EXHIBIT 1013

TO PETITIONER GOOGLE INC.'S PETITION FOR COVERED BUSINESS METHOD REVIEW OF U.S. PATENT NO. 7,334,720

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SMARTFLASH LLC, *et al.*,	§	
	§	
Plaintiffs,	§	CASE NO. 6:13cv447-JRG-KNM
	§	
v.	§	
	§	**JURY TRIAL DEMANDED**
APPLE INC., *et al.*,	§	
	§	
Defendants.	§	
	§	
SMARTFLASH LLC, *et al.*,	§	
	§	
Plaintiffs,	§	CASE NO. 6:13cv448-JRG-KNM
v.	§	
	§	**JURY TRIAL DEMANDED**
SAMSUNG ELECTRONICS CO., LTD. *et al.*,	§	
	§	
Defendants.	§	
	§	

MEMORANDUM OPINION AND ORDER

This Memorandum Opinion resolves an additional claim construction dispute in United States Patent Numbers: (1) 7,334,720; (2) 7,942,317; (3) 8,033,458; (4) 8,061,598; (5) 8,118,221; and (6) 8,336,772. For the reasons discussed below, the Court resolves the dispute as stated.

BACKGROUND

On November 14, 2014, Smartflash filed a Motion to Enforce Compliance with *O2 Micro*, or in the Alternative, to Resolve Manufactured Claim Construction Disputes that Defendants Intend to Argue to the Jury (6:13CV447, Doc. No 317; 6:13CV448, Doc. No. 363).[1] The Court heard argument on dispositive and *Daubert* Motions on December 2, 2014. At that hearing, the Court also

[1] The Court GRANTED that motion in the alternative by ordering supplemental claim construction briefing as noted below.

heard argument on Smartflash's Motion and ordered the parties to submit supplemental claim construction briefing. Smartflash and Defendants Apple, Inc., Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, HTC Corporation, HTC America, Inc., Exedea, Inc. (collectively "Defendants") submitted additional briefing.

Smartflash alleges Defendants infringe the following patents: U.S. Patent No. 7,334,720 (the '720 Patent); U.S. Patent No. 7,942,317 (the '317 Patent); U.S. Patent No. 8,033,458 (the '458 Patent); U.S. Patent No. 8,061,598 (the '598 Patent); U.S. Patent No. 8,118,221 (the '221 Patent); and U.S. Patent No. 8,336,772 (the '772 Patent). All patents are titled "Data Storage and Access Systems." The patents-in-suit all stem from a common specification and share a common written description and figures.

APPLICABLE LAW

"It is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). The Court examines a patent's intrinsic evidence to define the patented invention's scope. *Id.* at 1313–14; *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). Intrinsic evidence includes the claims, the rest of the specification, and the prosecution history. *Phillips*, 415 F.3d at 1312–13; *Bell Atl. Network Servs.*, 262 F.3d at 1267. The Court gives claim terms their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention. *Phillips*, 415 F.3d at 1312–13; *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

Claim language guides the Court's construction of claim terms. *Phillips*, 415 F.3d at 1314. "[T]he context in which a term is used in the asserted claim can be highly instructive." *Id.* Other

claims, asserted and unasserted, can provide additional instruction because "terms are normally used consistently throughout the patent." *Id.* Differences among claims, such as additional limitations in dependent claims, can provide further guidance. *Id.*

"[C]laims 'must be read in view of the specification, of which they are a part.'" *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995)). "[T]he 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.'" *Id.* (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *Teleflex. Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). In the specification, a patentee may define his own terms, give a claim term a different meaning than it would otherwise possess, or disclaim or disavow some claim scope. *Phillips*, 415 F.3d at 1316. Although the Court generally presumes terms possess their ordinary meaning, this presumption can be overcome by statements of clear disclaimer. *See SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343–44 (Fed. Cir. 2001). This presumption does not arise when the patentee acts as his own lexicographer. *See Irdeto Access, Inc. v. EchoStar Satellite Corp.*, 383 F.3d 1295, 1301 (Fed. Cir. 2004).

The specification may also resolve ambiguous claim terms "where the ordinary and accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone." *Teleflex, Inc.*, 299 F.3d at 1325. For example, "[a] claim interpretation that excludes a preferred embodiment from the scope of the claim 'is rarely, if ever, correct.'" *Globetrotter Software, Inc. v. Elam Computer Group Inc.*, 362 F.3d 1367, 1381 (Fed. Cir. 2004) (quoting *Vitronics Corp.*, 90 F.3d at 1583). But, "[a]lthough the specification may aid the court in interpreting the meaning of disputed language in the claims, particular embodiments and examples appearing in the specification will not generally be read into the

claims." *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988); *see also Phillips*, 415 F.3d at 1323.

The prosecution history is another tool to supply the proper context for claim construction because a patentee may define a term during prosecution of the patent. *Home Diagnostics Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1356 (Fed. Cir. 2004) ("As in the case of the specification, a patent applicant may define a term in prosecuting a patent."). The well-established doctrine of prosecution disclaimer "preclud[es] patentees from recapturing through claim interpretation specific meanings disclaimed during prosecution." *Omega Eng'g Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003). The prosecution history must show that the patentee clearly and unambiguously disclaimed or disavowed the proposed interpretation during prosecution to obtain claim allowance. *Middleton Inc. v. 3M Co.*, 311 F.3d 1384, 1388 (Fed. Cir. 2002); *see also Springs Window Fashions, LP v. Novo Indus., L.P.*, 323 F.3d 989, 994 ("The disclaimer . . . must be effected with 'reasonable clarity and deliberateness.'") (citations omitted)). "Indeed, by distinguishing the claimed invention over the prior art, an applicant is indicating what the claims do not cover." *Spectrum Int'l v. Sterilite Corp.*, 164 F.3d 1372, 1378–79 (Fed. Cir. 1988) (internal quotation omitted). "As a basic principle of claim interpretation, prosecution disclaimer promotes the public notice function of the intrinsic evidence and protects the public's reliance on definitive statements made during prosecution." *Omega Eng'g, Inc.*, 334 F.3d at 1324.

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