United States District Court,
C.D. California.

RGB SYSTEMS, INC., dba Extron Electronics,
Plaintiff.
v.
SP CONTROLS, INC,
Defendant.

No. CV 04-6946 GPS (FMOx)

Aug. 12, 2005.

Gary A. Hecker, James Michael Slominski, Hecker Law Group, Los Angeles, CA, for Plaintiff.

Michael E. Dergosits, Degosits and Noah, San Francisco, CA, for Defendant.

ORDER ON CLAIM CONSTRUCTION

GEORGE P. SCHIAVELLI**, District Judge.**

I. INTRODUCTION

A claim construction hearing was conducted on August 1, 2005. By this order the Court construes the disputed claim language of U.S. Patent No. 6,137,794 (the '794 patent). Each disputed term or phrase is set forth followed by the Court's construction of the term or phrase.

II. BACKGROUND

Defendant, SP Controls, Inc. (Defendant), owns the '794 patent, entitled "audio-visual projector control apparatus allowing selection among multiple input devices." Plaintiff, RGB Systems, Inc., dba Extron Electronics (Plaintiff), designs, manufactures, and sells audio-visual control equipment. Plaintiff and Defendant are competitors.

Plaintiff commenced this action by filing a complaint on March 1, 2004, seeking declaratory judgment of noninfringement, invalidity, and unenforceability of the '794 patent. Defendant filed an answer to the complaint and a counter claim for infringement of the '794 patent against Plaintiff on July 1, 2004.

Although Defendant does not point out which specific claims Plaintiff is potentially infringing, Defendant suggests that the focus of the infringement is on the user interface features and components. FN1 Plaintiff asserts that the focus of the dispute should be in the arrangement of the slots and backlighting of the labels.

FN1. The '794 patent is mainly concerned with the user interface features and components (e.g.buttons, backlighting, labels, etc.). The Patent and Trademark Office has stated that the claims in '794 patent are

"drawn to the control device of backlighting." (Pl.'s Markman Brief Exhibit 3, page RGB 1957 (referring to claims 6-11 of Application No. 08/963,001, which eventually became the six claims of the '794 patent).)

III. CONSTRUCTION OF THE '794 PATENT

A. '794 Patent Claims

In this case, the parties dispute the meanings of several words and phrases in the '794 patent. The parties have filed a Joint Claim Construction Chart that summarizes the dispute. (First Am. Joint Claim Construction Chart of May 5, 2005 (hereinafter "Claim Constr. Chart").) The disputed terms are discussed in turn below. All disputed terms are from claim 1, except the term "electro-luminescent light source," which is from claim 2. Claim 1 is the only independent claim among the six claims contained in the '794 patent. Claims 2-5 are dependent on claim 1, and claim 6 is dependent on claim 5.

Claim 1 states:

A device control apparatus capable of controlling connection of any selected one of at least two input devices to a controllable device, said apparatus comprising:

-> **input device selection keys,** each of the selection keys corresponding to one of the input devices;

-> **control circuitry** coupled to the input device selection keys, configured to be coupled to **switching circuitry,** and configured to assert a different **input device selection signal** to the switching circuitry in response to actuation of each of the selection keys to cause the switching circuitry to connect the controllable device to a corresponding one of the input devices;

-> a set of **light sources,** including a controllable light source for each of the input device selection keys;

-> a **frame** to which the control circuitry and the keys are **mounted,** wherein the frame has **slots extending through said frame for receiving labels,** and **each of the slots is positioned between one of the light sources and one of the input device selection keys;** and

-> **labels mounted over the slots,** each of said labels comprising transparent material marked with a legend identifying one of the input devices.

('794 Patent at 9; 13-10:6.)

B. Legal Standard for Claim Construction

"It is well-settled that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record." Vitronics Corps, v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996) (citing Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed.Cir.1995) (en banc)). The Federal Circuit has identified three sources of intrinsic evidence: the claims, the specification, and the prosecution history. *Id*. First, analysis of the intrinsic evidence requires the court to look to the words of the claims themselves, both asserted and nonasserted, to define the scope of the patent. *Id*.

