

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

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|-------------------|---|--------------------------------|
| UNILOC 2017 LLC, | § | |
| | § | |
| <i>Plaintiff,</i> | § | Case No. 2:18-CV-00493-JRG-RSP |
| | § | |
| v. | § | Case No. 2:18-CV-00499-JRG-RSP |
| | § | |
| GOOGLE LLC | § | Case No. 2:18-CV-00502-JRG-RSP |
| | § | |
| <i>Defendant.</i> | § | |

CLAIM CONSTRUCTION
MEMORANDUM AND ORDER

On January 10, 2020, the Court held a hearing to determine the proper construction of disputed claim terms in United States Patents No. 6,836,654 (Civil Action No. 2:18-CV-493), 8,194,632 (Civil Action No. 2:18-CV-499), and 8,407,609 (Civil Action No. 2:18-CV-502). Having reviewed the arguments made by the parties at the hearing and in their claim construction briefing (Dkt. Nos. 143, 150 & 152),¹ having considered the intrinsic evidence, and having made subsidiary factual findings about the extrinsic evidence, the Court hereby issues this Claim Construction Memorandum and Order. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc); *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015).

¹ Pursuant to the Court's November 22, 2019 Order (Civil Action No. 2:18-CV-493, Dkt. No. 135; Civil Action No. 2:18-CV-499, Dkt. No. 124; Civil Action No. 2:18-CV-502, Dkt. No. 122), the parties submitted consolidated claim construction briefing for Civil Actions No. 2:18-CV-493, -499, and -502. The Court therefore herein cites docket numbers in only Civil Action No. 2:18-CV-493 unless otherwise indicated. Citations to documents (such as the parties' briefs and exhibits) in this Claim Construction Memorandum and Order refer to the page numbers of the original documents rather than the page numbers assigned by the Court's electronic docket unless otherwise indicated.

TABLE OF CONTENTS

| | |
|---|-----------|
| I. BACKGROUND..... | 4 |
| II. LEGAL PRINCIPLES | 4 |
| III. THE PARTIES’ STIPULATED TERMS | 7 |
| IV. CONSTRUCTION OF DISPUTED TERMS IN U.S. PATENT NO. 6,836,654..... | 8 |
| A. “linked user identification module” | 9 |
| B. “ver[i]fying a user identification module mounted inside the mobile radiotelephony device is linked to the mobile radiotelephony device” | 13 |
| C. “preventing the normal operation of the mobile radiotelephony device / preventing a normal operation of the mobile radiotelephony device” | 14 |
| D. “deblocking code” | 17 |
| E. “protecting a mobile radiotelephone device” | 20 |
| F. “blocking means for preventing a normal operation of the mobile radiotelephony device” | 20 |
| G. “timing means for activating the blocking means in response to the mobile radiotelephony device being inactive during the normal operation of the mobile radiotelephony device for a defined period of time subsequent to a mounting of a linked user identification module inside the mobile radiotelephony device” | 26 |
| H. “deblocking means for permitting the normal operation of the mobile radiotelephony device in response to a supply of a deblocking code to the mobile radiotelephony device subsequent to the mounting of the linked user identification module inside the mobile radiotelephony device and subsequent to the defined period of time” | 29 |
| I. “locking means for facilitating an activation of the block means by the timing means” | 32 |
| J. “connecting means for establishing a link between the mobile radiotelephony device and the linked user identification module” | 34 |
| V. CONSTRUCTION OF DISPUTED TERMS IN U.S. PATENT NO. 8,194,632 | 38 |
| AA. “mobile device” | 38 |
| BB. “stationary terminal” | 39 |
| CC. “short-range wireless technology” | 45 |
| DD. “transmitting, by the stationary terminal, an invitation message comprising a network address relating to the stationary terminal and a remote device identifier to the proximate mobile device through the established communication link, whereupon the proximate mobile device establishes communication with the remote device” | 50 |
| EE. “the established communication link” | 51 |
| FF. “causes the processor to establish a data communications session between the stationary terminal and a remote mobile device, by performing all the steps of claim 1” | 52 |

