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6   UNITED STATES DISTRICT COURT
          WESTERN DISTRICT OF WASHINGTON
7   AT SEATTLE

8   UNILOC 2017 LLC,   CASE NO. C18-1732 RSM

9   Plaintiff,   ORDER RE CLAIM CONSTRUCTION

10   v.

11   HTC AMERICA, INC.,

12   Defendant.

13   I.   INTRODUCTION

14   This matter is before the Court for construction of certain terms used in the Claims of

15   Patent No. 6,836,654 ("the '654 Patent"). The '654 Patent relates to mobile radiotelephony

16   devices (cell phones) and the manner in which cell phones, by locking at different states of

17   operability (blocking states), are secured against unauthorized use to discourage theft. The

18   parties have presented the Court with the terms that they recommend the Court interpret and have

19   briefed their favored constructions of those terms. Dkts. #42 and ##46–51. The parties were

20   also afforded an opportunity to argue and answer questions at a *Markman* hearing. Now, having

21   fully considered the issue, the Court decides as follows.

22   II.   BACKGROUND

23   The '654 Patent was filed in 2000, at a time when cell phones generally had to be

24   deactivated at the network level if they were lost or stolen. This allowed charges to be incurred

on a user's account between the time the loss or theft occurred and the time the network operator was able to deactivate the cell phone. The '654 Patent, issued in 2004, addressed deactivation at the phone level by the use of three "blocking states." A first blocking state required a linked user identification module (e.g. a SIM card) without which the phone would not operate on the network.[1] If the linked user identification module was present, the phone would work in its normal operative state—allowing for both inbound and outbound calls. A device entered the second blocking state after a period of inactivity. In the second blocking state, the phone could receive calls, but could not make outgoing calls (possibly excepting calls to emergency numbers). After entering the second blocking state, the device required a passcode (e.g. PIN) to be entered to return to the normal operative state. If the correct passcode was not provided within a specified number of attempts, the phone would move to the third blocking state. In this third blocking state, the phone would lock such that it was inoperative (again possibly excepting calls to emergency numbers) until an unblocking code linked to the user identification module was provided at the network level.

Uniloc initiated this action on the basis that HTC had infringed upon claims 1, 3–5, and 7 of the '654 Patent. Dkt. #1 at ¶¶ 12, 15–18. Pursuant to this Court's local patent rules, the parties submitted a Joint Claim Construction and Prehearing Statement setting forth the claim terms and phrases in need of construction. Dkt. #42. The Court's local patent rules limit construction to "a maximum of ten claim terms at the initial *Markman* hearing, unless the Court determines otherwise." LPR 132(c). Nevertheless, the parties set forth a list of seventeen terms and phrases needing construction. Dkt. #42 at 5–20. The parties agree that the first ten claim

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[1] Patent No. 5,913,175 ("the '175 Patent") constituted prior art and provided for linking a device to a specific user identification module such that a stolen device could not be used with a different user identification module. But deactivation still had to occur at the network level if the device was stolen with the linked user identification module.

terms are the most important. *Id.* at 2. But HTC further requests that the Court construe at least

the first thirteen, and preferably all seventeen, terms and phrases. *Id.* at 3. Uniloc maintains that

construction of the first ten terms and phrases is sufficient. *Id.*

Importantly, this Court's construction of the '654 Patent does not proceed in isolation as

litigation related to the '654 is proceeding in several other United States District Courts. Uniloc

is concurrently pursuing actions against Motorola,[2] Google,[3] Samsung,[4] Microsoft,[5] and Apple.[6]

The *Motorola*, *Google*, and *Samsung* courts have all issued orders on claim construction related

to the '654 Patent. *See* Dkt. #42 at 21–33 (*Motorola*), 34–112 (*Google*), 113–165 (*Samsung*).

Uniloc indicates that "[o]ther than one term, the constructions . . . were effectively the same" in

the *Motorola* and *Google/Samsung* actions. Dkt. #46 at 8. The Court remains mindful of these

prior orders as it proceeds to claim construction.

III.   DISCUSSION

A. Legal Standard

The scope of a patent is measured by its claims. *Phillips v. AWH Corp.*, 415 F.3d 1303,

1312 (Fed. Cir. 2005) (citing *Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*,

381 F.3d 1111, 1115 (Fed. Cir. 2004); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582

(Fed. Cir. 1996) ("we look to the words of the claims themselves . . . to define the scope of the

patented invention"); *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995)

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[2] *Uniloc 2017 LLC v. Motorola Mobility, LLC*, Case No. 1-18-cv-01844 (D. Del.).