Second, it is necessary to review the specification to determine whether the inventor has used any term in a

manner inconsistent with its ordinary meaning. *Id*. Claims must be read in view of the specification. *Id*. As stated by the court in *Vitronics,* "[t]he specification contains a written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it." *Id*. In *Markman,* the Federal Circuit explained "[f]or claim construction purposes, the description may act as a sort of dictionary, which explains the invention and may define terms used in the claims." Markman, 52 F.3d at 979. The *Markman* Court went on to state "a patentee is free to be his own lexicographer.... The caveat is that any special definition given to a word must be clearly defined in the specification.... The written description part of the specification itself does not delimit the right to exclude. That is the function and purpose of the claims." *Id*. at 980. The specification must clearly express the patentees' intent to impart novel meaning to terms used in the claims portion of the patent. Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1325 (Fed.Cir.2002) (stating "[i]n the absence of an express intent to impart a novel meaning to claim terms, an inventor's claim terms take on their ordinary meaning.").

The third primary source available to the court is the prosecution history of the patent, if in evidence. *Id*. The prosecution history contains record of all the proceedings before the Patent and Trademark Office, including arguments, amendments, and representations made by the applicant regarding the scope of the claims. Vitronics, 90 F.3d at 1582.

"In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such cases it is improper to rely on extrinsic evidence." Id. at 1583 (citing Pall Corp. v. Micron Separations, Inc., 66 F.3d 1211, 1216 (Fed.Cir.1995)). If necessary, however, the court may look to extrinsic evidence. *Id.; see also* Markman, 52 F.3d. at 980 (finding the court may, in its discretion, receive extrinsic evidence in order to aid the court in coming to a correct conclusion as to the true meaning of the language employed in the patent). The court may also receive expert testimony to aid in understanding what the patent claims actually say. Id. at 981. "Extrinsic evidence is to be used for the court's understanding of the patent, not for the purpose of varying or contradicting the terms of the claims." *Id*. (citing U.S. Indus. Chems., Inc. v. Carbide & Carbon Chems. Corp., 315 U.S. 668, 678 (1942)). Testimony of the patentee or his attorney on the proper construction of claims is not entitled to deference. Markman, 52 F.3d at 983.

In the instant case, the parties dispute the importance of customary and ordinary meanings of the claim terms as well as the dictionary and technical definitions of disputed claim terms. Proper definition of a disputed term is the "definition that one of ordinary skill in the art could ascertain from the intrinsic evidence in the record." *Phillips v. AWH Corp.,* No. 03-1269, 2005 U.S.App. LEXIS 13954, at (Fed.Cir. July 12, 2005) (quoting Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc., 375 F.3d 1341, 1351 (Fed.Cir.2004) In *Phillips,* the Federal Circuit emphasized that 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*. at (quoting Vitronics, 90 F.3d at 1582).

Although the court may use dictionaries, encyclopedias and treatises to aid in determining the ordinary and customary meanings of claim terms, the Federal Circuit advised against heavy reliance on such extrinsic evidence and emphasized the importance of intrinsic evidence. *Id*. at ("[H]eavy reliance on the dictionary divorced from the intrinsic evidence risks transforming the meaning of the claim term to the artisan into the meaning of the term in the abstract, out of its particular context, which is the specification."). The Federal Circuit further stated that "a general-usage dictionary cannot overcome art-specific evidence of the meaning" of a claim term. *Id*. at *51. Moreover, the Federal Circuit instructed that the "sequence of steps used by the judge in consulting various sources is not important; what matters is for the court to attach the appropriate weight to be assigned to those sources in light of the statutes and policies that inform patent

law." *Id*. at *58.

C. Analysis

The three primary sources of intrinsic evidence are available in this case: the claims and specification are located in the '794 patent, and the prosecution history was filed by Plaintiff on March 22, 2005. (Lodging of File Histories for the '668 FN2 and ' 794 Patents.) The parties also have submitted some extrinsic evidence. Both have submitted an expert's declaration. Plaintiff also has submitted additional extrinsic evidence, including related patents (all of which are cited in the ' 794 patent) and dictionary definitions of some of the terms in dispute.

FN2. The '668 patent refers to U.S. Patent No. 6,064,668. Defendant originally filed the inventions disclosed in the '668 and '794 in the same patent application. However, the Patent and Trademark office determined that more than one invention was disclosed in the application and required Defendant to elect some claims and withdraw the others so that only one invention is claimed in the application. (Pl.'s Markman Brief 2: 4-5 and Exhibit 3 at page RGB 1957 para.para. 1-3).) Defendant elected claims that became the '668 patent. Defendant filed a divisional patent application that contained some of the withdrawn claims. (Pl.'s Markman Brief 2:18-19 and Exhibit 8.) The divisional application became the '794 patent.

