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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

16 VIASAT, INC.,
17 VIASAT COMMUNICATIONS, INC.,
f/k/a WILDBLUE
18 COMMUNICATIONS, INC.,

19 Plaintiffs,

20 vs.

21 SPACE SYSTEMS/LORAL, INC.,
LORAL SPACE &
22 COMMUNICATIONS,
23 INC.,

24 Defendants.

CASE NO. 3:12-cv-00260-H-WVG

**[PUBLIC REDACTED]
VIASAT'S OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OF NON-
INFRINGEMENT OF U.S. PATENT
NO. 8,107,875**

Judge: Hon. Marilyn L. Huff
Courtroom: 15A
Date: January 17, 2014
Time: 9:00 a.m.

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1 According to candid and damaging admissions from their own internal
2 documents, [REDACTED]
3 [REDACTED]
4 [REDACTED]. ViaSat-1 was the first satellite to
5 embody ViaSat's innovative technology for maximizing bandwidth in a spot beam
6 satellite through strategic beam placement and color re-use, which is claimed in the
7 asserted U.S. Patent No. 8,107,875. Applying one broad claim interpretation,
8 Defendants admit that the ViaSat-1 satellite practices the '875 patent. Yet, by
9 applying a different, narrower claim construction in this motion, they argue that the
10 [REDACTED] Jupiter-1 satellite does not. That position is belied by the detailed, three-
11 hundred page report from Dr. Chris Bartone, an expert on satellite design, detailing
12 multiple instances of infringement in the Jupiter-1 satellite. Defendants' argument
13 that there is not even substantial evidence of infringement is contrary to their own
14 admissions and inconsistent application of the claims, and is a transparent attempt to
15 escape liability.

16 This is, in fact, Defendants' fourth attempt to escape liability for their
17 [REDACTED] through pretrial
18 motion practice. First, Defendants moved for summary judgment on the appropriate
19 priority date for the '875 patent, which the Court denied. (Dkt. 306; Dkt. 433.)
20 Second, Defendants moved to strike the expert report of Dr. Bartone in which he
21 provided his opinion on how Defendants' infringe the '875 patent, which the Court
22 also denied. (Dkt. 461; Dkt. 495.) Third, Defendants moved to exclude Dr.
23 Bartone's testimony, this time based on claim construction arguments Defendants'
24 failed to present at the claim construction hearing. (Dkt. 526.) Finally, Defendants

1 filed this fourth attempt at disposing of the '875 patent. Like Defendants' previous
2 motions, it too should be denied. This Court has already held that there are factual
3 disputes regarding this patent, and there is no basis for reconsidering the Court's
4 prior decisions.

5 **BACKGROUND**

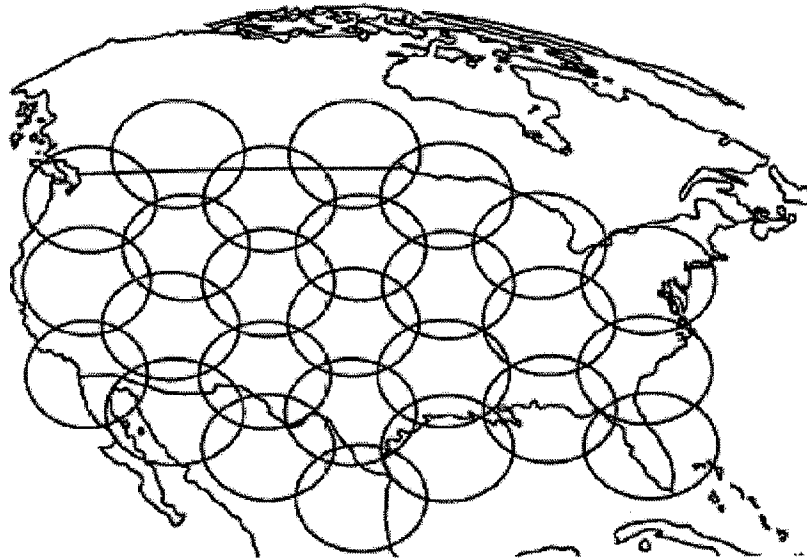
6 **I. THE '875 PATENT**

7 The '875 patent describes a spot-beam satellite system designed to make more
8 efficient use of the limited spectrum available to satellite systems. The patented
9 system is comprised of gateways connected to a network (*e.g.*, the internet),
10 numerous subscriber terminals that customers use to access the system, and a
11 satellite that links the two types of components. (Smith Dec. Ex. 1 at Fig. 1A.) The
12 beam that connects the satellite to the gateway is a "feeder beam," and the beam that
13 connects the satellite to the subscriber terminal is a "service beam." (*Id.*)

14 Satellite communications systems have limited frequency bandwidth with
15 which to convey information. Gateways and subscriber terminals may use "colors"
16 to divide the bandwidth. (*Id.* at 1:51-53; Bonn Dec. Ex. 2 at ¶ 55.) In systems
17 where gateway terminals and their associated feeder beams are located within the
18 geographic coverage area of the service beams, the satellite designer must typically
19 reserve certain portions of the frequency spectrum for feeder beams, and other
20 portions for service beams in order to avoid interference. (*Id.* at ¶¶ 60-63.)

