

17-1928

**United States Court of
Appeals for the Federal
Circuit**

RICHARD J BAKER,

Plaintiff-Appellant,

v.

MICROSOFT CORPORATION; et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Washington
No. 2:16-cv-00396-RAJ -THE
The Honorable Richard A Jones, Judge

OPENING BRIEF FOR PLAINTIFF-APPELLANT

Richard J Baker

9 Deloraine Court
Mermaid Waters, Queensland
Australia 4218
Phone (61 7) 5526 5523
Email: rb@personalised-video.com

Pro Se Plaintiff-Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATUTES AND RULES.....	iii
ORAL ARGUMENT.....	1
STATEMENT OF RELATED CASES.....	1
JURISDICTIONAL STATEMENT.....	2
STATEMENT OF THE ISSUES	2
STATEMENT OF THE CASE.....	3
A. The Parties.....	6
SUMMARY OF ARGUMENT.....	6
LAW AND ARGUMENT	8
ARGUMENT	9
I. The District Court erred in granting Appellees Summary Judgment as they are working Appellants claim limitations with only thing left for trial court to consider are they working Baker’s inventive algorithm?.....	9
A. Baker’s 1996 Personalised Instructional Aid U.S.A No.5,486,001 patent.....	9
B. Use of a “peripheral” device camera puts Appellees accused systems working directly on Baker’s US Patent claim limitations anywhere	10
C. Baker’s new non cumulative evidence defense.....	12
D. Summary judgment was not applicable clearly erroneous.....	18
II. Whether the district court erred made clearly erroneous determination that Baker’s two audio-visual transceivers cannot be in close proximity to person having their motion captured via camera	19

A. Microsoft Patent Also Mentions A PC Can Be Remote Computer	22
4. Conclusion.....	24
5. Certificate of Service.....	
6. Certificate of Compliance.....	

TABLE OF AUTHORITIES

Cases	Page
Verizon Servs. Corp. v. Cox Fibernet Va., Inc., 602 F.3d 1325, 1331 (Fed. Cir. 2010)	8
<u>Teleflex</u> , Inc. v. Ficosa N. Am. Corp., <u>299 F.3d 1313</u> , 1323, 63 USPQ2d 1374, 1379 (Fed. Cir.2002) (citing Anderson v. Liberty Lobby, Inc., <u>477 U.S. 242</u> , 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).....	8
Cybor Corp. v. FAS Techs., Inc., <u>138 F.3d 1448</u> , 1456, 46 USPQ2d 1169 1174 (Fed. Cir.1998) (en banc).....	9
INVST Fin. Grp., Inc. v. Chem-Nuclear Sys., Inc., <u>815 F.2d 391</u> , 399 (6th Cir. 1987).....	12
Smith v. Comm'r of Internal Revenue, <u>926 F.2d 1470</u> , 1480 (6th Cir. 1991) (internal alteration omitted) (quoting INVST, <u>815 F.2d at 399</u>).....	12
Brookhill-Wilk 1, LLC. v. Intuitive Surgical, Inc., 334 F.3d 1294 (Fed. Cir. 2003).....	16,21,22
Teleflex, 299 F.3d at 1328, 63 USPQ2d at 1382-83; Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc., 289 F.3d 801, 809, 62 USPQ2d 1781, 1785 (Fed.Cir. 2002).....	16
Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed.Cir.2001).....	17
Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986).....	18

Amini Innovation Corp. v. Anthony Cal., Inc., 439 F.3d 1365, 1368 (Fed. Cir. 2006).....	19
Kreighbaum v. First Nat’l Bank & Trust, 776 N.E.2d 413, 419 (Ind.Ct.App.2002).....	19
<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U. S. 242, 255 (1986).....	8,21

STATUTES AND RULES

Fed.R. Civ. P. 60(b)2.....	2,4,5
Fed.R. Civ. P. 62.1.....	2,5
28 U.S.C. § 1295(a)(1).	2
USPTO 35 U.S.C. 112	3
Fed. R. Civ. P. 56(a)).....	18
35 U.S.C. § 112 ¶ 6.....	3

ORAL ARGUMENT

If this case should not be remand for trial on the merits of Appellant's Appeal Brief and the court has questions in regards any matters Appellant asks that the court may allow him to answer any questions court may have in oral argument as nobody knows this invention and can speak for it, better than the Appellant.