Although the claim construction has important consequences for the parties' arguments about validity, enforceability, and infringement of the patent, the parties have not set out specific arguments regarding these issues. As mentioned previously, Defendant believes that the user interface features and components are the central issues in this case. (Def.'s Claim Construction Tutorial Rebuttal Brief 3:19-20.) Plaintiff believes that the focus of the dispute should be in the arrangement of the slots and backlighting of the labels. (Pl.'s Response Re: Markman Tutorials 3: 4-6, 5: 20-21.)

1. Input Device Selection Keys

Plaintiff asserts that "input device selection keys" should be defined as "button[s] having a conductive portion that selectively contacts one control circuitry terminal on the PCB FN3 when activated." (Pl.'s Markman Brief 9:14-16.) Defendant's preferred definition is "buttons, levers, or keypad for selecting an input device for a controllable device." (Claim Constr. Chart.) Plaintiff supports its construction by asserting that the term does not have an established meaning in the art, and therefore, the term must be defined by the specification. (Pl.'s Markman Brief 9: 17-21 (citing a conclusory declaration of Plaintiffs expert, Rubin Decl. at para. 4).)

FN3. "PCB" means "printed circuit board." ('794 Patent 3: 36.)

However, the conclusory declaration of an expert merits little weight. Velander v. Garner, 348 F.3d 1359, 1371 (Fed.Cir.2003); Techsearch LLC v. Intel Corp., 286 F.3d 1360, 1372 (Fed.Cir.2002). Moreover, although the specification of the patent discusses a preferred embodiment that includes keys having a conductive portion, the patent does not explicitly define keys as having a conductive portion. ('794 Patent 5: 33-37.) "Even when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using 'words or expressions of manifest exclusion or restriction.' " Liebel-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 906 (Fed.Cir .2004) (quoting *Tefeflex,* Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313,1327

(Fed.Cir.2002)). Therefore, keys should not be limited as having a conductive portion.

Furthermore, both parties agree that the term "key" means "button." FN4 (Pl.'s Markman Brief 9: 19-20.) Defendant cites two prior arts, Patent No. 5,204,768 (Tsakiris et al.) and Patent No. 5,610,797 (Nakamura), to demonstrate that the term "key" has an ordinary meaning in the art. (Def.'s Reply to Pl.'s Markman Brief 1: 22-24, 2: 7-12.) Also, the same prior arts show that the term "key" is often preceded by words that describe the function performed by the key. Id.

FN4. Although Defendant defines "key" as "button, lever, or keypad" in the Joint Claim Construction Chart, Defendant does not specifically argue that "key" should be defined to include lever or keypad in its Markman briefs. Furthermore, Defendant agrees that the "heart of the dispute" is whether the key must have a conductive portion. (Def.'s Reply to Pl.'s Markman Brief 3: 3-5.)

Therefore, "input device selection keys" means "buttons for selecting an input device," a slight modification of Defendant's proposed construction.

2. Control Circuitry and Switching Circuitry

Plaintiff argues that "control circuitry" and "switching circuitry" are "means-plus-function" limitations under 35 U.S.C. s. 112, para. 6. (Pl.'s Markman Brief 10: 23-26.) Plaintiff supports this argument by asserting that the patent does not sufficiently identify or describe "control circuitry" or "switching circuitry." (Pl.'s Markman Brief 11: 22-25.) Plaintiff concludes that the terms are indefinite and has proposed no construction of the terms.FN5 (Pl.'s Markman Brief 13: 25.)

FN5. Also, Plaintiff suggests that prior arts, Patent No. 5,204,768 (Tsakiris et al.) and Patent No. 5,610,797 (Nakamura), anticipate the 794 patent because "control circuitry" and "switching circuitry" are not described in detail. (Pl.'s Markman Brief 13: 18-24.) Further, Plaintiff suggests that there was inequitable conduct by Defendant during prosecution of the '794 patent relating to the term "control circuitry." (Pl.'s Markman Brief 3: 1-6.) These assertions are issues regarding the validity or enforceability of the '794 patent, and are separate from the issue of claim construction.

