

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

INTELLECTUAL VENTURES I LLC, *et al.*, §
§
vs. § CIVIL ACTION NO. 6:15-CV-660
§
HCC INSURANCE HOLDINGS, INC., *et al.* §

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This report and recommendation construes the disputed claim terms in United States Patent Nos. 6,516,442 (“the ’442 Patent”), 7,516,177 (“the ’177 Patent”), 7,757,298 (“the ’298 Patent”), and 7,949,752 (“the ’752 Patent”), asserted in this suit by Plaintiffs Intellectual Ventures I LLC and Intellectual Ventures II LLC (collectively “IV”). The Parties’ claim construction briefing also addresses Defendants’ indefiniteness arguments.

On June 15, 2016, the Parties presented oral arguments on the disputed claim terms at a *Markman* hearing. Based on the analysis stated herein, the Court resolves the Parties’ claim construction disputes and **RECOMMENDS** the constructions set forth below.

BACKGROUND

Intellectual Ventures filed the above-styled action against Defendants HCC Insurance Holdings, Inc., HCC Life Insurance Company, HCC Specialty Insurance Company, HCC Specialty Underwriters, Inc., Houston Casualty Company, and Professional Indemnity Agency, Inc.’s (collectively “HCC”) alleging infringement of the asserted patents. *See* Docket No. 1. There are two separate but related actions pending before the Court involving claims of patent infringement of the ’177 Patent, and one action pending involving claims of patent infringement of the ’442 Patent. Docket No. 31 at ¶ 7; *see also Intellectual Ventures II LLC v. Bitco General*

Insurance Corporation, 6:15-CV-59; *Intellectual Ventures II LLC v. Great West Casualty Company*, 6:15-CV-60;¹ *Intellectual Ventures II LLC v. Kemper Corp., et al.*, 6:16-CV-81.

APPLICABLE LAW

Claim Construction

“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. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). The Court examines a patent’s intrinsic evidence to define the patented invention’s scope. *Id.* at 1313–1314; *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). Intrinsic evidence includes the claims, the rest of the specification and the prosecution history. *Phillips*, 415 F.3d at 1312–13; 3 *Bell Atl. Network Servs.*, 262 F.3d at 1267. The Court gives claim terms their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention. *Phillips*, 415 F.3d at 1312–13; *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

Claim language guides the Court’s construction of claim terms. *Phillips*, 415 F.3d at 1314. “[T]he context in which a term is used in the asserted claim can be highly instructive.” *Id.* Other claims, asserted and un-asserted, can provide additional instruction because “terms are normally used consistently throughout the patent.” *Id.* Differences among claims, such as additional limitations in dependent claims, can provide further guidance. *Id.*

“[C]laims ‘must be read in view of the specification, of which they are a part.’” *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995), *aff’d*, 517

¹ On April 30, 2015, cause nos. 6:15-CV-59 and 6:15-CV-60 were consolidated for pretrial issues only, with the exception of venue. See *Intellectual Ventures II LLC v. Bitco General Insurance Corporation*, 6:15-CV-59, Docket No. 33.

U.S. 370, 116 S.Ct. 1384, 134 Led.2d 577 (1996)). “[T]he 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.* (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *see also Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). In the specification a patentee may define his own terms, give a claim term a different meaning than the term would otherwise possess, or disclaim or disavow the claim scope. *Phillips*, 415 F.3d at 1316. Although the Court generally presumes terms possess their ordinary meaning, this presumption can be overcome by statements of clear disclaimer. *See SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343-44 (Fed. Cir. 2001). This presumption does not arise when the patentee acts as his own lexicographer. *See Irdeto Access, Inc. v. EchoStar Satellite Corp.*, 383 F.3d 1295, 1301 (Fed. Cir. 2004).

The specification may also resolve ambiguous claim terms “where the ordinary and 4 accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone.” *Teleflex, Inc.*, 299 F.3d at 1325. For example, “[a] claim interpretation that excludes a preferred embodiment from the scope of the claim ‘is rarely, if ever, correct.’” *Globetrotter Software, Inc. v. Elam Computer Group Inc.*, 362 F.3d 1367, 1381 (Fed. Cir. 2004) (quoting *Vitronics Corp.*, 90 F.3d at 1583). But, “[a]lthough the specification may aid the court in interpreting the meaning of disputed language in the claims, particular embodiments and examples appearing in the specification will not generally be read into the claims.” *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988); *see also Phillips*, 415 F.3d at 1323.

