IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LOGANTREE LP,

Plaintiff,

vs.

GARMIN INTERNATIONAL, INC. and GARMIN USA, INC.,

Defendants.

Case No. 17-1217-EFM-ADM

MEMORANDUM AND ORDER

Plaintiff LoganTree LP is the owner of U.S. Patent No. 6,059,576, entitled "Training and Safety Device, System and Method to Aid in Proper Movement During Physical Activity" (the "Patent"). The Patent claims an electronic device, system, and method that monitors the movement of an individual's body parts during physical activity. LoganTree filed this lawsuit against Garmin International, Inc., and Garmin USA, Inc. ("Garmin") alleging that Garmin's accelerometer-based activity trackers infringe the Patent.

This matter comes before the Court on the parties' request that the Court construe certain terms in the Patent's claims as a matter of law pursuant to *Markman v. Westview Instruments, Inc.*[1] The Court has thoroughly considered the information submitted in the parties' briefs as well as the

[1]52 F.3d 967 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996).

oral arguments presented at the *Markman* hearing on December 18, 2020, and construes the disputed terms as set forth below.

I. Legal Standard

The first step in a patent infringement action is to determine the meaning and scope of the asserted patent's claims.[2] Claim construction is an issue of law for the Court to decide.[3] Only after the Court has properly construed a patent's claims may it determine whether the accused method or product infringes the claim as properly construed.[4]

The Federal Circuit Court of Appeals set forth a comprehensive guide for claim construction in *Phillips v. AWH Corp*.[5] In *Phillips*, the Federal Circuit reiterated that the claims of the patent define the patentee's invention, and to that end, claim construction begins with the claim language itself.[6] "The words of a claim are generally given their ordinary and customary meaning."[7] The "ordinary and customary meaning" is "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, *i.e.*, as of the effective filing date of the application."[8] "[T]he claims themselves provide substantial guidance as to the meaning of particular claim terms."[9] Both "the context in which a term is used in the asserted

[2] *Id.*

[3] *Id.* at 979.

[4] *Id.* at 976.

[5] 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

[6] *Id.* at 1312.

[7] *Id.* (citation and quotation marks omitted).

[8] *Id.* at 1313 (citations omitted).

[9] *Id.* at 1314.

claim" and the "[o]ther claims of the patent in question" are helpful for understanding the ordinary meaning of a term.[10]

"The claims . . . do not stand alone, [and] they are part of 'a fully integrated written instrument.' "[11] Therefore, "they 'must be read in view of the specification, of which they are a part.' "[12] The specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term."[13] The specification may reveal a special definition that a patentee has given a claim term that is different from the meaning the term would otherwise possess.[14] In that instance, the patentee's definition controls. Or, the specification may reveal "an intentional disclaimer, or disavowal, of claim scope" by the patentee.[15] In that instance as well, the patentee's intention, as expressed in the specification, is dispositive.[16] The fact, however, that the specification includes preferred embodiments or specific examples is not enough to define a term implicitly, and "it is improper to confine the scope of the claims to the embodiments of the specification."[17]

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[10] *Id.*

[11] *Id.* at 1315 (quoting *Markman*, 52 F.3d at 978).

[12] *MGP Ingredients, Inc. v. Mars, Inc.*, 494 F. Supp. 2d 1231, 1234 (D. Kan. 2007) (quoting *Phillips*, 415 F.3d at 1315).

[13] *Phillips*, 415 F.3d at 1315 (quotation omitted).

[14] *Id.* at 1316.

[15] *Id.*

[16] *Id.*

[17] *Mars*, 494 F. Supp. 2d at 1234 (citing *Phillips*, 415 F.3d at 1323).

A court "should also consider the patent's prosecution history, if it is in evidence."[18] This consists of "the complete record of the proceedings before the PTO and includes the prior art cited during the examination of the patent."[19] The prosecution history provides "evidence of how the PTO and the inventor understood the patent."[20] Because, however, the prosecution history is an ongoing negotiation between the patentee and the patent examiner, it "lacks the clarity of the specification and thus is less useful for claim construction purposes."[21] Regardless, "the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be."[22]

Finally, a court may rely on extrinsic evidence, which consists of "all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises."[23] The Federal Circuit has found that technical dictionaries may provide a court " 'to better understand the underlying technology' and the way in which one of skill in art might use the claim terms."[24] And, extrinsic evidence in the form of expert testimony can provide background on the technology at issue, explain how an invention works, or establish that a

[18] *Phillips*, 415 F.3d at 1317 (citation omitted).

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 1318 (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 n.6 (Fed. Cir. 1996)).

particular term in the patent or prior art has a particular meaning in the pertinent field.[25] But, "conclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court."[26] Overall, although "extrinsic evidence can shed useful light on the relevant art, . . . it is less significant than the intrinsic record in determining the legally operative meaning of claim language."[27]

III. Analysis

There are four claim construction disputes for the Court to resolve. The disputed terms are found in claims 1 and 20 of the Patent. Claim 1 states as follows, with the disputed terms in bold:

> 1. A portable, self-contained device for monitoring movement of body parts during physical activity, said device comprising:
>
> a movement sensor capable of measuring data associated with **unrestrained movement in any direction** and generating signals indicative of said movement;
>
> a power source;
>
> a microprocessor connected to said movement sensor and to said power source, said microprocessor capable of receiving, interpreting, storing and responding to said movement data based on user-defined operational parameters, detecting a first user-defined event based on the movement data and at least one of the user-defined operational parameters regarding the movement data, and storing first event information related to the detected first user-defined event along with **first time stamp information reflecting a time at which the movement data causing the first user-defined event occurred**;
>
> at least one user input connected to said microprocessor for controlling the operation of said device;
>
> a real-time clock connected to said microprocessor;
>
> memory for storing said movement data; and

[25] *Id.*

[26] *Id.*

[27] *Id.* (quotation omitted).

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