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3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
5

6 BELL NORTHERN RESEARCH, LLC,
7 Plaintiff,
8 v.
9 COOLPAD TECHNOLOGIES, INC. et
10 al.,
11 Defendants.

Case No.: 18-CV-1783-CAB-BLM

**CLAIM CONSTRUCTION ORDER
AND ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

[Doc. No. 68]

12 BELL NORTHERN RESEARCH, LLC,
13 Plaintiff,
14 v.
15 HUAWEI TECHNOLOGIES CO., LTD.
16 et al.,
17 Defendants.

Case No.: 18-CV-1784-CAB-BLM

[Doc. No. 65]

18 BELL NORTHERN RESEARCH, LLC,
19 Plaintiff,
20 v.
21 ZTE CORPORATION et al.,
22 Defendants.

Case No.: 18-CV-1786-CAB-BLM

[Doc. Nos. 86, 93]

23
24 On June 19-20, 2019, the Court held a hearing to construe certain disputed terms and
25 phrases of the patents at issue in this lawsuit. Having considered the submissions of the
26 parties, the arguments of counsel, and for the reasons set forth at the hearing and herein,
27 the Court enters the claim constructions listed below.
28

1 **I. U.S. Patent Nos. 7,319,889 and 8,204,554**¹

2 The ‘889 patent and the ‘554 patent (a continuation of the ‘889 patent) are for a
3 System and Method for Conserving Battery Power in a Mobile Station. The patent
4 addresses the need in the art as of 2003, for “a way to prolong the lifetime of a mobile
5 station [cordless phone or cell phone] without having to use a battery with an increased
6 capacity.” [Doc. No. 1-2, at Col. 1:21-26, 35-37.] The system and method accomplish this
7 by reducing the power consumption of the display of an activated mobile station when the
8 display is not needed, particularly during a telephone call thereby saving needless power
9 consumption. [Id., at Col. 1:47-51.]

10 The parties requested construction of the following terms **in bold** of the ‘889 patent
11 and the ‘554 patent.

12 Claim 1 [of ‘889 patent]. A mobile station, comprising:

13 A display;

14 A proximity sensor adapted to generate **a signal indicative of proximity of an
external object**; and

15 A microprocessor adapted to:

16 (a) Determine whether a telephone call is active;

17 (b) Receive the signal from the proximity sensor; and

18 (c) Reduce power to the display if (i) the microprocessor determines that a telephone
call is active and (ii) the signal indicates the proximity of the external object;
wherein

19 The telephone call is a wireless telephone call;

20 The microprocessor reduces power to the display while the signal indicates the
proximity of the external object only if the microprocessor determines that the
wireless telephone call is active; and

21 The proximity sensor begins detecting whether an external object is proximate
22 **substantially concurrently** with the mobile station initiating an outgoing
wireless telephone call or receiving an incoming wireless telephone call.
23

24 [Id., at Col. 4:2-25.]
25
26
27

28 ¹ These patents are filed in case 18cv1783 at Doc. Nos. 1-2 and 1-3.

1 Claim 7 [of '554 patent]. A mobile station, comprising:

2 a display;

3 a proximity sensor adapted to generate **a signal indicative of the first condition,**
4 **the first condition being that an external object is proximate;** and

5 a microprocessor adapted to:

6 (a) determine, without using the proximity sensor, the existence of a second
7 condition independent and different from the first condition, the second condition
8 being that a user of the mobile station has performed an action to initiate an
9 outgoing call or to answer an incoming call;

10 (b) in response to a determination in step (a) that the second condition exists, activate
11 the proximity sensor;

12 (c) receive the signal from the activated proximity sensor; and

13 (d) reduce power to the display if the signal from the activated proximity sensor
14 indicates the first condition exists.

15 [The mobile station as recited in claim 1,] wherein the proximity sensor begins
16 detecting whether an external object is proximate **substantially concurrently** with
17 the mobile station initiating an outgoing telephone call.

18 [Doc. No. 1-3 at Col. 4:2-22, 40-43.]

19 The '889 and '554 Claim Constructions

20 **A. signal indicative of proximity of an external object;**
21 **a signal indicative ... that an external object is proximate**

22 The parties agree that the proximity sensor is adapted to generate **a signal that**
23 **indicates an external object is within predetermined range.** [Doc. No. 1-2 at Abstract
24 and Col. 1:44-4.] Defendants, however, sought additional language in the construction that
25 the sensor generates “a signal that indicates an external object is *or is not* detected to be
26 within a predetermined range.” The Court declined to include the proposed *or is not*
27 language.