The phrase "means for" is a signal to the courts to turn to the specification in order to define the invention. 35 U.S.C. s. 112 (2005). s. 112, para. 6 reads as follows:

An element in a claim for a combination may be expressed as a meansior step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Id.

The use of the phrase "means for" "triggers a presumption that the inventor used this term advisedly to invoke the statutory mandate for means-plus-function clauses." York Prods., Inc. v. Cent. Tractor Farm & Family Ctr., 99 F.3d 1568, 1574 (Fed.Cir.1996). However, the absence of "means for" language creates a presumption *against* the application of s. 112, para. 6. CCS Fitness Inc. v. Brunswick Corp., 288 F.3d 1359,

1369 (Fed.Cir.2002); Apex, Inc. v. Raritan Computer, Inc., 325 F.3d 1364, 1372 (Fed.Cir.2003). This presumption against application of s. 112, para. 6 may be overcome if the claim limitation fails to "recite sufficiently definite structure." *Id*.

Defendant did not use the "means for" language, and Plaintiff has not overcome the presumption against application of s. 112, para. 6. The Federal Circuit has explicitly held that "the term 'circuit' with an appropriate identifier such as 'interface,' 'programming' and 'logic,' certainly identifies some structural meaning to one of ordinary skill in the art." Apex Inc., 325 F.3d at 1373. "Thus, when the structure-connoting term 'circuit' is coupled with a description of the circuit's operation, sufficient structural meaning generally will be conveyed to persons of ordinary skill in the art, and s. 112, para. 6 presumptively will not apply." Linear Tech. Corp. v. Impaia Linear Corp., 379 F.3d 1311, 1320 (Fed.Cir.2004); *see also* Database Excelleration Sys. Inc. v. Imperial Tech. Inc., 48 U.S.P.Q.2d (BNA) 1533, 1537 (N.D.Cal.1998) (stating that the term "circuit" in "control circuit" "indicates sufficient structure to avoid application of section 112, paragraph 6"); *Nilssen v. Magnetek, Inc.,* 1999 U.S. Dist. LEXIS 16718, (N.D.Ill.1999) (holding that the term "circuit means" is not in means-plus-function format even though "means" language was used). Plaintiff cites *Nilssen v. Motorola, Inc*. to support its contention that "circuit" conveys "no sense of structure at all." 80 F.Supp.2d 921, 929 (N.D.III.2000). However, *Nilssen v. Motorola* is distinguishable in two ways. First, the patent in *Nilssen v. Motorola* used the "means" language, invoking presumption *for* application of s. 112, para. 6. *Id*. Second, the term "circuit" in *Nilssen v. Motorola* was not coupled with any modifier.FN6 *Id*. In the ' 794 patent, "means" language is not used, and the term "circuit" is coupled with "control" or "switching."

FN6. Moreover, in *Nilssen,* the structure of the circuit was central to the patent at issue. On the contrary, in this case, the circuit is not central to the patent. As mentioned, the patent is mainly concerned with the user interface. Although Plaintiff cites the prosecution history regarding the circuitry, the issue that Plaintiff raises is an issue of patent validity, not claim construction. *See supra* note 5.

Furthermore, contrary to Plaintiffs assertion, the terms "control circuitry" and "switching circuitry" are not indefinite even though the details of the circuitry are not disclosed. *See* Apex Inc., 325 F.3d at 1373; Linear Tech. Corp., 379 F.3d at 1320; *Nilssen v. Magnetek,* 1999 U.S. Dist. LEXIS 16718 at (holding that "circuit means" recites sufficient structure because the *location* of the circuit is disclosed, in addition to the fact that the term "circuit" has a commonly known meaning in the art); Cellnet Data Sys. v. Itron, Inc., 17 F.Supp.2d 1100, 1109 (N.D.Cal.1998) (stating that the term "circuit means" is not indefinite even though the patent at issue did not disclose the detailed structure of the "circuit means" in the specification or the claims);

The Federal Circuit has defined the term "circuit" as "combination of a number of electrical devices and conductors that, when interconnected to form a conducting path, fulfill some desired function." Apex Inc., 325 F.3d at 1373; Linear Tech. Corp., 379 F.3d at 1320. Therefore, "control circuit" means a "combination of interconnected electrical devices and conductors that form a conducting path for relaying an electronic signal relating to control of the switching circuitry." (Defendant's construction of "control circuit" in Claim Constr. Chart.) "Switching circuit" means a "combination of interconnected electrical devices and conductors that form a conducting path between the control circuitry, the input devices, and the controllable device." (Defendant's construction of "switching circuit" in Claim Constr. Chart.)