STATEMENT OF RELATED CASES

This Appeal Appendix (Appx8) filed 16th April, 2017 relates to new additional supportive non cumulative evidence the Appellant [Baker] would like court to consider against early summary judgment grant to the Appellees in U.S District Court for the Western District of Washington, Case No 2:16-cv-00396-RAJ, Baker v. Microsoft Corporation et al. This new evidence filed under Fed.R. Civ. P. 60(b)2 timely motion he has asked the district court for indicative ruling on under a Fed.R. Civ. P. 62.1 motion and Order response District Court Appendix Appx7-43, 31st March, 2017 was meritless. Baker also filed a timely appeal against early summary judgment grant but mistakenly in the wrong court, the Ninth Circuit Case No. 17-35098 February 2, 2017 and a motion 1st March, 2017 asking Ninth Circuit if they could transfer case to US Court of Appeals for the Federal Circuit and opening brief against summary judgment in the Ninth Circuit as he was given a filing date of May 12, 2017.

JURISDICTIONAL STATEMENT

The congress has directed that appeals of patent cases shall be heard by the Court of Appeals for the Federal Circuit and shall have exclusive jurisdiction to decide such cases. 28 U.S.C. § 1295(a)(1). Order appealed from Appx2 Order, March 17, terminating Appx3 and Appx4 and March 31 Order Appx1 a FRCP 62.1 Indicative Ruling Appx6 request in regards his timely filed 60(b)2 motion. Baker sought indicative ruling from district court first to see if the court would rule favorably on his 60(b)2 motion if it actually had jurisdiction, the court seems in Order Appx7 to have considered his request under his earlier filed Motion for Reconsideration Appx2 of which was not his intention and advised meritless. This appeal has been filed so the court can now consider Baker's new evidence which he believes offers a meritorious defense to early summary judgment which if he would have recognized earlier would likely have altered the verdict and finding.

STATEMENT OF THE ISSUES

I. Whether the district court erred, and made clearly erroneous decision, by determining and granting Appellees (Defendants) Motion for Summary Judgment that their accused systems working in close proximity/vicinity to a person having their motion captured via camera did not meet all the limitations of Baker's (Appellants) U.S.A. Patent No. 5,486,001 ('001) Appx9 claims and specification.

II. Whether the district court erred, and made clearly erroneous decision in determining Baker's two audio-visual transceivers cannot be in close proximity to person/s having their motion captured via camera.

STATEMENT OF THE CASE

This is an appeal from an early summary judgment request, by Appellees that Baker was not entitled to – *work his computer in close vicinity proximity to a person who was having their motion captured via camera*, when he mentions in '001 patent – *motion capture camera was in first location connected to a remote computer in second location via a communication means*. Appellees requested the district court to consider this narrow question only. Baker pleaded his was entitled to work his computer in this position under his approved '001 patent claims and pioneer inventor DOE AAT rights. Appellees' Microsoft Corporation, et al., initiated this action seeking early summary judgment on 17th June, 2016 (Dist. Ct. Dkt. 130). On 9th July, 2016 (Dist. Ct. Dkt. 133), Baker filed his answer asserting numerous defenses, including the defense of Appellees and Baker's systems work the *same*, he only had a obligation at prosecution to mention to USPTO examiner best mode of operation which he had a legal responsibility to do under USPTO 35 U.S.C. 112 and no estoppel took place of which could limit his pioneer inventor DOE AAT rights to claim Appellees are working an equivalent machine to a 1991

mainframe computer he thought could make the invention, of which came up to speed way after his invention issued, from 2006 onwards. Appellees' filed their Response to Baker's Reply on 15th July, 2017, Dist. Ct. Dkt. 134. On January 3, 2017 Appx1, the district court issued its Memorandum Opinion Order granting Appellees summary judgment concluding that Baker could not work his mentioned "remote computer" in close proximity to a person having their motion captured via camera and so Appellees' accused systems did not literally infringe Baker's claims and in finding a limitation district court also denied Baker's AAT DOE rights. Baker then filed a Motion for Reconsideration Appx6 but being pro se, with no excuses, Baker missed the time limit. Baker then filed a timely 60(b) motion 9th February, 2017 Appx3, subject of this appeal, to provide new additional supportive evidence that showed:

- (a) by the use of a peripheral device camera the same as Baker's specification Appellees met every one of Baker's claim limitations contrary to district courts decision
- (b) Baker could work his computer in close vicinity to person having their motion captured via camera over a network, basically anywhere
- (c) Microsoft's own issued US 8,418,085 Gesture Coach patent Appx9, for the accused Kinect camera working with Xbox 360 PC also spoke of working a remote computer over a network the same as Baker's patent

(d) New evidence in regards to US 8270604 B2 Appx11 of which shows USPTO did not put a restriction on these inventors as to where they could work their invention over a network, when they too as Baker said, camera was in a first position, location Appx11 –97 line 34 connecting to a remote computer at a second location position Appx11 –97 line 50 via a “network” communications means Appx11–97 line 33. Also they never mentioned like Baker (a) what sort of computer was being using or (b) how far away it was from camera.