28 The plain language of the claim states the sensor generates a signal when an external
object is proximate. Nothing in the claim or the specification supports a construction that
a signal is generated to indicate the absence of a proximate external object. If there is no
external object sensed, then no signal is generated. The signal may cease when an object is
no longer proximate (*Id.* at Col 4:16-18, the microprocessor reduces power to the display

1 “while the signal indicates the proximity of the external object”). Defendants’ proposed
2 construction creates a requirement that the proximity sensor generate a signal that indicates
3 an external object is not within a predetermined range. This is not supported by the claim
4 language or the specification. The Court construes “a signal indicative of proximity of an
5 external object” and “a signal indicative ... that an external object is proximate” as **a signal**
6 **that indicates an external object is within predetermined range.**

7 **B. substantially concurrently**

8 Defendants argue that a person of skill in the art could not understand the scope of
9 claim 1 of the ‘889 patent and claim 7 of the ‘554 patent because the claims require the
10 proximity sensor begin detecting whether an object is proximate “substantially
11 concurrently” with the mobile station initiating or receiving a telephone call. Defendants
12 contend that the patent provides no standard for determining what is encompassed by
13 “substantially concurrently.” Defendants therefore argue the claims are indefinite and
14 invalid. The Court is not persuaded.

15 The Court construes “concurrently” to have its ordinary meaning of
16 “simultaneously” or “at the same time.” The use of a relative term such as “substantially”
17 does not render the patent claim so unclear as to prevent persons skilled in the art from
18 determining the claim scope. *Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1359 (Fed.
19 Cir. 2012). When such a word is used the court must determine whether the patent provides
20 some standard for measuring the degree. Words of degree—such as “substantially”—are
21 not considered indefinite so long as intrinsic evidence “provides objective boundaries for
22 those of skill in the art.” *See Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1370–71
23 (Fed. Cir. 2014).

24 “Substantially” as a word of degree is generally understood to mean “essentially” or
25 “mainly.” In the context of the claims and the patents, the Court finds this phrase not to be
26 indefinite and that a person of skill in the art would understand that the proximity sensor
27 will begin detecting the proximity of an external object **essentially at the same time** the
28 mobile station receives or makes a call.

1 **II. U.S. Patent No. 7,039,435²**

2 The ‘435 patent is for a Proximity Regulation System for use with a portable cell
3 phone and a method of operation thereof. Filed in 2001, the patent is directed at increased
4 health concerns regarding the power used to transmit the radio frequency of cell phones
5 when operated close to the body of the cell phone user. “For example, when held close to
6 the ear, many users have health concerns about the high level of radio frequency energy
7 causing damage to brain cells.” [Doc. No. 33-8 at Col. 1:14-40.] The patent claims a system
8 and method to automatically reduce the transmit power level of a portable cell phone when
9 located near a human body thereby decreasing the perception of health risks associated
10 with the use thereof. [*Id.* at Col. 1:63-67.]

11 Plaintiff requested construction of the following term **in bold** of the ‘435 patent.

12 Claim 1. A portable cell phone, comprising:
13 a power circuit that provides a network adjusted transmit power level as a function
14 of a **position to a communications tower**; and
15 a proximity regulation system including:
16 a location sensing subsystem that determines a location of said portable cell phone
17 proximate a user; and
18 a power governing subsystem, coupled to said location sensing subsystem, that
determines a proximity transmit power level of said portable cell phone based on
said location and determines a transmit power level for said portable cell phone
based on said network adjusted power level and said proximity transmit power level.

19 [*Id.* at Col. 8:2-15.]

20 Plaintiff sought clarification that the limitation of a network adjusted transmit power
21 level as a function of a “position to a communications tower” is based on the transmit signal
22 strength of a communications path between the communications tower and the portable
23 cell phone. [*Id.* at Col. 3:39-41.] Plaintiff therefore proposed that **position to a**
24 **communications tower** be construed as “transmit signal strength of a communications
25 path between the communications tower and the portable cell phone.” Defendants offered
26 that the network adjusted transmit power level as a function of the position of the cell phone

27 _____
28 ² This patent is filed in case 18cv1786 at Doc. No. 33-8.

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