

Technology Ltd., Hon Hai Precision Industry (Taiwan) Co., Ltd., Wistron Corp., Wistron Infocomm Technology (Texas) Corp., Wistron Infocomm Technology (America) Corp., and Vizio (collectively, “Vizio Defendants”). The two actions have been consolidated for pre-trial purposes. Further, the claim construction has been separated into two phases. This Opinion and Order addresses Phase 1. Phase 1 includes the construction of the four patents asserted in the action against Apple: U.S. Patent Nos. 7,752,649 (“the ’2,649 Patent”), 8,191,091 (“the ’091 Patent”), 8,559,635 (“the ’635 Patent”), and 8,752,088 (“the ’088 Patent”) (collectively, “the Phase 1 Patents”). The ’2,649 Patent is also asserted against the Vizio Defendants along with a number of other patents. The ’2,649 Patent claim terms that overlap both actions are included in the Phase 1 construction.

The Phase 1 patents are part of patent family which has extensive prosecution and litigation history, including multiple prior litigations, reexaminations and IPRs. The Phase 1 patents were originally filed in May and June 1995 and are part of a chain of continuation applications filed from U.S. Patent 4,965,825 (“the ’825 Patent). The ’825 Patent issued from an application filed in 1987. The ’825 Patent was a continuation-in-part application of another application first filed in 1981 (now U.S. Patent No. 4,694,490).¹ The parties appear to dispute which priority date is applicable to which Phase 1 Patent. At the hearing, the parties indicated that PMC originally contended that the ’635 Patent and ’088 Patent claims are entitled to a priority to the 1981 specification and the ’091 Patent and ’2,649 Patent claims are entitled to a priority to the 1987 specification. However, shortly before the hearing, PMC changed its contentions with regard to the ’091 Patent claims, now asserting priority to the 1981 specification. (Dkt. No. 194 at 13-14, 50-51.)

¹ For citations to the 1981 specification the parties cite to the ’490 Patent. For citations to the 1987 specification the parties cite to the ’091 Patent.

The disputed terms fall into 24 term groupings. In addition to the claim construction disputes, Apple and Vizio argue that PMC's expert declaration should be afforded no weight.²

The Phase 1 Patents generally relate to the delivery of programming content to consumers. More particularly, the patents relate to the concept of delivering "personalized" programming. The Phase 1 Patents share a common Abstract:

A unified system of programming communication. The system encompasses the prior art (television, radio, broadcast hardcopy, computer communications, etc.) and new user specific mass media. Within the unified system, parallel processing computer systems, each having an input (e.g., 77) controlling a plurality of computers (e.g., 205), generate and output user information at receiver stations. Under broadcast control, local computers (73, 205), combine user information selectively into prior art communications to exhibit personalized mass media programming at video monitors (202), speakers (263), printers (221), etc. At intermediate transmission stations (e.g., cable television stations), signals in network broadcasts and from local inputs (74, 77, 97, 98) cause control processors (71) and computers (73) to selectively automate connection and operation of receivers (53), recorder/players (76), computers (73), generators (82), strippers (81), etc. At receiver stations, signals in received transmissions and from local inputs (225, 218, 22) cause control processors (200) and computers (205) to automate connection and operation of converters (201), tuners (215), decryptors (224), recorder/players (217), computers (205), furnaces (206), etc. Processors (71, 200) meter and monitor availability and usage of programming.

'2,649 Abstract. In one of the IPR decisions, the concepts of the 1987 specification have been succinctly described in relation to U.S. Patent 5,887,243 as:

The '243 patent discloses a system for viewing a conventional broadcast program simultaneously with relevant user specific information at a subscriber station. Ex. 1003, 6:61-67.

Figure 1, below, is illustrative of the system.

² Apple contends that Dr. Weaver's declaration (Dkt. No. 148-41) consists of nothing more than conclusory statements and legal argument that should be given no weight. Apple further contends that Dr. Weaver admits that he is not an expert in analog or digital television or broadcast transmissions. (Dkt. No. 161 at 30 (citing Dkt. No. 161 Ex. 9, Weaver Tr. at 216:6-20).) Vizio makes similar assertions. The Court's findings as described herein do not rely on the Weaver declaration, largely rendering that dispute moot for the claim construction issues.