As part of this appeal Baker would like the court to consider his motion for leave to file additional evidence, on the 14th February, 2017 Appx4 that Appellees systems were working a modern day equivalent of his two audio-visual transceivers mentioned in ‘001 patent Appx9, in the same room as a camera when the district court said Baker’s two audio-visual transceivers could not be working in the same room, which went towards supporting the district courts summary judgment grant to defendants. Baker asked the district court on 30th March, 2017 Appx6 to give an indicative ruling on his new evidence contained in Appx3, Appx 4 under FRCP 62.1 on a 60(b) motion, hoping for a remand of this case to trial but the district court seems to have in Appx1 considered his motion under his earlier filed Appx2 Motion for Reconsideration. Baker is thinking this may have happened because on stepping through district courts CM/ECF system to file his indicative ruling request Appx6 his document did not seem to get classified under a

miscellaneous submission as recommended by the CM/ECF system, Wishing to preserve this additional supportive evidence contained in Appx3, Appx4 after summary judgment for US Court of Appeals for the Federal Circuit to review and feeling from district court order Appx7 he was nearly being held in contempt of court for trying to get his additional evidence reviewed, the order was final, with only final judgment to be handed down to Appellees he then filed this additional appeal.

A. The Parties

Richard (Rick) Baker is a Australian Golf Professional who thought of this invention which allows a computer for the first time to “automatically” produce a personalised coaching video for a person in 1991, when the Internet was in its infancy and personal computers, games consoles lacked the processing capabilities of today’s machines. Microsoft Corporation; Ubisoft, Inc.; Nintendo of America. Inc.; Electronic Arts Inc.; Harmonix Music Systems, Inc.; Majesco Entertainment Company, are leading designers suppliers’ of computer hardware and software products.

SUMMARY OF THE ARGUMENT

Appellees in their early summary judgment request asked the district court to consider this narrow question only:

- was Baker entitled to work his remote computer mentioned in ‘001 patent,

Appx9 *in close vicinity proximity to a person* having their motion captured via camera, when he also mentioned

- motion capture camera was in *first location* and it was connected to a remote computer in *second location* via a *communication* means.

Baker pleaded his was entitled to work his computer in close vicinity proximity to a person having their motion captured via camera under his approved ‘001 Appx9 patent claims, pioneer inventor DOE AAT rights. Appellees' Microsoft Corporation, et al., initiated this action seeking early summary judgment on 17th June, 2016 (Dist. Ct. Dkt. 130). On 9th July, 2016 (Dist. Ct. Dkt. 133), Baker filed his answer asserting numerous defenses, including the defense of Appellees and Baker’s system work the *same*, he only had a obligation at prosecution to inform USPTO examiner the best mode of operation of the invention and no estoppel took place, which is covered in separate Ninth Circuit appeal document No. 17-35098.

The Appellees believe Baker was only approved by the USPTO to work his remote computer *outside of a room* and Appellees can work their accused computers *inside the four walls of room* and not be on Baker’s claim limitations because Baker mentioned use of a “*remote computer in a second location to a camera.*” All the court needs to consider to place Appellees accused systems working precisely on Baker’s ‘001 Appx9 claim limitations, no matter where Appellees computers are located – do Appellees systems use:

(a) motion capture camera mentioned?

(b) are they using a communications means which can transmit motion captured data from camera to computer?

(c) do Appellees accused systems use a computer which has the ability to display an audio-visual presentation on a screen?

leaving it then to be decided by a trial court if Appellees promoted and sold for profit Baker's inventive algorithm.

Further, the district court said in Appx1-7 line 19 Baker's use of two audio-visual transceivers in his patent could not be in same room. Baker points out herein at page 21 how the Appellees accused systems use modern day equivalent of his audio-visual transceivers, USB Bus with their computers.

LAW AND ARGUMENT

Appellate Standards of Review. The Court of Appeals for the Federal Circuit applies a wide range of standards of review, but in appeals from district courts, the most common are de novo, clearly erroneous, substantial evidence, and abuse of discretion. For issues such as judgments as a matter of law, the Federal Circuit will apply regional circuit law. *See, e.g., Verizon Servs. Corp. v. Cox Fibernet Va., Inc., 602 F.3d 1325, 1331 (Fed. Cir. 2010) See Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1323, 63 USPQ2d 1374, 1379 (Fed. Cir.2002) (citing *Anderson v.**

Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

The grant of summary judgment in this case was predicated on the parties' stipulation of the factual component of the infringement question, leaving only the issue of claim construction for appeal. Claim construction is a question of law that this court reviews de novo. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1456, 46 USPQ2d 1169, 1174 (Fed. Cir.1998) (en banc).

ARGUMENT

I. Whether the district court made clearly erroneous determination by granting Appellees (Defendants) Motion for Summary Judgment that their accused computers working in close proximity to a person having their motion captured via camera did not meet all the limitations of Baker's (Appellant's) U.S.A. Patent No. 5,486,001 ('001) Appx9 claims and specification.

