

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ULTRATEC, INC., and CAPTEL, INC.,

ORDER

Plaintiffs,

v.

14-cv-66-jdp

SORENSEN COMMUNICATIONS, INC., and
CAPTIONCALL, LLC,

Defendants.

Defendants have asked the court to clarify its construction of the claim term “cancel the voice of the assisted user.” Dkt. 488. Plaintiffs oppose the request. Dkt. 496. I will clarify the construction, but I will not adopt either side’s proposed instructions concerning the term.

I will instruct the jury that:

The claim term “cancel the voice of the assisted user from the second telephone line so that the relay does not hear the voice of the assisted user, so the relay can caption all the words on the second telephone line” should be given its plain meaning. This claim limitation is satisfied so long as a call assistant with normal hearing would not hear the words spoken by the assisted user while captioning a call.

This instruction should address the parties’ concerns. To put it in the terms of defendants’ motion, the line is drawn within category 3. Cancellation that leaves audio bleed-through that consists of only buzzing would fall within the claim limitation. Audible words would not. This is an objective standard that depends on the operation of the accused system, not the actual hearing experience of any particular call assistant. The construction depends on the normal limits of human attention only in that it is to be judged from the

perspective of a call assistant while captioning a call, not, for example, by an expert's repeated review of a recording.

Defendants raise a second question, concerning the term "from the second line." I confirm that this term requires that it is the "captioned telephone device" that uses echo cancellation to cancel the voice of the assisted user, which means that the assisted user's voice would not be transmitted to the relay. But this clarification may not resolve the issue for defendants. Defendants contend that "[t]he evidence will show that reasonable jurors could find the phrase is not infringed by a two-line captioned telephone using echo cancellation to cancel the assisted user's echoes from the first telephone line." Defendants do not offer much explanation of their trial strategy, but I would think that non-infringement theory has been foreclosed by the court's decision on summary judgment. Dkt. 478, at 19-20.

Entered September 22, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge