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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CROSSROADS SYSTEMS, INC.,
Plaintiff,

-vs- **Case No. A-13-CA-800-SS**

DOT HILL SYSTEMS CORP.,
Defendant.

CROSSROADS SYSTEMS, INC.,
Plaintiff,

-vs- **Case No. A-13-CA-895-SS**

ORACLE CORPORATION,
Defendant.

CROSSROADS SYSTEMS, INC.,
Plaintiff,

-vs- **Case No. A-13-CA-1025-SS**

HUAWEI TECHNOLOGIES CO. LTD.; HUAWEI ENTERPRISE USA INC.; and HUAWEI TECHNOLOGIES USA INC.,
Defendants.

CROSSROADS SYSTEMS, INC.,
Plaintiff,

-vs- **Case No. A-14-CA-148-SS**

CISCO SYSTEMS, INC.,
Defendant.

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CROSSROADS SYSTEMS, INC.,
Plaintiff,

-vs- **Case No. A-14-CA-149-SS**

NETAPP, INC.,
Defendant.

CROSSROADS SYSTEMS, INC.,
Plaintiff,

-vs- **Case No. A-14-CA-150-SS**

QUANTUM CORPORATION,
Defendant.

CONSOLIDATED *MARKMAN* ORDER

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled causes, and specifically Plaintiff Crossroads Systems, Inc. (Crossroads)'s Opening Claim Construction Brief [#82];[1] Defendants Dot Hill Systems Corp., Oracle Corporation, Huawei Technologies Co. Ltd., Huawei Enterprise USA, Inc., Huawei Technologies USA, Inc., Cisco Systems, Inc., NetApp, Inc., and Quantum Corporation (collectively, Defendants)'s Joint Opening Claim Construction Brief [#83]; Defendant NetApp, Inc. (NetApp)'s Additional Opening Claim Construction Brief [#69]; Crossroads' Reply Claim Construction Brief [#87]; Defendants' Reply Claim Construction Brief [#90]; NetApp's Additional Reply Claim Construction Brief [#91]; the parties' Joint Proposed Claim

[1] Defendants have generally made joint filings with respect to the pre- and post-*Markman* briefing, and for ease of reference, the Court uses the docket entry numbers reflected in the first-filed case, case number 1:13-CV-800-SS (the Dot Hill Case). The only defendant to make its own separate filings with respect to the pre- and post-*Markman* briefing is NetApp, Inc. While NetApp, Inc. joined the other defendants in the joint filings, it also filed a group of briefs related to an indefiniteness question. Where NetApp, Inc. filed its own additional briefs, the Court refers to the docket entry numbers reflected in case number 1:14-CV-149-SS (the NetApp Case).

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Constructions [#92]; Crossroads' Opening Post-*Markman* Brief [#100]; Defendants' Opening Post-*Markman* Brief [#101]; NetApp's Additional Opening Post-*Markman* Brief [#88]; Crossroads' Responsive Post-*Markman* Brief [#103]; Defendants' Responsive Post-*Markman* Brief [#102]; NetApp's Additional Responsive Post-*Markman* Brief [#91]; the Report and Recommendation (R&R) of the Special Master [#105]; Crossroads' Objections [#111]; Defendants' Objections [#110]; Crossroads' Response to Defendants' Objections [#117]; and Defendants' Response to Crossroads' Objections [#118]. Having reviewed the documents, the governing law, the arguments of the parties at the *Markman* hearing, and the file as a whole, the Court now enters the following opinion and orders.

Background

This case is a patent infringement suit brought by Crossroads against Defendants. At issue are four patents: (1) United States Patent No. 6,425,035 (the '035 Patent); (2) United States Patent No. 7,934,041 (the '041 Patent); (3) United States Patent No. 7,051,147 (the '147 Patent); and (4) United States Patent No. 7,987,311 (the '311 Patent).[2] All four patents are titled "Storage Router and Method for Providing Virtual Local Storage," and they all are continuations of United States Patent No. 5,941,972 (the '972 Patent).[3] The invention of the patents-in-suit is a storage router that provides virtual local storage to hosts. The virtual local storage appears to a host to be within, or

[2] Crossroads asserts the '035 Patent against Dot Hill Systems, Inc.; the '035, '147, and '041 Patents against Oracle Corporation, Huawei Technologies Co., Ltd., Huawei Enterprise USA, Inc., Huawei Technologies USA, Inc., Cisco Systems, Inc., and Quantum Corporation; and the '035, '147, '041, and '311 Patents against NetApp, Inc.

