

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TQ DELTA, LLC,

Plaintiff,

v.

2WIRE, INC.,

Defendant.

Civil Action No. 1:13-cv-01835-RGA

TQ DELTA, LLC,

Plaintiff,

v.

ZYXEL COMMUNICATIONS, INC  
and  
ZYXEL COMMUNICATIONS  
CORPORATION,

Defendants.

Civil Action No. 1:13-cv-02013-RGA

TQ DELTA, LLC,

Plaintiff,

v.

ADTRAN, INC.,

Defendant.

Civil Action No. 1:14-cv-00954-RGA

ADTRAN, INC.,

Plaintiff,

v.

TQ DELTA, LLC,

Defendant.

Civil Action No. 1:15-cv-00121-RGA

MEMORANDUM OPINION

Brian E. Farnan, and Michael J. Farnan, FARNAN LLP, Wilmington, DE; Peter J. McAndrews, Esq. (argued) and Rajendra A. Chiplunkar, MCANDREWS, HELD & MALLOY, (Chicago, IL).

Attorneys for Plaintiff

Colm F. Connolly and Jody Barillare, MORGAN LEWIS & BOCKIUS LLP, Wilmington, DE; Brett M. Schuman (argued), Rachel M. Walsh (argued), and David L. Simpson, GOODWIN PROCTOR LLP, San Francisco, CA.

Attorneys for Defendant 2WIRE, Inc.

Kenneth L. Dorsney, MORRIS JAMES LLP, Wilmington, DE.

Attorney for Defendants Adtran Inc. and Zyxel Communications Inc.

January 30, 2018

  
ANDREWS, U.S. DISTRICT JUDGE:

Presently before the Court is the issue of claim construction of multiple terms in U.S. Patent Nos. 7,570,686 (“the ’686 patent”); 7,835,430 (“the ’430 patent”); 7,889,784 (“the ’784 patent”); 8,238,412 (“the ’412 patent”); and 9,432,956 (“the ’956 patent”). The Court has considered the Parties’ Joint Claim Construction Brief. (Civ. Act. No. 13-01835-RGA, D.I. 342; Civ. Act. No. 13-02013-RGA, D.I. 327; Civ. Act. No. 14-00954-RGA, D.I. 180; Civ. Act. No. 15-00121-RGA; D.I. 182).<sup>1</sup> The Court heard oral argument on September 5, 2017. (D.I. 357). The Court subsequently heard testimony from two technical experts and received supplemental submissions.

## I. BACKGROUND

The patents-in-suit represent “Family 1” of the patents that Plaintiff has asserted against Defendants, and they all share a common specification. (D.I. 342 at 12 n.1). The Family 1 patents claim both an apparatus and method for the reliable exchange of diagnostic and test information over a multicarrier communications system.

## II. LEGAL STANDARD

“It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (citation omitted). “[T]here is no magic formula or catechism for conducting claim construction.’ Instead, the court is free to attach the appropriate weight to appropriate sources ‘in light of the statutes and policies that inform patent law.’” *SoftView LLC v. Apple Inc.*, 2013 WL 4758195, at \*1 (D. Del. Sept. 4, 2013) (quoting *Phillips*, 415 F.3d at 1324) (alteration in original). When construing patent claims, a court considers the literal language of the claim, the patent specification, and the prosecution history. *Markman v. Westview Instruments*,

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<sup>1</sup> Unless otherwise specifically noted, all references to the docket refer to Civil Action No. 13-1835-RGA.

*Inc.*, 52 F.3d 967, 979-80 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Of these sources, “the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.” *Phillips*, 415 F.3d at 1315.

“[T]he words of a claim are generally given their ordinary and customary meaning. . . . [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 1312-13. “[T]he ordinary meaning of a claim term is its meaning to [an] ordinary artisan after reading the entire patent.” *Id.* at 1321. “In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.” *Id.* at 1314.

When a court relies solely upon the intrinsic evidence—the patent claims, the specification, and the prosecution history—the court’s construction is a determination of law. *See Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015). The court may also make factual findings based upon consideration of extrinsic evidence, which “consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.” *Phillips*, 415 F.3d at 1317-19. Extrinsic evidence may assist the court in understanding the underlying technology, the meaning of terms to one skilled in the art, and how the invention works. *Id.* Extrinsic evidence, however, is less reliable and less useful in claim construction than the patent and its prosecution history. *Id.*

“A claim construction is persuasive, not because it follows a certain rule, but because it defines terms in the context of the whole patent.” *Renishaw PLC v. Marposs Societa’ per Azioni*,

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