UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BELL NORTHERN RESEARCH, LLC, Plaintiff, v. COOLPAD TECHNOLOGIES, INC. et al., Defendants.	Case No.: 18-CV-1783-CAB-BLM **CLAIM CONSTRUCTION ORDER AND ORDER ON MOTIONS FOR SUMMARY JUDGMENT** [Doc. No. 68]
BELL NORTHERN RESEARCH, LLC, Plaintiff, v. HUAWEI TECHNOLOGIES CO., LTD. et al., Defendants.	Case No.: 18-CV-1784-CAB-BLM [Doc. No. 65]
BELL NORTHERN RESEARCH, LLC, Plaintiff, v. ZTE CORPORATION et al., Defendants.	Case No.: 18-CV-1786-CAB-BLM [Doc. Nos. 86, 93]

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

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

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

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

> Claim 1 [of '889 patent]. A mobile station, comprising:
> A display;
> A proximity sensor adapted to generate **a signal indicative of proximity of an external object**; and
> A microprocessor adapted to:
> (a) Determine whether a telephone call is active;
> (b) Receive the signal from the proximity sensor; and
> (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
> The telephone call is a wireless telephone call;
> 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
> The proximity sensor begins detecting whether an external object is proximate **substantially concurrently** with the mobile station initiating an outgoing wireless telephone call or receiving an incoming wireless telephone call.

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

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

> Claim 7 [of '554 patent]. A mobile station, comprising:
> a display;
> a proximity sensor adapted to generate **a signal indicative of the first condition, the first condition being that an external object is proximate**; and
> a microprocessor adapted to:
> (a) determine, without using the proximity sensor, the existence of a second condition independent and different from the first condition, the second condition being that a user of the mobile station has performed an action to initiate an outgoing call or to answer an incoming call;
> (b) in response to a determination in step (a) that the second condition exists, activate the proximity sensor;
> (c) receive the signal from the activated proximity sensor; and
> (d) reduce power to the display if the signal from the activated proximity sensor indicates the first condition exists.
>
> [The mobile station as recited in claim 1,] wherein the proximity sensor begins detecting whether an external object is proximate **substantially concurrently** with the mobile station initiating an outgoing telephone call.

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

The '889 and '554 Claim Constructions

A. signal indicative of proximity of an external object; a signal indicative … that an external object is proximate

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

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

"while the signal indicates the proximity of the external object"). Defendants' proposed construction creates a requirement that the proximity sensor generate a signal that indicates an external object is not within a predetermined range. This is not supported by the claim language or the specification. The Court construes "a signal indicative of proximity of an external object" and "a signal indicative … that an external object is proximate" as **a signal that indicates an external object is within predetermined range.**

B. substantially concurrently

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

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

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

II. U.S. Patent No. 7,039,435[2]

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

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

> Claim 1. A portable cell phone, comprising:
> a power circuit that provides a network adjusted transmit power level as a function of a **position to a communications tower**; and
> a proximity regulation system including:
> a location sensing subsystem that determines a location of said portable cell phone proximate a user; and
> 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.

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

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

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[2] This patent is filed in case 18cv1786 at Doc. No. 33-8.

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