

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

**INTERDIGITAL COMMUNICATIONS,
INC., et al.,**

Plaintiffs and
Counterclaim
Defendants;

v.

ZTE CORP., et al.,

Defendants and
Counterclaim
Plaintiffs.

Civil Action No. 1:13-cv-00009-RGA

**INTERDIGITAL COMMUNICATIONS,
INC., et al.,**

Plaintiffs and
Counterclaim
Defendants;

v.

NOKIA CORP., et al.

Defendants and
Counterclaim
Plaintiffs.

Civil Action No. 1:13-cv-00010-RGA

MEMORANDUM OPINION

Neal C. Belgam, Esq., Smith, Katzenstein & Jenkins, Wilmington, DE; Maximilian A. Grant, Esq. (argued), Latham & Watkins LLP, Washington D.C.; Ron E. Schulman, Esq., Latham & Watkins LLP, Menlo Park, CA; Julie M. Holloway, Esq. (argued), Latham & Watkins LLP, San Francisco, CA; Thomas W. Yeh, Esq., Latham & Watkins LLP, Washington D.C.; attorneys for the Plaintiff.

**IPR Licensing, Inc.
Exhibit 2009**

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April , 2014


ANDREWS, UNITED STATES DISTRICT JUDGE:

Pending before this Court is the issue of claim construction of various disputed terms found in U.S. Patent Nos. 7,190,966 (“966 Patent”), 7,286,847 (“847 Patent”), 7,941,151 (“151 Patent”), and 8,380,244 (“244 Patent”).

BACKGROUND

On January 2, 2013, InterDigital Communications Inc., InterDigital Technology Corporation, IPR Licensing, Inc., and InterDigital Holdings, Inc. (“Plaintiffs”) filed four patent infringement actions. (1:13-cv-00008 D.I. 1; 1:13-cv-00009 D.I. 1; 1:13-cv-00010 D.I. 1; 1:13-cv-00011 D.I. 1)¹. The remaining defendants are ZTE Corporation, ZTE (USA) Inc., Samsung Electronics Co. Ltd., Samsung Electronics America Inc., Samsung Telecommunications America LLC, Nokia Corporation, and Nokia Inc.² (“Defendants”) The Court has considered the Parties’ Amended Joint Claim Construction Brief. (D.I. 140). The Court held oral argument on March 12, 2014. (D.I. 225).

LEGAL STANDARD

“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) (en banc) (internal quotation marks omitted). “[T]here is no magic formula or catechism for conducting claim construction.’ Instead, the court is free to attach the appropriate weight to appropriate sources ‘in light of the statutes and policies that inform patent law.’”

¹ Unless otherwise noted, all subsequent citations to the Docket will be for case 1:13-cv-00009.

² Samsung Electronics Co. Ltd., Samsung Electronics America Inc., and Samsung Telecommunications America LLC were not parties to the present motion.

SoftView LLC v. Apple Inc., 2013 WL 4758195, at *1 (D. Del. Sept. 4, 2013) (quoting *Phillips*, 415 F.3d at 1324). When construing patent claims, a matter of law, a court considers the literal language of the claim, the patent specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977-80 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Of these sources, “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.” *Phillips*, 415 F.3d at 1315 (internal quotations and citations omitted).

Furthermore, “the words of a claim are generally given their ordinary and customary meaning . . . [which 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 patent application.” *Phillips*, 415 F.3d at 1312-13 (internal citations and quotation marks omitted). “[T]he ordinary meaning of a claim term is its meaning to [an] ordinary artisan after reading the entire patent.” *Id.* at 1321 (internal quotation marks omitted). “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.” *Id.* at 1314 (internal citations omitted).

A court may consider extrinsic evidence, which “consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises,” in order to assist the court in understanding the underlying technology, the meaning of terms to one skilled in the art and how the invention works. *Id.* at 1317-19 (internal quotation

marks and citations omitted). However, extrinsic evidence is less reliable and less useful in claim construction than the patent and its prosecution history. *Id.*

“A claim construction is persuasive, not because it follows a certain rule, but because it defines terms in the context of the whole patent.” *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998). It follows that “a claim interpretation that would exclude the inventor’s device is rarely the correct interpretation.” *Osram GmbH v. Int’l Trade Comm’n*, 505 F.3d 1351, 1358 (Fed. Cir. 2007) (internal quotation marks and citation omitted).

`966 AND `847 PATENTS

The Court will first take up the claim construction issues that relate to the `966 and the `847 Patents. Claim 1 of the `966 Patent is representative and reads:

A wireless code division multiple access (CDMA) subscriber unit comprising:

a transmitter configured such that, when the subscriber unit is first accessing a CDMA network and wants to establish communications with a base station associated with the network over a communication channel to be indicated by the base station, the transmitter *successively transmits signals* until the subscriber unit receives from the base station an indication that a transmitted one of the signals has been detected by the base station, wherein each transmission of one of the signals by the transmitter is at an increased power level with respect to a prior transmission of one of the signals;

the transmitter further configured such that the transmitter transmits to the base station a message indicating to the base station that the subscriber unit wants to establish the communications with the base station over the communication channel to be indicated by the base station, the message being transmitted only subsequent to the subscriber unit receiving the indication,

wherein each of the *successively transmitted signals* and the message are *generated using a same code*; and

wherein each of the *successively transmitted signals* is shorter than the message.

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