II. Whether the district court made clearly erroneous determination that Baker's audio-visual transceivers cannot be in close proximity to person having their motion captured via camera.

I. The District Court erred in granting Appellees Summary Judgment as they are working Appellants claim limitations with only thing left for trial court to consider are they working Baker's inventive algorithm

A. Baker's 1996 Personalised Instructional Aid U.S.A No.5,486,001 patent

See Appx8

B. Use of a “peripheral” device camera puts Appellees accused systems working directly on Baker’s US Patent claim limitations anywhere

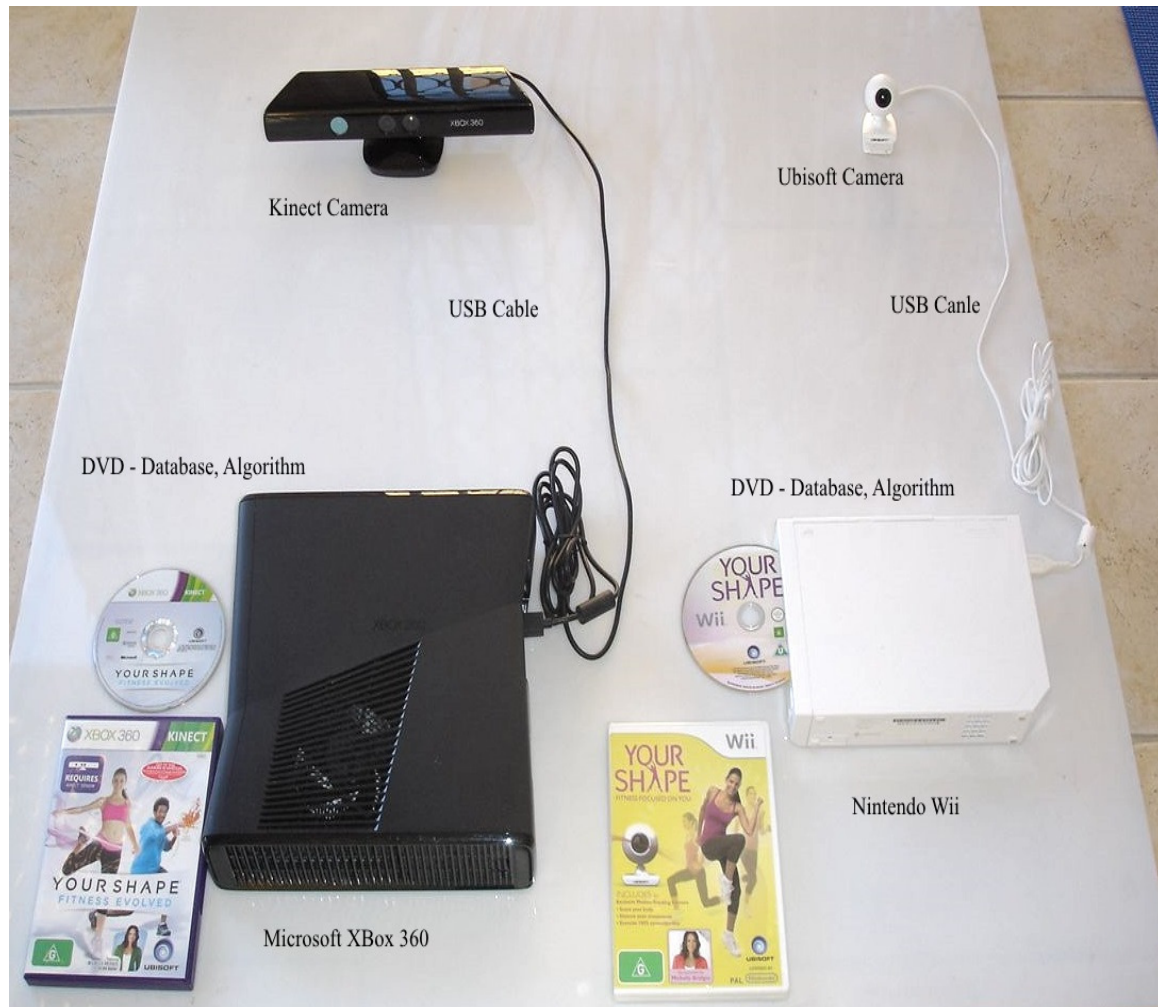


Fig.1

Baker presented to the district court in opposition summary judgment on page 5 Dist. Ct. Dkt. 133 above picture of accused systems, and explained how Appellees cameras are connected to Xbox 360 and Wii games console via a USB cable. Explained Page 3 line 24 – Page 5 line 18 how he “never said” during prosecution how far away his computer was from first location [where camera is located], a

few inches or around the world and on Page 4 line 18 – Page 6 line 3 how his system and accused systems “work the same”. All the defendants have done is to use a modern day after-arising technology DVD to load his inventive algorithm onto their modern computers which then allows them to manufacture and show Baker’s personalised audio-visual teaching presentation in close proximity to a person who’s motion was being captured via camera on a screen, see Fig 3.



