

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

BANDSPEED, LLC,

Plaintiff,

v.

REALTEK SEMICONDUCTOR
CORPORATION,

Defendant.

§
§
§
§
§
§
§
§
§
§

CASE NO. 1:20-cv-00765-LY

BANDSPEED'S OPENING CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

I. OVERVIEW OF THE PATENTS AND BLUETOOTH1

II. LEGAL PRINCIPLES OF CLAIM CONSTRUCTION1

III. CONTESTED CLAIM TERM NOS. 1-113

 A. Contested Term No. 1: “selection kernel”3

 1. The Term Is Not Indefinite.3

 2. Realtek’s Alternative Proposed Construction Fails.4

 3. Bandspeed’s Proposed Construction Should Be Adopted7

 B. Contested Term No. 2: “the hopping sequence”7

 C. Contested Term No. 3: “[first/second/third] performance [criterion/criteria]” ..10

 D. Contested Term No. 4: “a [first]/[second] time”12

 E. Contested Term Nos. 5 and 6: “channel index” and “apply[ing] an index to a channel index of the identified communications channel”13

 F. Contested Term Nos. 7 and 8: “distinct channels” and “the number of distinct channels in the first set of two or more communications channels varies from the number of distinct channels in the second set of two or more communications channels”15

 G. Contested Term No. 9: “rescanning [the default channels]”17

 H. Contested Term Nos. 10 and 11: “bad” and “good”19

 1. No Construction Is Necessary for These Terms.19

 2. Realtek’s Claims of Indefiniteness Fail.19

 a) Realtek Failed to Identify the Terms “bad” and “good” as Indefinite. 19

 b) The Terms “bad” and “good” Are Not Indefinite. 19

 3. Realtek’s Alternative Proposed Constructions Should Be Rejected.....20

IV. CONTESTED TERM NOS. 12-15: “INSTRUCTIONS” TERMS21

A. The “Instructions” Terms Are Not Mean-Plus-Function Terms.....21

1. Realtek Failed to Assert the Indefiniteness of Any of the “Instructions” Terms in Its Invalidity Contentions22

2. The “Instructions” Terms Lack the Word “Means” and §112, ¶6 Does Not Apply.....22

3. *Beauregard* Claims Are Not Subject to M+F Treatment23

B. Even Under §112, ¶ 6, the “Instructions” Terms Are Not Indefinite, and Bandspeed’s Constructions Are Correct.24

1. Contested Term No. 12: “Instructions that Cause . . . Generating [First / Second] Channel Identification Data that Identifies the [First / Second] Set of Two or More Communications Channels”24

2. Contested Term No. 13: “[Instructions . . .] Causing the [First / Second] Set of Two or More Communications Channels to be Loaded into [a/the] [First] Register”28

3. Contested Term No. 14: “Instructions . . . Cause[] Loading a Set of Default Channels into a Default Channel Register; Loading a Set of Good Channels into a Good Channel Register”32

4. Contested Term No. 15: “[instructions ...causes] select[ing], based upon performance of [a/the] plurality of communications channels ... communications channels”34

