EXHIBIT 1-1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

PARKERVISION, INC.,

Plaintiff,

v. Case No. 3:15-cv-1477-J-39JRK

APPLE INC. and QUALCOMM INCORPORATED,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court for patent claim construction of claim terms or phrases, as described in Markman v. Westview Instruments, Inc., 52 F.3d 967 (Fed. Cir. 1995) (en banc), aff'd, 517 U.S. 370 (1996). The parties have submitted the following documents for the Court's consideration: 1) ParkerVision's Opening Claim Construction Brief (Doc. 80; Plaintiff's Brief); 2) Defendants' Opening Claim Construction Brief (Doc. 81; Defendants' Brief); 3) ParkerVision's Responsive Claim Construction Brief (Doc. 83; Plaintiff's Responsive Brief); 4) Defendants' Responsive Claim Construction Brief (Doc. 84; Defendants' Responsive Brief); 5) Joint List of Claim Terms for Construction (Doc. 78; Claim Terms); and 6) Joint Claim Construction Chart (Doc. 86-1; Claim Construction Chart).

I. Background

On December 14, 2015, Plaintiff ParkerVision, Inc. initiated this case alleging patent infringement against nine Defendants. (Doc. 1; Complaint). Plaintiff amended the

Complaint twice. (Docs. 1, 3, and 121).[1] In the operative Second Amended Complaint (Doc. 121), Plaintiff alleges infringement of the United States Patent No. 9,118,528 against the only two remaining Defendants—Apple, Inc. and Qualcomm Incorporated. See Sec. Am. Compl. ¶¶ 12–22.

On August 31, 2018, the Court held a Technology Tutorial and Claim Construction hearing. (Doc. 113). In accordance with the Court's Order (Doc. 112), the parties filed a Joint Notice Regarding Claim Construction (Doc. 125), representing that after they met and conferred on September 18 and 25, 2018, the parties were unable to reach an agreement on the disputed claim construction terms or phrases or claims alleged to be indefinite. The Court now constructs six claim terms or phrases, determines whether three claim phrases are invalid for indefiniteness, and considers whether three agreed-upon claim terms or phrases are properly construed by the parties. See Claim Constr. Chart at 2–3.

The '528 patent is titled "Method and System for Down-Converting an Electromagnetic Signal, and Transforms for Same, and Aperture Relationships." '(Docs. 80-1, 80-2; '528 Patent). The '528 Patent concerns systems and methods used in wireless receivers, such as those used in cell phones, and is directed to a system for down-converting a high-frequency modulated carrier signal to a low-frequency baseband signal. (Doc. 80-20 ¶ 18; Declaration of Dr. Phillip E. Allen). As described in the abstract of the '528 Patent,

[1] By Order dated June 5, 2019 (Doc. 141), the Honorable James R. Klindt, United States Magistrate Judge, denied Plaintiff's Motion for Leave to File Third Amended Complaint (Doc. 131). Plaintiff filed an Objection (Doc. 142) to Judge Klindt's Order, which the Court overruled and affirmed Judge Klindt's Order (Doc. 143).

> Briefly stated, in embodiments the invention operates by receiving an EM signal and recursively operating on approximate half cycles (½, 1 ½, 2 ½, etc.) of the carrier signal. The recursive operations can be performed at a sub-harmonic rate of the carrier signal. The invention accumulates the results of the recursive operations and uses the accumulated results to form a down-converted signal. In an embodiment, the EM signal is down-converted to an intermediate frequency (IF) signal. In another embodiment, the EM signal is down-converted to a baseband information signal. In another embodiment, the EM signal is a frequency modulated (FM) signal, which is down-converted to a non-FM signal, such as a phase modulated (PM) signal or an amplitude modulated (AM) signal.

Plaintiff alleges that Defendants' products, including the iPhone 6 and 6S smartphones, iPad Air tablet, radio frequency receivers, transceivers, and other semiconductors that enable wireless technology, infringe on claims 1, 5, 8–10, 17–19, 23, 26–28, and 33–36 of the '528 Patent. See Sec. Am. Compl. ¶¶ 15, 17–18.

II. Claim Construction Standards

A patent describes the scope and limits of an invention to alert the public to what exclusive rights the patentee holds, and by the same token, what remains open to the public. Markman, 52 F.3d at 978–79. A patent consists of claims which should "'particularly point[ ] out and distinctly claim[ ] the subject matter which the applicant regards as his invention.'" Howmedica Osteonics Corp. v. Tranquil Prospects, Ltd., 401 F.3d 1367, 1371 (Fed. Cir. 2005) (quoting 35 U.S.C. § 112). A determination of patent infringement requires a two-step analysis: first, the meaning of the claim language is construed, then the facts are applied to determine if the accused device falls within the scope of the claims as interpreted. Markman, 52 F.3d at 976.

"When the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it." O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., Ltd., 521 F.3d 1351, 1362 (Fed. Cir. 2008). When the Court determines claim

construction based on evidence intrinsic to the patent, such determinations are questions of law subject to de novo review. Teva Pharm. USA, Inc. v. Sandoz, Inc., 135 S. Ct. 831, 837 (2015). To the extent that the Court makes underlying factual findings based on extrinsic evidence, such findings are reviewed for clear error. Id. at 837–38. A court need construe "only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy." Vivid Techs., Inc. v. Am. Science & Eng'g, Inc., 200 F.3d 795, 803 (Fed. Cir. 1999); see also U.S. Surgical Corp. v. Ethicon, Inc., 103 F.3d 1554, 1568 (Fed. Cir. 1997) ("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. It is not an obligatory exercise in redundancy.").

In claim construction, courts first examine the patent's intrinsic evidence to define the patented invention's scope. See Phillips v. AWH Corp., 415 F.3d 1303, 1312–17 (Fed. Cir. 2005) (en banc). This intrinsic evidence includes the claims, the specification, and the prosecution history. See id. at 1314–17. Claim construction begins with the words of the claims themselves. Amgen Inc. v. Hoechst Marion Roussel, Inc., 457 F.3d 1293, 1301 (Fed. Cir. 2006); Phillips, 415 F.3d at 1312. "[T]he 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)). Such ordinary meaning "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." Phillips, 415 F.3d at 1313. "Furthermore, a claim term should be construed consistently with its appearance in other places in the same claim or in other

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