21 The '875 patent facilitates color re-use between feeder beams and service
22 beams, which thereby increases the system's overall data-carrying capacity. (*Id.* at
23 ¶¶ 56 & 65-71.) In particular, it describes a more efficient geographic placement of
24 gateway terminals to avoid interference and enhance color re-use. (Smith Dec. Ex.

1 1 at 15:62-16:62.) Prior to the '875 patent, broadband internet satellites focused on
2 providing full service beam coverage over the continental United States, referred to
3 as "full" or "ubiquitous CONUS." (Bonn Dec. Ex. 2 at ¶ 59.) A prior art example
4 of service beams covering the entire continental United States is depicted below:



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12 (Bonn Dec. Ex. 2 at ¶ 59.) Because the service beam coverage area included the
13 entire continental United States, gateway terminals were commonly placed within
14 these service beam coverage areas.
15

16 The inventors of the '875 Patent realized that by omitting service beams in
17 sparsely populated regions (resulting in "partial CONUS" coverage) and placing
18 gateway terminals in these sparsely populated regions, the feeder beam could reuse
19 all of the colors that were allocated to the service beams. (*Id.* at ¶ 65; Smith Dec.
20 Ex. 1 at 2:3-6, 7:22-24, 7:38-41, 14:9-14 & 15:62-16:62.) The patent therefore
21 describes geographically separating gateways and subscriber terminals, which
22 allows the gateways and subscriber terminals to re-use the same colors without
23 undue interference. (*Id.* at 15:62-16:62; Bonn Dec. Ex. 2 at ¶ 65.) To achieve
24 complete re-use of the uplink and downlink frequency bands by the feeder beam and

1 its associated service beams, the patent teaches that complete spatial isolation is
2 desirable. (*Id.* at ¶ 69; Smith Dec. Ex. 1 at 15:5-18.)

3 The '875 patent also introduced the concept of a "feeder beam coverage
4 area." Re-using service beam colors for feeder beams introduces additional
5 interference between feeder beams and service beams. (Bonn Dec. Ex. 2 at ¶ 68.)
6 As taught by the '875 patent, the "feeder beam coverage area" bounds the area in
7 which unacceptable interference will result between the feeder beam and a service
8 beam transmitting or receiving signals of the same color. (*Id.*; Smith Dec. Ex. 1 at
9 7:22-29, 15:52-56 & Fig. 2B.)

10 The '875 patent further acknowledges that, in striking a balance between the
11 competing goals of maximum color re-use and optimal service beam coverage area,
12 some overlap between feeder beam coverage areas and service beam coverage areas
13 can occur. The claims of the '875 patent are addressed to this situation in which a
14 feeder beam coverage area is "proximate" to a service beam coverage area and
15 complete re-use of color is therefore not possible. Asserted claim 1 therefore
16 recites:

17 [a] A spot beam satellite comprising:

18 [b] an antenna system configured to create a beam pattern having a
19 plurality of different colors, wherein a color has a unique combination
of frequency band and polarization,

20 [c] *the spot beam satellite being configured to receive data from a*
21 *plurality of service beams and from at least one feeder beam,*

22 [d] each service beam having an associated service beam coverage area

23 [e] and the at least one feeder beam having an associated feeder beam
24 coverage area,

[f] wherein the feeder beam coverage area is proximate to one or more of the service beam coverage areas,

[g] wherein *the at least one feeder beam and a service beam associated with each of the one or more service beam coverage areas proximate to the feeder beam coverage area are allocated different colors* from the beam pattern, such that signals associated with different colors differ by a frequency band, a polarization, or both a frequency band and a polarization,

[h] wherein the feeder beam coverage area is not proximate to one or more of the service beam coverage areas, and

[i] wherein a set of colors allocated to a service beam associated with each of the one or more service beam coverage areas not proximate to the feeder beam coverage area includes at least one same color allocated to the at least one feeder beam, such that signals associated with the same color have the same frequency band and polarization.

(Smith Dec. Ex. 1 at 23:55-24:16 (claim element lettering; relevant claim language emphasized).)