Fig.3

This is why the Appellees asked the district court to determine narrowly tailored question - if under Baker’s issued patent claims and DOE AAT rights could he, without considering they may work his inventive algorithm on their computers, work his computer in same “vicinity room”, Dist. Ct. Dkt. 130 Page 11 line 26 to a person who was having their motion captured via camera in the same “physical location” they say, line 15.

District court ruled in their Memorandum Summary Judgment Order dated

January 3, 2017 Appx1-6

The Court agrees that Defendants' accused products do not literally infringe Claims 1, 10, and 18 of the '001 Patent.

and by believing this the district court found limitation to dismiss all of Baker's pioneer inventor DOE and AAT rights as well. The district court got things terribly wrong and Baker shows below and presented in this appeal document Appx3 how his approved USPTO claims of which do allow him to work his invention not just on any computer but anywhere, contrary to district court summary judgment decision. The Appellant presents below (1) operative facts constituting prima facie evidence of a meritorious defense and (2) facts explaining why his failure to submit this information at summary judgment was not culpable conduct. A defendant need not establish a "likelihood of success" on the merits to establish a "meritorious defense." *INVST Fin. Grp., Inc. v. Chem-Nuclear Sys., Inc.*, 815 F.2d 391, 399 (6th Cir. 1987). Rather, "A defense is sufficient if it contains even a hint of a suggestion which, proven at trial, would constitute a complete defense." *Smith v. Comm'r of Internal Revenue*, 926 F.2d 1470, 1480 (6th Cir. 1991) (internal alteration omitted) (quoting *INVST*, 815 F.2d at 399).

Baker's new non cumulative evidence defense:



Fig.1

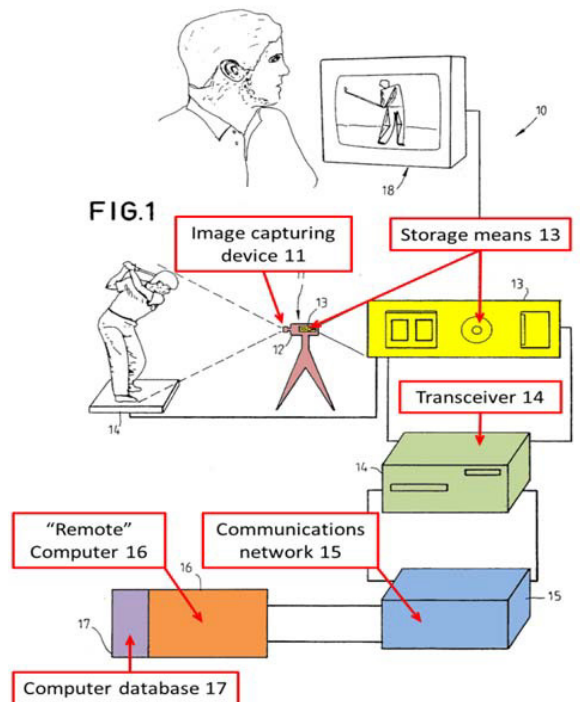
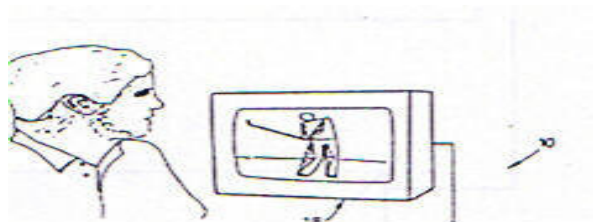


Fig.2



Fig.3



Baker's '001 Appx9-52, lines 15-34 split screening, super imposing etcetera on a monitor

1. Both Appellees Fig. 1 above, Dist. Ct. Dkt. 130 Page 6 and Baker Fig.2, also see '001 patent Appx9-52 line 12 are using a "Peripheral" device camera not affixed to computer. Peripheral is (of a device) able to be attached to and used with a computer, though importantly not an integral part of it, which connects to a computer via a communications means. Baker's patent mentions use of

communications means between camera and computer. Appellees camera and computer communicates via USB cable seen in Fig.1. Baker said in his '001 Appx9 patent claims and specification camera was at “first location which is correct if it’s not physically attached to a computer, and both are connected via communication means.

