

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

THOMAS SWAN & CO. LTD.,

Plaintiff,

v.

FINISAR CORP. and FUJITSU NETWORK

COMMUNICATIONS, Inc.,

Defendants.

Case No. 2:13-cv-178-JRG

JURY TRIAL DEMANDED

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to Local Patent Rule 4-3 and the Court's Amended Docket Control Order (Dkt. No. 94), Plaintiff Thomas Swan & Co. Ltd. ("Thomas Swan") and Defendants Finisar Corp. and Fujitsu Network Communications, Inc. (together "Defendants") (collectively, "the Parties") hereby provide this Joint Claim Construction and Pre-Hearing Statement regarding U.S. Patent Nos. 7,145,710, 7,664,395, 8,089,683, and 8,335,033.^{1,2}

¹ Plaintiff provided Defendants with an initial draft of this pleading (a draft which included both Plaintiff and Defendants' proposed constructions) at 2:00pm CST on March 25, 2014. Despite repeated—and unanswered—requests throughout the day on March 26, 2014 for Defendants to confirm that they would not be changing their proposed constructions, Defendants waited until 8:30 CST to provide Plaintiff with their portion of the pleading which contained changes to their proposed constructions of a number of terms. As such, and in view of the fact that Plaintiff resides in the UK, Plaintiff reserves the right to submit an Amended P.R. 4-3 pleading to respond to the eleventh-hour changes made by the Defendants, if needed.

² Plaintiff has asserted 132 claims in this case, rendering the claim construction process unduly burdensome. Nevertheless, Defendants have worked hard to narrow disputes where possible even in the face of Plaintiff's unwillingness to disclose which claims it will be pursuing in this case. Any alleged timing issues are of Plaintiff's own making. Defendants made repeated requests for an earlier draft of this pleading, but Plaintiff failed to provide a draft in a timely manner. The parties were in contact throughout the day on March 26, 2014. At several times during the day, Defendants reached out to Plaintiff to seek agreement on terms for construction. Defendants do not consent to Plaintiff's submission of an Amended P.R. 4-3 pleading but remain willing to meet and confer in an effort to further narrow disputed issues.

I. CONSTRUCTION OF THOSE CLAIM TERMS, PHRASES, OR CLAUSES ON WHICH THE PARTIES AGREE (PARAGRAPH 4-3(a))

The Parties have agreed to the construction of the following claim terms, phrases, or clauses at this time. The Parties will continue to meet and confer in an attempt to reach agreement on other claim terms, phrases, or clauses.

Term Or Phrase	Patent	Agreed Construction
sensors for detecting temperature change	710	two or more sensors for detecting temperature change
temperature responsive devices constructed and arranged to feed signals indicative of device temperature to said control circuit	710	two or more temperature responsive devices constructed and arranged to feed signals indicative of device temperature to said control circuit
arbitrary shape	395	any shape
LCOS	395, 683, 033	Liquid Crystal On Silicon
WDM	033	Wavelength Division Multiplexing
rectangle	395	four-sided figure with four right angles
multiplex of optical signals	683	ensemble of optical signals

Term Or Phrase	Patent	Agreed Construction
means for delineating a respective group of controllable elements for each chosen location whereby the light from said locations is determined by the size, shape or position of said groups	033	<p>Function: delineating a respective group of controllable elements for each chosen location whereby the light from said locations is determined by the size, shape or position of said groups</p> <p>Corresponding Structure: control circuit (<i>e.g.</i>, processing circuit 42 of Fig. 6) that delineates groups of controllable elements for each chosen location whereby the light from said locations is determined by the size, shape or position of said groups</p>
specularly reflected	033	reflected in a manner that a mirror reflects
performing said varying step in response to the outputs of those sensors	710	varying the delineation of the groups or the selection of control data in response to the outputs of those two or more sensors
control circuit being responsive to signals from the sensor devices to vary said delineation and/or said selection	710	control circuit being responsive to signals from the two or more sensor devices to vary said delineation and/or said selection
delineation of the group boundaries in response to signals from sensors arranged to provide signals indicative of said emergent beams	033	delineation of the group boundaries in response to signals from two or more sensors arranged to provide signals indicative of said emergent beams

Term Or Phrase	Patent	Agreed Construction
determining, by means of a control device, selection of the groups, selection of control data and delineation of the group boundaries in response to signals from sensors arranged to provide signals indicative of said emergent beams	033	determining, by means of a control device, selection of the groups, selection of control data and delineation of the group boundaries in response to signals from two or more sensors arranged to provide signals indicative of said emergent beams
two[-]dimensional array	710, 033	an arrangement of two or more elements in each of two dimensions
two[-]dimensional array of pixels	395, 683	an arrangement of two or more pixels in each of two dimensions
two-dimensional group(s)	033	a group of two or more elements arranged in each of two dimensions

II. DISPUTED CONSTRUCTIONS OF TERMS, PHRASES, OR CLAUSES (PARAGRAPH 4-3(b))

The Parties dispute construction of the following claim terms, phrases, or clauses contained in the asserted claims.

Term, Phrase, or Clause	Patent	Thomas Swan Proposed Constructions	Defendants' Proposed Constructions
SLM / Spatial Light Modulator	710, 395, 683, 033	a device that modifies a property of light as a function of time and position across it	a device that modifies a property of light as a function of time and position across the device, and is at least somewhat polarisation-independent ³

³ In order to focus the claim construction process on the main dispute between the Parties with respect to this term, Defendants have incorporated the language from Thomas Swan's proposed construction for this term

Term, Phrase, or Clause	Patent	Thomas Swan Proposed Constructions	Defendants' Proposed Constructions
hologram(s)	710, 395, 683, 033	a modulation pattern (e.g., a phase ramp)	<p>indefinite</p> <p><i>To the extent the Court determines that a construction is ascertainable:</i></p> <p>the ideal set of phase modulation values for achieving a desired change in incident light</p>
actual holograms	710	Plain and ordinary meaning in light of other constructions proposed herein (e.g., hologram)	<p>indefinite</p> <p><i>To the extent the Court determines that a construction is ascertainable:</i></p> <p>sets of phase modulation values that are derived from and are the closest available approximations to the respective ideal sets of phase modulation values adapted to the physical limitations of the SLM</p>
generat[ed/ing a] hologram	710, 395	Plain and ordinary meaning in light of other constructions proposed herein (e.g., hologram)	<p>indefinite</p> <p><i>To the extent the Court determines that a construction is ascertainable:</i></p> <p>determin[ed/ing the] ideal set of phase modulation values for achieving a desired change in incident light using an ideal SLM (i.e., having a continuously variable limitless phase modulation ability)</p>

into their own proposed construction. However, Defendants believe that the phrase “as a function of time” in Thomas Swan’s proposed construction is not necessary.

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