

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

CHRIMAR SYSTEMS, INC., et al,	§	
	§	
v.	§	
	§	Civil Action No. 6:15-cv-163 -JDL
ALCATEL-LUCENT USA, INC., et al.	§	
(LEAD CASE)	§	
	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant ALE USA Inc.’s (“ALE”) Motion for construction of the terms “adapted” and “physically connect.” (Doc. No. 298.) Plaintiffs Chrimar Systems, Inc. and Chrimar Holding Company, LLC (“Chrimar”) filed a response. (Doc. No. 309.)

BACKGROUND

The Court previously held that the preambles of claims 31 and 67 of U.S. Patent No. 8,115,012 (“the ’012 Patent”) to be limiting, which contain the terms “adapted” and “adapting,” respectively. (6:13-cv-00880 (Doc. No. 99, at 17).) At the parties’ request, the Court entered that finding in the instant action. (Doc. No. 117.) This Court was never asked to construe the term “physically connect,” which is found in 8,902,760 (“the ’760 Patent”). Defendants now contend that there is a dispute regarding the scope of these claim terms that must be resolved by the Court.

A. The Patents

The ’012 Patent is titled “System and Method for Adapting a Piece of Terminal Equipment,” and relates to tracking of devices that are connected to a wired network. *See generally* ’012 Patent. More specifically, the ’012 Patent describes permanently identifying an “asset,” such as a computer, “by attaching an external or internal device to the asset and

communicating with that device using existing network wiring or cabling.” ’012 Patent at 1:67–2:2. The ’012 Patent refers to that device as the “remote module.” *Id.* at 3:22–26. The asset can then be managed, tracked, or identified by using the remote module to communicate a unique identification number, port ID, or wall jack location to the network monitoring equipment, or “central module.” *Id.* at 6:7–13, 8:66–9:4. The ’012 Patent further discloses that “asset identification” may be done in a way “that does not use existing network bandwidth.” *Id.* at 3:10–12. These concepts are reflected in the patents’ asserted claims, and independent claim 31 is set forth below for reference:

31. An adapted piece of Ethernet data terminal equipment comprising:
 - an Ethernet connector comprising a plurality of contacts;
 - and
 - at least one path coupled across selected contacts, the selected contacts comprising at least one of the plurality of contacts of the Ethernet connector and at least another one of the plurality of contacts of the Ethernet connector,wherein distinguishing information about the piece of Ethernet data terminal equipment is associated to impedance within the at least one path.

’012 Patent at 18:62–19:5 (Claim 31).

The ’760 Patent is related, and claim 1 recites:

1. A BaseT Ethernet system comprising:
 - a piece of central BaseT Ethernet equipment;
 - a piece of BaseT Ethernet terminal equipment;
 - data signaling pairs of conductors comprising first and second pairs used to carry BaseT Ethernet communication signals between the piece of central BaseT Ethernet equipment and the piece of BaseT Ethernet terminal equipment, the first and second pairs physically connect between the piece of BaseT Ethernet terminal equipment and the piece of central Base T Ethernet equipment, the piece of central BaseT Ethernet equipment having at least one DC supply, the piece of BaseT Ethernet terminal equipment having at least one path to draw different magnitudes of current flow from the at least one DC supply through a loop formed over at least one of the

conductors of the first pair and at least one of the conductors of the second pair, the piece of central BaseT Ethernet equipment to detect at least two different magnitudes of the current flow through the loop and to control the application of at least one electrical condition to at least two of the conductors.

(’760 Patent at 17:15–36 (Claim 1).)

APPLICABLE LAW

The Federal Circuit has held: “When the parties raise an actual dispute regarding the proper scope of [the] claims, the court . . . must resolve that dispute.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008). The court must resolve the dispute because “the scope of the asserted claims is a question of law,” and the court cannot leave “the jury free to consider the[] [parties’] arguments” on a disputed question of law. *Id.* at 1361–62.

The Court applies the familiar principles of claim construction to resolve this dispute. Those begin: “the words of a claim ‘are generally given their ordinary and customary meaning.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). “[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.* at 1314. “[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. Conceptor, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002).

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.

Although, “less significant than the intrinsic record in determining the legally operative meaning of claim language,” the Court may rely on extrinsic evidence to “shed useful light on the relevant art.” *Phillips*, 415 F.3d at 1317 (quotation omitted). Technical dictionaries and treatises may help the Court understand the underlying technology and the manner in which one skilled in the art might use claim terms, but such sources may also provide overly broad definitions or may not be indicative of how terms are used in the patent. *Id.* at 1318. Similarly, expert testimony may aid the Court in determining the particular meaning of a term in the pertinent field, but “conclusory, unsupported assertions by experts as to the definition of a claim term are not useful.” *Id.*

In patent construction, “subsidiary fact finding is sometimes necessary” and the court “may have to make ‘credibility judgments’ about witnesses.” *Teva v. Sandoz*, 135 S.Ct. 831, 838 (2015). In some cases, “the district court will need to look beyond the patent’s intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or

the meaning of a term in the relevant art during the relevant time period.” *Id.* at 841. “If a district court resolves a dispute between experts and makes a factual finding that, in general, a certain term of art had a particular meaning to a person of ordinary skill in the art at the time of the invention, the district court must then conduct a legal analysis: whether a skilled artisan would ascribe that same meaning to that term *in the context of the specific patent claim under review.*” *Id.* (emphasis in original). When the court makes subsidiary factual findings about the extrinsic evidence in consideration of the “evidentiary underpinnings” of claim construction, those findings are reviewed for clear error on appeal. *Id.*

ANALYSIS

1. “adapted”

ALE argues that the construction of the term “adapted” is disputed and must be resolved. (Doc. No. 298, at 2.) Specifically, ALE argues that Chrimar alleges “adapted” should have its plain and ordinary meaning of “designed, configured, or made” in accordance with the claim, which ALE argues reads out the meaning of term “adapted.” *Id.* at 2–3. ALE contends that instead the Court should adopt its construction of “adapted” to mean “modification of preexisting equipment,” because it captures the problem confronted by the inventors taking existing networks and adapting them to make equipment distinguishable. *Id.* at 5.

Chrimar agrees that the term “adapted” should be construed, but disagrees with ALE’s proposed construction. (Doc. No. 309, at 1–2.) Chrimar maintains that Defendants continue to try and read in to the claim a requirement that “adapted” means modifying or retrofitting an existing piece of equipment. *Id.* at 2. Specifically, Chrimar argues that “ALE’s proposed construction seeks to limit the claim to one particular embodiment (i.e., where the remote module is external to and attached to a network asset) while completely ignoring that the

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