UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 19-2192-GW-ADSx	Date	October 15, 2020
Title	*Ancora Technologies, Inc v. TCT Mobile (US), Inc., et al.*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	Terri A. Hourigan	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Marc Lorelli John P. Rondini	Kyle R. Canavera John P. Schnurer

PROCEEDINGS: TELEPHONIC *MARKMAN* HEARING

The Court's Tentative Ruling is circulated and attached hereto. Court hears oral argument. For reasons stated on the record, the matter stands submitted. Court to issue its ruling.

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Ancora Techs., Inc. v. TCT Mobile (US) Inc. et al.; Case No. 8:19-cv-02192-GW-(ASx) (Lead Case);
Case No. 2:20-cv-01252-GW-(ASx) (Consolidated Case)
Tentative Ruling on Claim Construction (*Markman*) Hearing

I. Introduction

Plaintiff Ancora Techs., Inc. ("Plaintiff" or "Ancora") filed suit against TCL Corp., TCL Commc'n Ltd., TCL Commc'n Holdings Ltd., and TCL Commc'n Tech. Holdings Ltd. on August 27, 2019, in the U.S. District Court for the Eastern District of Texas alleging infringement of U.S. Patent No. 6,411,941 ("the '941 Patent"). *Ancora Techs., Inc. v. TCL Corp. et al.*, Case No. 2:20-cv-01252-GW-(ASx) ("*Consolidated Case*"), Docket No. 1; *see also* Docket No. 12 (Consolidated Case Amended Complaint). The case was transferred to the Central District of California in February of 2020.

On November 12, 2019, TCT Mobile (US) Inc. and Huizhou TCL Mobile Commc'n Co., Ltd., separately filed suit against Plaintiff, seeking declaratory judgement of non-infringement of the '941 Patent. *TCT Mobile (US) Inc. et al. v. Ancora Techs., Inc.*, Case No. 8:19-cv-02192-GW-(ASx) ("*Lead Case*"), Docket No. 1. The two actions have been consolidated so that Plaintiff now accuses TCT Mobile (US) Inc., Huizhou TCL Mobile Commc'n Co., Ltd., Shenzhen TCL Creative Cloud Tech. Co., Ltd., TCL Corp., TCL Commc'n Ltd., TCL Commc'n Holdings Ltd., and TCL Commc'n Tech. Holdings Ltd., TCT Mobile (US) Holdings Inc., TCT Mobile, Inc., TCT Mobile Int'l Ltd. (collectively, "Defendant" or "TCL") of infringing the '941 Patent. Docket No. 29; *see also* Docket No. 23 (stipulation to realign parties); Docket No. 24 (First Amended Complaint); Docket No. 44 (Second Amended Complaint).[1]

Now pending are the parties' claim construction disputes. The parties have submitted a Joint Claim Construction and Prehearing Statement. *See* Docket No. 49. They have also filed various claim construction briefs and supporting documents:

- Plaintiff Ancora's Opening Claim Construction Brief (Docket No. 52); Defendant TCL's Opening Claim Construction Brief (Docket No. 53)
- Plaintiff Ancora's Responsive Claim Construction Brief (Docket No. 54); Defendant TCL's Responsive Claim Construction Brief (Docket No. 55)

[1] Citations are to the *Lead Case* unless otherwise noted.

The Court construes the disputed terms as stated herein.

II. Background

For purposes of the parties' claim construction disputes, the parties request construction of seven terms in the asserted claims of the '941 Patent, titled "Method of Restricting Software Operation Within a License Limitation." The '941 Patent issued on June 25, 2002. The '941 Patent relates to "a method and system of identifying and restricting an unauthorized software program's operation." '941 Patent at 1:6-8.

Claim 1 of the '941 Patent recites:

> 1. A method of restricting software operation within a license for use with a computer including an erasable, non-volatile memory area of a BIOS of the computer, and a volatile memory area; the method comprising the steps of:
>
> selecting a program residing in the volatile memory,
>
> using an agent to set up a verification structure in the erasable, non-volatile memory of the BIOS, the verification structure accommodating data that includes at least one license record,
>
> verifying the program using at least the verification structure from the erasable non-volatile memory of the BIOS, and
>
> acting on the program according to the verification.