II. THE VIASAT-1 AND ACCUSED JUPITER-1 SATELLITES

The '875 patent was first practiced by ViaSat's ViaSat-1 satellite. (See Bonn Dec. Ex. 2 at ¶¶ 488-610; Smith Dec. Ex. 2 at 7.4.1.4.7.)¹ ViaSat is not, however, a satellite manufacturer. It therefore began discussing with Defendant SS/L the building of ViaSat-1 in early 2006. During the design process, ViaSat disclosed numerous proprietary technologies for its design, including the technology claimed in the '875 patent. (See Smith Dec. Ex. 3 at ¶¶ 39, 79-85, 95-103 & 110.)

While ViaSat and SS/L were working to build ViaSat-1, SS/L contracted with Hughes Network Systems ("HNS" or "Hughes") to begin building a competing

¹ Defendants do not dispute that the ViaSat-1 satellite practices the '875 patent. Their expert, Dr. Schindall, has provided an expert report opining that it practices the asserted claims in an attempt to prove that the satellite is itself prior art to the '875 patent. (Smith Dec. Ex. 2 at 95-100.)

1 broadband satellite that would become the accused Jupiter-1 satellite. The original
2 plan for Jupiter-1 was very different from ViaSat-1 and the '875 patent. For
3 example, [REDACTED]
4 [REDACTED]. (Smith Dec. Ex. 4 at
5 SSL0346214; Smith Dec. Ex. 5 at SSL0826283; Smith Dec. Ex. 6.) In a May 4,
6 2007 email, a Hughes Vice President wrote to SS/L [REDACTED]
7 [REDACTED]
8 [REDACTED] (Smith Dec. Ex. 7). [REDACTED]
9 [REDACTED]
10 [REDACTED] (Smith Dec. Ex. 8.)
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Smith Dec. Ex. 13.) [REDACTED]

[REDACTED]

[REDACTED]

Thus [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]—all made possible by the same technology claimed in the '875 patent and
2 used first on the ViaSat-1 satellite.

3 ARGUMENT

4 I. LEGAL STANDARD

5 Patent infringement is a question of fact. *Absolute Software, Inc. v. Stealth*
6 *Signal, Inc.*, 659 F.3d 1121, 1130-31 (Fed. Cir. 2011). To determine infringement,
7 the fact-finder compares the construed claims to the allegedly infringing device and
8 determines whether every limitation is present. *Gart v. Logitech, Inc.*, 254 F.3d
9 1334, 1339 (Fed. Cir. 2001).

10 Defendants bears the burden to establish the absence of any genuine issues of
11 material fact and legal entitlement to judgment. Fed. R. Civ. P. 56(c). Summary
12 judgment is proper only if no reasonable jury could find infringement. *Gart*, 254
13 F.3d at 1339. All of ViaSat's infringement evidence must be credited and all
14 justifiable inferences from that evidence must be drawn in ViaSat's favor. *Id.* A
15 conflict between the parties' experts on a material issue defeats summary judgment.
16 *Crown Packaging Tech., Inc. v. Ball Metal Beverage Container Corp.*, 635 F.3d
17 1373, 1384 (Fed. Cir. 2011).²

18 II. THERE IS SUBSTANTIAL EVIDENCE OF DEFENDANTS' DIRECT 19 INFRINGEMENT OF THE '875 PATENT

20 The evidence of Defendants' direct infringement of the '875 patent is not only
21 substantial, it is overwhelming. Because they believe it is prior art to the patent

22 ² See also *Metro. Life Ins. Co. v. Bancorp Servs., L.L.C.*, 527 F.3d 1330, 1339
23 (Fed. Cir. 2008) ("The conflict in [expert] declarations created a genuine issue of
24 material fact that made summary judgment inappropriate."); *Optical Disc Corp. v.*
Del Mar Avionics, 208 F.3d 1324, 1338-39 (Fed. Cir. 2000) (vacating part of
summary judgment where the parties' experts offered conflicting testimony).

1 (which it is not), Defendants argue that the ViaSat-1 satellite practices its claims.
 2 This admission, combined with [REDACTED]
 3 [REDACTED] is substantial evidence of infringement. ViaSat has
 4 also provided a three-hundred page expert report detailing how the copycat Jupiter-1
 5 satellite practices the asserted claims of the '875 patent. (Bonn Dec. Ex. 2.) That
 6 report provides a detailed, element-by-element explanation of infringement under
 7 the plain claim language and the Court's claim construction.

