UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of CERTAIN AUDIO PROCESSING HARDWARE AND SOFTWARE AND PRODUCTS CONTAINING SAME	Investigation No. 337-TA-949

ORDER NO. 27: CONSTRUING TERMS OF THE ASSERTED PATENTS

(January 7, 2016)

The claim terms construed in this Order are done so for the purposes of this Investigation. Hereafter, discovery and briefing in this Investigation shall be governed by the construction of the claim terms in this Order. Those terms not in dispute need not be construed. *See Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311, 1323 (Fed. Cir. 2004) (noting that the administrative law judge need only construe disputed claim terms).

Table of Abbreviations

CMIB	Complainant's Initial Markman Brief
CMRB	Complainant's Reply Markman Brief
CBPS	Complainant's Bullet-Point Summary
RMIB	Respondents' and Intervenors' Initial Markman Brief
RMRB	Respondents' and Intervenors' Reply Markman Brief
RBPS	Respondents' and Intervenors' Bullet-Point Summary
SMIB	Staff's Initial Markman Brief
SMRB	Staff's Reply Markman Brief
SBPS	Staff's Bullet-Point Summary
Tr.	Transcript of the Markman Hearing

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I. INTRODUCTION

This investigation was instituted on March 11, 2015, based on a complaint filed by Complainant Andrea Electronics Corp. ("Complainant") on February 9, 2015. (80 Fed. Reg. 14,159-160 (Mar. 18, 2015).) The Respondents in this investigation are: ASUSTeK Computer Inc.; ASUS Computer International; Dell Inc.; Hewlett Packard Co.[1]; Lenovo Holding Co., Inc.; Lenovo (United States) Inc.; Toshiba Corp.; and Toshiba American Information Systems, Inc. (collectively "Respondents"). In addition, two third-parties have sought and obtained nonrespondent intervenor status: Contexant Systems, Inc. and Waves Audio, Ltd. (collectively "Intervenors"). (Order No. 15 (Aug. 7, 2015) (nonreviewed Sept. 10, 2015).)

On August 7, 2015, I issued the procedural schedule for this investigation. (*See* Order No. 16 (August 7, 2015).) In accordance with that schedule, the parties exchanged: (i) on September 4, 2015, their lists of proposed terms for construction, as required by G.R. 8.1; and (ii) on September 18, 2015 their preliminary constructions for those terms, as required by G.R. 8.2. After meeting and conferring to narrow the issues, the parties filed their Joint Claim Construction Chart on September 25, 2015. Thereafter, on October 19, 2015, the parties filed their initial claim construction briefs and on November 2, 2015, the parties filed their rebuttal claim construction briefs. On November 13, 2015, the parties filed a joint motion, which is hereby Granted, seeking leave to amend their joint claim construction chart to reflect the fact that the parties no longer dispute the construction of a number of claim terms that the parties had previously asked me to construe. (Motion Docket No. 949-035.) On November 16-17, 2015, in accordance with the procedural schedule, I held a technology tutorial and Markman hearing. I informed the parties during the hearing that I would allow them to file a bullet-point summary of

[1] Pending is a motion to terminate HP from this investigation based on settlement. (Motion Docket No. 949-052.)

their claims construction arguments after the conclusion of the Markman hearing. On November 23, 2015, each of the parties filed a bullet-point summary of their claim construction arguments.

II. RELEVANT LAW

"An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*) (internal citations omitted), *aff'd*, 517 U.S. 370 (1996). Claim construction is a "matter of law exclusively for the court." *Id.* at 970-71. "The construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims." *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000).

Claim construction focuses on the intrinsic evidence, which consists of the claims themselves, the specification, and the prosecution history. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*); *see also Markman*, 52 F.3d at 979. As the Federal Circuit in *Phillips* explained, courts must analyze each of these components to determine the "ordinary and customary meaning of a claim term" as understood by a person of ordinary skill in art at the time of the invention. 415 F.3d at 1313. "Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language." *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Grp., Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001).

"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*, 415 F.3d at 1312 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). "Quite apart from the written description and the prosecution history, the claims themselves provide substantial guidance as to the meaning of particular claims terms."

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