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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.

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

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  
19 call is active and (ii) the signal indicates the proximity of the external object;  
20 wherein

21           The telephone call is a wireless telephone call;

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

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

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

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<sup>1</sup> 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.

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

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

#### 14 The ‘889 and ‘554 Claim Constructions

##### 15 **A. signal indicative of proximity of an external object;** 16 **a signal indicative ... that an external object is proximate**

17  
18 The parties agree that the proximity sensor is adapted to generate **a signal that**  
19 **indicates an external object is within predetermined range.** [Doc. No. 1-2 at Abstract  
20 and Col. 1:44-4.] Defendants, however, sought additional language in the construction that  
21 the sensor generates “a signal that indicates an external object is *or is not* detected to be  
22 within a predetermined range.” The Court declined to include the proposed *or is not*  
23 language.

24 The plain language of the claim states the sensor generates a signal when an external  
25 object is proximate. Nothing in the claim or the specification supports a construction that  
26 a signal is generated to indicate the absence of a proximate external object. If there is no  
27 external object sensed, then no signal is generated. The signal may cease when an object is  
28 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. 7,039,435**<sup>2</sup>

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  
19           determines a proximity transmit power level of said portable cell phone based on  
20           said location and determines a transmit power level for said portable cell phone  
21           based on said network adjusted power level and said proximity transmit power level.

22           [*Id.* at Col. 8:2-15.]

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

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<sup>2</sup> This patent is filed in case 18cv1786 at Doc. No. 33-8.

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