

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of

CERTAIN CONSUMER ELECTRONICS
AND DISPLAY DEVICES WITH
GRAPHICS PROCESSING AND GRAPHICS
PROCESSING UNITS THEREIN

Investigation No. 337-TA-943

ORDER NO. 12: CONSTRUING TERMS OF THE ASSERTED PATENTS

(July 24, 2015)

The claim terms construed in this Order are done so for the purposes of this Investigation. Hereafter, discovery and briefing in this Investigation shall be governed by the construction of the claim terms in this Order. Those terms not in dispute need not be construed. *See Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311, 1323 (Fed. Cir. 2004) (noting that the administrative law judge need only construe disputed claim terms)

Table of Abbreviations

CMIB	Complainant's Initial Markman Brief
CMRB	Complainant's Reply Markman Brief
CBPS	Complainant's Bullet-Point Summary
RMIB	Respondents' Initial Markman Brief
RMRB	Respondents' Reply Markman Brief
RBPS	Respondents' Bullet-Point Summary
SMIB	Staff's Initial Markman Brief
SMRB	Staff's Reply Markman Brief
SBPS	Staff's Bullet-Point Summary
Tr.	Transcript of the Markman Hearing

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I. INTRODUCTION

The Commission instituted this investigation on January 13, 2015, based on a complaint filed on behalf of One-E-Way, Inc. (“One-E-Way” or “Complainant”). 80 *Fed. Reg.* 1663 (January 13, 2015). The complaint alleges violations of Section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain wireless headsets by reason of infringement of, *inter alia*, claims 4, 8, and 10 of U.S. Patent No. 7,865,258 (“the ‘258 Patent”) and claims 1-6 and 10 of U.S. Patent No. 8,131,391 (“the ‘391 Patent”)¹ by, *inter alia*: (i) Sony Corporation, Sony Corporation of America, and Sony Electronics Inc. (collectively “Sony”); (ii) BlueAnt Wireless Ltd. and BlueAnt Wireless, Inc. (collectively “BlueAnt”); (iii) Creative Technology Ltd. and Creative Labs, Inc. (collectively “Creative”); (iv) Jawbone, Inc. (“Jawbone”); and (v) GN Netcom A/S (“GN Netcom”) (collectively “Respondents”).² *Id.*

¹ Originally, Complainant also asserted infringement of claims 3 and 11 of the ‘258 Patent, but subsequently filed a motion to terminate the investigation with respect to those claims. On May 4, 2015, I issued Order No. 9 terminating this investigation with regard to claims 3 and 11 of the ‘258 Patent. (Order No. 9 (May 4, 2015); Notice of Commission Determination Not to Review an Initial Determination Granting an Unopposed Motion to Partially Terminate the Investigation with Respect to Claims 3 and 11 of U.S. Patent No. 7,865,258 (May 26, 2015).)

On July 20, 2015, Complainant filed an unopposed motion to partially terminate the investigation as to claims 4 and 10 of the ‘258 Patent and claim 2 of the ‘391 Patent.

² Complainant also named as respondents in the complaint Beats Electronics LLC and Beats Electronics International Ltd. (collectively “Beats”), but subsequently filed a motion to terminate the investigation with respect to Beats. *See* Motion Docket No. 943-004. Beats is no longer a party to this investigation. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting a Motion to Terminate the Investigation as to Respondents Beats Electronics LLC and Beats Electronics International Ltd. Based on Withdrawal of Allegations (April 29, 2015).)

Additionally, the Complainant named as respondents Sennheiser Electronic GmbH & Co. KG and Sennheiser Electronic Corporation (collectively “Sennheiser”). On April 30, 2015, Complainant and Respondents Sennheiser filed a joint motion to terminate Sennheiser by settlement. Sennheiser is no longer a party to this investigation. (*See* Notice of Commission Determination Not to Review an Initial Determination Granting a Motion to Terminate the Investigation as to Respondents Sennheiser Electronic GmbH & Co. KG and Sennheiser Electronic Corporation Based on Settlement Agreement (June 11, 2015).)

On February 9, 2015, I issued the initial procedural schedule for this investigation setting May 26-27, 2015, as the dates for the *Markman* hearing. (See Order No. 5, Appendix A (February 9, 2015).) In accordance with the Joint Proposed Procedural Schedule submitted by the parties thereafter, the parties exchanged: (i) on March 13, 2015, their lists of proposed terms for construction, as required by G.R. 8.1; and (ii) on March 27, 2015 and April 14, 2015, their preliminary constructions for those terms, as required by G.R. 8.2. After meeting and conferring to narrow the issues, the parties filed their Joint Claim Construction Chart on April 21, 2015. On May 26-27, 2015, in accordance with the procedural schedule, I held a technology tutorial and *Markman* hearing. I informed the parties during the hearing that I would allow them to file a bullet-point summary of their claims construction arguments after the conclusion of the *Markman* hearing. On June 3, 2015, Complainant and Respondents filed a bullet-point summary of their claims construction arguments. On June 5, 2015, the Staff filed a bullet-point summary of its claims construction arguments.

II. RELEVANT LAW

“An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*) (internal citations omitted), *aff'd*, 517 U.S. 370 (1996). Claim construction is a “matter of law exclusively for the court.” *Id.* at 970-71. “The construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims.” *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000).

Claim construction focuses on the intrinsic evidence, which consists of the claims themselves, the specification, and the prosecution history. See *Phillips v. AWH Corp.*, 415 F.3d

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