IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KONINKLIJKE PHILIPS N.V. and U.S. PHILIPS CORPORATION, Plaintiffs, v. ASUSTeK COMPUTER INC. and ASUS COMPUTER INTERNATIONAL, Defendants.	)))))))))))))	C.A. No. 15-1125-GMS
KONINKLIJKE PHILIPS N.V. and U.S. PHILIPS CORPORATION, Plaintiffs, v. HTC CORP. and HTC AMERICA, INC. Defendants.	)))))))))))))	C.A. No. 15-1126-GMS
KONINKLIJKE PHILIPS N.V. and U.S. PHILIPS CORPORATION, Plaintiffs, v. VISUAL LAND, INC., Defendant.	)))))))))))	C.A. No. 15-1127-GMS
U.S. PHILIPS CORPORATION, Plaintiffs, v. SOUTHERN TELECOM INC.,	))))))))))	C.A. No. 15-1128-GMS

Defendant.	)	
_____	)	
KONINKLIJKE PHILIPS N.V. and	)	
U.S. PHILIPS CORPORATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 15-1130-GMS
	)	
DOUBLE POWER TECHNOLOGY, INC.,	)	
ZOWEE MARKETING CO., LTD., and	)	
SHENZEN ZOWEE TECH. CO., LTD.,	)	
	)	
Defendants.	)	
_____	)	
KONINKLIJKE PHILIPS N.V. and	)	
U.S. PHILIPS CORPORATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 15-1131-GMS
	)	
YIFANG USA, INC., d/b/a	)	
E-FUN, INC.,	)	
	)	
Defendant.	)	
_____	)	
KONINKLIJKE PHILIPS N.V. and	)	
U.S. PHILIPS CORPORATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 15-1170-GMS
	)	
ACER INC. and	)	
ACER AMERICA CORPORATION,	)	
	)	
Defendants.	)	
_____	)	

ORDER CONSTRUING THE TERMS OF U.S. PATENT NOs. RE44,913, 6,690,387, 7,184,064, 7,529,806, 5,910,797, 6,522,695, 8,543,819, 9,436,809, 6,772,114, RE43,564[1]

After having considered the submissions of the parties and hearing oral argument on the matter, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, as used in the asserted claims of U.S. Patent Nos. RE 44,913 ("the '913 patent"), 6,690,387 ("the '387 patent"), 7,184,064 ("the '064 patent"), 7,529,806 ("the '806 patent"), 5,910,797 ("the 797 patent"), 6,522,695 ("the '695 patent"), 8,543,819 ("the '819 patent"), 9,436,809 ("the '809 patent"), 6,772,114 ("the '114 patent"), & RE43,564 ("the '564 patent"):[2]

The '913 Patent

1. The court adopts the parties' proposed construction for the term **"display area"** to mean "region of an electronic screen."[3]

2. The term **"keypad"** is construed in accordance with its plain and ordinary meaning.[4]

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[1] All docket citations refer to Civil Action NO. 15-1125-GMS. The abbreviation "Tr." refers to the transcript from the *Markman* Hearing on May 3, 2017, D.I. 143.

[2] The court does not address indefiniteness contentions at this time.

[3] The parties' agreed upon the construction of the term "display area" in the Joint Claim Chart. (D.I. 111-2.) In the absence of a genuine dispute, the court will not construe this term. *See O2 Micro International Ltd. v. Beyond Innovation Technology Co., Ltd.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008); *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997).

[4] Defendants propose a construction that limits the claimed "keypad" to "a plurality of keys arranged to resemble a numeric entry or phone dialing interface." The Defendants' citations to the specification are not persuasive. (D.I. 118 at 11.) The patentee provided no definition of "keypad" in the specification and no disavowal of QWERTY or other non-numeric keypads. (D.I. 117 at 2.) Accordingly, the court will not limit the term to a particular embodiment disclosed in the specification. Instead, the court construes the term consistent with its plain and ordinary meaning.

(1) a microprocessor in conjunction with a computer readable storage medium running a computer program to perform the function, such as the algorithm disclosed at 4:45-5:14, 5:48-67, Figure 5; or (2) dedicated logic circuits, PICmicro chips, or application specific integrated circuits (ASIC) that work with or without such a computer program to perform the function, such as the algorithm disclosed at 4:45-5:15, 5:47-67, Figure 5."[6]

The '387 Patent

1.   The term **"terminating said scrolling motion when one of the conditions comprising the following group of conditions is sensed: (a) a substantially stationary finger touch having a finite duration is sensed; (b) an end-of-scroll signal is sensed"** is construed in accordance with its plain and ordinary meaning.[7]