3. Input Device Selection Signal

Plaintiff asserts that "signal" means "an impulse or a fluctuating electric quantity, such as voltage, current, or electric field, whose variations represent coded information." (Pl.'s Markman Brief 14:13-15 (citing Exhibit 13); Dictionary.com.) Defendant asserts that "signal" means "electronic signal." (Def .'s Reply to Pl.'s Markman Brief 6: 6-7.) As Defendant argues, Plaintiff's definition of "signal" unnecessarily complicates a familiar term. (Def.'s Reply to Pl.'s Markman Brief 6: 7-12.) "Signal" means "electronic signal."

Plaintiff asserts that "input device selection signal" should be defined as Defendant has defined it in the prosecution history of the '668 patent. FN7 (Pl.'s Markman Brief 14:7-12.) "Input device selection signal" is defined in the prosecution history as a "signal which causes switching circuitry to connect an input device to an output terminal of the switching circuitry." (Def.'s Reply to Pl.'s Markman Brief 6: 17-18.) However, Defendant asks the Court to change the definition found in the prosecution history to "electronic signal electrically communicated to the switching circuitry to select or deselect an input device." (Id. at 6: 18-22.) Although Defendant asserts that there is "very little difference between the two constructions," Defendant's new definition may be broader than the definition found in the prosecution history. "[C]ourts can neither broaden nor narrow claims to give the patentee something different than what he has set forth." Texas Instruments v. United States ITC, 988 F.2d 1165, 1171 (Fed.Cir.1993) (quoting Autogiro Co. of Am. v. United States, 384 F.2d 391, 396 (Ct.Cl.1967)).

FN7. As mentioned *supra* in footnote 2, the '668 patent is the parent of the '794 patent. The written description and drawings are identical in the two patents.

Therefore, "input device selection signal" means "electronic signal which causes switching circuitry to connect an input device to an output terminal of the switching circuitry," a modification of both parties' proposed constructions.FN8

FN8. Plaintiff also contends that the definition is indefinite because the term "switching circuitry" is indefinite. However, the term "switching circuitry" is not indefinite, as discussed *supra* in Section III(C)(2).

4. Light Source

Defendant asserts that "light source" should be defined as "an element that produces light." (Claim Constr. Chart.) Plaintiff contends that "light source" should be defined as "electro-luminescent light source" because Defendant has implicitly defined the term by using the term in only one way throughout the specification. (Def.'s Markman Brief 15:16-18.) However, limitations found in the specification should not be imported into the claims. Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1186 (Fed.Cir.1998).

Moreover, under the doctrine of claim differentiation, construction of a claim that would render another claim in the patent redundant is to be avoided. Ecolab, Inc. v. Paraclipse, Inc., 285 F.3d 1362, 1375 (Fed.Cir.2002) (The infringer argued that "insect attractant light" in an independent claim should be interpreted to mean only ultraviolet light. The court disagreed, pointing to a narrower dependent claim that specifically limited the light source to ultraviolet light.). Therefore, as Defendant asserts, the term "light source" in independent claim 1 should not be limited to electro-luminescent light source because dependent claim 2 specifically recites a light source that is an electro-luminescent light source.FN9 *Id.;* ('794 Patent at 10: 7-9.)

FN9. Although Plaintiff argues that claim 2 may be differentiated because claim 2 is an electro-luminescent light source" that is " *driven by the control circuitry,*" this is a "strained argument." (Pl.'s Markman Brief 16: 13-16; Def.'s Reply to Pl.'s Markman Brief 8: 2-4.)

Therefore, a "light source" should be defined in its plain and ordinary meaning: "[a]n element that produces light." (Def.'s construction of "light source" in Claim Constr. Chart.)

5. Frame

The parties have resolved their differences over the meaning of "frame." A "frame" means a "support structure." (Claim Constr. Chart.)

6. Mounted

The parties' asserted definitions of "mounted" are very close. Plaintiff asserts that "mounted" means "firmly attached," while Defendant contends it means "secured firmly to a support." (Claim Constr. Chart.) Defendant asserts that "secured" is a slightly broader term than "attached," and prefers that "mounted" means "firmly secured." FN10 (Pl.'s Reply to Def.'s Markman Brief 8:8-12.) If a claim is subject to two viable alternative interpretations, the narrower one should apply. *See* Athletic Alternatives, Inc. v. Prince Mfg., Inc., 73 F.3d 1573 (Fed.Cir.1996). "Mounted" means "firmly attached," Plaintiff's proposed definition.