The prosecution history is another tool to supply the proper context for claim construction because a patentee may define a term during prosecution of the patent. *Home*

Diagnostics Inc. v. LifeScan, Inc., 381 F.3d 1352, 1356 (Fed. Cir. 2004) (“As in the case of the specification, a patent applicant may define a term in prosecuting a patent”). The well-established doctrine of prosecution disclaimer “preclud[es] patentees from recapturing through claim interpretation specific meanings disclaimed during prosecution.” *Omega Eng’g Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003). The prosecution history must show that the patentee clearly and unambiguously disclaimed or disavowed the proposed interpretation during prosecution to obtain claim allowance. *Middleton Inc. v. 3M Co.*, 311 F.3d 1384, 1388 (Fed. Cir. 2002); *see also Springs Window Fashions LP v. Novo Indus., L.P.*, 323 F.3d 989, 994 (Fed. Cir. 2003) (“The disclaimer . . . must be effected with ‘reasonable clarity and deliberateness.’”) (citations omitted). “Indeed, by distinguishing the claimed invention over the prior art, an applicant is indicating what the claims do not cover.” *Spectrum Int’l v. Sterilite Corp.*, 164 F.3d 1372, 1378–79 (Fed. Cir. 1988) (quotation omitted). “As a basic principle of claim interpretation, 5 prosecution disclaimer promotes the public notice function of the intrinsic evidence and protects the public’s reliance on definitive statements made during prosecution.” *Omega Eng’g, Inc.*, 334 F.3d at 1324.

Although “less significant than the intrinsic record in determining the legally operative meaning of claim language,” the Court may rely on extrinsic evidence to “shed useful light on the relevant art.” *Phillips*, 415 F.3d at 1317 (quotation omitted). Technical dictionaries and treatises may help a court understand the underlying technology and the manner in which one skilled in the art might use claim terms, but such sources may also provide overly broad definitions or may not be indicative of how the term is used in the patent. *Id.* at 1318. Similarly, expert testimony may aid the Court in determining the particular meaning of a term in the pertinent field, but “conclusory, unsupported assertions by experts as to the definition of a claim

term are not useful.” *Id.* Generally, extrinsic evidence is “less reliable than the patent and its prosecution history in determining how to read claim terms.” *Id.*

Claim Indefiniteness

Patent claims must particularly point out and distinctly claim the subject matter regarded as the invention. 35 U.S.C. § 112, ¶ 2. “[I]ndefiniteness is a question of law and in effect part of claim construction.” *ePlus, Inc. v. Lawson Software, Inc.*, 700 F.3d 509, 517 (Fed. Cir. 2012). A party challenging the definiteness of a claim must show it is invalid by clear and convincing evidence. *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1345 (Fed. Cir. 2007). The definiteness standard of 35 U.S.C. § 112, ¶ 2 requires that:

[A] patent’s claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention with reasonable certainty. The definiteness requirement, so understood, mandates clarity, while recognizing that absolute precision is unattainable. The standard we adopt accords with opinions of this Court stating that “the certainty which the law requires in patents is not greater than is reasonable, having regard to their subject-matter.”

Nautilus, Inc. v. Biosig Instruments, Inc., 134 S. Ct. 2120, 2129–30 (2014) (internal citations omitted).

ANALYSIS

I. Agreed Terms

The Parties have submitted the following agreements:

Term	Agreed Construction
“administrative interface” (’177 Patent, Claim 11)	A software management tool that facilitates administrative functions.
“centralized access point of a user” (’177 Patent, Claims 11 and 16)	A user’s network resource that can be used to access content.
“centralized access point of the particular user” (’177 Patent, Claim 16)	The particular user’s network resource that can be used to access content.
“distributed information access point” (’177 Patent, Claims 11 and 16)	A network resource which is delivered to one or more users and that enables a user to interact with a centralized access point.

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