PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of	
CERTAIN ELECTRICAL CONNECTORS AND CAGES, COMPONENTS THEREOF, AND PRODUCTS CONTAINING THE SAME	**Inv. No. 337-TA-1241**

ORDER NO. 31: CONSTRUING CERTAIN TERMS OF THE ASSERTED CLAIMS OF THE PATENTS AT ISSUE

(October 19, 2021)

This order addresses the construction of certain disputed claim terms in U.S. Patent No. 7,371,117 ("the '117 patent); U.S. Patent No. 9,705,255 ("the '255 patent"), and U.S. Patent No. 10,381,767 ("the '767 patent").

I. BACKGROUND

The Commission instituted this investigation to determine whether certain electrical connectors and cages, components thereof, and products containing the same infringe certain claims of the '117 patent, the '255 patent, the '767 patent, U.S. Patent No. 8,371,875 ("the '875 patent"), and U.S. Patent No. 8,864,521 ("the '521 patent"). *See* 86 Fed. Reg. 7104 (Jan. 26, 2021) ("Notice of Investigation"). As set forth in the Notice of Investigation, the plain language description of the accused products is "high speed electrical connectors, components thereof, electrical connectors disposed within metal cages, and products containing the same, including electrical connectors mounted to printed circuit boards, such as test boards, test fixtures, or mated compliance boards." *Id.*

The complainant is Amphenol Corporation ("Amphenol"). *Id.* The respondents are Luxshare Precision Industry Co., Ltd., Dongguan Luxshare Precision Industry Co., Ltd., Luxshare Precision Limited (HK), and Luxshare-ICT Inc. (collectively, "Luxshare"). *Id.* The claims originally asserted in this investigation were claims 1, 2, 9, 11, 24-27, and 29 of the '117 patent; claims 1, 2, 9, 10, 12, and 13 of the '875 patent; claims 33-35, 38-40, 45, 46, and 48-50 of the '521 patent; claims 1-3, 5-8, 12-14, and 16-18 of the '255 patent; and claims 1-7, 9-17, 19-23, 24-27, and 28-30 of the '767 patent. *Id.*

Pursuant to the Procedural Schedule (Order No. 6), the parties filed a joint proposed claim construction chart on May 3, 2021 identifying terms proposed for construction, including the "ten most significant disputed terms." EDIS Doc. ID 741445. The parties filed opening claim construction briefs on May 26, 2021 and rebuttal claim construction briefs on June 11, 2021 addressing the ten most significant terms. A *Markman* hearing was held on June 23, 2021 addressing these terms. Pursuant to Order No. 8 (Apr. 6, 2021), the parties filed an updated joint proposed claim construction chart on June 25, 2021.

On October 8, 2021, Amphenol filed an unopposed motion for partial termination of the investigation based on withdrawal of the '875 patent and '521 patent as well as certain asserted claims of the '117, '255, and '767 patents. Mot. Dkt. 1241-024. The unopposed motion, granted in Order No. 29, states that the following patent claims remain at issue: claims 1, 9, 11, 24, and 29 of the '117 patent; claims 12-14, 16 and 17 of the '255 patent; and claims 1, 4-6, 9-13, 15-17, 19, 23, 28 and 29 of the '767 patent. Order No. 29 at 2 n.2 (EDIS Doc. ID 754054, Oct. 13, 2021). On October 8, 2021, the parties also filed a Joint Status Report noting the withdrawal of these patents and claims, and providing an updated chart identifying the 8 remaining most

significant terms briefed by the parties and argued at the June 23, 2021 hearing. EDIS Doc. ID 753882, Exhibit A.

On October 12, 2021, pursuant to Order No. 28, the parties filed supplemental submissions regarding construction of the term "lossy" in the '255 patent.