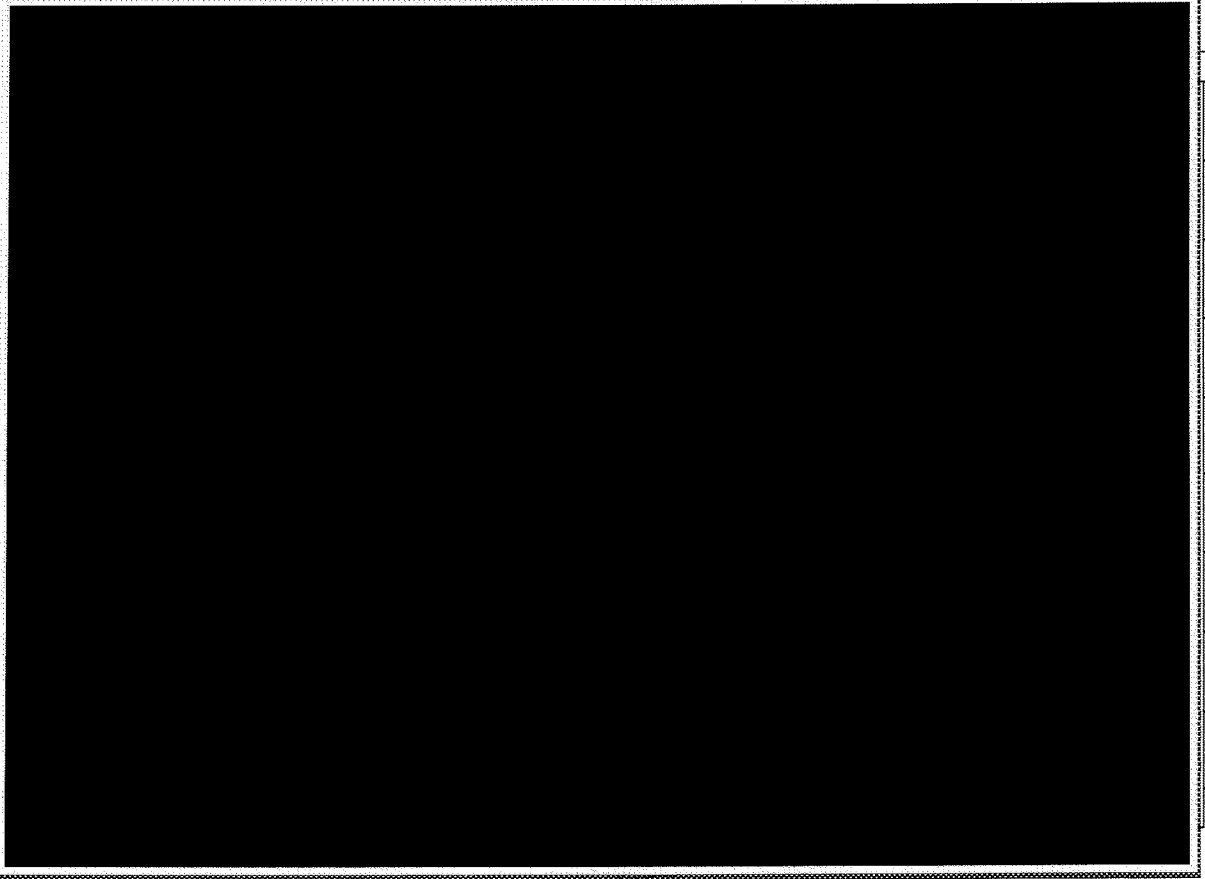
8 In their Motion, Defendants do not dispute that Jupiter-1 practices nearly all
 9 of the limitations of the asserted claims of the '875 patent. The only claim
 10 limitation that Defendants argue is not met is element [g], which requires a feeder
 11 beam and a proximate service beam to be "allocated different colors." (Mot. at 2.)³
 12 Defendants' arguments are, however, contrary to the plain claim language, the
 13 Court's claim construction, and statements by their own expert witnesses.

14 **A. Jupiter-1 Receives Data From Feeder and Service Beams with**
 15 **Proximate Coverage Areas**

16 Defendants do not dispute that the Jupiter-1 satellite receives data from
 17 proximate feeder and service beams. Defendants candidly admit in their Motion
 18 that, for example, [REDACTED]
 19 [REDACTED]
 20 [REDACTED]

21
 22 ³ Defendants move for summary judgment that this claim limitation is not
 23 infringed under the doctrine of equivalents. (Mot. at 12-13.) Although ViaSat has
 24 presented evidence that other claim limitations (not challenged in this motion) are
 infringed by equivalents (Bonn Dec. Ex. 2 at ¶¶422-53), it does not intend to prove
 infringement of this limitation under the doctrine of equivalents.

