

****NOT FOR PRINTED PUBLICATION****

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

AFFINITY LABS OF TEXAS, LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	CIVIL ACTION No. 9:08CV164
v.	§	
	§	
BMW NORTH AMERICA, LLC, ET AL.,	§	JUDGE RON CLARK
	§	
<i>Defendants.</i>	§	
	§	

AFFINITY LABS OF TEXAS, LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	CIVIL ACTION No. 9:08CV171
v.	§	
	§	
ALPINE ELECTRONICS OF AMERICA, INC., ET AL.,	§	JUDGE RON CLARK
	§	
<i>Defendants.</i>	§	
	§	

ORDER CONSTRUING CLAIM TERMS OF UNITED STATES PATENT NO. 7,324,833

Plaintiff Affinity Labs of Texas, LLC (“Affinity”) filed suit against Defendants BMW North America LLC, *et al.* (Civil Action No. 9:08CV164) and Defendants Alpine Electronics of America, Inc., *et al.* (Civil Action No. 9:08CV171), claiming infringement of United States Patent No. 7,324,833 (“the ‘833 patent”). The court conducted a joint *Markman* hearing for these

two cases to assist in interpreting the meaning of the claim terms in dispute.¹ Having carefully considered the patent, the parties' contentions as presented in their briefs, and the arguments of counsel, the court now makes the following findings and construes the disputed claim terms.²

I. CLAIM CONSTRUCTION STANDARD OF REVIEW

Claim construction is a matter of law. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 388-91, 116 S. Ct. 1384, 1395-96 (1996) (“*Markman II*”); *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1456 (Fed. Cir. 1998). “The duty of the trial judge is to determine the meaning of the claims at issue, and to instruct the jury accordingly.” *Exxon Chem. Patents, Inc. v. Lubrizol*

¹ These two related cases remain as separate actions on the court's docket, and will be tried independently. However, because they involve the same patent, and the accused products in each case involve related technologies, the court conducted one claim construction hearing for both cases. The parties did not object to conducting a joint *Markman* hearing. [See 9:08CV164, Doc. #196, Tr. of Case Mgmt. Conference at p. 66, l. 11 to p. 68, l. 15.] The transcript of the *Markman* hearing contains a number of representations by and agreements of the parties, as well as answers by their experts to technical questions from the court, all of which will not be repeated here, but which may assist in understanding the issues presented. This order governs in the event of any conflict between the order and the court's preliminary analysis at the hearing. Court's Exhibit Nos. 1-15 were discussed at the hearing and are part of the record as [9:08CV164, Doc. #296-2] and [9:08CV171, Doc. #155-2]. These exhibits will be cited in this order as “Ct.'s Ex. No. ____.” The transcript of the claim construction hearing is found at [9:08CV164, Doc. #305], and will be cited in this order as “Tr. at p. ____, l. ____.”

² To become familiar with the technology underlying the '833 patent from the perspective of one skilled in the art, and to better understand the technical aspects of the parties' arguments, the court appointed Dr. Frank Shipman as technical advisor. [See 9:08CV164, Docs. #213 & 220; 9:08CV171, Docs. #124 & 125.] Dr. Shipman received his Ph.D. in computer science from the University of Colorado in 1993, his M.S. in computer science from the University of Colorado in 1990, and his B.S. in Electrical Engineering from Rice University in 1988. He is currently a professor at Texas A&M University, where he has been on the faculty since 1995. His research interests include intelligent user interfaces, hypertext, computers and education, multimedia, new media, computers and design, computer-human interaction, and computer-supported cooperative work. His research has resulted in more than 100 refereed publications, including two Association for Computing Machinery best paper awards. Dr. Shipman's curriculum vitae can be found at <http://www.csd.tamu.edu/~shipman/vitae.pdf>.

Corp., 64 F.3d 1553, 1555 (Fed. Cir. 1995), *cert. denied*, 518 U.S. 1020, 116 S. Ct. 2554 (1996).

