UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BANDSPEED LLC, Plaintiff, vs. REALTEK SEMICONDUCTOR CORPORATION, Defendant.	§ § § § § § § § §	No. 1:20-CV-765-DAE

CLAIM CONSTRUCTION ORDER

Before the Court is the claim construction of fifteen disputed terms across eight patents owned by Plaintiff Bandspeed LLC ("Bandspeed") and allegedly infringed by Realtek Semiconductor Corporation ("Realtek"). (Dkt. # 39-1.) The parties filed claim construction briefs on October 17, 2022, and each filed a reply brief on March 29, 2023. (Dkts. ## 40, 41, 54, 55.)

The instant case was originally pending before Judge Lee Yeakel, and was transferred to the undersigned on March 30, 2023. (Dkt. # 56.) This Court held a Markman hearing on the claim construction briefs on August 9, 2023. After reviewing the briefs filed by the parties in support of their constructions of the disputed claims, as well as the arguments advanced at the hearing, the Court adopts the claim constructions outlined below.

BACKGROUND

At issue in this case is the alleged infringement of eight patents: U.S. Patent No. 7,027, 418 ("the '418 Patent"); U.S. Patent No. 7,477,624 ("the '624 Patent"); U.S. Patent No. 7,570,614 ("the '614 Patent"); U.S. Patent No. 7,903,608 ("the '608 Patent"); U.S. Patent No. 8,542,643 ("the '643 Patent"); U.S. Patent No. 8,873,500 ("the '500 Patent"); U.S. Patent No. 9,379,769 ("the '769 Patent"); and U.S. Patent No. 9,883,520 ("the '520 Patent") (collectively, the "Asserted Patents"). (Dkt. # 22.)

Each of the Asserted Patents relate to "frequency-hopping" communications systems, commonly used to transmit radio signals within various technologies. (Id. at 13.) Products that use frequency-hopping systems, predominantly Bluetooth technologies, operate using both a frequency-hopping system and a non-frequency hopping system. (Id.) "[C]oexistence problems" tend to arise as the frequency-hopping system "hops" over the entire frequency band while the non-frequency-hopping system occupies separate parts of the frequency band. (Id.) Bandspeed's Asserted Patents purport to solve the coexistence problem through an "adaptive frequency hopping" method, which creates a subset of channels better suited for communications between frequency and non-frequency hopping systems. (Id.)

Bandspeed alleges that on July 2, 2018, it sent a letter to Realtek notifying it of the Asserted Patents and the nature of Realtek's infringing activities. (Id. at 12.) Bandspeed again sent a letter, this time by email, to Realtek on October 10, 2019. (Id.) According to Bandspeed, Realtek continued to infringe the Asserted Patents, and Bandspeed thus filed the instant suit on July 20, 2020. (Dkt. # 1.)

LEGAL STANDARD

The meaning of terms used in a patent claim is a question of law. See Markman v. Westview Instruments, Inc., 517 U.S. 370, 391 (1996). "[T]he claims of a patent define the invention to which the patentee is entitled to the right to exclude." Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1115 (Fed. Cir. 2004). "[D]istrict courts are not (and should not be) required to construe every limitation present in a patent's asserted claims." O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., Ltd., 521 F.3d 1351, 1362 (Fed. Cir. 2008). Instead, the purpose of claim construction is to resolve the "disputed meanings and technical scope [of the claims], 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). Claim construction is not an exercise in rewriting claims, but rather an opportunity to

"give effect to the terms chosen by the patentee." K-2 Corp. v. Salomon S.A., 191 F.3d 1356, 1364 (Fed. Cir. 1999).

"Claim interpretation begins with an examination of the intrinsic evidence, i.e., the claims, the rest of the specification and, if in evidence, the prosecution history." CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 1366 (Fed. Cir. 2002). Intrinsic evidence "is the most significant source of the legally operative meaning of disputed claim language." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996).

The claim construction analysis "remain[s] centered on the claim language itself, for that is the language the patentee has chosen to particularly point out and distinctly claim the subject matter which the patentee regards as his invention." Innova/Pure Water, Inc., 381 F.3d at 1116 (internal quotation marks omitted). "[T]he words of a claim are generally given their ordinary and customary meaning." Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal quotation marks omitted). "[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 . . . ." Id. at 1313. This inquiry "provides an objective baseline from which to begin claim interpretation." Id. "[T]he person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed

term appears, but in the context of the entire patent, including the specification." Id.

Because the claims "do not stand alone" and "are part of a fully integrated written instrument consisting principally of a specification that concludes with the claims[,]" the claims "must be read in view of the specification, of which they are a part." Id. at 1315 (internal quotation marks and citations omitted). Accordingly, the 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. In interpreting the effect the specification has on the claim limitations, however, courts must pay special attention to the admonition that one looks "to the specification to ascertain the meaning of the claim term as it is used by the inventor in the context of the entirety of his invention, and not merely to limit a claim term." Interactive Gift Express, Inc. v. Compuserve Inc., 256 F.3d 1323, 1332 (Fed. Cir. 2001). "[R]eading a limitation from the written description into the claims" is "one of the cardinal sins of patent law . . . ." Phillips, 415 F.3d at 1320.

"Like the specification, the prosecution history provides evidence of how the [patent office] and the inventor understood the patent." Id. at 1317. However, "because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that

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