FN10. Notably, "secured" is more narrowly defined as "firmly attached" in some references. (*See, e.g.,* http://wordnet.princeton.edu/.)

7. Slots Extending Through Said Frame for Receiving Labels

The parties have resolved their differences over the meaning of "slots extending through said frame for receiving labels." "[S]lots extending through said frame for receiving labels" means "[o]penings extending through said frame into which labels are inserted." (Claim Constr. Chart.)

8. Each of the Slots is Positioned Between One of the Light Sources and One of the Input Device Selection Keys

In the phrase "each of the slots is positioned between one of the light sources and one of the input device selection keys," the main contention is regarding the word "between." Specifically, the issue is whether a "slot" can be said to be "between" a "light source" and a "key" *if* the slot is between a light source and a *portion* of a key. Plaintiff asserts that the phrase should mean "[e]ach of the slots is positioned so that one light source is entirely to one side of said slot and one input device selection key is entirely to the opposite side of the slot." (Claim Constr. Chart.) Defendant asserts that the phrase should mean "[t]he slots are located between the light sources and the active surface of the keys." *Id.*

Although Plaintiff contends that the specification supports Plaintiff's construction of the phrase, Plaintiff's reading of the specification and surrounding claim language is wrong. A surrounding claim language recites: "a set of light sources, including a controllable light source for each of the input device selection keys." Plaintiff asserts that "light source for each of the ... keys" means that the light source is to be positioned to

provide light to the key. ('794 Patent at 9: 26-27; Pl.'s Markman Brief 19: 11-12.) However, the specification and the drawings of the patent demonstrate that "light source for each of the ... keys" means that a light source is *associated* with each keys.FN11 (*See, e.g.,* ' 794 Patent at Figure 3; Def.'s Reply to Pl.'s Markman Brief 9: 7-12.) Plaintiff uses such misinterpretation of the surrounding claim language to support its construction of the phrase at issue. (Pl.'s Markman Brief 19:16-18, 20: 8-11, drawing on page 19.)

FN11. The light source does not provide light to the keys, and the keys do not light up. Indeed, the keys in the preferred embodiment is made of rubber. (Def.'s Reply to Pl.'s Markman Brief 8: 25-26; '794 Patent at 5: 27.)

Plaintiff's construction of the phrase is inconsistent with the preferred embodiment of the patent. ('794 Patent at Figure 3.) "[I]t is unlikely that an inventor would define the invention in a way that excluded the preferred embodiment." Hoechst Celanese Corp. v. BP Chems. Ltd., 78 F.3d 1575, 1581 (Fed.Cir.1996). A claim construction that excludes a preferred embodiment is "rarely, if ever, correct." Vitronics Corp. v. Conceptronic, Inc., 90 F .3d 1576, 1583 (Fed.Cir.1996). Moreover, "if the claim [was] fairly susceptible of two constructions, that should be adopted which will secure to the patentee his actual invention." *Phillips v. AWH Corp.,* 2005 U.S.App. LEXIS 13954, at (Fed.Cir.2005) (quoting Smith v. Snow, 294 U.S. 1 (1935)). Although the phrase at issue is unclear by itself, the claim language should be viewed in light of the specification. Markman, 52 F.3d at 979. Moreover, Plaintiff does not seem to contest that the slot is between the light source and at least a *portion* of the key. (Pl.'s Markman Brief 20: 1-2, 7-8.)

Therefore, the phrase should be interpreted as "each of the slots is positioned between one of the light sources and a portion of one of the input device selection keys," a slight modification of Defendant's construction.

