by reciting the claim elements and merely concluding that the accused product has those elements.”). AutoConnect’s evidence that Ford, as a *corporate entity*, is a “partner” of AUTOSAR says nothing about whether Ford’s *vehicles* practice AUTOSAR generally, let alone the specific portions that AutoConnect points to in its claim charts.

AutoConnect's reliance on *Hoffmann La-Roche Inc. v. Invamed, Inc.*, 213 F.3d 1359 (Fed. Cir. 2000) is misplaced. That case did not concern a Fed. R. Civ. P. 12(b)(6) challenge to the pleadings or cite *Iqbal/Twombly*. The case concerned a Fed. R. Civ. P. 11 challenge having no bearing here. In addition, *Hoffmann* concerned a non-public process to manufacture a drug. *Id.* Here, Ford's vehicles are available in the public domain for inspection. AutoConnect has not attempted to present a plausible basis for its allegation that any Ford *vehicle* practices any aspect of the AUTOSAR standard, or any claim of the '100 Patent.

C. AutoConnect Fails to Plausibly Plead Infringement of the '491 Patent

AutoConnect points to no facts pled in the complaint from which it can be plausibly inferred that a signal processor in the vehicle communication system is operable to “determine load” as claimed. AutoConnect asserts the accused products “analyz[e] information.” (D.I. 13, at 19.) But the challenged claim recites “determine load” not “analyze information.” AutoConnect's pleading is plainly *not* plausible and *fails* to “allow[] the court to draw the reasonable inference that [Ford] is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Because AutoConnect fails to plead a plausible factual basis for the “determine load” limitation, the Court should dismiss AutoConnect's infringement claim.

III. CONCLUSION

For the reasons set forth above and in Ford's opening brief, Ford respectfully requests the Court dismiss Counts I, II, III, IV, VI, X, and XI of the Complaint.

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