

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**COMCAST CABLE
COMMUNICATIONS, LLC, TV WORKS,
LLC, and COMCAST MO GROUP, INC.,
Plaintiffs,**

v.

**SPRINT COMMUNICATIONS
COMPANY, LP, SPRINT SPECTRUM,
LP, and NEXTEL OPERATIONS, INC.,
Defendants.**

CIVIL ACTION

NO. 12-859

**SPRINT COMMUNICATIONS
COMPANY, LP, and SPRINT
SPECTRUM, LP,
Counterclaim-Plaintiffs,**

v.

**COMCAST CABLE
COMMUNICATIONS, LLC, COMCAST
IP PHONE, LLC, COMCAST BUSINESS
COMMUNICATIONS, LLC, and
COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC,
Counterclaim-Defendants.**

DuBois, J.

August 15, 2014

MEMORANDUM

I. INTRODUCTION

Plaintiffs and counterclaim-defendants, Comcast Communications, LLC and related corporate entities (collectively “Comcast”), brought this action against defendants and counterclaim-plaintiffs, Sprint Communications Co., LP and related corporate entities (collectively “Sprint”), alleging infringement of its U.S. Patent No. 6,885,870 (“the ‘870 patent”) and U.S. Patent 5,987,323 (“the ‘323 patent”). Sprint filed a Counterclaim alleging infringement of its U.S. Patent No. 6,754,907 (“the ‘4,907 patent”), U.S. Patent No.

6,757,907 (“the ‘7,907 patent”), and U.S. Patent No. 6,727,916 (“the ‘916 patent”). After a five-day pre-*Markman* and *Markman* hearing, the Court construes the disputed claim terms identified by the parties in each of the remaining patents-in-suit.

II. PROCEDURAL BACKGROUND

Comcast filed the instant patent-infringement suit on February 17, 2012 against Sprint, alleging infringement of four of its U.S. Patents.¹ On May 14, 2012, Sprint filed an Answer and a Counterclaim, alleging infringement of seven of its U.S. Patents.² On June 6, 2012, Comcast filed a First Amended Complaint for Patent Infringement.³ Sprint filed an Amended Answer and Counterclaim on June 25, 2012.⁴

Pursuant to Case Management Order No. 1, the parties submitted a Joint Claim Construction Chart on October 4, 2013, setting forth their proposed constructions. Thereafter, on November 1, 2013, Comcast and Sprint each filed an Opening Claim Construction Brief, addressing the construction of the disputed terms in its own patents, and, on November 22, 2013, an Answering Claim Construction Brief, addressing the

¹ In its Complaint, Comcast alleged infringement of its U.S. Patent No. 7,684,391 (“the ‘391 patent”), U.S. Patent No. 6,885,870 (“the ‘870 patent”), U.S. Patent No. 5,987,323 (“the ‘323 patent”), U.S. Patent No. 6,112,305 (“the ‘305 patent”).

² In its Counterclaim, Sprint alleged infringement of its U.S. Patent No. 6,754,907 (“the ‘4,907 patent”), U.S. Patent No. 6,757,907 (“the ‘7,909 patent”), U.S. Patent No. 7,602,886 (“the ‘886 patent”), U.S. Patent No. 7,043,241 (“the ‘241 patent”); U.S. Patent No. 7,054,654 (“the ‘654 patent”), U.S. Patent No. 6,727,916 (“the ‘916 patent”), and U.S. patent No. 6,965,666 (“the ‘666 patent”).

³ In its First Amended Complaint, Comcast alleged infringement of the ‘870 patent, the ‘323 patent, the ‘305 patent, and U.S. Patent No. 5,991,271 (“the ‘271 patent”). Comcast has since withdrawn its allegations of infringement with respect to the ‘305 patent and ‘271 patent.

⁴ In its Amended Counterclaim, Sprint alleged infringement of the same seven patents included in its initial Counterclaim. Sprint has since withdrawn its allegations of infringement with respect to the ‘886 patent, the ‘241 patent, the ‘654 patent, and the ‘666 patent.

construction of the disputed terms in each other's patents. Through the meet-and-confer and briefing process, the parties significantly narrowed the number of terms, claims, and patents in dispute.

