

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 2:19-cv-06301-AB-KS

Date: August 28, 2020

Title: *Philips North America LLC v. Garmin Int'l, Inc. et al.*

Present: The Honorable ANDRÉ BIROTTE JR., United States District Judge

Carla Badirian

N/A

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

None Appearing

Attorneys Present for Defendants:

None Appearing

Proceedings: **[IN CHAMBERS] CLAIM CONSTRUCTION ORDER
(DKTS. 75, 77, 79, 80)**

Plaintiff Philips North America LLC (“Plaintiff”) and Defendants Garmin International, Inc. and Garmin Ltd. (collectively, “Defendants”) have filed claim construction briefs asking the Court to construe 28 disputed claim terms found in six asserted patents: (1) U.S. Patent No. 6,013,007 (“the ‘007 Patent”); (2) U.S. Patent No. 7,088,233 (“the ‘233 Patent”); (3) U.S. Patent No. 6,976,958 (“the ‘958 Patent”); (4) U.S. Patent No. 8,277,377 (“the ‘377 Patent”); (5) U.S. Patent No. 9,314,192 (“the ‘192 Patent”); and (6) U.S. Patent No. 9,801,542 (“the ‘542 Patent”) (collectively, “the Asserted Patents”).

The parties filed a Joint Claim Construction and Prehearing Statement on June 23, 2020. (“Joint Statement,” Dkt. No. 73). The parties filed their Opening Claim Construction Briefs on June 26, 2020. (“Plaintiff’s Opening Brief,” Dkt. No. 77; “Defendants’ Opening Brief,” Dkt. No. 75.) The parties filed Responsive Claim Construction Briefs on July 9, 2020. (“Plaintiff’s Responsive Brief,” Dkt. No. 80; “Defendants’ Responsive Brief,” Dkt. No. 79.) Finding this motion suitable for resolution without oral argument, the Court vacated the hearing set for July 31, 2020. (See Dkt. No. 86; Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.)

The disputed terms are construed as set forth in this Order.

I. TECHNOLOGICAL SUMMARY

The Asserted Patents generally relate to monitoring a subject's activity or health condition.

The '007 Patent, titled "Athlete's GPS-Based Performance Monitor," issued on January 11, 2000 and generally describes a "Global Positioning System (GPS) based personal athletic performance monitor." '007 Patent at Abstract.

The '233 Patent, titled "Personal Medical Device Communication System and Method," issued on August 8, 2006 and generally describes "[a] personal and/or institutional health and wellness communications system, which may be used for a variety of emergency and non-emergency situations using two-way communications devices and a bi-directional communication network." '233 Patent at Abstract.

The '958 Patent, titled "Method and Apparatus for Health and Disease Management Combining Patient Data Monitoring with Wireless Internet Connectivity," issued on December 20, 2005 and generally describes "a method and apparatus for a wireless health monitoring system for interactively monitoring a disease or health condition of a patient by connecting an internet-enabled wireless web device ('WWD') to a digital camera or other health monitoring device." '958 Patent at Abstract.

The '377 Patent, titled "Method and Apparatus for Monitoring Exercise with Wireless Internet Connectivity," issued on October 2, 2012 and generally describes a method and apparatus for providing "wireless monitoring of exercise, fitness, or nutrition by connecting a web-enabled wireless phone to a device which provides exercise-related information, including physiological data and data indicating an amount of exercise performed." '377 Patent at Abstract.

The '192 Patent, titled "Detection and Compensation Method for Monitoring the Place of Activity on the Body," issued on April 19, 2016 and generally describes "[a] measuring system compris[ing] a sensor arranged to be attached to a subject for obtaining a measured value representing a physical or a physiological quantity of the subject." '192 Patent at Abstract.

The '542 Patent, titled "Health Monitoring Appliance," issued on October 31, 2017 and generally describes a "heart monitoring system for a person [that] includes one or more wireless nodes; and wearable appliance in communication with the one or more wireless nodes, the appliance monitoring vital signs." '542 Patent at Abstract.

Relevant disclosures from each of the Asserted Patents will be discussed in greater detail in relation to each of the parties' specific claim construction disputes.

II. LEGAL STANDARD

A. General Claim Construction Principles

As established in *Markman v. Westview Instruments*, 517 U.S. 370 (1996), claim construction is a matter wholly within the jurisdiction of the court. *Markman v. Westview Instruments*, 517 U.S. 370, 372 (1996) (“[T]he construction of a patent . . . is exclusively within the province of the court.”). The purpose of claim construction is to “determin[e] the meaning and scope” of a patented invention in order to define the patent owner’s rights. *Id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). Claim construction is a legal issue that may require subsidiary findings of fact. *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 332 (2015).

