

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**FRACTUS, S.A.,**

**Plaintiff,**

**vs.**

**SAMSUNG ELECTRONICS CO., LTD.;**

**et. al.**

**Defendants,**

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**CIVIL ACTION No. 6:09cv00203**

**MEMORANDUM ORDER AND OPINION**

This claim construction opinion construes the disputed terms in U.S. Patent Nos. 7,015,868 (the ‘868); 7,123,208 (the ‘208); 7,394,432 (the ‘432); 7,397,431 (the ‘431); 7,528,782 (the ‘782); 7,148,850 (the ‘850); 7,202,822 (the ‘822); 7,312,762 (the ‘762); 7,411,556 (the ‘556) (collectively “patents-in-suit”). The parties have presented their claim construction positions with Defendants diverging on some terms and filing separate oppositions.<sup>1</sup> (Doc. Nos. 423, “PL.’s BR.,” 428 “PKU DEF. RESP.,” 430, “DEF.’S RESP.,” 439, “PL.’S REPLY”). On September 2, 2010, the Court held a claim construction hearing and heard further argument (Doc. No. 455). The Court issued a provisional claim construction order on November 9, 2010. (Doc. No. 475). For the reasons stated herein, the Court adopts the constructions set forth below.

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<sup>1</sup> Defendants Palm, Inc., Kyocera Wireless, Inc., Kyocera Communications, Inc., and UTStarcom, Inc. (“PKU”) filed a separate opposition with regard to the terms “multilevel structure,” “first radiating arm” and “second radiating arm.” Otherwise, the PKU Defendants joined the other Defendants, HTC, RIM, Samsung, LG and Pantech (“RIM”) opposition.

### CLAIM CONSTRUCTION PRINCIPLES

“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 v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). The Court examines a patent’s intrinsic evidence to define the patented invention’s scope. *Id.* at 1313-1314; *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). Intrinsic evidence includes the claims, the rest of the specification and the prosecution history. *Phillips*, 415 F.3d at 1312-13; *Bell Atl. Network Servs.*, 262 F.3d at 1267. The Court gives claim terms their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention. *Phillips*, 415 F.3d at 1312-13; *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

Claim language guides the Court’s construction of claim terms. *Phillips*, 415 F.3d at 1314. “[T]he context in which a term is used in the asserted claim can be highly instructive.” *Id.* Other claims, asserted and unasserted, can provide additional instruction because “terms are normally used consistently throughout the patent.” *Id.* Differences among claims, such as additional limitations in dependent claims, can provide further guidance. *Id.*

“[C]laims ‘must be read in view of the specification, of which they are a part.’” *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995)). “[T]he specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’” *Id.* (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *Teleflex, Inc. v. Ficoso N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). In the specification, a patentee may define his own terms, give a claim term

a different meaning that it would otherwise possess, or disclaim or disavow some claim scope. *Phillips*, 415 F.3d at 1316. Although the Court generally presumes terms possess their ordinary meaning, this presumption can be overcome by statements of clear disclaimer. *See SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343-44 (Fed. Cir. 2001). This presumption does not arise when the patentee acts as his own lexicographer. *See Irdeto Access, Inc. v. EchoStar Satellite Corp.*, 383 F.3d 1295, 1301 (Fed. Cir. 2004).

The specification may also resolve ambiguous claim terms “where the ordinary and accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone.” *Teleflex, Inc.*, 299 F.3d at 1325. For example, “[a] claim interpretation that excludes a preferred embodiment from the scope of the claim ‘is rarely, if ever, correct.’” *Globetrotter Software, Inc. v. Elam Computer Group Inc.*, 362 F.3d 1367, 1381 (Fed. Cir. 2004) (quoting *Vitronics Corp.*, 90 F.3d at 1583). But, “[a]lthough the specification may aid the court in interpreting the meaning of disputed language in the claims, particular embodiments and examples appearing in the specification will not generally be read into the claims.” *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988); *see also Phillips*, 415 F.3d at 1323.

