United States District Court,
S.D. Florida.

NORTHPOINT TECHNOLOGY,
Plaintiff.
v.
MDS AMERICA, INC.et al,
Defendants.

No. 01-14207-CIV-COHN

Oct. 20, 2003.

Avi Benayoun, Greenberg Traurig et al., Boca Raton, FL, Glenn Thomas Burhans, Jr., Greenberg Traurig Hoffman Lipoff Rosen & Quentel, Tallahassee, FL, for Plaintiff.

Warren Anthony Fitch, Swidler Berlin Sherref Friedman, Washington, DC, Alicia A. Meros, Robert C. Bertin, Edward A. Pennington, James H. Laughlin, Janet T. Munn, Squire Sanders & Dempsey LLP, Miami, FL, for Defendants.

ORDER ON CLAIM CONSTRUCTION

JAMES I. COHN**, District Judge.**

THIS CAUSE is before the Court as a result of a Markman hearing held on October 15, 2003. Plaintiff initiated this action alleging infringing conduct by Defendants with respect to Plaintiff's U.S. Patent Nos. 5,761,605 and 6,169,878. (Hereinafter Patent 605 and Patent 878). The hearing was held to discern the meaning of the disputed claim language pursuant to Markman v. Westview Instruments, Inc., 52 F.3d 967 (Fed.Cir.1995).

Construction of a patent claim requires strict adherence to the intrinsic evidence: the claims, the specification, and the prosecution history. Apex Inc. v. Raritan Computer, Inc., 325 F.3d 1364, 1371 (Fed.Cir.2003). "[T]he analytical focus must begin and remain centered on the language of the claims themselves." Interactive Gift Express, Inc. v. Compuserve, Inc., 256 F.3d 1323, 1331 (Fed.Cir.2000).

Claim terms are afforded their ordinary meaning as understood by persons skilled in the relevant art. Texas Digital Sys., Inc. v. Telegenix, Inc., 308 F.3d 1193, 1202 (Fed.Cir.2002), *cert. denied,* 538 U.S. 1058, 123 S.Ct. 2230, 155 L.Ed.2d 1108 (2003). In order to ascertain such ordinary meanings, as well as to understand the technology at issue, courts may consult dictionary definitions and technical treatises. Texas Digital, 308 F.3d at 1202-03. Definitions ascertained from these sources should be accepted so long as they are consistent with the intrinsic record reflected in the patent and prosecution history. *Id.* The presumption in favor of such ordinary meaning definitions is only overcome when the specification clearly and explicitly sets out a different definition for a claim term, or when the prosecution history manifests a clear disavowal

of the ordinary meaning. *Id*. at 1203. In all cases, care must be taken to avoid unnecessarily importing extraneous limitations into the claims, particularly including features drawn from the inventor's preferred embodiments described in the specification. Generation II Orthotics Inc. v. Med. Tech., Inc., 263 F.3d 1356, 1367 (Fed.Cir.2001). Thus, a claim term should be afforded the full range of its ordinary meaning unless a clear inconsistency or disavowal in the intrinsic evidence compels otherwise. Riverwood Int'l Corp. v. Jones & Co., Inc., 324 F.3d 1346, 1357 (Fed.Cir.2003).

In sum, the scope of a claim term is ascertained by reading the claim language in view of relevant dictionaries and treatises, the patent specification, and the prosecution history. Intellectual Prop. Dev., Inc. v. UA-Columbia Cablevision of Westchester, Inc., 336 F.3d 1308, 1314 (Fed.Cir.2003). If the unambiguous meaning of the claim language at issue "is apparent from the totality of the intrinsic evidence, then the claim has been construed." Interactive Gift Express, 256 F.3d at 1332.

The parties have agreed to the definition of several terms and the Court hereby adopts same. Accordingly, these terms are construed as follows:

"direct broadcast satellite"

A satellite that transmits signals directly to a user location having proper receiving equipment.

"user location"

A place where signals are received on the common or first frequency.

"azimuth range"

An angle in a horizontal plane measured with respect to a reference direction.

"geosynchronous orbit"

An orbit in which satellites circle the earth at the same rate as the earth's rotation. When the orbit is above the equator, the geosynchronous orbit is geostationary.

The parties dispute the meaning of the terms "signal", "common frequency" or "first frequency", "directional reception range" and various permutations in the Patents 605 and 878 of "receiving" or "transmitting" signals. Based on a review of the intrinsic evidence and the dictionary definitions and treatises provided by the parties the Court finds as follows.

With respect to the term "signal", both parties agree that a signal is an electromagnetic wave that conveys information. Plaintiff seeks to expand on this concept by reference to channels and frequency bands. While these concepts are related to a signal they are not equivalent. While channels are bands of frequencies which are used in the transmission of signals, they are not themselves signals. These concepts are not used in Patents 605 and 878 and therefore will not be included in the definition of signal.

With respect to the term "common frequency" and "first frequency", the parties agree that a frequency is the number of identical cycles per second, measured in hertz and that the adjective "common" is defined as belonging to or shared by two or more individuals or things. Plaintiff seeks to extend the definition to

include more than one frequency. However, the common term for multiple frequencies is a frequency band. As evidenced in its brief on claim construction issues, Plaintiff frequently uses the term frequency bands to refer to multiple frequencies. However, the Patents 605 and 878 do not.

With respect to "directional reception range", the parties agree that it is a range of directions within which a receiving antenna can receive signals, and outside of which it cannot receive signals. Plaintiff seeks to add a definition of reception as the conversion of modulated electromagnetic or electrical signals, transmitted through the air into the original intelligence, or into desired useful information by means of antennas and electronic equipment. Defendants leave reception without definition as extraction of a useful information requires other electronic equipment. The intrinsic evidence supports the definition of reception advanced by Plaintiff and will be included.

Similarly, with respect to the phrases containing "receiving" and "transmitting", Plaintiff seeks a definition to indicate that information received or transmitted can be extracted. Review of the intrinsic evidence supports the ordinary meaning advanced by Plaintiff and the claims will be construed accordingly.

Based on the foregoing, the disputed claims are construed as follows:

"signal"

An electromagnetic wave that conveys information.

"common frequency" and "first frequency"

Two signals have a common frequency when they share the same carrier frequency. The first frequency is the common frequency.

"directional reception range"

A three-dimensional space about the centerline of a receiving antenna within which a usable signal can be received, a usable signal being a signal from which the information carried by it can be extracted.

"at a user location, receiving direct broadcast satellite signals"

Picking up direct broadcast satellite signals at the user location from which the information carried by the signals can be extracted.

"at the user location ... receiving the terrestrial signals"

Picking up terrestrial signals at the user location from which the information carried by the signals can be extracted.

"transmitting satellite signals ... to a user location"

Sending satellite signals to a user location at which the information carried by the signals can be extracted.

"transmitting [satellite signals] to a terrestrial user location"

Sending satellite signals to a user location at which the information carried by the signals can be extracted.

"transmitting terrestrial signals ... to the user location"

Sending terrestrial signals to a user location at which the information carried by the signals can be extracted.

DONE AND ORDERED

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