9. Labels Mounted Over the Slots

In the phrase "labels mounted over the slots," the contention between the parties is over the term "over." Plaintiff argues that "over" should mean "on top of." (Claim Constr. Chart.) Defendant argues that "over" should mean "within ... so as to cover." *Id.*

Although Plaintiff argues that the most common meaning ("on top of") should apply, the Federal Circuit's position is clear: the definition that is most consistent with the specification controls. Texas Digital Sys., Inc. v. Telegenix, Inc., 308 F.3d 1193, 1203-1204 (Fed.Cir.2003); *Ferguson Beauregard v. Mega Sys, LLC,* 315 F.3d 1327,1338 (Fed.Cir.2003). In *Phillips,* the Federal Circuit stated that "the specification is 'the single best guide to the meaning of a disputed term.' " 2005 U.S.App. LEXIS 13954, at *47-48 (quoting Vitronics Corp. v. Conceptronics, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996)). Although Plaintiff points to Defendant's uses of the term "over" to mean "on top of" throughout the specification, Plaintiff merely identifies such uses of the term "over" out of context.FN12 (Pl.'s Markman Brief 21:1-8.) The uses of "over" that Plaintiff identifies are not relevant to the phrase "labels mounted over the slots." Further, Plaintiff has clearly misinterpreted the drawings in the patent in arguing that "Figure 4 of the ' 794 patent clearly shows the label 4 in a position above (or 'on top of') the slot 3." (Pl.'s Markman Brief 21: 24-25.) Figure 4 of the patent is an "exploded side cross-sectional view of the unassembled control panel." ('794 Patent at 3: 18-19.) The label 4 is shown above slot 3 because the parts are *unassembled*. The specification and the drawings of the patent show that the labels fit into the slots. (*See, e.g.,* '794 Patent at 5: 56-61.)

Moreover; both parties agree that labels are inserted into the slots. *See supra* Section III(C)(7). Therefore, the specification demonstrates that "over" does not mean "on top of" in the context of the phrase "labels mounted over the slots."

FN12. Although Plaintiff argues that the term "over" should have a consistent meaning throughout the patent, "over" is not a term of art and is not used as a term of art in the patent.

Although Plaintiff asserts that "over" does not mean "in," Plaintiff does not dispute that "over" may mean "so as to cover." (Pl.'s Sur-Reply Brief Re: Markman Hearing 2: 16-17.) Plaintiff argues that Defendant's interpretation is equivalent to substituting terms because Defendant wants to interpret "over" as "in." *Id*. Plaintiff cites *Chef Am., Inc. v. Lamb-Weston, Inc*. to support its argument that Defendant may not *substitute* claim terms. 358 F.3d 1371 (Fed.Cir.2004). In *Chef Am.,* the court rejected patentee's request to *substitute* the term "to" to mean "at." *Id*. Similarly, Plaintiff argues that "in" should not substitute "over" in this case. However, *Chef Am*. is distinguishable, and substitution is not necessary to conform to the specification: although Plaintiff may be correct that "over" has a common meaning of "on top of," "over" may also mean "so as to cover." (Merriam-Webster Online Dictionary, Dictionary.com.)

Therefore, "labels mounted over the slots" should be interpreted as "labels mounted so as to cover the slots," a slight modification of Defendant's construction. This construction is consistent with the specification and does not inappropriately substitute words.

10. Electro-Luminescent Light Source

The parties have resolved their differences over the meaning of "electro-luminescent light source." An "electro-luminescent light source" means "[a]n electrical device that directly converts electric energy to light by a solid phosphor subjected to an alternating electrical field." (Claim Constr. Chart.)

IV. CONCLUSION

Based on the forgoing, the Court concludes that:

-> "Input device selection keys" means "buttons for selecting an input device."

-> "Control circuitry" means "combination of interconnected electrical devices and conductors that form a conducting path for relaying an electronic signal relating to control of the switching circuitry."

-> "Switching circuit" means "combination of interconnected electrical devices and conductors that form a conducting path between the control circuitry, the input devices, and the controllable device."

-> "Input device selection signal" means "electronic signal which causes switching circuitry to connect an input device to an output terminal of the switching circuitry."

-> "Light source" means "an element that produces light."

-> "Frame" means "a support structure."

-> "Mounted" means "firmly attached."

-> "Slots extending through said frame for receiving labels" means "openings extending through said frame into which labels are inserted."

-> "Each of the slots is positioned between one of the light sources and one of the input device selection keys" means "each of the slots is positioned between one of the light sources and a portion of one of the input device selection keys."

-> "Labels mounted over the slots" means "labels mounted so as to cover the slots."

-> "Electro-luminescent light source" means "an electrical device that directly converts electric energy to light by a solid phosphor subjected to an alternating electrical field."

IT IS SO ORDERED.

C.D.Cal.,2005.
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Produced by Sans Paper, LLC.