The prosecution history is another tool to supply the proper context for claim construction because a patentee may define a term during prosecution of the patent. *Home Diagnostics Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1356 (Fed. Cir. 2004) (“As in the case of the specification, a patent applicant may define a term in prosecuting a patent”). The well established doctrine of prosecution disclaimer “preclud[es] patentees from recapturing through claim interpretation specific meanings disclaimed during prosecution.” *Omega Eng’g Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir.

2003). The prosecution history must show that the patentee clearly and unambiguously disclaimed or disavowed the proposed interpretation during prosecution to obtain claim allowance. *Middleton Inc. v. 3M Co.*, 311 F.3d 1384, 1388 (Fed. Cir. 2002). “Indeed, by distinguishing the claimed invention over the prior art, an applicant is indicating what the claims do not cover.” *Spectrum Int’l v. Sterilite Corp.*, 164 F.3d 1372, 1378-79 (Fed. Cir. 1988) (quotation omitted). “As a basic principle of claim interpretation, prosecution disclaimer promotes the public notice function of the intrinsic evidence and protects the public’s reliance on definitive statements made during prosecution.” *Omega Eng’g, Inc.*, 334 F.3d at 1324.

Although, “less significant than the intrinsic record in determining the legally operative meaning of claim language,” the Court may rely on extrinsic evidence to “shed useful light on the relevant art.” *Phillips*, 415 F.3d at 1317 (quotation omitted). Technical dictionaries and treatises may help the Court understand the underlying technology and the manner in which one skilled in the art might use claim terms, but such sources may also provide overly broad definitions or may not be indicative of how terms are used in the patent. *Id.* at 1318. Similarly, expert testimony may aid the Court in determining the particular meaning of a term in the pertinent field, but “conclusory, unsupported assertions by experts as to the definition of a claim term are not useful.” *Id.* Generally, extrinsic evidence is “less reliable than the patent and its prosecution history in determining how to read claim terms.” *Id.*

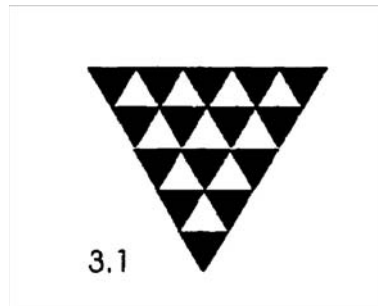
## DISCUSSION

### **A. Overview of Patents-in-Suit**

The patents-in-suit can be categorized into four patent families: (1) the “multilevel” family (“MLV”) which includes the ‘868, ‘208, ‘432, ‘431 and ‘782; (2) the “space-filling” antenna family

(“SFC”) which includes the ‘850 and ‘822; (3) the “loaded” antenna patent which is the ‘762; and (4) the “multiband monopole” patent which is the ‘556.

The MLV patent family generally claims antennae made up of “multilevel structures.” The term “multilevel” was coined by the inventors to describe the structural configuration of the claimed antennae. The ‘432 derived from a divisional application, in which the parent application issued as the ‘431. The ‘432 is a continuation of the ‘208, which in turn, is a continuation of the ‘868. The ‘782 is a continuation of the ‘431. The patents explain that MLV structures are generally characterized by their shape. ‘868 at 2:32-33. The claimed invention relates to a specific geometric design of antennae which facilitates two main advantages: multiband operation and/or small size. *Id.* at 1:13-16. One configuration of a multilevel structure is depicted in figure 3.1:



The SFC patent family generally claim antennae based on a specific geometry known as “space-filling curves.” ‘850 at 1:13-15. The patent explains that by using space-filling curves, the antennae can be reduced in size compared with prior existing antennae. *Id.* at ABSTRACT. The ‘822 is a continuation of the ‘850, thus they consist of a common specification but include different claim language. Figure 4 of the patent provides a depiction of a particular SFC antenna consisting of a monopole antenna:

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