EXHIBIT 11

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

BANDSPEED, INC., PLAINTIFF,	§	
V.	§	CAUSE NO. A-09-CA-593-LY
SONY ELECTORINICS, INC., SONY COMPUTER ENTERTAINMENT AMERICA, INC., LEGO SYSTEMS, INC., PARROT, INC., CAMBRIDGE SILICON RADIO LIMITED, DEFENDANTS.	§	

MEMORANDUM OPINION AND ORDER REGARDING CLAIMS CONSTRUCTION

1. Introduction

The Court renders this memorandum opinion and order to construe the claims of the patents-in-suit in this cause, U.S. Patent No. 7,027,418 (the "'418 Patent") and U.S. Patent No. 7,570,614 (the "'614 Patent"). Plaintiff Bandspeed, Inc. asserts claims against Defendants Sony Electronics, Inc., Sony Computer Entertainment America, Inc., Lego Systems, Inc., and Parrot, Inc.[1] for infringement of the '418 Patent and the '614 Patent. The patents are generally related to frequency hopping transmission techniques. In a frequency hopping communications system, a transmitter periodically changes its carrier frequency (frequency channel); that is, it changes from one frequency channel to another frequency channel. The technology underlying the '418 and '614 Patents is sometimes referred to as

[1] Cambridge Silicon Radio Limited was allowed to intervene as Defendant in the cause on March 5, 2010. (Doc. # 143).

"adaptive frequency hopping." The '418 Patent claims methods of selecting frequency channels for use in a frequency hopping sequence for data communications. The '614 Patent claims methods for selecting and using frequency channels by identifying channels not to be used in a frequency hopping sequence and a method for managing performance data.

2. Legal Principles Applicable to Claim Construction

Determining infringement is a two-step process. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996) ("[There are] two elements of a simple patent case, construing the patent and determining whether infringement occurred . . . ."). First, the meaning and scope of the relevant claims must be ascertained. *Id.* Second, the properly construed claims must be compared to the accused device. *Id.* Step one, claim construction, is the current issue before this Court.

Patent claims are construed as a matter of law. *Id.* at 979. To ascertain the meaning of claims, the court looks primarily to the intrinsic evidence: the claims, the specification, and the patent's prosecution history. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314–17 (Fed. Cir. 2005) (*en banc*); *Markman*, 52 F.3d at 979. The specification must contain a written description of the invention that enables one of ordinary skill in the art to make and use the invention. *Markman,* 52 F.3d at 979; 35 U.S.C. § 112, ¶1. A patent claim must always be read or interpreted in light of the specification. *Phillips*, 415 F.3d at 1316. For claim-construction purposes, the specification may reveal "a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs." *Id.* Indeed, the specification's written description "may act as a sort of dictionary, which explains the invention and may define terms used in

claims." *Markman*, 52 F.3d at 979. "One purpose for examining the specification is to determine if the patentee has limited the scope of the claims." *Watts v. XL Sys., Inc.*, 232 F.3d 877, 882 (Fed. Cir. 2000). Although the specification may indicate that certain embodiments are preferred, particular embodiments appearing in the specification will not be read into the claims when the claim language is broader than the embodiment. *Electro Med. Sys., S.A. v. Cooper Life Scis., Inc.*, 34 F.3d 1048, 1054 (Fed. Cir. 1994). The Court must be mindful that "when a patentee uses a claim term throughout the entire specification, in a manner consistent with only one meaning, he has defined that term by implication." *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1271 (Fed. Cir. 2001). However, "case law is clear that an applicant is not required to describe in the specification every conceivable and possible future embodiment of his invention . . . . [I]n short, it is the claims that measure the invention, as informed by the specification." *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1344 (Fed. Cir. 2001). It is axiomatic that although claims must be read in light of the specification, limitations from the specification may not be imported into the claims. *Playtex Prods., Inc. v. Proctor & Gamble Co.*, 400 F.3d 901, 906 (Fed. Cir. 2005). Furthermore, courts are not required to construe every limitation present in a patent's asserted claims. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). Rather, claim construction is a matter of resolution of disputed meanings and technical scope, to clarify and when necessary to explain what the patentee covered by the claims, for use in the determination of infringement. *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir.1997).

The "words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips*, 415 F.3d at 1312 (quoting *Vitronics Corp v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). "[T]he ordinary and customary meaning of a claim term 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 date of the patent application." *Phillips,* 415 F.3d at 1313 (citing *Innova/Pure Water, Inc. v. Safari Walter Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004); *Home Diagnostics, Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1358 (Fed. Cir. 2004); *Ferguson Beauregard/Logic Controls v. Mega Sys., LLC*, 350 F.3d 1327, 1338 (Fed. Cir. 2003)). There is a "heavy presumption in favor of the ordinary meaning of claim language." *Johnson Worldwide Assoc. v. Zebco Corp.,* 175 F.3d 985, 989 (Fed. Cir. 1999). Although extrinsic evidence, such as dictionaries, may be helpful to the court, such evidence is less reliable than intrinsic evidence. *Phillips*, 415 F.3d at 1318. Extrinsic evidence may be useful when considered in the context of the intrinsic evidence, *id.* at 1319, but it cannot "alter a claim construction dictated by a proper analysis of the intrinsic evidence," *On-Line Techs., Inc. v. Bodenseewerk Perkin-Elmer GmbH*, 386 F.3d 1133, 1139 (Fed. Cir. 2004).

3. Discussion

A. Agreed Terms

Either prior to, during, or after the claims-construction hearing on March 8, 2011, the parties agreed to various claim terms. The following table summarizes the parties' agreement.

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