TABLE OF AUTHORITIES

Cases

<i>Adams Respiratory Therapeutics, Inc. v. Perrigo Co.</i> , 616 F.3d 1283 (Fed. Cir. 2010)	5
<i>Advanced Mktg. Sys., LLC v. CVS Pharm., Inc.</i> , Nos. 6:15-cv-134, 6:15-cv-137, 2016 WL 1741396 (E.D. Tex. May 3, 2016)	24
<i>Apple, Inc. v. Samsung Electronics, Co., Ltd.</i> , 877 F.Supp.2d 838 (N.D. Cal., 2012)	24
<i>Azure Networks, LLC v. CSR PLC</i> , 771 F.3d 1336 (Fed. Cir. 2014)	13
<i>Bandspeed, LLC v. Cypress Semiconductor, Corp.</i> , No. Case No. 1:19-CV-00936-LY, Dkt. 53 (Aug. 18, 2020, W.D. Tex.)	25
<i>BASF Corp. v. Johnson Matthey Inc.</i> , No. 2016-1770, 875 F.3d 1360 (Fed. Cir. 2017)	9, 14
<i>Bell Howell Document Mgmt. Prods. Co. v. Altek Sys.</i> , No. 97–1226, 132 F.3d 701 (Fed. Cir. 1998).....	2
<i>Biosig Instruments, Inc. v. Nautilus, Inc.</i> , No. 2012–1289, 783 F.3d 1374 (Fed. Cir. 2015).....	9, 14
<i>Chimie v. PPG Industries, Inc.</i> , 402 F.3d 1371 (Fed. Cir. 2005)	5
<i>Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.</i> , 424 F.3d 1293 (Fed. Cir. 2005)	9
<i>CyberSource Corp. v. Retail Decisions, Inc.</i> , 654 F.3d 1366 (Fed. Cir. 2011)	24
<i>Digital-Vending Servs. Int'l, LLC v. Univ. of Phoenix, Inc.</i> , 672 F.3d 1270 (Fed. Cir. 2012)	24
<i>Energizer Holdings, Inc. v. Int'l Trade Comm'n</i> , 435 F.3d 1366 (Fed.Cir.2006)	9
<i>EnOcean GmbH v. Face Int'l Corp.</i> , 742 F.3d 955 (Fed. Cir. 2014)	23
<i>Enzo Biochem, Inc. v. Applera Corp.</i> , No. 2009–1281, 599 F.3d 1325 (Fed. Cir. 2010).....	3, 14

<i>Finjan, Inc. v. Proofpoint, Inc.</i> , No. 13-cv-05808, 2015 WL 7770208 (N.D. Cal. Dec. 3, 2015)	24
<i>Graham v. John Deere Co.</i> , Nos. 11, 37, 43, 86 S.Ct. 684 (1966)	2
<i>Haemonetics Corp. v. Baxter Healthcare Corp.</i> , 607 F.3d 776 (Fed. Cir. 2010)	4, 17
<i>Huawei Techs. Co. v. Verizon Commc'ns, Inc.</i> , No. 2:20-CV-00030-JRG, 2021 WL 150442 (E.D. Tex. Jan. 15, 2021)	24
<i>In re Beauregard</i> , 53 F.3d 1583 (Fed. Cir. 1995)	24
<i>In re Downing</i> , 754 Fed. App'x 988 (Fed. Cir. 2018)	9, 10
<i>Innogenetics, N.V. v. Abbott Labs.</i> , 512 F.3d 1363 (Fed. Cir. 2008)	2
<i>Intelligent Agency, LLC v. 7-Eleven, Inc.</i> , No. 4:20-CV-0185-ALM, 2022 WL 760203 (E.D. Tex. Mar. 11, 2022)	24
<i>Intelligent Automation Design, LLC v. Zimmer Biomet CMF & Thoracic, LLC</i> , 799 F. App'x 847 (Fed. Cir. 2020)	25
<i>Lemelson v. Gen. Mills, Inc.</i> , No. 90–1359, 968 F.2d 1202 (Fed. Cir. 1992)	2
<i>Linear Tech. Corp. v. Impala Linear Corp.</i> , 379 F.3d 1311 (Fed. Cir. 2004)	24
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d 967 (Fed. Cir. 1995)	1, 2
<i>Microsoft Corp. v. Multi-Tech Sys. Inc.</i> , Nos. 03–1138, 03–1139, 357 F.3d 1340 (Fed. Cir. 2004)	2
<i>MorphoTrust USA, LLC v. United States</i> , No. 16–227C, 132 Fed. Cl. 419 (2017)	4, 8, 9, 15, 20, 23
<i>Multiform Desiccants, Inc. v. Medzam, Ltd.</i> , Nos. 96–1255, 96–1274, 133 F.3d 1473 (Fed. Cir. 1998)	2
<i>Nautilus, Inc. v. Biosig Instruments, Inc.</i> , No. 13–369, 572 U.S. 898 (2014)	2, 9, 14

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.