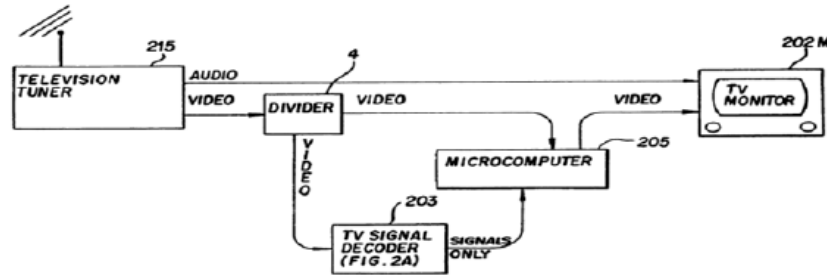


FIG. 1

Figure 1 “is a block diagram of a video/computer combined medium receiver station.” Ex. 1003, 9:39–40. The subscriber (receiver) station includes television tuner 215 for receiving a broadcast transmission, divider 4, TV signal decoder 203, microcomputer 205, and TV monitor 202M. Microcomputer 205 sends a query to a remote data source, and after receiving data from that source, generates graphics from that data that can be combined with the television broadcast video signal displayed by TV monitor 202M. *Id.* at 10:56–11:37; 236:65–237:20.

The ’243 patent provides an example of combining a graph of the market performance from a “Wall Street Week” program and financial data specific to each subscriber. In other words, monitor 205 displays “Wall Street Week” at the same time it displays previously stored data from another remote source that contains data about a user’s stock portfolio. *Id.* at 14:13–39. Microprocessor 205 accesses a floppy disk that holds a data file containing a portfolio of financial instruments owned by the specific subscriber at that subscriber station. During a program broadcast, microcomputer 205 also receives instruction signals embedded in the “Wall Street Week” programming transmission. *Id.* at 14:23–37. The embedded signals include a set of control instructions to control microcomputer 205 at each subscriber station. *Id.* at 13:1–14:38.

In response to the embedded signals, microcomputer 205 enters information at the video RAM of the graphics card for graphing the subscriber’s portfolio information. *Id.* at 13:44–65. A subsequent embedded signal instructs the microcomputer to overlay the graphic information onto the received video broadcast and transmit the combined information to TV monitor 202M, thereby displaying a dual graph showing a subscriber’s portfolio performance relative to the overall market performance generated during the “Wall Street Week” show. *Id.* at 14:23–36.

Figure 1C below, reproduced from the ’243 patent, depicts such an overlay:

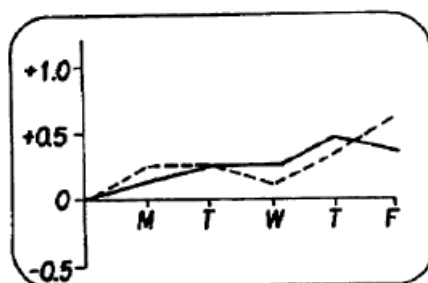


FIG. 1C

Figure 1C above depicts a dual graph representing an individual subscriber's portfolio performance overlaid on the Wall Street Week graph that represents overall market performance. As an example of creating the instruction signal to stimulate the overlay, during the broadcast of Wall Street Week, after the host describes overall market performance,

the host says, “[a]nd here is what your portfolio did.” At this point, an instruction signal is generated at said program origination studio, embedded in the programming transmission, and transmitted. . . . Said signal instructs microcomputer[] 205 . . . to overlay composite video information and transmit the combined information to TV monitor [205]. *Id.* at 14:23–33.

(Dkt. No. 161 Ex. 14 at 3-5.)

LEGAL PRINCIPLES

Claim Construction

“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) (en banc) (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). To determine the meaning of the claims, courts start by considering the intrinsic evidence. *Id.* at 1313; *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). The intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *Phillips*, 415 F.3d at 1314; *C.R. Bard, Inc.*, 388 F.3d at 861. The general rule—subject to certain specific exceptions discussed *infra*—is that each claim

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