III. Legal Standard

Claim construction is an interpretive issue "exclusively within the province of the court." *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). It is "a question of law in the way that we treat document construction as a question of law," with subsidiary fact-finding reviewed for clear error to Fed. R. Civ. P. 52(a)(6). *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 837-40 (2015). The claim language itself is the best guide to the meaning of a claim term. *See Vederi, LLC v. Google, Inc.*, 744 F.3d 1376, 1382 (Fed. Cir. 2014). This is because the claims define the scope of the claimed invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). But a "person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent." *Id.* at 1313. Thus, claims "must be read in view of the specification," which is "always highly relevant to the claim construction analysis." *Phillips*, 415 F.3d at 1315 (internal quotations omitted).

Although claims are read in light of the specification, limitations from the specification must not be imported into the claims. *Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282, 1288 (Fed. Cir. 2009). "[T]he line between construing terms and importing limitations can be

discerned with reasonable certainty and predictability if the court's focus remains on understanding how a person of ordinary skill in the art would understand the claim terms." *Phillips*, 415 F.3d at 1323.

The prosecution history may lack the clarity of the specification, but it is "another established source of intrinsic evidence." *Vederi*, 744 F.3d at 1382. "Like the specification, the prosecution history provides evidence of how the PTO and the inventor understood the patent." *Phillips*, 415 F.3d at 1317 (citations omitted). "Furthermore, like the specification, the prosecution history was created by the patentee in attempting to explain and obtain the patent." *Id.* "Yet because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Id.*

Claim construction usually involves resolving disputes about the "ordinary and customary meaning" that the words of the claim would have had "to a person of ordinary skill in the art in question at the time of the invention." *Phillips*, 415 F.3d at 1312-13 (internal quotations and citations omitted). But in some cases, claim terms will not be given their ordinary meaning because the specification defines the term to mean something else. "[A] claim term may be clearly redefined without an explicit statement of redefinition," so long as a person of skill in the art can ascertain the definition by a reading of the patent documents. *Id.* at 1320; *see also Trustees of Columbia Univ. in City of New York v. Symantec Corp.*, 811 F.3d 1359, 1364 (Fed. Cir. 2016).

Where the patent itself does not make clear the meaning of a claim term, courts may look to "those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean," including the prosecution history and "extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Phillips*, 415 F.3d at 1314 (internal quotations omitted). Sometimes, the use of "technical words or phrases not commonly understood" may give rise to a factual dispute, the determination of which will precede the ultimate legal question of the significance of the facts to the construction "in the context of the specific patent claim under review." *Teva*, 135 S. Ct. at 841, 849. "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly

understood words." *Phillips*, 415 F.3d at 1314. "In such circumstances, general purpose dictionaries may be helpful." *Id.*

IV. Discussion

A. Agreed Claim Terms

The parties have agreed to constructions for the following claim terms (*see* Docket No. 49):

Term	Asserted Claim(s)	Parties' Agreed Claim Construction
"non-volatile memory area of the BIOS"	1	"memory area of BIOS whose data is maintained when the power is removed"
"BIOS"	1	An acronym for Basic Input/Output System. It is the set of essential startup operations that run when a computer is turned on, which test hardware, starts the operating system, and support the transfer of data among hardware devices

B. Disputed Claim Terms

1. "volatile memory" (Claim 1)

Plaintiff's Proposed Construction	Defendant's Proposed Construction
"memory area whose data is not maintained or becomes inaccessible when the power is removed"	"memory whose data is not maintained when the power is removed"

The parties agree that "volatile memory" is "memory whose data is not maintained when the power is removed." Docket Nos. 52 at 7; 53 at 21. The only dispute is whether "volatile memory" also includes "memory whose data becomes inaccessible after the power is removed."

As Defendant highlights, Plaintiff has previously accepted Defendant's proposed construction. *See, e.g., Ancora Techs., Inc. v. Apple Inc.*, No. 11-cv-06357-YGR, 2012 WL 6738761, at *4 (N.D. Cal. Dec. 31, 2012) ("*Apple I*"). Plaintiff now seeks to broaden this construction based on the Federal Circuit's decision in *Ancora v. Apple, Inc.*, 744 F.3d 732 (Fed. Cir. 2014) ("*Apple II*").

In *Apple II*, the Federal Circuit affirmed the lower court's holding that the term "volatile memory" was not indefinite despite the '941 Patent specification stating that a hard disk is

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