

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

INTELLECTUAL VENTURES I LLC,

*Plaintiff,*

v.

T MOBILE USA, INC., T-MOBILE US,  
INC., ERICSSON INC.,  
TELEFONAKTIEBOLAGET LM  
ERICSSON,

*Defendants.*

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**CASE NO. 2:17-CV-577-JRG**

**CLAIM CONSTRUCTION**  
**MEMORANDUM AND ORDER**

Before the Court is the Opening Claim Construction Brief (Dkt. No. 165) filed by Plaintiff Intellectual Ventures I, LLC (“Plaintiff” or “IV”). Also before the Court are Defendants T-Mobile USA, Inc., T-Mobile US, Inc. (“T-Mobile”), Ericsson Inc., and Telefonaktiebolaget LM Ericsson’s (“Ericsson’s”) (collectively, “Defendants”) Responsive Claim Construction Brief (Dkt. No. 118) and Plaintiff’s reply (Dkt. No. 126).

Intellectual Ventures I LLC

**Exhibit 2023**

ERICSSON v. IV I

IPR2018-00727



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## I. BACKGROUND

On August 9, 2017, Plaintiff brought suit alleging infringement of United States Patents No. 6,628,629 (“the ’629 Patent”), 7,359,971 (“the ’971 Patent”), 7,412,517 (“the ’517 Patent”), and RE46,206 (“the ’206 Patent”) (collectively, “the patents-in-suit”). (*See* Dkt. No. 1.)

The ’629 Patent, titled “Reservation Based Prioritization Method for Wireless Transmission of Latency and Jitter Sensitive IP-Flows in a Wireless Point to Multi-Point Transmission System” and issued on September 30, 2003, bears the earliest priority date of July 10, 1998. The Abstract of the ’629 Patent states:

A wireless telecommunications network having superior quality of service is provided. A system and method for assigning future slots of a transmission frame to a data packet in the transmission frame for transmission over a wireless telecommunication network system includes applying an advanced reservation algorithm, reserving a first slot for a first data packet of an internet protocol (IP) flow in a future transmission frame based on the algorithm, reserving a second slot for a second data packet of the IP flow in a transmission frame subsequent in time to the future transmission frame based on the algorithm, wherein the second data packet is placed in the second slot in an isochronous manner to the placement of the first data packet in the first slot. There may be a periodic variation between the placement of the first data packet in the first slot and the placement of second data packet in the second slot or no periodic variation between placements of slots. The advanced reservation algorithm makes a determination whether the IP flow is jitter-sensitive.

The parties submit that the patents-in-suit all share a common specification. (*See* Dkt. No. 118 at 2.)

## 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).

“In some cases, however, the district court will need to look beyond the patent’s intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period.” *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015) (citation omitted). “In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factual findings about that extrinsic evidence. These are the ‘evidentiary underpinnings’ of claim construction that we discussed in *Markman*, and this subsidiary factfinding must be reviewed for clear error on appeal.” *Id.* (citing 517 U.S. 370).

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 particular, the court reiterated that "the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Id.* at 1312 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). To that end, the words used in a claim are generally given their ordinary and customary meaning. *Id.* The ordinary and customary meaning of a claim term "is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1313. This principle of patent law flows naturally from the recognition that inventors are usually persons who are skilled in the field of the invention and that patents are addressed to, and intended to be read by, others skilled in the particular art. *Id.*

Despite the importance of claim terms, *Phillips* made clear that "the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* Although the claims themselves may provide guidance as to the meaning of particular terms, those terms are part of "a fully integrated written instrument." *Id.* at 1315 (quoting *Markman*, 52 F.3d at 978). Thus, the *Phillips* court emphasized the specification as being the primary basis for construing the claims. *Id.* at 1314–17. As the Supreme Court stated long ago, "in case of doubt or ambiguity it is proper in all cases to refer back to the descriptive portions of the specification to aid in solving the doubt or in ascertaining the true intent and meaning of the

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