On January 22, 23, and 24, 2014, the Court held the first part of a pre-*Markman* and *Markman* hearing, which included technology tutorials and oral argument on the proper construction of the disputed claim terms in Sprint's '4,907, '7,907, and '916 patents and Comcast's '323 and '870 patents.⁵ During that hearing, it became apparent that the parties' initial Joint Claim Construction Chart was deficient.

At the conclusion of the third day of the *Markman* hearing on January 24, 2014, the Court issued an Order requiring that the parties submit an amended joint claim construction chart. In this Order, the parties were directed to include in that updated chart, *inter alia*, (1) a statement of the impact of each disputed claim term on the parties' infringement and invalidity contentions in order to place claim construction in proper context, and (2) with respect to those terms as to which a party asserts that "the plain and ordinary meaning of the term should control," a statement of "precisely what that 'plain and ordinary meaning' is in the form of a proposed alternative construction." After submission of the Amended Joint Claim Construction Chart on February 14, 2014, the Court conducted the second part of the *Markman* hearing on February 24 and 25, 2014, at which it briefly returned to Sprint's '916 patent to ask several follow-up questions, which had been left unanswered.⁶

⁵ The Court also heard argument on Sprint's '886 patent at the hearing on January 24, 2014. By letter dated June 17, 2014, counsel for Sprint and Comcast notified the Court that Sprint withdrew its infringement allegations with respect to this patent.

⁶ The Court also heard argument on Comcast's '271 patent at the hearing on February 25, 2014 and Comcast's '654 patent at the hearing on February 26, 2014. By letter dated June 17, 2014, counsel for Sprint and Comcast jointly notified the Court that "Sprint has agreed to withdraw from this case [*inter alia*] all claims based on Sprint's U.S. Patent

Finally, given the complexity of the issues presented in this case and by agreement of the parties, on March 20, 2014, the Court appointed Dr. A. J. Nichols as technical advisor to assist the Court by explaining, when requested, the relevant technology required for claim construction with respect to the patents-in-suit. His role has been limited to that contemplated by the Memorandum and Order dated April 1, 2014, as revised by the Order dated April 21, 2014, setting forth the authority for, and terms and conditions of, his appointment.

III. LEGAL STANDARD

Construction of disputed patent claims is a question of law and is therefore the province of the court, not the jury. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 389-91 (1996). The Court is not bound by the proposed constructions presented and argued by the parties. *See Marine Polymer Techs., Inc. v. HemCon, Inc.*, 672 F.3d 1350, 1359 n.4 (Fed. Cir. 2012) (en banc).

In construing claim terms, a court may look to any “source[] available to the public that show[s] what a person of skill in the art would have understood disputed claim language to mean.” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004). “It is well-settled that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). “Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language.” *Id.* There are three primary sources of “intrinsic evidence”: (1) the claims, (2) the specification, and (3) the prosecution history. The Court addresses each category of intrinsic evidence in

No. . . . 7,054,654,” and “Comcast has agreed to withdraw from this case all claims based on Comcast’s U.S. Patent No. 5,991,271.”

turn.

First, a court must examine the language of the claims, as “[i]t 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. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Innova/Pure Water*, 381 F.3d 1111 at 1115). “[W]ords of a claim ‘are generally given their ordinary and customary meaning.’”⁷ *Id.* (quoting *Vitronics*, 90 F.3d at 1582). In examining the claims of the patent, both “the context in which a term is used in the asserted claim” and “[o]ther claims of the patent in question” “provide substantial guidance as to the meaning of particular claim terms.” *Id.* at 1314. “Differences among claims also can be a useful guide in understanding the meaning of particular claim terms.” *Id.* For example, under the doctrine of claim differentiation, “the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim.” *Id.* at 1315.

The second source of intrinsic evidence is the patent specification, which “contains a written description of the invention that must enable one of ordinary skill in the art to make and use the invention.” *Markman*, 52 F.3d at 979. “In light of the statutory directive that the inventor provide a ‘full’ and ‘exact’ description of the claimed invention, the specification necessarily informs the proper construction of the claims.” *Phillips*, 415 F.3d at 1316. For example, the specification may reveal “a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess” or “an

⁷ As reiterated by the U.S. Court of Appeals for the Federal Circuit in *Phillips v. AWH Corp.*, “the ordinary and customary meaning of a claim term 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, i.e., as of the effective filing date of the patent application.” 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc).

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