1 [REDACTED] (Mot. at 5.) This is illustrated in a graphic from Defendants'
 2 own Motion showing Jupiter-1's partial CONUS coverage:



15 (Mot. at 5.)⁴

16 **B. Jupiter-1's Proximate Feeder and Service Beams Are Allocated**
 17 **Different Colors**

18 Defendants also do not dispute that that these proximate beams use different
 19 colors.⁵ This is described in detail in the expert report of Dr. Chris Bartone. (Bonn
 20 Dec. Ex. 2 at ¶¶ 154-88.) As explained by Dr. Bartone, [REDACTED]

21
 22 ⁴ This is substantially similar to the partial CONUS beam map for ViaSat-1 that
 Defendants' expert opines practices the '875 patent. (See Smith Dec. Ex. 2 at 95.)

23 ⁵ Defendants state that, although they dispute Dr. Bartone's analysis of the
 24 "colors" employed by the Jupiter-1 satellite, they accept his "coloring for purposes
 of this motion." (Mot. at 6 n.2.) ViaSat therefore does not address that dispute here.

1 [REDACTED]
2 [REDACTED]. As explained by Dr. Bartone (and
3 Defendants do not dispute), [REDACTED]
4 [REDACTED]
5 [REDACTED]. (*Id.* at ¶¶ 161, 167, 173, 179 &
6 185.) This evidence is not only substantial, it is undisputed.

7 Defendants nevertheless argue that [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]. (Mot. at 6.) Defendants therefore identify a possible mode of use in
11 which they claim the Jupiter-1 satellite is not using the inventive concept of the '875
12 patent. This, however, does not establish non-infringement.

13 First, as described above, Defendants do not dispute Dr. Bartone's showing
14 that, [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]. It is
18 black-letter law that "infringement is not avoided merely because a noninfringing
19 mode of operation is possible." *Z4 Techs., Inc. v. Microsoft Corp.*, 507 F.3d 1340,
20 1350 (Fed. Cir. 2007); *see also Hilgraeve Corp. v. Symantec Corp.*, 265 F.3d 1336,
21 1343 (Fed. Cir. 2001) ("[I]n determining whether a product claim is infringed, we
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23 ⁶ The NGSO frequency band is a set of frequencies normally reserved for use in
24 non-geostationary orbit satellites. "NGSO mode" refers to a mode of operation that
uses this frequency band.

1 have held that an accused device may be found to infringe if it is reasonably capable
 2 of satisfying the claim limitations, even though it may also be capable of non-
 3 infringing modes of operation.”). Similarly, “[i]t is well settled that an accused
 4 device that ‘sometimes, but not always, embodies a claim nonetheless infringes.’”
 5 *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1333 (Fed. Cir. 2013) (quoting
 6 *Bell Commc’ns Research, Inc. v. Vitalink Commc’ns Corp.*, 55 F.3d 615, 622-23
 7 (Fed. Cir. 1995)). Here, the plain claim language simply requires that the satellite
 8 be configured to receive data from service and feeder beams that are allocated colors
 9 in the manner described. The satellite is, in fact, [REDACTED]

10

11 Second, Defendants’ expert admitted under oath that the [REDACTED]
 12 [REDACTED]. (Smith Dec. Ex. 15 at 131-[REDACTED]
 13 [REDACTED].) Defendants
 14 therefore base their non-infringement position on a mode of operation [REDACTED]
 15 [REDACTED]. Thus, contrary to Defendants’
 16 argument, the satellite has always been configured to infringe..

17

C. Jupiter-1 is Configured to Receive Data From Service and Feeder Beams

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19 Claim 1 of the ’875 patent requires that the accused satellite be “configured to
 20 receive data from a plurality of service beams and from at least one feeder beam.”
 21 Those beams must be allocated colors in the manner described by the claim. The
 22 claim does not state that the satellite itself must perform the allocation.
 23
 24

1 **1. There Is Substantial Evidence that Jupiter-1 Satellite Is**
2 **Configured to Receive Data from Service and Feeder Beams**

3 Defendants' own Motion demonstrates that all requirements of claim 1 are
4 met. First of all, Defendants do not dispute [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Further, Dr. Bartone testified that "[REDACTED]"

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Dr. Bartone's expert report contains even more extensive detail about how

24 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷

Defendants' own witnesses also described other aspects of Jupiter-1's configuration. For example, SS/L officer Hampton Chan testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷ Defendants argue that the Jupiter-1 satellite will function even if the coloring of its feeder and service beams is altered. (Mot. at 12.) The fact that the satellite is theoretically capable of operating with beams of different color allocations does not demonstrate that the satellite is not configured to operate with specific feeder and service beams that are, in fact, allocated colors as described in claim 1. That the plain claim language may encompass satellites that are also capable of operating with alternative beam configurations simply confirms the breadth of the claim, not non-infringement.

