

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PACT XPP SCHWEIZ AG,

Plaintiff

v.

INTEL CORPORATION,

Defendant

Case No. 1:19-cv-01006-JDW

MEMORANDUM

On May 30, 2019, Plaintiff PACT XPP Schweiz AG filed suit against defendant Intel Corporation, alleging infringement of 12 of its patents. The patents relate to multi-core processing systems and, more specifically, reconfigurable data processing architectures. The parties have submitted to the Court for construction 10 terms from eight of the patents in suit, Patent Nos. 7,928,763 (“the ’763 patent”); 8,312,301 (“the ’301 patent”); 8,471,593 (“the ’593 patent”); 8,819,505 (“the ’505 patent”); 9,075,605 (“the ’605 patent”); 9,170,812 (“the ’812 patent”); 9,436,631 (“the ’631 patent”); and 9,552,047 (“the ’047 patent”).

I. LEGAL STANDARD

“It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude.” *Phillips v. AWS Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (quote omitted). Claim construction is a matter of law. *See Teva Pharm. USA v. Sandoz, Inc.*, 135 S. Ct. 831, 837 (2015). There is no “magic formula or catechism” for construing a

patent claim, nor is a court barred from considering “any particular sources or required to analyze sources in any specific sequence.” *Phillips*, 415 F.3d at 1323. Instead, a court is free to attach the appropriate weight to appropriate sources “in light of the statutes and policies that inform patent law.” *Id.*

A court generally gives the words of a claim their ordinary and customary meaning, which is the “meaning that the term would have to a person of ordinary skill in the art at the time of the invention, i.e., as of the effective filing date of the patent application.” *Id.* at 1312-13 (quote omitted). Usually, a court first considers the claim language; then the remaining intrinsic evidence; and finally, the extrinsic evidence in limited circumstances. *See, e.g., Interactive Gift Exp., Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001). While “the claims themselves provide substantial guidance as to the meaning of particular claim terms,” a court also must consider the context of the surrounding words. *Id.* at 1314. In addition, the patent 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.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). But, while a court must construe claims to be consistent with the specification, the court must “avoid the danger of reading limitations from the specification into the claim,” *Phillips*, 415 F.3d at 1323. This is a “fine” distinction. *Comark Communications, Inc. v. Harris Corp.*, 156 F.3d 1182, 1186–87 (Fed.Cir.1998). In addition, “[e]ven 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. *Hill-Rom Svcs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1372 (Fed. Cir. 2014) (quote omitted).

A court may refer to extrinsic evidence only if the disputed term's ordinary and accustomed meaning cannot be discerned from the intrinsic evidence. *Vitronics*, 90 F.3d at 1584. Although a court may not use extrinsic evidence to vary or contradict the claim language, extrinsic materials "may be helpful to explain scientific principles, the meaning of technical terms, and terms of art that appear in the patent and prosecution history. . . ." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995). Extrinsic evidence is used "to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art." *Phillips*, 415 F.3d at 1318. The Federal Circuit has cautioned against relying upon expert reports and testimony that is generated for the purpose of litigation because of the likelihood of bias. *Id.*; see also *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993) ("Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it.")

Ultimately, the "construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be . . . the correct construction." *Renishaw PLC v. Marposs Societa' per Anzioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998). It follows that a "claim interpretation that would exclude the inventor's device is rarely the correct interpretation." *Osram GmbH v. Int'l Trade Comm'n*, 505 F.3d 1351, 1358 (Fed. Cir. 2007) (quote omitted).

II. CONSTRUCTION OF DISPUTED TERMS

A. '763 Patent Terms

1. "A multi-processor chip, comprising" (Preamble of claims 1, 31)

PACT Limiting
INTEL Not limiting
COURT Not limiting

Preamble language that “merely states the purpose or intended use of an invention is generally not treated as limiting the scope of the claim.” *Pacing Tech., LLC v. Garmin Intern., Inc.*, 778 F.3d 1021, 1023-24 (Fed. Cir. 2015) (quote omitted). “However, when limitations in the body of the claim rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention.” *Id.* (cleaned up; quote omitted). That is, the preamble is limiting if it “recites essential structure or steps, or if it is necessary to give life, meaning, and vitality to the claim.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (quote omitted). There is no “litmus test” to determine whether preamble language is limiting. *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 952 (Fed. Cir. 2006). Whether to treat a preamble term as a claim limitation is “determined on the facts of each case in light of the claim as a whole and the invention described in the patent.” *Storage Tech. Corp. v. Cisco Sys., Inc.*, 329 F.3d 823, 831 (Fed. Cir. 2003).

The preamble to these claims does not animate the claims and is not limiting. The body of each claim lacks any reference to the preamble. To the

contrary, the body of each claim describes a complete system on its own. The language in the preamble is a descriptor, not a limitation.

Pact argues that the preamble must be limiting because two dependent claims, Claims 20 and 50, refer back to it. It is possible that the preamble is limiting as to those dependent claims. That question is not before the Court. However, language in a preamble can be limiting as to a dependent claim but not as to the independent claim from which it derives. *See TQ Delta, LLC v. 2WIRE, Inc.*, Civ A. No. 1:13-cv-01835, 2018 WL 4062617, at * 4-5 (D. Del. Aug. 24, 2018). So, even if the preamble is limiting as to dependent Claims 20 and 50, it is not limiting as to independent Claims 1 and 31.

Pact also argues that the specification requires the components to be internal to a single chip and that the preamble provides that specificity. The preamble refers to “**a**” chip. (D.I.90-8 at Claims 1, 31 (emphasis added).) “[A]n indefinite article ‘a’ or ‘an’ in patent parlance carries the meaning of ‘one or more’ in open-ended claims containing the transitional phrase ‘comprising.’” *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed. Cir. 2008). Pact argues that this rule does not apply to preambles, but it offers no support for that position. The Court sees no reason not to apply the rule to a preamble. Pact also argues that the specification’s reference to external components, such as a hard drive, demonstrates that in this case “a” really means “one.” Pact reads too much into the specification. The claims describe a complete system. There will always be components that are external to that system. That would be true whether the claims require a single chip or permitted multiple chips. Because

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