IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FUNDAMENTAL INNOVATION SYSTEMS INTERNATIONAL LLC, *Plaintiff,* vs. LG ELECTRONICS, INC., et al. *Defendants.*	Case No. 2:16-CV-01425-JRG-RSP LEAD CASE **[REDACTED]**
FUNDAMENTAL INNOVATION SYSTEMS INTERNATIONAL LLC, *Plaintiff,* vs. HUAWEI DEVICE USA, INC. and HUAWEI DEVICE CO., LTD., *Defendants*.	Case No. 2:16-CV-01424-JRG-RSP **[REDACTED]**

DEFENDANTS' OBJECTIONS TO THE COURT'S
APRIL 2, 2018 MEMORANDUM OPINION AND ORDER
REGARDING CLAIM CONSTRUCTION (DKT. 146)

Under L.R. CV-72(b) and 28 U.S.C. § 636(b)(1)(A), LG and Huawei (collectively "Defendants") respectfully object to the Court's Opinion and Order (Dkt. 146 or "Order").

"Generate" / "Generating" - These terms appear in all of the asserted claims of the '111 patent. Defendants proposed that "generate" and "generating" be construed as "produce" and "producing."   FISI proposed plain meaning or that no construction was necessary.   The Magistrate instead construed the terms as "provide" and "providing." (Order at 40.)   The Magistrate's constructions relied solely on the observation that "the specification uses the words 'provides' and 'generates' interchangeably." (*Id.* at 39 (citing '111 patent at 8:23-42).) But that observation is incorrect, and the construction is contrary to the use of the terms in claim, the prosecution history, and their plain meanings. *First*, the specification uses the words 'provides' and 'generates' to describe two distinct – and not interchangeable – functions of the "identification subsystem 108." (*Id.*) Thus, the identification system generates or produces, *in addition to* providing, the identification signal. Indeed, the specification's description of the only two embodiments of the identification subsystem are consistent with components that generate – rather than merely provide – the identification signal. Further, the specification repeatedly describes an identification subsystem that "generates" +2 volt identification signal. (Dkt. 127 at 15 (citing '550 at 8:32-45, 9:26-30, 9:36-44, Fig. 2).) *Second*, the claims themselves clearly distinguish between "generat[ing]" and merely "providing" an identification signal.   For example, claim 17 teaches a method that requires both. *See CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) ("In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings."). Indeed, the claim language requires that the act of "generating" occurs first, which supports an antecedent basis for the latter step of "providing *the* identification

signal." Further, claims 1-3, 6-8, 12, 14, and 16 use the term "generate" instead of "provide." *Digital Biometrics, Inc. v. Identix, Inc.,* 149 F.3d 1335, 1344 (Fed. Cir. 1998) ("The actual words of the claim are the controlling focus."). *Finally*, the construction is contrary to the plain of the terms captured in the dictionary definitions for the terms – "produce/ing". (Dkt. 127-24, Ex. 22 and Dkt. 127-25, Ex. 23.)

"Abnormal" terms - The "abnormal" terms appear in the asserted claims of the '550 and '766 patents. Defendants propose that those terms be construed as "an invalid or illegal [data condition/data line condition/signals] specified in USB." (Order at 22-23.) The Court construed these terms as data conditions that are not defined as valid USB data conditions. (*Id.* at 26.) Those constructions are erroneous in light of the claim language, specifications, and case law. Defendants' construction is consistent with the claim language which recites an affirmative limitation, an "abnormal USB data line condition." The Federal Circuit has stated that the claims, when read in light of the specification and the prosecution history, must provide objective boundaries for those of skill in the art. (*See Interval Licensing LLC v. AOL, Inc.,* 766 F.3d 1364, 1371 (Fed. Cir. 2014) (finding a claim term indefinite for the failure to provide objective boundaries). The only objective boundary for interpreting the scope of "abnormal" in the specification is the sole embodiment in which both the D+ and D- data lines are set to over 2 volts. ('550 at 9:20-30, Fig. 3; Dkt. 127-14, Ex. 12 ¶ 99). The other objective boundary is within USB 2.0, which defines a class of signals that is abnormal, or illegal, for example, an SE1 – 0.8 Volts or greater on each data line. (*Id.* ¶ 100-102; Dkt. 127-12, Ex. 11 at 123.) Both fall within Defendants' construction. Further, the prosecution history supports Defendants' construction because the patentees amended their claims to add the "abnormal" limitation instead

of "identification signal," arguing that the new claims were different from the related patents. (Dkt. 127-23, Ex. 21 at 6, 11-12; Dkt. 127-20, Ex. 18 at 42841.).