2. If peripheral device camera is in a first location which connects to a computer via a communications means mentioned in '001 this would place Baker’s computer at a “second location” “remote” from first, correctly identified in '001 patent, Appx9 claims and advised to the USPTO. It is a “remote computer” in a second location. Appellees accused systems because they also use a peripheral device camera and connect it to computer, games console are actually connecting to a remote computer as well in a second location. Appellees are working their accused computers in the same location as Baker’s patent claims.

3. Nowhere can Baker produce his invention knowing that his remote computer only has to be “separated” from peripheral device camera, using a “communications” means and he made no mention ever what type of computer is used, only that it is remote?

This all depends on what type of computer Baker’s peripheral device camera is connecting to via communications means. If it’s a PC or Games Console computer that most people have in the home, then this computer is likely to be in very close

proximity to person whose motion was being captured by peripheral device camera, so Baker's invention algorithm, as approved by USPTO in 1996 could be generated, shown via association with a PC or Games Console computer, the accused computers in very close vicinity, (same room) as a person whose motion was being captured via peripheral device camera. The Appellees accused systems work this way so they are working on Baker's '001 Appx9 patent claims at this stage, their summary judgment argument that Baker cannot work his computer in close vicinity to person having their motion captured via camera is disproved.

If the computer being connected to via peripheral device camera was a Server or Mainframe. Most people do not usually have one of these in the home, especially in 1991, this computer is likely to be outside of a room where a person was having their motion captured via peripheral device camera, so Baker's approved 1996 USPTO claims also allow him to work his invention outside of room as well, basically anywhere.

The above is not cumulative evidence, it is non cumulative because Baker has never put forward the Appellees work a "*peripheral*" device camera not affixed to computer via network covered via his '001 patent Appx9. It allows the court to view the Appellees accused systems in a different light and puts a different spin on things as to how the Appellees meet Baker's claim limitations the way their systems work currently without even considering infringement of his DOE AAT

rights. This new evidence came about because Baker was forced to do further due diligence after the district court made a determination in summary judgment against known networking of devices which put a *divide* on a network when there is no divide on a network - Appellees can work their computers inside a single room, four walls of a room, where Baker cannot and ruled against Federal Circuit previous ruling in Brookhill-Wilk 1, LLC. v. Intuitive Surgical, Inc., 334 F.3d 1294 (Fed. Cir. 2003) that a “remote” “expert” can be in same room if not *physically touching* person.

This case was important to Baker because his invention works via “virtual expert”, a digitally replicated version of a real experts thoughts, knowledge and movements which can be stored in the database of a computer, which then allows an expert to provide real help to a person, like the surgeon in Brookhill-Wilk, again without physically touching person (physically adjusting their technique for sports coaching etcetera) or even needing to see a persons movement.

In Brookhill-Wilk 1, LLC. v. Intuitive Surgical, Inc the court also stated at [36]

Absent a clear disclaimer of particular subject matter, the fact that the inventor anticipated that the invention may be used in a particular manner does not limit the scope to that narrow context. See, e.g., Teleflex, 299 F.3d at 1328, 63 USPQ2d at 1382-83; Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc., 289 F.3d 801, 809, 62 USPQ2d 1781, 1785 (Fed.Cir. 2002). Where, as here, the written description and prosecution history fail to express a manifest exclusion or restriction limiting the claim term, and where the written description otherwise supports the broader interpretation, "we are constrained to follow the language of the claims," Teleflex, 299 F.3d at 1328,

63 USPQ2d at 1382-83, and to give the claim term its full breadth of ordinary meaning as understood by persons skilled in the relevant art. See Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed.Cir.2001). As such, we construe the term "remote location" to encompass not just locations that are "far apart" or "distant," but also those locations that are merely "separated by intervals greater than usual." Webster's at 1921. These locations need not be outside the operating room.

The summary judgment argument Appellees can work their accused computers in a single room where Baker cannot does not stack up, because Appellees are on Baker's patent limitations from the moment they connect a peripheral device camera over a network to their computers, no matter where their computers are located. The district court could not see this and made the following determination, Appx1-12-14

- *Defendants' accused products do not literally infringe Claim 1 of the '001 Patent. Here, the accused products, contrary to the limitations required by Claim 1, do not require the capturing of visual images "at a first location," followed by the subsequent storage of those images "at a second location remote from said first location." The Kinect Sensor and the USB camera are in the same room as the computer (in this case the accused game consoles and PCs) that stores, analyzes, and generates subsequent visual images. The accused game consoles and PCs are thus not located "at a second location remote from said first location." By design, the Kinect Sensor and USB camera are physically connected to the accused game consoles and PCs. Defendants' accused products likewise do not literally infringe the claim limitation which requires "transmitting said captured and stored visual image signals from said first location to said computer at said second location."*

Claim 10 of the '001 Patent is also not literally infringed. Here, a Claim 10 limitation requires a "means for storing said captured visual image signals at a second location remote from said first

location.” The claimed function in this limitation requires storing of captured visual image signals at a second location remote from the first location. Here, Defendants’ accused products are within the same room and the storage of signals “at a second location remote from said first location” does not occur. Because identity of function between the accused products and this Claim 10 limitation is lacking, literal infringement cannot be found.