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[6] The parties agree that this phrase should be construed under 35 U.S.C § 112, ¶ 6, and agree as to the claimed function. The only remaining dispute is what constitutes adequate corresponding structure. Plaintiffs propose "a touch a screen and either: (1) a microprocessor in conjunction with a computer readable storage medium running a computer program to perform the function, such as the algorithm disclosed at 4:45-5:14, 5:48-67, Figure 5; or (2) dedicated logic circuits, PICmicro chips, or application specific integrated circuits (ASIC) that works [sic] with or without such a computer program to perform the function, such as the algorithm disclosed at 4:45-5:15, 5:47-67, Figure 5" as the corresponding structure. The Plaintiffs' citations to the specification provide sufficient structure for this function. In contrast, Defendants' construction contains structure—related to displaying—that is not necessary for performing the function. (D.I. 131 at 4.) The court therefore adopts Plaintiffs' proposed corresponding structure.

[7] The parties primarily dispute is whether this term requires "sensing" for both conditions (a) and (b) of the claims, or simply one. *Markman* Hr'g Tr. 42:1-5; 63:3-5. Plaintiffs' proposed construction largely relies on claim 9, which discloses that the sensing is done for a "group of conditions" and that scrolling is terminated when of those conditions occurs. (D.I. 117 at 5.) Plaintiffs also rely on the language of dependent claim 10, which states "wherein said group of conditions to be sensed for terminating said scrolling motion." '387 patent, col. 8 ll. 45-46. Defendants contend that the plain language of this claim requires performance of only one of these conditions: "terminating said scrolling motion **when one** of the conditions comprising the following group of conditions **is sensed**." (D.I. 118 at 7) (emphasis added). In light of the intrinsic evidence, the court sees no reason to unnecessarily modify the scope of the claim by adding the extra step of "sensing for." Thus, the court adopts Defendants' proposed construction.

The '064 Patent

1. The term **"finger touch program instructions associated with said microprocessor for sensing speed, direction, and time duration of a finger touch contact with said display screen"** is construed in accordance with its plain and ordinary meaning.[8]

2. The term **"timer means associated with said microprocessor to provide timing capacity therefor"** is construed in accordance with its plain and ordinary meaning.[9]

_____

[8] The parties dispute whether this term should be construed pursuant to § 35 U.S.C. 112, ¶ 6. There is a presumption that a term falls outside §112, ¶ 6 where the claim does not employ the word "means." *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015). While this presumption may be overcome when the claim fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function, the court does not believe that is the case here. *Id.*

Plaintiffs' expert, Dr. Douglass Schmidt, has supported their assertion that the claim limitation recites "program instructions associated with said microprocessor," and a person of ordinary skill in the art ("POSA") would understand this language to connote the structure of a software program that is executed by a microprocessor. (D.I. 117 at 6.) In his declaration, Dr. Schmidt explains: a POSA would understand that "finger touch" refers to a user's interaction with a touchscreen, and that "finger touch program instructions" are part of a software program executed by the microprocessor that operates on the information provided from a touchscreen." *Id.* at 6-7 (citing D.I. 122 ¶ 29).

Defendants offer no opposing evidence, either intrinsic or extrinsic. Rather, Defendants rely on arguments that the claim merely substitutes the word "instructions," that "could encompass any number of different software algorithms," for the word "means" and fail to disclose "how the software operates to achieve [the claimed] function." (D.I. 118 at 8.) Notably, Defendants seem to concede that the claim language connotes structure by indicating that "[t]his limitation describes a special-purpose software running on a microprocessor." (*Id.* at 8; D.I. 131 at 6.) Because Defendants failed to establish clear and convincing evidence that the claim limitation does not provide sufficient structure, they cannot overcome the presumption that the claim is not subject to § 112 ¶ 6.

[9] As noted, the court is aware that a term presumptively falls within 35 U.S.C. § 112, ¶ 6 when the claim employs the word "means," *Micro Chem., Inc. v. Great Plains Chem. Co., Inc.*, 194 F.3d 1250, 1257 (Fed. Cir. 1999), but that presumption may be overcome when the claim recites sufficient structure for performing the function. *Id.* The court believes that is the case here.

Plaintiffs argue that the term connotes sufficient structure for a POSA to perform the claimed function of "providing timing capacity therefor," and therefore should be afforded its plain and ordinary meaning. (D.I. 117 at 9.) The court is convinced that a POSA would interpret a "timer means associated with said microprocessor" to refer to specific, well known structure for providing timing capacity for a microprocessor. (*Id.*) Although Defendants argue that patentee "as master of the claim" made a "deliberate choice" to use "timer means" language, *Markman* Hr'g Tr. 61:4-8, the court finds that the term should be given its plain and ordinary meaning. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) ("In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.").

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