IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MAXELL LTD.,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 5:16-CV-00178-RWS
v.	§	LEAD CASE
	§	
HUAWEI DEVICE USA INC, HUAWEI DEVICE CO., LTD.,	§	
	§	
	§	
Defendants.	§	

	§	
MAXELL LTD.,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 5:16-CV-00179-RWS
	§	
v.	§	
	§	
ZTE CORPORATION, ZTE USA INC.,	§	
	§	
Defendants.	§	

CLAIM CONSTRUCTION
MEMORANDUM AND ORDER

On November 29, 2017, the Court held an oral hearing to determine the proper construction of the disputed claim terms of the patents-in-suit. Having considered the parties claim-construction briefing and based on the intrinsic and extrinsic evidence, the Court construes the disputed terms in this Memorandum and Order as detailed below. *See Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005); *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831 (2015).

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BACKGROUND

On November 18, 2016, Plaintiff Maxell, Ltd. ("Maxell") filed suit against Defendants Huawei Device USA Inc., Huawei Device Co., Ltd. (collectively "Huawei") and ZTE USA Inc. ("ZTE"). Plaintiff Maxell, Ltd. ("Maxell") has asserted fifteen patents in this consolidated action:[1]

- U.S. Patent No. 5,396,443 ("'443 Patent"), which is asserted against both Huawei and ZTE USA;
- U.S. Patent Nos. 7,509,139 ("'139 Patent"); 6,754,440 ("'440 Patent"); 6,928,292 ("'292 Patent"); 7,203,517 ("'517 Patent"); 7,671,901 ("'901 Patent"); 6,856,760 ("'760 Patent"); and 7,116,438 ("'438 Patent"), which are asserted against Huawei; and
- U.S. Patent Nos. 6,748,317 ("'317 Patent"); 8,339,493 ("'493 Patent"); 8,736,729 ("'729 Patent"); 6,408,193 ("'193 Patent"); 6,329,794 ("'794 Patent"); 6,816,491 ("'491 Patent"); and 8,098,695 ("'695 Patent"), which are asserted against ZTE USA.

On November 29, 2017, the Court held a *Markman* hearing on the disputed claim terms of the patents-in-suit. Docket Nos. 118, 138. At the hearing, Maxell and Huawei agreed to the construction of the sole disputed terms in the '901 Patent and '438 Patent. Docket No. 138 (H'rg Tr.) at 101:8–10.

APPLICABLE LAW

"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) (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). The Court examines a patent's intrinsic evidence to

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[1] The Court consolidated the case against Huawei (Case No. 5:16-cv-178) with the case against ZTE (Case No. 5:16-cv-179) for pretrial purposes.

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define the patented invention's scope. *Id*. at 1313–14; *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). Intrinsic evidence includes the claims, the rest of the specification and the prosecution history. *Phillips*, 415 F.3d at 1312–13; *Bell Atl. Network Servs.*, 262 F.3d at 1267. The Court gives claim terms their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention. *Phillips*, 415 F.3d at 1312–13; *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

Claim language guides the Court's construction of claim terms. *Phillips*, 415 F.3d at 1314. "[T]he context in which a term is used in the asserted claim can be highly instructive." *Id*. Other claims, asserted and unasserted, can provide additional instruction because "terms are normally used consistently throughout the patent." *Id*. Differences among claims, such as additional limitations in dependent claims, can provide further guidance. *Id*.

"[C]laims 'must be read in view of the specification, of which they are a part.' " *Id*. (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995)). "[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.' " *Id*. (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). In the specification, a patentee may define his own terms, give a claim term a different meaning that it would otherwise possess, or disclaim or disavow some claim scope. *Phillips*, 415 F.3d at 1316. Although the Court generally presumes terms possess their ordinary meaning, this presumption can be overcome by statements of clear disclaimer. *See SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343–44 (Fed. Cir. 2001). This presumption does not arise when the patentee acts as his own

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lexicographer. *See Irdeto Access, Inc. v. EchoStar Satellite Corp.*, 383 F.3d 1295, 1301 (Fed. Cir. 2004).

The specification may also resolve ambiguous claim terms "where the ordinary and accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone." *Teleflex, Inc.*, 299 F.3d at 1325. For example, "[a] claim interpretation that excludes a preferred embodiment from the scope of the claim 'is rarely, if ever, correct.' " *Globetrotter Software, Inc. v. Elam Computer Group Inc.*, 362 F.3d 1367, 1381 (Fed. Cir. 2004) (quoting *Vitronics Corp.*, 90 F.3d at 1583). But, "[a]lthough the specification may aid the court in interpreting the meaning of disputed language in the claims, particular embodiments and examples appearing in the specification will not generally be read into the claims." *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988); *see also Phillips*, 415 F.3d at 1323.

"A district court's construction of a patent claim, like a district court's interpretation of a written instrument, often requires the judge only to examine and to construe the document's words without requiring the judge to resolve any underlying factual disputes." *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 840–41 (2015). For certain terms, however, the Court may "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." *Id.* at 841. "In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factfindings about that extrinsic evidence." *Id.*

Although extrinsic evidence is useful, it is "less significant than the intrinsic record in determining the legally operative meaning of claim language." *Phillips*, 415 F.3d at 1317

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(quoting *C.R. Bard, Inc.*, 388 F.3d at 862) (internal quotation marks omitted). Technical dictionaries and treatises may help a court understand the underlying technology and the manner in which one skilled in the art might use claim terms, but technical dictionaries and treatises may provide definitions that are too broad or may not be indicative of how the term is used in the patent. *Id.* at 1318. Similarly, expert testimony may aid a court in understanding the underlying technology and determining the particular meaning of a term in the pertinent field, but an expert's conclusory, unsupported assertions as to a term's definition are not useful. *Id.* Generally, extrinsic evidence is "less reliable than the patent and its prosecution history in determining how to read claim terms." *Id.*

A. Departing from the Ordinary Meaning of a Claim Term

There are "only two exceptions to [the] general rule" that claim terms are construed according to their plain and ordinary meaning: "(1) when a patentee sets out a definition and acts as his own lexicographer, or (2) when the patentee disavows the full scope of the claim term either in the specification or during prosecution." *Golden Bridge Tech., Inc. v. Apple Inc.*, 758 F.3d 1362, 1365 (Fed. Cir. 2014) (quoting *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012)); *see also GE Lighting Solutions, LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014) ("[T]he specification and prosecution history only compel departure from the plain meaning in two instances: lexicography and disavowal."). The standards for finding lexicography or disavowal are "exacting." *GE Lighting Solutions*, 750 F.3d at 1309.

To act as his 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.* (quoting *Thorner*, 669 F.3d at 1365); *see also Renishaw*, 158 F.3d at 1249. The patentee's lexicography must appear "with reasonable clarity, deliberateness, and precision." *Renishaw*, 158 F.3d at 1249.

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