

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**CELLULAR COMMUNICATIONS
EQUIPMENT LLC,**

Plaintiff,

v.

HTC CORPORATION, ET AL.,

Defendants.

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Case No. 6:13-cv-507

CONSOLIDATED LEAD CASE

MEMORANDUM OPINION AND ORDER

This Memorandum Opinion construes disputed claim terms in United States Patent Nos. 8,055,820 (“the ’820 Patent”), and 7,218,923 (“the ’8923 Patent”) asserted in this suit by Plaintiff Cellular Communications Equipment LLC. On April 9, 2015, the parties presented oral arguments on the disputed claim terms at a *Markman* hearing. For the reasons stated herein, the court **ADOPTS** the constructions set forth below.

BACKGROUND

Plaintiff alleges that Defendants, a group of mobile device manufacturers and mobile network carriers, infringe five of its patents. The patents-in-suit were acquired from Nokia Siemens Networks and generally relate to mobile communications. Docket No. 361 at 1. This is the second claim construction ruling in this case. The Court previously addressed terms from all of the patents-in-suit, including the ’820 and ’8923 Patents, in a first Memorandum Opinion, which issued on March 9, 2015. Docket No. 363. This second Memorandum Opinion construes three disputed terms that were not construed in the first Memorandum Opinion.

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) (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 define the patented invention’s scope. *Id.* at 1313–1314; *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. Conceptor, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *Teleflex, Inc. v. Ficoso 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 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.

Although “less significant than the intrinsic record in determining the legally operative meaning of claim language,” the Court may rely on extrinsic evidence to “shed useful light on the relevant art.” *Phillips*, 415 F.3d at 1317 (quotation omitted). Technical dictionaries and treatises may help the Court understand the underlying technology and the manner in which one

skilled in the art might use claim terms, but such sources may also provide overly broad definitions or may not be indicative of how terms are used in the patent. *Id.* at 1318. Similarly, expert testimony may aid the Court in determining the particular meaning of a term in the pertinent field, but “conclusory, unsupported assertions by experts as to the definition of a claim term 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.*

DISPUTED TERM IN THE '820 PATENT

The '820 Patent, titled “Apparatus, System, and Method for Designating a Buffer Status Reporting Format Based on Detected Pre-Selected Buffer Conditions,” issued on November 8, 2011 and bears a priority date of November 5, 2007. The Abstract of the '820 Patent states:

An apparatus, system and method for increasing buffer status reporting efficiency and adapting buffer status reporting according to uplink capacity. User equipment is configured a [*sic*, to] monitor a usage of a plurality of buffers, detect one of a plurality of pre-selected conditions corresponding to at least one of the plurality of buffers, designate one of a plurality of buffer status reporting formats depending on the pre-selected condition detected, communicate a buffer status report to a network device in accordance with the buffer status reporting format designated. The buffer status reporting format is configured to minimize buffer status reporting overhead created by the communicating of the buffer status report.

A. “usage” (Claims 1, 12, and 24)

Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
Plain and ordinary meaning; no construction necessary.	“an act, way, or manner of using”

Plaintiff argues that “[t]he specification describes monitoring ‘usage’ in broad terms, commensurate with the plain claim language.” Docket No. 361 at 4. Plaintiff also argues that Defendants’ proposed construction, which “selectively adopt[s] — and omit[s] — phrases from the extrinsic evidence [Defendants] identify,” is “arbitrary and improper.” *Id.* at 5–6. Plaintiff

urges that, for instance, “‘monitoring a usage of a plurality of buffers’ may be accomplished by looking at the buffers to discern whether (or not) the buffers are used or employed.” Docket No. 369 at 2.

Defendants respond that “Plaintiff conflates the different concepts of ‘monitoring the buffers’ and ‘monitoring *the usage of* buffers.’” Docket No. 362 at 4. Defendants submit that “the claimed monitoring must be directed to the ‘usage’ of the buffers by other components (*e.g.*, applications) as opposed to monitoring directly the buffers themselves.” *Id.* at 5–6. Thus, Defendants conclude, Plaintiff’s interpretation “will confuse the jury because it improperly discards ‘usage’ from the claim limitation.” *Id.* at 6.

Claim 1 of the ’820 Patent is representative and recites (emphasis added):

1. A method, comprising:
 - monitoring a *usage* of a plurality of buffers;
 - detecting one of a plurality of pre-selected conditions corresponding to the plurality of buffers;
 - designating one of a plurality of buffer status reporting formats comprising a long buffer status reporting format and a short buffer status reporting format depending on the pre-selected condition detected; and
 - communicating a buffer status report to a network device in accordance with the buffer status reporting format designated, wherein the designating designates the long buffer status reporting format when there is sufficient uplink bandwidth to communicate using the long buffer status reporting format.

The specification does not limit the definition of “usage” to a particular meaning different from or narrower than the term’s plain meaning. Defendants do not dispute that certain meanings of “usage” found in the dictionary excerpts attached to their briefing include or relate to the fact of use. *See* Docket No. 362-2 at 9 (“the fact of being used”); *id.* at 24 (“use”). Rather, Defendants argue that the patentee intentionally excluded these meanings because “the patentee made a conscious decision to forgo claiming ‘monitoring buffers,’ ‘monitoring the use of

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