THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	
v.	§	CASE NO. 2:22-CV-263-JRG-RSP
	§	
SAMSUNG ELECTRONICS CO., LTD and SAMSUNG ELECTRONICS AMERICA, INC.	§	

CLAIM CONSTRUCTION ORDER

On November 3, 2023, the Court held a hearing to determine the proper construction of disputed terms in United States Patents No. 8,213,970, 9,467,838, 9,749,829, and 9,820,123. Before the Court are the Opening Claim Construction Brief (Dkt. No. 87) filed by Plaintiff AGIS Software Development LLC ("AGIS"), the Responsive Claim Construction Brief (Dkt. No. 97) filed by Defendants Samsung Electronics Co., Ltd. and Samsung Electronics, America, Inc. ("Samsung"), and Plaintiff's reply (Dkt. No. 103). Also before the Court are the parties' Patent Rule 4-3 Joint Claim Construction and Prehearing Statement (Dkt. No. 67), Plaintiff's Supplemental Opening Claim Construction Brief (Dkt. No. 129), Defendants' response (Dkt. No. 139), Plaintiff's reply (Dkt. No. 145), and the parties' Patent Rule 4-5(d) Joint Claim Construction Charts (Dkt. Nos. 107 & 145). Having reviewed the arguments made by the parties at the hearing and in their claim construction briefing, having considered the intrinsic evidence, and having made subsidiary factual findings about the extrinsic evidence, the Court hereby issues this Claim Construction Order. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc); *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015).

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I. BACKGROUND

Plaintiff alleges infringement of United States Patents No. 8,213,970 ("the '970 Patent"), 9,467,838 ("the '838 Patent"), 9,749,829 ("the '829 Patent"), and 9,820,123 ("the '123 Patent"). Dkt. No. 87, Exs. A–D.

The '970 Patent, titled "Method of Utilizing Forced Alerts for Interactive Remote Communications," issued on July 3, 2012, and bears an earliest priority date of September 21, 2004. The Abstract of the '970 Patent states:

> The system and method having a specialized software application on a personal computer or a PDA/cell phone that that [*sic*] enables a participant to force an automatic acknowledgement and a manual response to a text or voice message from other participants within the same network. Each participant's PDA/cell phone includes a force message alert software application program for both creating and processing these forced message alerts. The system and method

> enabled by the force message alert software application program provides the ability to (a) allow an operator to create and transmit a forced message alert from a sender PDA/cell phone to one or more recipient PCs and PDA/cell phones within the communication network; (b) automatically transmit an acknowledgement of receipt to the sender PDA cell phone upon the receipt of the forced message alert; (c) periodically resend the message to the recipient PCs and PDA/cell phones that have not sent an acknowledgement; (d) provide an indication of which recipient PCs and PDA/cell phones have acknowledged the forced message alert; (e) provide a manual response list on the display of the recipient PC and PDA/cell phone's display that can only be cleared by manually transmitting a response; and (f) provide an indication on the sender PDA/cell phone of the status and content the [*sic*] manual responses.

The '838 Patent, titled "Method to Provide Ad Hoc and Password Protected Digital and Voice Networks," issued on October 11, 2016, and bears an earliest priority date of September 21, 2004. The Abstract of the '838 Patent states:

> A method and system includes the ability for individuals to set up an ad hoc digital and voice network easily and rapidly to allow users to coordinate their activities by eliminating the need for pre-entry of data into a web or identifying others by name, phone numbers or email. This method is especially useful for police, fire fighters, military, first responders or other emergency situations for coordinating different organizations at the scene of a disaster to elevate conventional communication problems either up and down the chain of command or cross communication between different emergency units. The method and system provides that the users are only required to enter a specific Server IP address and an ad hoc event name, a password and perhaps the name of the particular unit.

The '829 Patent and the '123 Patent resulted from continuations of the '838 Patent.

The Court previously construed disputed terms in the patents-in-suit in *AGIS Software Development, LLC v. Huawei Device USA, Inc.*, No. 2:17-CV-513-JRG, Dkt. No. 205 ("*Huawei*") (attached to Plaintiff's opening brief as Ex. F), *AGIS Software Development, LLC v. Google LLC*, No. 2:19-CV-361-JRG, Dkt. No. 147 ("*Google*") (attached to Plaintiff's opening brief as Ex. G), and *AGIS Software Development, LLC v. T-Mobile USA Inc.*, No. 2:21-CV-72-JRG, Dkt. No. 213 ("*T-Mobile* Case") (attached to Plaintiff's opening brief as Ex. H).

Also, in the present case, the Court granted the parties' Joint Motion for Entry of Claim Construction with Regard to Certain Specified Terms Based on Established Prior Record (Dkt. No. 68). *See* Dkt. No. 70, June 21, 2023 Order.

Shortly before the start of the November 3, 2023 hearing, the Court provided the parties with preliminary constructions with the aim of focusing the parties' arguments and facilitating discussion. Those preliminary constructions are noted below within the discussion for each term.

II. LEGAL PRINCIPLES

"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*, 415 F.3d at 1312 (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). Claim construction is clearly an issue of law for the court to decide. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970–71 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). "In some cases, however, the district court will need to look beyond the patent's intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period." *Teva*, 135 S. Ct. at 841 (citation omitted). "In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factual findings about that extrinsic evidence. These are the 'evidentiary underpinnings' of claim construction that we discussed in *Markman*, and this subsidiary factfinding must be reviewed for clear error on appeal." *Id.* (citing 517 U.S. 370).

To determine the meaning of the claims, courts start by considering the intrinsic evidence. *See Phillips*, 415 F.3d at 1313; *see also C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*,

262 F.3d 1258, 1267 (Fed. Cir. 2001). The intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *See Phillips*, 415 F.3d at 1314; *C.R. Bard*, 388 F.3d at 861. Courts give claim terms their ordinary and accustomed meaning as understood by one of ordinary skill in the art at the time of the invention in the context of the entire patent. *Phillips*, 415 F.3d at 1312–13; *accord Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

The claims themselves provide substantial guidance in determining the meaning of particular claim terms. *Phillips*, 415 F.3d at 1314. First, a term's context in the asserted claim can be very instructive. *Id.* Other asserted or unasserted claims can aid in determining the claim's meaning because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term's meaning. *Id.* For example, when a dependent claim adds a limitation to an independent claim, it is presumed that the independent claim does not include the limitation. *Id.* at 1314–15.

"[C]laims 'must be read in view of the specification, of which they are a part.'" *Id.* at 1315 (quoting *Markman*, 52 F.3d at 979). "[T]he 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 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *accord Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). This is true because a patentee may define his own terms, give a claim term a different meaning than the term would otherwise possess, or disclaim or disavow the claim scope. *Phillips*, 415 F.3d at 1316. In these situations, the inventor's lexicography governs. *Id.* The specification may also resolve the meaning of ambiguous claim terms "where the ordinary and accustomed meaning of the words used in the claims lack

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