1 [REDACTED]

2 [REDACTED].

3 Defendants' own Motion excerpts one of the "[REDACTED]"

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED].

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] Defendants cannot contend that they have provided
18 clear and convincing evidence that the ViaSat-1 satellite is invalidating prior art
19 without identifying any "configuration" whatsoever while simultaneously arguing
20 that there is not even substantial evidence that Jupiter-1 practices this claim
21 limitation. *Source Search Techs., LLC v. LendingTree, LLC*, 588 F.3d 1063, 1075
22 (Fed. Cir. 2009) ("As this court has repeatedly instructed in the past, 'it is axiomatic
23 that claims are construed the same way for both invalidity and infringement.'")
24

(quoting *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1330 (Fed. Cir. 2003)).

2. The Patent Does Not Require the Satellite to “Turn Off” or Have a “Physical Structure” that Allocate Colors

Defendants argue that there is no necessary “configuration” in the Jupiter-1 satellite [REDACTED]

[REDACTED]. (Mot. at 7-12.) Defendants argue that the Jupiter-1 satellite does not infringe [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*) Defendants’

argument rests on a fundamental misreading of the plain claim language. Claim 1 does not require the *satellite* to “turn off” or “allocate” colors.

Neither does claim 1 require the accused satellite to have a “physical structure” that allocates colors or is only capable of receiving certain colors from certain beams. Instead, the claim states simply that the satellite must be configured to receive data from certain beams and those *beams* “are allocated different colors.” The “allocation” limitation is written in the passive voice. It does not require the satellite to perform the allocation or that the configuration in the satellite limit what colors it can receive. The claim simply does not require the satellite itself to perform the allocation or be configured to perform the allocation of colors. *See*,

1 *e.g., McDavid, Inc. v. Nike USA, Inc.*, 892 F. Supp. 2d 970, 974 (N.D. Ill. 2012)
2 (noting that “the claims use the passive voice, requiring that the elements are ‘held,’
3 but do not specify the subject performing the holding”). Defendants’ expert, Dr.
4 Helgert, agreed:

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 (Smith Dec. Ex. 15 at 126) (emphasis added).) How the allocation came about is
10 simply irrelevant to whether or not the relevant beams “are allocated different
11 colors” or whether the satellite is configured to receive data from those beams.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 (Smith Dec. Ex. 15 at 138-39 (emphasis added).) [REDACTED]
10 [REDACTED]
11 [REDACTED]. Defendants' inconsistent application of the claims
12 to ViaSat-1 and Jupiter-1 itself demonstrates substantial evidence of infringement.
13 *Source Search Techs.*, 588 F.3d at 1075 ("As this court has repeatedly instructed in
14 the past, 'it is axiomatic that claims are construed the same way for both invalidity
15 and infringement.'") (quoting *Amgen*, 314 F.3d at 1330).

16 **D. Defendants' Infringement Does Not Depend on Subjective Intent,**
17 **How the Satellite Is Used, or the Process by Which It Was Made**

18 Defendants argue that whether Jupiter-1 infringes the '875 patent cannot turn
19 on either the "process by which it is made" or the subjective intent of the person
20 using the satellite. (Mot. at 10-11.) ViaSat does not contend otherwise. Nothing in
21 ViaSat's proof of infringement turns on how the Jupiter-1 satellite was made or the
22 subjective intent of anyone operating it. Defendants are simply attempting to
23 repackage as non-infringement positions the same invalidity arguments that the
24 Court has already rejected.

1 **1. Defendants' Motion Reargues Validity Positions the Court**
2 **Has Rejected**

3 Defendants' argument is simply a rehashing of invalidity positions it has
4 already lost on. Defendants previously moved for summary judgment that the
5 claims of ViaSat's 8,010,043 patent were invalid as indefinite. (Dkt. 251-1.)
6 Defendants argued that a limitation of that patent was indefinite because, according
7 to Defendants, it recited "how the claimed satellite is operated and details about
8 users' reception of a spot beam" and "an action by a user or subscriber terminal to
9 use the spot beam." (Dkt. 251-1 at 8-9.) The Court rejected this argument and
10 denied Defendants' motion because "apparatus claims are not necessarily indefinite
11 for using functional language." (Dkt. 358 at 8.)

