

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EVOLVED WIRELESS, LLC,)
)
 Plaintiff,)
)
 v.) Civ. No. 15-542-SLR
)
 APPLE, INC.,)
)
 Defendant.)

EVOLVED WIRELESS, LLC,)
)
 Plaintiff,)
)
 v.) Civ. No. 15-543-SLR
)
 HTC CORPORATION and)
 HTC AMERICA, INC.,)
)
 Defendants.)

EVOLVED WIRELESS, LLC,)
)
 Plaintiff,)
)
 v.) Civ. No. 15-544-SLR
)
 LENOVO GROUP LTD.)
 LENOVO (UNITED STATES) INC., and)
 MOTOROLA MOBILITY)
)
 Defendants.)

EVOLVED WIRELESS, LLC,)
)
 Plaintiff,)
)
 v.) Civ. No. 15-545-SLR
)
 SAMSUNG ELECTRONICS CO., LTD.)
 and SAMSUNG ELECTRONICS)
 AMERICA, INC.,)
)
 Defendants.)

EVOLVED WIRELESS, LLC,)
)
 Plaintiff,)
)
 v.) Civ. No. 15-546-SLR
)
 ZTE CORPORATION, ZTE (USA) INC.,)
 and ZTE SOLUTIONS INC.)
)
 Defendants.)

EVOLVED WIRELESS, LLC,)
)
 Plaintiff,)
)
 v.) Civ. No. 15-547-SLR
)
 MICROSOFT CORPORATION,)
 MICROSOFT MOBILE OY and)
 NOKIA INC.,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington this 14th day of November, 2016, having heard argument on, and having reviewed the papers submitted in connection with, the parties' proposed claim construction;

IT IS ORDERED that the disputed claim language of U.S. Patent Nos. 7,746,916 (“the ‘916 patent”); 7,768,965 (“the ‘965 patent”); 7,809,373 (“the ‘373 patent”); 7,881,236 (“the ‘236 patent”); and 8,218,481 (“the ‘481 patent”) shall be construed consistent with the tenets of claim construction set forth by the United States Court of Appeals for the Federal Circuit in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005), as follows:

The ‘916 Patent

1. A code sequence generator for generating a code sequence having a second length by cyclic extension of a code sequence having a first length, and performing a circular shift to the code sequence having the second length:¹

“Hardware and/or software in the apparatus that is capable of generating a code sequence having a second length by cyclic extension of a code sequence having a first length, and performing a circular shift to the code sequence having the second length.”
Structure is identified in the specification as a “basic code sequence generation unit

¹ Found in claim 6 of the ‘916 patent.

1701.”² (‘916 patent, 15:36-16:7) Defendants failed to shift the § 112, ¶ 6 burden to plaintiff.³ (See D.I. 73 at 4) Section 112, ¶ 6 does not apply.⁴ Not indefinite.⁵

² In addition to the structure identified in the specification, plaintiff’s expert, Dr. Cooklev, demonstrated that a person having ordinary skill in the art would identify structure in the specification. (D.I. 66 at ¶¶ 72-74)

³ When a claim uses the word “means,” the presumption is that § 112, ¶ 6 applies. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015). Generic terms may be used “in a manner that is tantamount to using the word ‘means’ because they ‘typically do not connote sufficiently definite structure.’” *Id.* at 1350 (citations omitted). Defendants argued that the present term is one of “[e]ven claim limitations [that] **require construction** as means-plus-function terms under § 112, ¶ 6 because each recites one of five nonce words—module, generator, unit, entity, and protocol.” (D.I. 73 at 1) (citing *Williamson*) The cited text in *Williamson* does not support this proposition with respect to the terms “generator,” “entity,” “unit,” and “protocol.” Moreover, *Williamson* articulated a two-part test, applying § 112, ¶ 6 to the term “distributed learning control module,” because the court determined that: “module” was a “well-known nonce word that can operate as a substituted for ‘means,’” **and** the “distributed learning control” prefix did not “provide any indication of structure.” *Williamson*, 792 F.3d at 1350-51. An outcome of this two-part test is that the alleged “nonce word” is interpreted to be equivalent to the term “means,” which “creates a presumption that § 112, ¶ 6 applies,” thereby shifting the burden to the patentee. *Id.* at 1349. Defendants did not address the second part of the *Williamson* test; therefore, the burden has not shifted, and the presumption is that § 112, ¶ 6 does not apply. (See D.I. 73 at 4-9)

⁴ In order to rebut the presumption that § 112, ¶ 6 does not apply, defendants carry the burden to demonstrate “that the claim term fails to ‘recite sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” *Williamson*, 792 F.3d at 1349. Defendants failed to rebut the presumption.

⁵ Defendants argued that the specification does not disclose how to generate a code sequence. (D.I. 73 at 10) A person with “a bachelor’s degree in electrical engineering [and] 2-3 years of experience in cellular communication systems and [who] would have been aware of the Third Generation Partnership Project (“3GPP”) and its work on the LTE standard” would know how to generate a code sequence. (See D.I. 66 at ¶ 23) Defendants also argued that “the claimed functions of generating a code sequence and performing a circular shift are not clearly linked to any sort of code sequence generator.” (D.I. 73 at 11) The Patent Act, § 112, ¶ 2 requires “that a patent’s claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, ___ U.S. ___, 134 S.Ct. 2120, 2129 (2014). Here, claim 6 includes several limitations that, with reasonable certainty, inform those skilled in the art about the scope of the invention. (See D.I. 85 at 11-12)

2. A transmitting unit for transmitting the circular shifted code sequence having the second length:⁶ “Hardware and/or software in the apparatus that is capable of transmitting the circular shifted code sequence having the second length.” Defendants failed to shift the § 112, ¶ 6 burden to plaintiff.⁷ Section 112, ¶ 6 does not apply.⁸ Not indefinite.⁹ Structure is identified in the specification with reference to figure 16. (‘916 patent, 15:6-21; fig. 6, item 1603)

The ‘965 Patent

3. A sequence selecting module acquiring information about predetermined two or more random access preamble sequence sets, selecting one random access preamble sequence set from among the predetermined random access preamble sequence sets considering at least one of a size of information to be transmitted by the apparatus and a degree of a path loss, and randomly selecting a specific sequence within the selected random access sequence set:¹⁰ “Hardware and/or software in the user equipment that is capable of performing the following algorithm: acquire information about predetermined two or more random access preamble sequence sets, select one random access preamble sequence set from among the predetermined random access preamble sequence sets considering at least one of a size of information to be transmitted by the apparatus and a degree of a path loss, and randomly select a specific sequence within the selected

⁶ Found in claim 6 of the ‘916 patent.

⁷ See *supra* note 3.

⁸ See *supra* note 4.

⁹ Defendants presented no evidence as to how or why the claims of the ‘916 patent, “viewed in light of the specification and prosecution history, [would fail to] inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus*, 134 S.Ct. at 2129.

¹⁰ Found in claim 8 of the ‘965 patent.

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