Independent Claim 18 is likewise not literally infringed. Claim 18 requires a “means for transmitting said representative visual and informational data signals to a remote location.” The ‘001 Patent’s specification describes the corresponding structure to this recited means as an audio-visual transceiver that “may take the form of a portable signal unit or a personal computer.” Dkt. #131, Ex. 3 at 7. The function claimed is the transmitting of the visual and informational data signals “to a remote location.” The identical function of this Claim 18 limitation is not found in the accused products because those products are all within the same room as a user, and they do not transmit signals to a “remote” location. Because no identity of function exists between the accused products and this Claim 18 limitation, literal infringement cannot be found. In summary, because Defendants’ accused products do not contain each limitation of Claims 1, 10, and 18, the Court does not find literal infringement of those claims.

C. SUMMARY JUDGMENT WAS NOT APPLICABLE CLEARLY ERRONEOUS

Summary Judgment is only appropriate if the record shows ‘that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” Id. (quoting Fed. R. Civ. P. 56(a)). The relevant inquiry on summary judgment is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52

(1986). The district court, in reaching a narrower construction, erroneously imported limitations into Baker's claims, by reading in limitations where there is none – Baker's '001 patent shows Appellees by their use of a peripheral device cameras and connecting them to computers via a network communications means such as USB are on Baker's claim limitations exactly, the camera is in first location and computer in second location remote from first, without needing to consider his DOE AAT rights. The district court should have recognized the existence of this substantial issue of material fact, barring summary judgment. To overturn summary judgment, the non-movant need only show that one or more facts on which the district court relied was genuinely in dispute and was material to the judgment. *Amini Innovation Corp. v. Anthony Cal., Inc.*, 439 F.3d 1365, 1368 (Fed. Cir. 2006). Even if the trial court does not believe that the moving party will be successful at trial, summary judgment should not be entered where material facts conflict or where conflicting inferences arise from undisputed facts.

Kreighbaum v. First Nat'l Bank & Trust, 776 N.E.2d 413, 419 (Ind.Ct.App.2002).

2. Whether the district court erred made clearly erroneous determination that Baker's two audio-visual transceivers cannot be in close proximity to person having their motion captured via camera

In the district courts summary judgment grant Appx1-9 the district court formed an opinion, see below, that went towards convincing the district court summary judgment to Appellees was appropriate, that Baker could not be working his two

audio-visual transceivers mentioned in '001 patent. Appx9 claim 12 and specifications in close proximity to a person having their motion captured via camera in same room and gave this opinion:

That “remote” simply indicates physical separation between devices is further belied by the specification’s description of the audio-visual signal transceiver required by the ‘001 Patent. Id. The specification’s use of the term “discrete” to describe the separation of units within the same room indicates that “remote” data bases cannot be within the same room as a user.

In regards the word “discrete” found in Appx9-51 line 6 of '001 patent surrounding this word comes:

The image capturing device 11 referred to above in one form is a unit “discrete” from the audio-visual signal transceiver 14 and adapted to be connected thereto or the two may be one and the same, so that the image capturing device 11 also incorporates a unit for transmission and reception of signals to and from remote data bases.

All the above is talking about put simply is Baker’s image capturing camera can have affixed, within its hardware, a means to transmit (audio-visual transceiver) a persons captured movement to and from computer database/s or his audio-visual transceiver can be a separate unit. This is also important in regards determining if Appellees are working Baker’s issued patent claims. At Dist. Ct. Dkt. 133 Page 5 lines 15-18 Baker pointed out to the district court Appellees systems operate the same way, their systems capture a person movement via Microsoft Kinect and Ubisoft cameras and transmit it to Xbox and Wii computers pictured, see Fig.1 Page 10 so as to allow their computers to then make and show the Applicants

personalised audio-visual instructional video on a screen, but the district court took no notice, when summary judgment is supposed to favor or support plaintiffs contentions and remand for trial if valid grounds are found. [t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 255 (1986). Again right at this point the Appellees are working on Baker approved claims, there is no need to determine where Baker can work his invention as Appellees are working on his claim limitations. In Appx10-85 line 55 Appellant shows how the Appellees via use of a “*systems bus*” are also working two modern transceivers in same room where district courts said Baker could not be working his two audio-visual transceivers in same room. Baker also shows below how district court made a determination, which went against this courts Brookhill determination that concluded district court erred in construing the limitation "remote location." Brookhill is similar to Baker’s invention in many ways until providing help. Brookhill use a camera endoscopic instrument, which has to be a peripheral device as its not permanently attached to computer, its in a first location and a *transmitter* associated with this instrument, same as Baker’s mentioned audio-visual transceiver to transmit captured video over a communications means to a computer which in Brookhill has an associated *receiver* at computer end, again same as Baker’s use of second audio-visual transceiver, then once the data has come into