12 Similarly, Defendants argued at claim construction and in a motion for
13 summary judgment that the claims of the 8,068,827 patent were indefinite because
14 ViaSat's construction left "the question of infringement dependent on the subjective
15 motivations of the individual on the ground." (Dkt. 138 at 16-17; Dkt. 206 at 20;
16 Dkt. 209 at 9-10.) The Court again rejected this argument. (Dkt. 206 at 21; Dkt.
17 209 at 9-10.)

18 Defendants now repackage the same invalidity position as an argument for
19 non-infringement. The Court has already ruled that these arguments present factual
20 disputes that preclude summary judgment. The same just as is true here in the
21 context of infringement as it was in the context of invalidity.

22 **2. Defendants' Rejected Invalidity Arguments Again Fail**

23 Even if the Court were inclined to consider Defendants' invalidity arguments
24 in the context of this Motion for non-infringement, they fail on the merits. None of

1 the evidence of infringement turns in any way on the subjective intent of a person
2 operating the Jupiter-1 satellite. ViaSat does not rely on any person or party's
3 subjective intent to prove infringement, and "intent" is not a limitation in claim 1 of
4 the '875 patent. Instead, ViaSat points to the objectively verifiable configuration of
5 the satellite and the indisputable allocation of colors to its feeder and service beams.

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED].

14 Similarly, Defendants argue that [REDACTED]
15 [REDACTED]
16 [REDACTED] (Mot. at 11.) Of course this is true. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Nor, contrary to Defendants' suggestion, is there anything unusual about a
23 patent claim that requires that the accused device be "configured" to operate with
24 unclaimed components, in this case feeder and service beams, having certain color

1 allocations.⁸ Even the case relied on by Defendants, *Paragon Solutions, LLC v.*
 2 *Timex Corp.*, 566 F.3d 1075, 1079 (Fed. Cir. 2009), took no issue with a claim that
 3 claimed a device “configured to be worn by a subject performing a physical
 4 activity” and “configured to receive electromagnetic signals from three or more
 5 sources.” Defendants cite no cases suggesting that the factfinder cannot consider
 6 evidence of what colors are allocated to the gateways and subscriber terminals with
 7 which Jupiter-1 is configured to operate.

8 Finally, as the Court has held there is no prohibition on a patent claim
 9 defining an invention by the results it achieves or its function. *Bosig Instruments,*
 10 *Inc. v. Nautilus, Inc.*, 715 F.3d 891, 903-04 (Fed. Cir. 2013). It is black letter law
 11 that a “patent applicant is free to recite features of an apparatus either structurally or

12 ⁸ See, e.g., *HTC Corp. v. IPCom GmbH & Co., KG*, 667 F.3d 1270, 1274-75
 13 (Fed. Cir. 2012) (claim not indefinite where mobile station was claimed to operate
 14 in a specific network environment); *Icon Health & Fitness, Inc. v. Octane Fitness,*
 15 *LLC*, 496 F. App’x 57, 60 (Fed. Cir. 2012) (claim for an apparatus requiring a
 16 “frame configured for resting on a ground surface”); *Apple Inc. v. Samsung Elecs.*
 17 *Co., Ltd.*, 695 F.3d 1370, 1372 (Fed. Cir. 2012) (apparatus claim that required “an
 18 interface module configured to receive an inputted information descriptor from a
 19 user-input device”); *Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1381-
 20 82 (Fed. Cir. 2011) (finding that the term “operating in conjunction with” required
 21 no construction because it was clear the term meant “configured and programmed to
 22 operate in conjunction with” the processor operating system at issue in the patent);
 23 *Hologic, Inc. v. SenoRx, Inc.*, 639 F.3d 1329, 1331 (Fed. Cir. 2011) (patent claiming
 24 a surgical apparatus “configured to fill an interstitial void created by the surgical
 extraction of diseased tissue”); *Anchor Wall Sys., Inc. v. Rockwood Retaining Walls,*
Inc., 340 F.3d 1298, 1302 (Fed. Cir. 2003) (claim reciting a masonry block
 “configured to mate with an inset of one or more adjacently positioned blocks”);
Toshiba Corp. v. Juniper Networks, Inc., No. 03-1035, 2006 WL 1788479, at *4 (D.
 Del. June 28, 2006) (finding no indefiniteness where claim limitation stating
 “communicates with the next hop node” was equivalent to “is configured to
 communicate with the next hop node,” which is just permissible functional
 language); *Ricoh Co. v. Katun Corp.*, 486 F. Supp. 2d 395, 402 (D.N.J. 2007)
 (collecting cases).

functionally.” *In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997). Similarly, a court may construe a claim term using “comparative and functional language” that explains “what a component does . . . in the context in which it is used.” *Funai Elec. Co., Ltd. v. Daweoo Elecs. Corp.*, 616 F.3d 1357, 1366 (Fed. Cir. 2010).