“[T]he 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*) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)), *cert. denied*, 546 U.S. 1170, 126 S. Ct. 1332 (2006). “Because the patentee is required to ‘define precisely what his invention is,’ . . . it is ‘unjust to the public, as well as an evasion of the law, to construe it in a manner different from the plain import of its terms.’” *Id.* (quoting *White v. Dunbar*, 119 U.S. 47, 52, 7 S. Ct. 72, 75 (1886)).

The words of a claim are generally given their ordinary and customary meaning. *Id.*

“[T]he ordinary and customary meaning of a claim term 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.” *Id.* at 1313.

Analyzing how a person of ordinary skill in the art understands a claim term is the starting point of claim interpretation. *Id.*

A person of ordinary skill in the art is “deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Id.* Where a claim term has a particular meaning in the field of the art, the court looks to “those sources available to the public to show what a person of skill in the art would have understood [the] disputed claim language to mean.” *Id.* at 1314 (quoting *Innova*, 381 F.3d at 1116). Those sources include “the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” *Id.* (quoting *Innova*, 381 F.3d at 1116).

The intrinsic evidence, that is, the patent's specification and, if in evidence, the prosecution history, is important in claim construction. *Id.* at 1315-17. "[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.* at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). The patent specification and the prosecution history may clarify the definition of terms used in the claims, or may show that the patentee has clearly disavowed the ordinary meaning of a term in favor of some special meaning. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979-80 (Fed. Cir. 1995) ("*Markman I*"), *aff'd*, 517 U.S. 370, 116 S. Ct. 1384 (1996). A claim term takes on its ordinary and accustomed meaning unless the patentee demonstrated an express intent to impart a novel meaning by redefining the term "with reasonable clarity, deliberateness, and precision" in the patent specification or prosecution history. *Teleflex, Inc. v. Ficoso N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). The patentee may demonstrate an intent to deviate from the ordinary meaning "by redefining the term or by characterizing the invention in the intrinsic record using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." *Id.* at 1327. If the patentee clearly intended to provide his own definitions for claim terms, the "inventor's lexicography governs." *Phillips*, 415 F.3d at 1316.

In addition to the intrinsic evidence, a court is also authorized to review extrinsic evidence, such as dictionaries, inventor testimony, and learned treatises. *Id.* at 1317. For instance, 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 . . . involves little more than the application of the widely accepted meaning of commonly understood words";

a general purpose dictionary may be helpful in these instances. *Id.* at 1314. However, extrinsic evidence is “in general less reliable” than the intrinsic evidence in determining how to read claim terms. *Id.* at 1318. Therefore, while extrinsic evidence may be used to help educate the court regarding the field of the invention and what a person of ordinary skill in the art would understand claim terms to mean, extrinsic evidence should be considered in the context of the intrinsic evidence in order to result in a reliable interpretation of claim scope. *Id.* at 1319.

II. PATENT BACKGROUND AND TECHNOLOGY

The ‘833 patent is directed toward a system and method for connecting and integrating a portable electronic device, such as an MP3 player, with a second electronic device, such as a car’s sound system. The portable electronic device communicates metadata—i.e., information about a particular data set that may describe how, when, and by whom the data set was created, accessed, or modified; its size; and how it was formatted—to the second electronic device. This metadata may include information about song, artist, album, and playlist names. The metadata is used by the second electronic device to create a graphical user interface that is shown on the device’s display. The second electronic device can then be used to select songs stored on the portable electronic device, using “soft buttons” on the GUI. The ‘833 patent also claims a mounting system to connect the two devices.

III. PERSON OF ORDINARY SKILL IN THE ART

After considering the parties’ proposals and arguments made by the parties at the *Markman* hearing, the court finds that a person of ordinary skill in the art is an individual with the equivalent of a four-year degree from an accredited institution (usually denoted in this country as a B.S. or Bachelor’s degree) in Electrical Engineering (EE), Mechanical Engineering

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