For ease of reference, the materials submitted by the parties shall be referred to as follows:

CIB	Complainant's Initial Claim Construction Brief (May 26, 2021)
CRB	Complainant's Responsive Claim Construction Brief (June 11, 2021)
RIB	Respondents' Initial Claim Construction Brief (May 26, 2021)
RRB	Respondents' Responsive Claim Construction Brief (June 11, 2021)
June 25, 2021 Joint Chart	June 25, 2021 Updated Joint Proposed Claim Construction Chart (EDIS Doc. ID 745533)
October 8, 2021 Joint Chart	October 8, 2021 Joint Status Report, Exhibit A (EDIS Doc. ID 753882)
Tr.	Transcript of June 23, 2021 claim construction hearing
Amphenol Presentation	Amphenol's Markman Hearing Presentation (EDIS Doc. ID 753136)
Luxshare Presentation	Luxshare's Markman Hearing Presentation (EDIS Doc. ID 753163)
Blichasz Decl.	Declaration of Charles S. Blichasz in Support of Luxshare's Opening *Markman* Brief (May 26, 2021), filed with Respondents' Initial Claim Construction Brief
Locati Decl.	Declaration of Ronald P. Locati (June 11, 2021), filed as Exhibit R to Complainant's Responsive Claim Construction Brief
CSB	Complainant's October 12, 2021 Supplemental Claim Construction Brief
RSB	Respondents' October 12, 2021 Supplemental Claim Construction Brief

II. LEGAL STANDARDS

A. Claim Construction

The scope of a patent claim is defined by the claim language. *Catalina Mktg. Int'l., Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 807 (Fed. Cir. 2002). In construing the claims, the court's task is to "ascertain[] the meaning of the claim terms to one of ordinary skill in the art at the time of invention." *Metabolite Labs., Inc. v. Lab'y Corp. of Am. Holdings*, 370 F.3d 1354,

1361 (Fed. Cir. 2004). "[O]nly those [claim] terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy." *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999); *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Ltd. Matal*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (same).

To ascertain the meaning of claim terms at issue, courts rely on intrinsic evidence: the claims, specification, and prosecution history for the patent at issue. *Phillips v. AWH Corp.*, 415 F.3d 1303, at 1313-14 (Fed. Cir. 2005); *Vitronics Corp. v. Conceptronic, Inc.,* 90 F.3d 1576, 1582 (Fed. Cir. 1996). The words of a claim "are generally given their ordinary and customary meaning." *Phillips*, 415 F.3d at 1312. This 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, i.e., as of the effective filing date of the patent application." *Id.* at 1313.

Importantly, the person of ordinary skill in the art "is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Phillips*, 415 F.3d at 1313. The Federal Circuit has repeatedly confirmed that the specification is "the single best guide to the meaning of a disputed term." *Id.* at 1315. The specification plays a primary role because it can function as a sort of dictionary, explaining the invention and defining the terms used in the claims. *See id.* ("[C]laims . . . do not stand alone. Rather, they are part of a 'fully integrated written instrument,' consisting principally of a specification that concludes with the claims.") (citation omitted). "Ultimately . . . the construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction." *Id.* at 1316 (internal quotation and citation omitted).

Claims should also be read in view of the prosecution history, which provides "evidence of how the PTO and the inventor understood the patent." *Id.* at 1317. "The prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." *Id.*

In addition to intrinsic evidence, extrinsic evidence may be considered if necessary to explain scientific principles, technical terms, and terms of art that appear in the patent and prosecution history. Extrinsic evidence consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises. *Vitronics*, 90 F.3d at 1584. Extrinsic evidence in the form of expert testimony "can be useful to a court for a variety of purposes, such as to provide background on the technology at issue, to explain how an invention works, to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent . . . has a particular meaning in the pertinent field." *Phillips*, 415 F.3d at 1318. While not prohibited, extrinsic evidence is less reliable than the patent and its prosecution history. *Phillips*, 415 F.3d at 1318. Extrinsic evidence in the form of expert testimony that is at odds with the intrinsic evidence must be disregarded. *Network Commerce, Inc. v. Microsoft Corp.*, 422 F.3d 1353, 1361 (Fed. Cir. 2005).

B. Indefiniteness

"The Patent Act requires that a patent specification 'conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as [the] invention.'" *Nautilus, Inc. v. Biosig Instruments, Inc.,* 572 U.S. 898 (2014) (quoting 35 U.S.C. § 112, ¶ 2). "[T]he second paragraph of § 112 contains two requirements: first, [the claim] must set forth what the applicant regards as his invention, and second, it must do

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