[3] *Uniloc 2017 LLC v. Google LLC*, Case No. 2-18-cv-00493 (E.D. Tex.).

[4] *Uniloc 2017 LLC v. Samsung Electronics America, Inc.*, Case No. 2-18-cv-00508 (E.D. Tex.).

[5] *Uniloc 2017 LLC v. Microsoft Corporation*, Case No. 8-19-cv-00781 (C.D. Cal.).

[6] *Uniloc 2017 LLC v. Apple Inc.*, Case No. 3-19-cv-01697 (N.D. Cal.).

1 (en banc), *affirmed*, 517 U.S. 370 (1996) ("The written description part of the specification itself

2 does not delimit the right to exclude. That is the function and purpose of claims.")). In short,

3 the claims set forth what the inventor regarded as the invention. *See* 35 U.S.C. § 112(b). Not all

4 claim terms require construction and where a lay person does not need assistance interpreting a

5 claim term, the term is simply given its plain and ordinary meaning. *See Brown v. 3M*, 265 F.3d

6 1349, 1352 (Fed Cir. 2001) (holding that the claims did "not require elaborate interpretation").

7   In claim construction, "the words of a claim 'are generally given their ordinary and

8 customary meaning.'" *Phillips*, 415 F.3d at 1312 (citing *Vitronics*, 90 F.3d at 1582) (additional

9 citations omitted). What is ordinary and customary is measured at the time of the invention and

10 is based off the understanding of a "person of ordinary skill in the art in question." *Id.* at 1313

11 (citing *Innova*, 381 F.3d at 1116) (additional citations omitted).

12   In constructing claims, the Court relies on intrinsic evidence and extrinsic evidence.

13 Intrinsic evidence is preferred and includes the context of the entire patent and its prosecution

14 history. *Id.* at 1313–14. Extrinsic evidence, like expert testimony, dictionaries, and treatises, is

15 generally of less significance than the intrinsic record. *Id.* at 1317 (citing *C.R. Bard, Inc. v. U.S.*

16 *Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004)). In approximate descending order of

17 significance, the Court should consider "the words of the claims themselves, the remainder of

18 the specification, the prosecution history, and extrinsic evidence concerning relevant scientific

19 principles, the meaning of technical terms, and the state of the art." *Id.* at 1314 (quoting *Innova*,

20 381 F.3d at 1116). Often the claims themselves and the remainder of the specification is

21 dispositive as it "is the single best guide to the meaning of a disputed term." *Vitronics*, 90 F.3d

22 at 1582. "Relying on extrinsic evidence to construe a claim is proper only when the claim

23 language remains genuinely ambiguous after consideration of the intrinsic evidence." *Interactive*

24 *Gift Exp. Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1332 (Fed. Cir. 2001).

B. Construction of Terms

Term 1. "linked user identification module" – (Claims 1, 5, 7, 10, 11, 14, 17, 18)

Uniloc's Construction	HTC's Construction
Plain and ordinary meaning. Alternatively, "an authorized user identification module that permits the normal operation of the device"	"a user identification module that is the only one that permits normal operation of the device"

Court's Construction	"a user identification module that is the only one that permits normal operation of the device"

This is the most hotly contested of the terms. The parties provide reasonable and compelling arguments in support of their positions and each enjoys the benefit of a prior court order adopting its favored interpretation. While both constructions have support, the Court adopts HTC's proposed construction and that of the *Google*/*Samsung* court.

The parties' dispute is whether the '654 Patent contemplates that multiple user identification modules can be linked to a device at any one time or whether it contemplates that a device is limited to use with a single user identification module after being linked. Uniloc relies on the fact that the first mentions of the "linked user identification module," in both the patent as a whole and in Claim 1, are proceeded by an "a" term. '654 Patent at Abstract, ln. 2; 1:7. As such, Uniloc invokes the Federal Circuit's rule of construction—not merely a presumption or a convention—

> [t]hat "a" or "an" can mean "one or more." . . . The exceptions to this rule are extremely limited: a patentee must "evince[] a clear intent" to limit "a" or "an" to "one." The subsequent use of definite articles "the" or "said" in a claim to refer back to the same claim term does not change the general plural rule, but simply reinvokes that non-singular meaning. An exception to the general rule that "a" or "an" means more than one only arises where the language of the claims themselves, the specification, or the prosecution history necessitate a departure from the rule.

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