[3] As described by Crossroads, the primary difference between the patents is the parent '972 Patent claims specifically recite that the first transport medium is Fibre Channel and the second transport medium is Small Computer System Interface (SCSI), the '147 Patent claims specifically recite that both transport media are Fibre Channel, and the '035 Patent claims do not recite any protocol limitations on the first and second transport media. *See* Crossroads' Opening Claim Construction Br. [#82] at 1 n.1. Similarly, the '311 Patent and the '041 Patent do not recite any protocol limitations on the first and second transport media, but the claims are different in the three "any-to-any" patents. *Id.* The majority of the claim terms at issue are identical between the patents-in-suit. *Id.*

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locally connected to, the host even though the storage space is actually in a remote storage device. Because the virtual local storage appears as local storage to a host, the host will access the virtual local storage in the same manner as local storage, using native low level block protocols (NLLBPs). The storage router can therefore allow access to storage using the NLLBP received from the host. The storage router uses a map to allocate storage to associated hosts so that hosts have controlled access to the storage specified in the map.

The Court has previously encountered this family of patents on multiple occasions and actually construed many of the claim terms at issue in the present case in those previous encounters. First, the Court construed the '972 Patent in *Crossroads Systems, (Texas), Inc. v. Chaparral Network Storage, Inc.*, No. A-00-CA-217-SS (W.D. Tex. 2000) (the *Chaparral* Litigation). Second, the Court construed the '972 Patent and the '035 Patent in *Crossroads Systems, (Texas), Inc. v. Dot Hill Systems Corporation*, No. A-03-CA-754-SS (W.D. Tex. 2003) (the *Dot Hill* Litigation). Third, the Court construed the '035 Patent in *Crossroads Systems, Inc. v. 3Par, Inc.*, No. 1:10-CV-652-SS (W.D. Tex. 2010) (the *3Par* Litigation). In the *3Par* Litigation, Special Master Karl Bayer (also appointed in the present case) issued a Report and Recommendation regarding the '147 Patent, but because the claims relating to that patent were dismissed prior to the Court's *Markman* order, the Court did not consider the proposed constructions relating to the '147 Patent. While they do not have preclusive effect, the Court's previous constructions are highly persuasive in the present case, especially where there is no new argument or evidence to justify a change in position. *See Collegenet, Inc. v. XAP Corp.*, No. CV-03-1229, 2004 WL 2429843, at *6 (D. Or. Oct. 29, 2004) ("[T]o the extent neither party raises new arguments, I defer to the prior claim constructions . . . and even in the presence of new arguments . . . give 'considerable weight' to my previous claim

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constructions") (citing *KX Indus., L.P. v. PUR Water Purification Prods., Inc.*, 108 F. Supp. 2d 380, 387 (D. Del. 2000), *aff'd*, 18 F. App'x 871 (Fed. Cir. 2001) (unpublished)).

The Court, through Special Master Bayer, held the *Markman* hearing on October 6–7, 2014. The Special Master issued his Report and Recommendation on claim construction on February 23, 2015. To the extent the parties have made specific objections to the Special Master's factual findings or legal conclusions, they are entitled to de novo review of those findings and conclusions. FED. R. CIV. P. 53(f).

Analysis

I. Claim Construction—Legal Standard

When construing claims, courts begin with "an examination of the intrinsic evidence, i.e., the claims, the rest of the specification and, if in evidence, the prosecution history." *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002); *see also Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1327 (Fed. Cir. 2001).

The words in the claims themselves are of primary importance in the analysis, as the claim language in a patent defines the scope of the invention. *SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). The words of a claim "are generally given their ordinary and customary meaning." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). "[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, i.e., as of the effective filing date of the patent application."[4] *Id.* at 1313. The inquiry into how a person of ordinary skill in the art

[4] This hypothetical person is now commonly referred to simply as an "ordinarily skilled artisan." *E.g.*, *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 711 F.3d 1348, 1365–66 (Fed. Cir. 2013).

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