3. Defendants’ Authority Is Inapposite

None of the cases cited by Defendants are to the contrary. For example, defendants cite *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1468 (Fed. Cir. 1990). In that case, the district court held that certain prior art reference using a “knurled wheel” did not render obvious a patent related to “X-Y plotters used to create a two-dimensional plot, such as a chart or a graph, on a sheet of paper.” *Id.* at 1466. The patent did not claim use of a “knurled wheel” but instead a “rough surface” with “a random pattern, size, and height of rough spots.” *Id.* at 1468. The defendant argued that, even though a “knurled wheel” did not fall within the literal scope of the claim, there was no “operational difference.” *Id.* The Federal Circuit held that the lack of an “operational difference” was irrelevant because the prior art did not read on the claim language. *Id.* (“In the present case, the language ‘random pattern, size, and height of rough spots’ is certainly *different* than the surface of a knurled wheel.”). In the case at bar, however, ViaSat has presented substantial evidence that Jupiter-1 **does** fall within the scope of the plain claim language as construed by the Court. ViaSat is **not** arguing that, despite falling outside the literal scope of the claim, the lack of an “operational difference” renders Jupiter-1 nevertheless infringing. Indeed, there is no “operational difference” whatsoever between Jupiter-1 and the asserted claims of the ’875 patent.

Defendants also cite *Paragon Solutions, LLC v. Timex Corp.*, 566 F.3d 1075, 1090 (Fed. Cir. 2009). In that case, the Federal Circuit held that it was improper to construe the claim term “displaying real-time data” to mean “without contextually meaningful delay” because a determination of what was “contextually meaningful” would turn on how the device was used. *Id.* The court emphasized that “[a]bsent an express limitation to the contrary, any use of a device that meets all of the limitations of an apparatus claim written in structural terms infringes that apparatus claim.” *Id.* at 1091. Here, ViaSat has shown that the Jupiter-1 satellite meets every limitation of claim 1. Proof of infringement does not turn on how the Jupiter-1 satellite is “used,” but instead whether it is configured to receive data from service and feeder beams allocated colors as claimed in the patent.

Finally, Defendants cite *Union Oil Co. of California v. Atlantic Richfield Co.*, 208 F.3d 989 (Fed. Cir. 2000), for the proposition that any (and not simply certain) use of a patented composition is infringement. (Mot. at 11.) ViaSat agrees. Any and all uses of products within the scope of the claims infringe, including any use of the Jupiter-1 satellite. Defendants’ infringement does not depend on how they or Hughes use Jupiter-1.

III. THERE IS SUBSTANTIAL EVIDENCE OF DEFENDANTS’ INDIRECT INFRINGEMENT OF THE ’875 PATENT

In addition to directly infringing the ’875 patent by making, selling, and offering to sell the Jupiter-1 satellite, there is also substantial evidence that Defendants have indirectly infringed the patent. One form of indirect infringement occurs when a defendant induces a third party to infringe the patent. 35 U.S.C. § 271(b). A second form of indirect infringement occurs when a defendant aids in

1 committing an act of direct infringement by supplying a component used in the
2 infringement. 35 U.S.C. § 271(c). As explained in Dr. Bartone's expert report,
3 Defendants have induced and contributed to Hughes' infringing use of the '875
4 patent. (Bonn Dec. Ex. 2 at ¶¶ 454-72.)

5 Defendants do not dispute that, if the Jupiter-1 satellite infringes, they are
6 liable for induced and contributory infringement. (Mot. at 13.) They only contend
7 that, for the reasons stated elsewhere in their Motion, that there can be no indirect
8 infringement because the offer to sell, sale, manufacture, and use of the Jupiter-1
9 satellite does not directly infringe. (*Id.*) That assertion is thoroughly rebutted in the
10 preceding section of this Opposition, which are incorporated herein.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Defendants' second Motion for Summary
13 Judgment on the '875 patent should be denied.

14
15 DATED: January 3, 2014

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

16
17
18 By /s/ Sean S. Pak

19 Attorneys for Plaintiffs ViaSat, Inc. and
20 ViaSat Communications, Inc. f/k/a
21 WildBlue Communications, Inc.
22
23
24

CERTIFICATE OF SERVICE

I hereby certify that, on January 3, 2014, I caused the foregoing "ViaSat's Opposition to Defendants' Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 8,107,875" to be served on Defendants' counsel via the Court's CM/ECF system.

DATED: January 3, 2014

By /s/ Sean Pak