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

AGIS SOFTWARE DEVELOPMENT, LLC	§	
	§	
v.	§	CASE NO. 2:17-CV-513-JRG
	§	
HUAWEI DEVICE USA INC., et al.	§	

CLAIM CONSTRUCTION
MEMORANDUM AND ORDER

Before the Court is the Opening Claim Construction Brief (Dkt. No. 165) filed by Plaintiff AGIS Software Development, LLC ("Plaintiff" or "AGIS"). Also before the Court are Defendants Huawei Device USA Inc., Huawei Device Co., Ltd., Huawei Device (Dongguan) Co., Ltd. ("Huawei"), HTC Corporation ("HTC"), LG Electronics Inc. ("LG"), Apple Inc. ("Apple"), and ZTE (USA) Inc., and ZTE (TX), Inc.'s ("ZTE's") (collectively, "Defendants'") Responsive Claim Construction Brief (Dkt. No. 175) and Plaintiff's reply (Dkt. No. 186).[1,2]

[1] On August 22, 2018, the Court consolidated the following cases, *Agis Software Development LLC v. LG Electronics, Inc.*, 2:17-cv-515 (the "LG case") and *Agis Software Development LLC v. ZTE Corporation et al*., 2:17-cv-517 (the "ZTE case"), under a new lead case, *Agis Software Development LLC v. HTC Corporation*, 2:17-cv-514 (the "HTC case"). (2:17-cv-514, Dkt. No. 57.) The Court set a Markman Hearing for the HTC case on December 17, 2018. (*Id.*) In addition, on September 28, 2018, the Court unconsolidated and transferred the ZTE case to the Northern District of California. (2:17-cv-514, Dkt. No. 78); (2:17-cv-513, Dkt. No. 203); (2:17-cv-517, Dkt. No. 85.)

[2] All citations to docket entries refer to entries in Case No. 2:17-cv-513.

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I. BACKGROUND

Plaintiff brings suit alleging infringement of United States Patents Nos. 8,213,970 ("the '970 Patent"), 9,408,055 ("the '055 Patent"), 9,445,251 ("the '251 Patent"), 9,467,838 ("the '838 Patent"), and 9,749,829 ("the '829 Patent") (collectively, "the patents-in-suit"). (*See* Dkt. No. 165, Exs. A–E.)

The '970 Patent, titled "Method of Utilizing Forced Alerts for Interactive Remote Communications," issued on July 3, 2012, and bears an earliest priority date of September 21, 2004. The Abstract of the '970 Patent states:

> The system and method having a specialized software application on a personal computer or a PDA/cell phone that that [*sic*] enables a participant to force an automatic acknowledgement and a manual response to a text or voice message from other participants within the same network. Each participant's PDA/cell phone includes a force message alert software application program for both creating and processing these forced message alerts. The system and method enabled by the force message alert software application program provides the ability to (a) allow an operator to create and transmit a forced message alert from a sender PDA/cell phone to one or more recipient PCs and PDA/cell phones within the communication network; (b) automatically transmit an acknowledgement of receipt to the sender PDA cell phone upon the receipt of the forced message alert; (c) periodically resend the message to the recipient PCs and PDA/cell phones that have not sent an acknowledgement; (d) provide an indication of which recipient PCs and PDA/cell phones have acknowledged the forced message alert; (e) provide a manual response list on the display of the recipient PC and PDA/cell phone's display that can only be cleared by manually transmitting a response; and (f) provide an indication on the sender PDA/cell phone of the status and content the [*sic*] manual responses.

The '838 Patent, titled "Method to Provide Ad Hoc and Password Protected Digital and Voice Networks," issued on October 11, 2016, and bears an earliest priority date of September 21, 2004. The Abstract of the '838 Patent states:

> A method and system includes the ability for individuals to set up an ad hoc digital and voice network easily and rapidly to allow users to coordinate their activities by eliminating the need for pre-entry of data into a web or identifying others by name, phone numbers or email. This method is especially useful for police, fire fighters, military, first responders or other emergency situations for coordinating different organizations at the scene of a disaster to elevate conventional communication

> problems either up and down the chain of command or cross communication between different emergency units. The method and system provides that the users are only required to enter a specific Server IP address and an ad hoc event name, a password and perhaps the name of the particular unit.

The '055 Patent, the '251 Patent, and the '829 Patent resulted from continuations of the '838 Patent. Plaintiff asserts the '829 Patent only against Apple. (*See* Dkt. No. 162, at 2 n.1.)

Plaintiff has noted that the priority date for the patents-in-suit may be in dispute. (*See* Dkt. No. 165, at 3 n.2.) The parties have not shown that any such dispute would have an impact on how a person of ordinary skill in the art would understand the patents-in-suit.

II. LEGAL PRINCIPLES

Claim construction is 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). 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).

"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

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