



presented their claim construction position (Doc. No. 83) (“PLS.’ BR.”).<sup>2</sup> Defendants filed a Response (Doc. No. 88) (“RESP.”) and Plaintiff filed a Reply (Doc. No. 91) (“REPLY”). The parties additionally submitted a Joint Claim Construction Chart pursuant to P.R. 4-5(d). Doc. No. 93. On October 30, 2014, the Court held a claim construction hearing. Upon consideration of the parties’ arguments and for the reasons stated herein, the Court adopts the constructions set forth below.

### OVERVIEW OF THE PATENTS

Plaintiff alleges Defendants infringe independent claims 31 and 67 and dependent claims 35, 42, 43, 49, 50, 55, 66, 72, 73, 77, 88, 89, and 106 (“the asserted claims”) of the ‘012 Patent. PL.’S BR. at 1. 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. ‘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 and 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, including independent claims 31 and 67 as set forth below:

31. An adapted piece of Ethernet data terminal equipment comprising:  
an Ethernet connector comprising a plurality of contacts;  
and

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<sup>2</sup> All citations herein will be to the Docket in No. 6:13-cv-880 unless otherwise indicated.

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.

67. A method for adapting a piece of terminal equipment, the piece of terminal equipment having an Ethernet connector, the method comprising:  
 coupling at least one path across specific contacts of the Ethernet connector, the at least one path permits use of the specific contacts for Ethernet communication, the Ethernet connector comprising the contact 1 through the contact 8, the specific contacts of the Ethernet connector comprising at least one of the contacts of the Ethernet connector and at least another one of the contacts of the Ethernet connector; and  
 arranging impedance within the at least one path to distinguish the piece of terminal equipment.

'012 Patent, claims 31 and 67.

There are six disputed terms or phrases in the asserted claims. One term has been construed by the Court following early claim construction briefing and oral argument on September 3, 2014. Doc. No. 92 (“EARLY CLAIM CONSTRUCTION OPINION”). In its Order, the Court denied Defendants’ summary judgment motion and construed the “distinguishing” term as follows:

<u>Term</u>	<u>Construction</u>
“distinguishing information about the piece of Ethernet terminal equipment” (Claim 31)	“information to distinguish the piece of Ethernet data terminal equipment from at least one other piece of Ethernet data terminal equipment”
“to distinguish the piece of terminal equipment” (Claim 67)	“to distinguish the piece of terminal equipment having an Ethernet connector from at least one other piece of terminal equipment having an Ethernet connector”

EARLY CLAIM CONSTRUCTION OPINION at 15. Trial is scheduled for September 8, 2015.

### CLAIM CONSTRUCTION PRINCIPLES

“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) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). The Court examines a patent’s intrinsic evidence to define the patented invention’s scope. *Id.* at 1313-1314; *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). Intrinsic evidence includes the claims, the rest of the specification and the prosecution history. *Phillips*, 415 F.3d at 1312-13; *Bell Atl. Network Servs.*, 262 F.3d at 1267. The Court gives claim terms their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention. *Phillips*, 415 F.3d at 1312-13; *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003). Claim language guides the Court’s construction of claim terms. *Phillips*, 415 F.3d at 1314. “[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.* Differences among claims, such as additional limitations in dependent claims, can provide further guidance. *Id.*

“[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. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *Teleflex, Inc. v. Ficoso N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). In the specification, a patentee may define his own terms, give a claim term a different meaning than it would otherwise possess, or

disclaim or disavow some claim scope. *Phillips*, 415 F.3d at 1316. Although the Court generally presumes terms possess their ordinary meaning, this presumption can be overcome by statements of clear disclaimer. See *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343-44 (Fed. Cir. 2001). This presumption does not arise when the patentee acts as his own lexicographer. See *Irdeto Access, Inc. v. EchoStar Satellite Corp.*, 383 F.3d 1295, 1301 (Fed. Cir. 2004).

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.

The prosecution history is another tool to supply the proper context for claim construction because a patentee may define a term during prosecution of the patent. *Home Diagnostics Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1356 (Fed. Cir. 2004) (“As in the case of the specification, a patent applicant may define a term in prosecuting a patent.”). The well-established doctrine of prosecution disclaimer “preclud[es] patentees from recapturing through claim interpretation specific meanings disclaimed during prosecution.” *Omega Eng’g Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003). The prosecution history must show that the patentee clearly and unambiguously disclaimed or disavowed the proposed interpretation during

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