| | |
|--|-----------|
| GG. “the computer system comprising a processor configured to perform all the steps of claim 1” | 55 |
| VI. CONSTRUCTION OF DISPUTED TERMS IN U.S. PATENT NO. 8,407,609..... | 57 |
| AAA. “web page” / “webpage” | 57 |
| BBB. “wherein each provided webpage causes [wherein each provided webpage causes corresponding digital media presentation data to be streamed]” | 61 |
| CCC. “identifier data”..... | 62 |
| DDD. “providing identifier data to the user’s computer using the first computer system” | 63 |
| EEE. “storing data indicative of the received at least [a] portion of the identifier data using the first computer system” | 63 |
| FFF. “indicative of” | 64 |
| GGG. “is indicative of an amount of time the digital media presentation data is streamed from the second computer system to the user’s computer” | 67 |
| HHH. “wherein each stored data is together” | 69 |
| III. “wherein each stored data is together indicative of” | 70 |
| JJJ. “the stored data” | 71 |
| KKK. “each stored data” | 72 |
| LLL. “predetermined temporal period” | 72 |
| MMM. “receiving at least a portion of the identifier data from the user’s computer responsively to the timer applet each time a predetermined temporal period elapses using the first computer system” | 76 |
| NNN. “a second computer system distinct from the first computer system” | 77 |
| OOO. “providing an applet to the user’s computer for each digital media presentation to be delivered using the first computer system”..... | 77 |
| VII. CONCLUSION | 78 |

I. BACKGROUND

Plaintiff Uniloc 2017 LLC (“Plaintiff” or “Uniloc”) alleges that Defendant Google LLC (“Defendant” or “Google”) infringes United States Patents No. 6,836,654 (“the ’654 Patent”), 8,194,632 (“the ’632 Patent”), and 8,407,609 (“the ’609 Patent”).

Shortly before the start of the January 10, 2020 hearing, the Court provided the parties with preliminary constructions with the aim of focusing the parties’ arguments and facilitating discussion. Those preliminary constructions are noted below within the discussion for each term.

II. LEGAL 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*, 415 F.3d at 1312 (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). 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*, 135 S. Ct. at 841 (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 determine the meaning of the claims, courts start by considering the intrinsic evidence. *See Phillips*, 415 F.3d at 1313; *see also C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Group, Inc.*, 262 F.3d 1258,

1267 (Fed. Cir. 2001). The intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *See Phillips*, 415 F.3d at 1314; *C.R. Bard*, 388 F.3d at 861. Courts give claim terms their ordinary and accustomed meaning as understood by one of ordinary skill in the art at the time of the invention in the context of the entire patent. *Phillips*, 415 F.3d at 1312–13; *accord Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

The claims themselves provide substantial guidance in determining the meaning of particular claim terms. *Phillips*, 415 F.3d at 1314. First, a term’s context in the asserted claim can be very instructive. *Id.* Other asserted or unasserted claims can aid in determining the claim’s meaning because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term’s meaning. *Id.* For example, when a dependent claim adds a limitation to an independent claim, it is presumed that the independent claim does not include the limitation. *Id.* at 1314–15.

“[C]laims ‘must be read in view of the specification, of which they are a part.’” *Id.* at 1315 (quoting *Markman*, 52 F.3d at 979). “[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.’” *Phillips*, 415 F.3d at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *accord Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). This is true because a patentee may define his own terms, give a claim term a different meaning than the term would otherwise possess, or disclaim or disavow the claim scope. *Phillips*, 415 F.3d at 1316. In these situations, the inventor’s lexicography governs. *Id.* The specification may also resolve the meaning of 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*, 299 F.3d at 1325. But, “[a]lthough

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