

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MOTOROLA MOBILITY, INC., and §
GENERAL INSTRUMENT CORP., §
Plaintiffs, §

v. §

TIVO, INC., §
Defendant. §

CASE NO. 5:11-CV-53-JRG

TIVO, INC., §
Counterclaim Plaintiff, §

v. §

MOTOROLA MOBILITY, INC., §
GENERAL INSTRUMENT CORP., TIME §
WARNER CABLE INC., and TIME §
WARNER CABLE LLC., §
Counterclaim Defendants, §

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiffs Motorola Mobility, Inc. and General Instruments Corporation’s (collectively, “Motorola’s”) Opening Claim Construction Brief (Dkt. No. 173). Also before the Court are Defendant TiVo, Inc.’s (“TiVo’s”) response (Dkt. No. 182) and Motorola’s reply (Dkt. No. 189).

Before the Court is Counterclaim Plaintiff TiVo’s P.R. 4-5(a) Opening Claim Construction Brief (Dkt. No. 177). Also before the Court is the response of Counterclaim Defendants Time Warner Cable Inc. and Time Warner Cable LLC (collectively, “TWC”) and Motorola (Dkt. No. 183). Further before the Court is TiVo’s reply (Dkt. No. 190).

The Court held a claim construction hearing on November 27, 2012.

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I. BACKGROUND

Motorola brings suit alleging infringement of the following United States Patents

(collectively, “the Motorola Patents”):

5,949,948 (“the ‘948 Patent”)
6,304,714 (“the ‘714 Patent”)
6,356,708 (“the ‘708 Patent”)

(Dkt. No. 86, 4/30/2012 Amended Complaint, at ¶¶ 1 & 27-53.)

TiVo has counterclaimed, alleging infringement by Motorola of the following United States Patents (collectively, “the TiVo Patents”):

6,233,389 (“the ‘389 Patent”)
7,529,465 (“the ‘465 Patent”)
6,792,195 (“the ‘195 Patent”)

(Dkt. No. 73, 3/26/2012 Amended Counterclaims, at ¶¶ 88-90 & 111-149.) TiVo’s Amended Counterclaims also accuse TWC of distributing infringing set-top digital video recorder (“DVR”) boxes made by Motorola. (*See generally* Dkt. No. 129, 7/18/2012 Memorandum Opinion and Order (denying motion to sever and stay TiVo’s counterclaims against TWC).)

The patents-in-suit relate to digital video recording and playback and frequently refer to the widely-used “MPEG” (Moving Pictures Experts Group) standard for compressed digital video and audio.

II. LEGAL PRINCIPLES

It is understood that “[a] claim in a patent provides the metes and bounds of the right which the patent confers on the patentee to exclude others from making, using or selling the protected invention.” *Burke, Inc. v. Bruno Indep. Living Aids, Inc.*, 183 F.3d 1334, 1340 (Fed. Cir. 1999). Claim construction is clearly an issue of law for the court to decide. *Markman v.*

Westview Instruments, Inc., 52 F.3d 967, 970-71 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996).

To ascertain the meaning of claims, courts look to three primary sources: the claims, the specification, and the prosecution history. *Markman*, 52 F.3d at 979. The specification must contain a written description of the invention that enables one of ordinary skill in the art to make and use the invention. *Id.* A patent's claims must be read in view of the specification, of which they are a part. *Id.* For claim construction purposes, the description may act as a sort of dictionary, which explains the invention and may define terms used in the claims. *Id.* "One purpose for examining the specification is to determine if the patentee has limited the scope of the claims." *Watts v. XL Sys., Inc.*, 232 F.3d 877, 882 (Fed. Cir. 2000).

Nonetheless, it is the function of the claims, not the specification, to set forth the limits of the patentee's invention. Otherwise, there would be no need for claims. *SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). The patentee is free to be his own lexicographer, but any special definition given to a word must be clearly set forth in the specification. *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1388 (Fed. Cir. 1992). Although the specification may indicate that certain embodiments are preferred, particular embodiments appearing in the specification will not be read into the claims when the claim language is broader than the embodiments. *Electro Med. Sys., S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 1054 (Fed. Cir. 1994).

This Court's claim construction analysis is substantially guided by the Federal Circuit's decision in *Phillips v. AWH Corporation*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). In *Phillips*, the court set forth several guideposts that courts should follow when construing claims. In

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