Generally, a claim term is given its “ordinary and customary meaning.” *Phillips*, 415 F.3d at 1312 (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). In patent cases, “the ordinary and customary meaning . . . is the meaning that the term would have to a person of ordinary skill in the art in question at the time of invention.” *Philips*, 415 F.3d at 1313. “In some cases, the ordinary meaning . . . may be readily apparent,” requiring only common sense application of a widely accepted meaning. *Id.* at 1314. However, when claim meaning is not so readily apparent, a court must determine what a skilled person in the appropriate field of art would understand a claim term to mean. *Id.*

Courts first consider the intrinsic evidence, which includes the patent claims, patent specification, and prosecution history. *Vitronics*, 90 F.3d at 1582. “Attending this principle, a claim construction analysis must begin and remain centered on the claim language itself, for that is the language the patentee has chosen to ‘particularly point out and distinctly claim the [patented] subject matter.’” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004) (quoting *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001)). A term’s use in context may help to distinguish or clarify its meaning from other potential definitions. See, e.g., *Phillips*, 415 F.3d at 1314 (illustrating that “steel baffles” implies that “baffles” are not intrinsically made of steel). Claim terms are commonly used consistently throughout a patent, and thus “the usage of a term in one claim can often illuminate the meaning of the same term in other claims.” *Id.*

The claim terms must be read in light of the specification. *Id.* at 1315 (citing *Vitronics*, 90 F.3d at 1582 (“[T]he specification ‘is always highly relevant . . . Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’”)). The specification may provide insight into an inventor’s understanding of her invention at the time of patenting, as it might contain an intentional disclaimer of claim scope that reveals

limits on an inventor's intended invention. *Phillips*, 415 F.3d at 1316. The Federal Circuit has also recognized that an inventor may invoke a particular definition of a term in her specification or otherwise use a term in the specification in a manner that differs from the term's ordinary usage. *Id.* "In such cases, the inventor's lexicography governs." *Id.*

In addition to the patent itself, the Court "should also consider the patent's prosecution history, if it is in evidence." *Id.* at 1317. The prosecution history consists of "all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims." *Vitronics*, 90 F.3d at 1582. However, because the prosecution history, also called the "file history" or "file wrapper," is a product of negotiations between the inventor and the United States Patent and Trademark Office ("USPTO"), "it often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Phillips*, 415 F.3d at 1317. Nevertheless, like the specification, the prosecution history may still be useful in understanding the inventor's understanding of her own invention. *Id.* (citing *Vitronics*, 90 F.3d at 1582-83). Moreover, during prosecution history, a patent applicant may disclaim claim scope by making a clear and unequivocal disavowal of the plain meaning of ordinary claim language. *Id.* at 1319 (citing *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1204 (Fed. Cir. 2002)).

After looking at the intrinsic evidence, courts may consider extrinsic evidence, including inventor and expert testimony, dictionaries, and treatises. *Phillips*, 415 F.3d at 1317. However, extrinsic evidence is "less significant than the intrinsic record" because it is generally "less reliable." *Id.* at 1317-18. Additionally, extrinsic evidence cannot be used to change the meaning of a term as used in the specification. *Merck & Co. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005). Thus, the extrinsic evidence should always be considered in context of the intrinsic evidence. *Phillips*, 415 F.3d at 1319.

Technical dictionaries are a particular type of extrinsic evidence that may provide information about the ways a term is used in a particular field of art. *Id.* at 1318. Expert testimony may also be useful in several ways, "such as to provide background on the technology at issue, to explain how an invention works, to ensure that the court's understanding . . . is consistent with that of a person of skill in the art, or to establish that a particular term . . . has a particular meaning in the pertinent field." *Id.* However, as with all extrinsic evidence, courts will "discount any expert testimony 'that is clearly at odds with [the intrinsic evidence] of the patent,'" as well as expert testimony that is conclusory or unsupported. *Id.* (quoting *Key Pharm. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed. Cir. 1998)).

B. Claim Term Indefiniteness

“[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014); *see also* 35 U.S.C. § 112 ¶ 2. This standard “mandates clarity, while recognizing that absolute precession is unattainable.” *Id.* at 910. “General principles of claim construction apply to indefiniteness allegations.” *HZNP Medicines LLC v. Actavis Labs. UT, Inc.*, 940 F.3d 680, 688 (Fed. Cir. 2019) (*citing Biosig Instruments, Inc. v. Nautilus, Inc.*, 783 F.3d 1374, 1377-78 (Fed. Cir. 2015)). To the extent subsidiary facts are presented to support that a claim term is indefinite, they must be proven by clear and convincing evidence. *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91, 95 (2011).

C. Means-Plus-Function Claim Construction Principles

Under Section 112, Paragraph 6¹ of the Patent Act,

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. § 112 ¶ 6. “[U]se of the word ‘means’ creates a presumption that § 112, ¶ 6 applies.” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (*quoting Personalized Media Commc’ns, LLC v. Int’l Trade Comm’n*, 161 F.3d 696, 703 (Fed. Cir. 1998)); *but see Skky, Inc. v. MindGeek, s.a.r.l.*, 859 F.3d 1014, 1019 (Fed. Cir. 2017) (claim term “wireless device means” does not invoke § 112, ¶ 6 because it denotes a class of structures).

Conversely, when a claim term lacks the word “means,” there is a presumption against “means-plus-function” claiming. *Id.* “[T]he presumption can be overcome and § 112, para. 6 will apply if the challenger demonstrates that the claim term fails to ‘recite sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” *Id.* (*citing Watts v. XL Sys., Inc.*, 232 F.3d 877, 880 (Fed.

¹ The America Invents Act (“AIA”) amended the labeling convention of sub-sections of § 112 of the Patent Act, so that the sub-sections correspond to letters instead of numbers. Thus, 35 U.S.C. § 112 ¶ 6 was relabeled to 35 U.S.C. § 112(f). Because the Asserted Patents in this case were filed before the AIA took effect, the Court refers to the prior labeling convention in this Order.

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