IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ANCORA TECHNOLOGIES, INC. *Plaintiff,*	§	
v.	§	**CIVIL NO. 1-20-CV-00034-ADA**
LG ELECTRONICS INC., LG ELECTRONICS U.S.A., INC., SAMSUNG ELECTRONICS CO., LTD., AND SAMSUNG ELECTRONICS AMERICA, INC., *Defendants.*	§	

SUPPLEMENTAL CLAIM CONSTRUCTION ORDER

Before the Court are the Parties' claim construction briefs: Plaintiff Ancora Technologies, Inc. ("Ancora") opening, responsive, and reply briefs (ECF No. 44, 50, and 53, respectively) and Defendants LG Electronics Inc., LG Electronics U.S.A., Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc., ("Defendants") opening, responsive, and reply briefs (ECF No. 45, 49, and 52, respectively). The Court held the Markman hearing on May 29, 2020. ECF No. 66. During that hearing, the Court informed the Parties of the final constructions for all terms. The Court entered its Final Claim Construction Order on June 2, 2020. ECF No. 69. This Order does not alter any of those constructions but provides additional rationale for the Court's constructions.

I. BACKGROUND

Ancora filed this lawsuit alleging that Defendants infringed U.S. Patent No. 6,411,941 ("the '941 Patent"). Compl. ¶ 16, ECF No. 1. The '941 Patent is entitled "Method of Restricting Software Operation Within a License Limitation." *Id.* The patent is a "method and system of identifying and restricting an unauthorized Software program's operation." '941 Patent at 1:6–8. The "background" section of the specification describes how "illegal copying [of software]

represents billions of dollars in lost profits to commercial software developers" and the need to "substantially reduce or overcome the drawbacks" of existing solutions. *Id.* at 1:16–18, 33–35.

Although the technology is not something completely new, the patent describes how the restriction process is performed. *Id.* at 1:6–8. "This method strongly relies on the use of a key and of a [license] record, which have been written into the non-volatile memory of a computer." *Id.* at 1:40–42. The invention allows for the immediate detection of unauthorized use of software and a responsive defined action (*e.g.*, informing the user of the unlicensed status or halting the operation of the program under question). *Id.* at 2:22–26. The key is stored in the non-volatile portion of the BIOS, which cannot be removed or modified. *Id.* at 1:50–52. The key is used in conjunction with other identification information to encrypt the license record, which is stored in another non-volatile section of the BIOS that may be optionally erased or modified. *Id.* at 1:40–42. The invention utilizes an agent to set up a verification structure in the non-volatile memory of the BIOS. *Id.* at 6:64–65. The verification structure is then used to verify the program which is being used. *Id.* at 7:1–3.

A license verifier application can then encrypt the license record of any given software using the key and compare it to the already encrypted license record stored in the BIOS. *Id.* at 2:13–19. In the case of a match, the program is verified to run. *Id.* at 2:19–20. However, if a computer's data were to be copied, an unauthorized copy of the encrypted license record could be stored on a different computer. *Id.* at 2:20–26. When attempting to run the software on the second computer, the encrypted license records will not match as they were encrypted with two different keys. *Id.* at 2:56–59.

II. LEGAL PRINCIPLES

The general rule is that claim terms are generally given their plain-and-ordinary meaning. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*); *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1347 (Fed. Cir. 2014), *vacated on other grounds by* 135 S. Ct. 1846, 1846 (2015) ("There is a heavy presumption that claim terms carry their accustomed meaning in the relevant community at the relevant time."). The plain and ordinary meaning of a term is the "meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips*, 415 F.3d at 1313.

"'Although the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims.'" *Comark Commc'ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) (quoting *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988)). "[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited." *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004).

Although extrinsic evidence can also be useful, it is "'less significant than the intrinsic record in determining the legally operative meaning of claim language.'" *Phillips*, 415 F.3d at 1317 (quoting *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004)). Technical dictionaries may be helpful, but they may also provide definitions that are too broad or not indicative of how the term is used in the patent. *Id.* at 1318. Expert testimony also may be helpful, but an expert's conclusory or unsupported assertions as to the meaning of a term are not. *Id.*

The "only two exceptions to [the] general rule" that claim terms are construed according to their plain and ordinary meaning are when the patentee (1) acts as his/her own lexicographer or (2) disavows the full scope of the claim term either in the specification or during prosecution. *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). To act as his/her own lexicographer, the patentee must "clearly set forth a definition of the disputed claim term," and "clearly express an intent to define the term." *Id.* To disavow the full scope of a claim term, the patentee's statements in the specification or prosecution history must represent "a clear disavowal of claim scope." *Id.* at 1366. Accordingly, when "an applicant's statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable." *3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013).

Under the doctrine of claim differentiation, a court presumes that each claim in a patent has a different scope. *Phillips*, 415 F.3d at 1314-15. The presumption is rebutted when, for example, the "construction of an independent claim leads to a clear conclusion inconsistent with a dependent claim." *Id.* The presumption is also rebutted when there is a "contrary construction dictated by the written description or prosecution history." *Seachange Int'l., Inc. v. C-COR, Inc.*, 413 F.3d 1361, 1369 (Fed. Cir. 2005). The presumption does not apply if it serves to broaden the claims beyond their meaning in light of the specification. *Intellectual Ventures I LLC v. Motorola Mobility LLC*, 870 F.3d 1320, 1326 (Fed. Cir. 2017).

A. Means-Plus Function Claiming

A patent claim may be expressed using functional language. *See* 36 U.S.C. § 112 ¶ 6[1]; *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1347–49 (Fed. Cir. 2015). In particular, § 112 ¶ 6 provides that a structure may be claimed as a "means . . . for performing a specified function"

[1]The AIA changed the numeration of the relevant subsection from § 112 ¶ 6 to § 112(f). The substance of the subsection did not change, so the Court will refer to the relevant subsection as § 112 ¶ 6 in keeping with the numeration at the time of the patent filing.

and that an act may be claimed as a "step for performing a specified function." *Masco Corp. v. United States*, 303 F.3d 1316, 1326 (Fed. Cir. 2002). While there is a rebuttable presumption that § 112 ¶ 6 applies when the claim language includes "means" or "step for," and that § 112 ¶ 6 does not apply in the absence of those terms, the presumption stands or falls according to whether one of ordinary skill in the art would understand the claim with the functional language, in the context of the entire specification, to denote sufficiently definite structure or acts for performing the function. *Id.*

When it applies, § 112 ¶ 6 limits the scope of the functional term "to only the structure, materials, or acts described in the specification as corresponding to the claimed function and equivalents thereof." *Williamson*, 792 F.3d at 1347. Construing a means-plus-function limitation involves multiple steps. "The first step . . . is a determination of the function of the means-plus-function limitation." *Medtronic, Inc. v. Advanced Cardiovascular Sys., Inc.*, 248 F.3d 1303, 1311 (Fed. Cir. 2001). "[T]he next step is to determine the corresponding structure disclosed in the specification and equivalents thereof." *Id.* A "structure disclosed in the specification is 'corresponding' structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim." *Id.* The focus of the "corresponding structure" inquiry is not merely whether a structure is capable of performing the recited function, but rather whether the corresponding structure is "clearly linked or associated with the [recited] function." *Id.* The corresponding structure "must include all structure that actually performs the recited function." *Default Proof Credit Card Sys. v. Home Depot U.S.A., Inc.*, 412 F.3d 1291, 1298 (Fed. Cir. 2005). However, § 112 ¶ 6 does not permit "incorporation of structure from the written description beyond that necessary to perform the claimed function." *Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed. Cir. 1999).

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