computer in Brookhill, which then must also be in second location remote from first as per Baker's invention, the computer has communications means to send a video to a screen for a surgeon to view in room or anywhere in the world for that matter and perform an operation via manipulating surgical instruments. By this way of doing things the *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc* court found a surgeon could operate in same room because they where *not physical touching the patient*. Baker's invention works same way until point of data is coming into the computer, of which places Appellees accused systems on Baker's claim limitations for this instant case, but then Baker's algorithm allows expert to provide help in a different way to surgeon in Brookhill, by generating a personalised audio-visual teaching presentation so experts can pass on their knowledge, similar to way human's communicate today but without needing to see a person. Baker's invention allows a computer to act for an expert person so they can pass on their knowledge like face to face communications today without the need to see or touch a person, person simply stands in front of camera, Baker's invention captures their motion, sends it to computer and person receives back on a screen a personalised audio-visual teaching presentation as to how to improve their technique like expert was in attendance with the person. Old prior art before Baker's '001 patent.

A. Microsoft Also Mentions A PC Can Be Remote Computer

In Appx3 Baker attached Exhibit I, Microsoft US 8,418,085 B2 “Gesture Coach” patent Appx10 approved by USPTO in 2013 that Microsoft claims allows them to work their PC in single room where Baker’s 1992 remote computer cannot work in same location. The invention he believes should not have been issued reads on Baker’s prior art in regards - motion capture of persons movement via peripheral device camera, transmitting motion to computer to be analysed, computer generating a visual presentation which shows a user their motion on a screen against selected experts motion and providing audio instructional comments with the visual presentation Appx10-78, lines 47- 61. This patent mentions at Appx10-79, lines 60-66

*As shown in FIG. 2, the capture device **20** may be in communication with the computing environment **12** via a communication link **36**. The communication link **36** may be a wired connection including, for example, a USB connection, a Firewire connection, an Ethernet cable connection, or the like and/or a wireless connection such as a wireless 802.11b, g, a, or n connection,*

then at Appx10-85, lines 36- 42

*The computer **241** may operate in a networked environment using logical connections to one or more remote computers, such as a remote computer **246**. The remote computer 246 may be a personal computer, a server, a router, a network PC, a peer device or other common network node, and typically includes many or all of the elements described above relative to the computer 241*

Microsoft is saying above a PC, their accused computer, can be a remote computer when connected over a network but on the other hand are saying Baker’s remote computer in this instant case cannot be in same room. The Nintendo Wii computer

with Ubisoft camera work same way.

CONCLUSION

In summary, the district court in reaching a narrower construction, erroneously imported limitations into Baker's claims, by reading in limitations where there is none. The Appellees are working on Baker's claims with only his algorithm to be decided. The grant of summary judgment was clearly erroneous due to the presence of questions of operative facts shown herein and within his earlier Dist. Ct. Dkt. 133 stemming from Baker's intrinsic evidence. It was entirely unreasonable to make on the evidence. The district court improperly weighed and applied that intrinsic evidence and made factual determinations that should have been left to the jury after hearing expert testimony. The district court's grant of summary judgment should therefore be reversed, case remanded for trial and any district court judgments against Appellant rescinded.

Baker v Microsoft Corporation; et al., 17-1928

PROOF OF SERVICE

I hereby certify on June 5, 2017, I sent one copy of Appellant's Opening Brief Appendix, by Electronic Email to:

Jonathan L McFarland JMcFarland@perkinscoie.com,
Nintendo of America, Inc Counsel

Michelle Lyons Marriott michelle.marriott@eriselP.com,
Ubisoft, Inc Counsel

Sonal N Mehta smehta@durietangri.com,
Microsoft Corporation, Electronic Arts Inc Counsel

Linda Jean Thayer linda.thayer@finnegan.com,
Harmonix Music Systems, Inc Counsel

Patrick J Coyne Patrick.Coyne@finnegan.com,
Harmonix Music Systems, Inc Counsel

Scott Kaliko skaliko@srfklp.com,
Majesco Entertainment Company Inc Counsel

Attorneys for the Defendants Appellees

DATED: June 5, 2017

By 

Richard J Baker

Pro Se Appellant
9 Deloraine Court, Mermaid Waters
Queensland Australia 4218
Telephone: (61 7) 5526 5523
Email:rb@personalised-video.com

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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