

erally do not limit the claims because the patentability of apparatus or composition claims depends on the claimed structure, not on the use or purpose of that structure.” *Id.* “Thus, preamble language merely extolling benefits or features of the claimed invention does not limit the claim scope without clear reliance on those benefits or features as patentably significant.” *Id.*

With the foregoing, in mind, the claims do not recite the preamble in Jepson form, nor do the limitations of the claim body rely on the disputed limitation for antecedent basis, nor does the preamble recite important additional structure. Furthermore, it is apparent from reading the body of the claim that the claim is directed to an apparatus that receives television transmissions; thus, the preamble is not necessary to give “life, meaning and vitality” to the claim. Nor did Harvey *et al.* rely on the preambles during prosecution to distinguish prior art or emphasize patentability. In short, the preamble simply serves “as a convenient label for the invention as a whole,” and thus should not be construed as limiting. See *Storage Technology*, 329 F.3d at 831. Thus, construction of the term “television receiver system” need not be reached.

c) Recommended Construction

In view of the foregoing, therefore, the special master recommends that the Court conclude that

The preambles of claims 8, 10, 11 and 44 are not limiting.

11. “processor”

This term appears in claims 11, 12 and 13. Claim 11 is deemed representative, and is reproduced below for reference, with the disputed term in boldface:

11. A television receiver system comprising:

a first **processor** for receiving information of a selected television program transmission and detecting a specific signal in said transmission based upon a location or timing pattern of said specific signal in said transmission, said first processor being programmed with information of a varying location or timing pattern;

a second processor operatively connected to said first processor for receiving and processing information of said specific signal, and for identifying

when and where to pass said information based upon said information, and passing said information.

a) The Parties' Proposed Constructions and Arguments

PMC/GEMSTAR'S PROPOSED CONSTR.

A digital electronic device that processes information by operating on data according to instructions.

Post-Hearing: [no change]

DEFENDANTS' PROPOSED CONSTR.

[not addressed]

Post-Hearing: The terms "first processor"/"second processor"/"processor" require no construction.

Plaintiffs' Harvey VI Chart at 41; Joint Summary at 65.

Defendants urge that the construction of "processor" should apply to that term as it appears in claim 44.

According to the JCCS, the parties agree that "processor" should be defined as "a digital electronic device that processes information by operating on data according to instructions." JCCS at 10.

b) Discussion

As discussed above in connection with construction of the term "first processor means" called for in Harvey IV, a "processor" is "a digital electronic device that processes information by operating on data according to instructions." That construction applies here.

c) Recommended Construction

In view of the foregoing, therefore, the special master recommends that the Court conclude that:

A "processor" is a digital electronic device that processes information by operating on data according to instructions.

ing one or more lines or a portion of a line from the video that contain embedded digital signals,” the claim uses the word “selecting” – not “accessing” or “choosing” – and is readily understandable. Furthermore, the claim calls for “selecting portions of one or more lines,” not selecting “one or more lines or a portion of a line.”

As for the plaintiffs’ other contention that “changing the specific portions of said video lines that are selected” means that “the line receiver can be controlled or caused to change the lines or portions of a line that it examines for digital signals,” again, that is not what the claim says. The claim uses the words “receiving” and “selecting,” not “examining.” Again, the claim calls for “portions of one or more lines,” not “one or more lines or a portion of a line.”

Finally, as for whether this term excludes a “full field receiver” (whatever that is) or not, that is a question for the later infringement stage.

c) Recommended Construction

In view of the foregoing, therefore, the special master recommends that the Court conclude that

In the phrase “a line receiver for receiving * * * and selecting * * *,” a “line receiver” is a device for receiving electrical signals. The claim expressly requires that the “line receiver” have two functions: (1) “receiving a video signal of an analog television transmission” and (2) “selecting portions of one or more lines of said video that contain embedded signals.” The claim also requires that the “line receiver” be “capable of changing the specific portions of said video lines that are selected.”

23. “alter its decryption pattern or technique”

This term appears in claim 17, below (the disputed term is in boldface):

17. A system for controlling a decryptor, said system comprising:

a digital detector for receiving at least a portion of a television program transmission, said program transmission comprising a program and a plurality of signals embedded in said transmission, said detector detecting said signals;

a decryptor operatively connected to said detector for receiving and decrypting said detected signals; and

a controller operatively connected to said decryptor for causing said decryptor to alter its decryption pattern or technique.

a) The Parties' Proposed Constructions and Arguments

PMC/GEMSTAR'S PROPOSED CONSTR.

[T]he controller can cause the decryptor to alter either the decryption key (pattern) or the decryption algorithm (technique) used to decrypt the signal.

Post-Hearing: [no change]

DEFENDANTS' PROPOSED CONSTR.

The term "alter its decryption pattern or technique" requires a change in the decryption algorithm itself or in a plan or model of which the decryptor is preinformed and which determines what bits of a received message are and are not decrypted. This term should be construed to exclude merely changing the decryption key.

Post-Hearing: [no change]

Plaintiffs' Harvey VI Chart at 113; Defendants' Harvey VI Chart at 67; Joint Summary at 49.

The plaintiffs say that the parties agree that the terms "decryption pattern or technique" and "manner of decryption" should be interpreted consistently. The plaintiffs contend that both of those terms should include both a decryption key (pattern) and algorithm (technique), and that the defendants exclude a decryption key. The plaintiffs urge that their proposed construction is consistent with special master Harmon's construction of the term "controller operatively connected to said decrypter for causing said decrypter to alter its decryption pattern or technique," and that the 1981 and 1987 specifications support their construction. In particular, the plaintiffs urge, example 4 of the 1987 specification demonstrates that the disclosed system is capable of changing both its decryption pattern and technique. According to the plaintiffs, the defendants ignore the intrinsic evidence and rely on obscure, non-technical definitions to conclude that the term "pattern" refers not to a decryption key, but to a "plan or model" in which the receiver determines what to decrypt and what not to decrypt. According to the plaintiffs, the opinion of the defendants' expert, Mr. Arnold, is incorrect because it ignores the explicit support set forth in the Harvey specifications demonstrating that "pattern" corresponds to "key." Plaintiffs' Opening *Markman* Brief at 80-84.

According to the defendants, the dispute concerns whether changing a key is "altering a decryption." The defendants urge that a person of ordinary skill would understand that altering the

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