"**Reference Voltage**" - This term appears in all claims of the Veselic '655 patent. Defendants' proposed construction for the term was "a voltage against which a voltage of interest is compared."   The term was construed to mean "a voltage level based on which a voltage of interest is determined." (Order at 89.) The Order indicates that this construction was based on the claim construction order in Case No. 17-cv-145-JRG-RSP ("*Samsung* Case"), Dkt. 140 (E.D. Tex. Jan. 31, 2018) ("*Samsung* Order"). (Order at 89.) That order, however, states that a "reference voltage" is "[not] necessarily an actual electrical voltage." (*Samsung* Order at 101.) The construction is incorrect because it replaces the noun "voltage" in the claims with a different noun "level"— a substitution that rewrites the claim language and is inconsistent with the intrinsic evidence.   Defendants' construction, on the other hand, which construes the reference voltage as a voltage, is consistent with the claim language and specification. The claim term itself is reference *voltage*. The word "reference" functions as an adjective describing the noun "voltage," indicating that a reference voltage is a type of voltage. (Waldrop Decl.,[1] Ex. A; *In re Hyatt*, 708 F.2d 712, 714 (Fed. Cir. 1983) ("A claim must be read in accordance with the precepts of English grammar.")).   The patentee knew how to use "voltage" as an adjective to describe something not itself a voltage, reciting "voltage value" in adjacent claim language to claim a value relating to (but not itself) a voltage. ('655 Patent Claim 1.)   With "reference voltage," by contrast, the patentee chose to use "voltage" as a noun. That choice should be given effect, not written out of the claims. *Bondyopadhyay v. United States*, 129 Fed. Cl. 793, 804 (2017) (rejecting construction that "would fail to give meaning to the term … as a noun"). The

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[1] Filed concurrently herewith is the Declaration of Jonathan K. Waldrop in Support of Defendants' Objections to the Court's April 2, 2018 Memorandum Opinion and Order Regarding Claim Construction (Dkt. 146) ("Waldrop Decl.").

specification confirms that the reference voltage recited in the claims is a voltage because its only description of the reference voltage is "an appropriate *voltage* at a pin of the device's microprocessor" ('655 Patent at 7:50-57 (emphasis added)). Further, the reference voltage must be a voltage in order for the embodiments to operate. *Finally*, the reference voltage "provide[s] the voltage source 274." (*Id.*) After being divided by resistor(s) R7, R8, and R10, the reference voltage and system voltage VSYS1 are fed into op amp 275. (*Id.* at Fig. 3.) Because an op amp operates by comparing voltages, this circuitry only functions if the inputs are actual voltages.

"**Battery Charge Controller**" - The Court construed the term "battery charge controller" to mean "controller that manages charging of a battery."[2] In the *Samsung* claim construction order, the Court found that the term "battery charge controller" is a well-known term of the art and found that the term was "immediately followed by a listing of functionality that '*such battery charge controllers offer.*'" (*Samsung* Order at 55 (citing '319 at 1:24-35) (emphasis added)). The Court found the opposite in the LG Claim Construction Order, finding the identical passage "exemplary rather than definitional." (Order at 55.) LG respectfully requests that the Court construe the term "battery charge controller" consistent with the specification and file history which only identifies standard off-the-shelf battery charge controllers, and the functions and features required of such. The Court was also incorrect that there are embodiments in the specification that are not standard. (Order at 53.) The portion referenced by the Court ('319 at 6:9-17, 5:30-33) identifies battery charge controller 20, which is described in Figure 4 and at 5:30-33 as a "standard battery charge controller." (*See also* Dkt. 127 at 16-18; Waldrop Decl., Ex. B at slides 4-18.)

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[2] FISI's original proposed construction was "circuitry that manages charging of a battery." ▮▮▮▮▮▮▮
▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ FISI opposed Samsung's construction, but now argues for the Samsung Construction in the LG case.

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