

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

TOUCHSTREAM TECHNOLOGIES, INC.	§	
LTD.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	NO. 2:23-CV-00059-JRG
	§	(Lead Case)
CHARTER COMMUNICATIONS, INC.,	§	
et al.,	§	
	§	
<i>Defendants.</i>	§	

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TOUCHSTREAM TECHNOLOGIES, INC.	§	
LTD.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	NO. 2:23-CV-00062-JRG
	§	(Member Case)
COMCAST CABLE COMMUNICATIONS,	§	
LLC d/b/a XFINITY, et al.,	§	
	§	
<i>Defendants.</i>	§	

**CLAIM CONSTRUCTION ORDER**

Before the Court is Touchstream Technologies, Inc.’s Opening Claim Construction Brief filed by Plaintiff Touchstream Technologies, Inc. (“Plaintiff” or “Touchstream”). (Dkt. No. 36.) Also before the Court is Defendants’ Responsive Claim Construction Brief filed by Charter Communications, Inc., et al. and Comcast Cable Communications, LLC, d/b/a Xfinity, et al. (collectively, “Defendants” and with Plaintiff, the “Parties”). (Dkt. No. 40.) Also before the Court

is Touchstream Technologies, Inc.’s Reply in Support of Its Opening Claim Construction Brief. (Dkt. No. 42.) The Court held a hearing on May 30, 2024. Having considered the Parties’ briefing along with arguments of counsel, the Court resolves the disputes as ordered herein.

## **I. BACKGROUND**

Plaintiff alleges infringement of three patents: U.S. Patent No. 8,356,251 (“the ’251 Patent”); U.S. Patent No. 11,048,751 (“the ’751 Patent”); and U.S. Patent No. 11,086,934 (“the ’934 Patent”) (collectively, the “Patents-in-Suit”). The Patents-in-Suit all derive from the same patent family and are about casting and controlling content from a personal device, like a smartphone or tablet, to a second display unit, such as a TV or a computer monitor.

The Patents-in-Suit all claim priority to the same provisional application and share the same specification. Accordingly, as the parties did in their briefing, citations in this Order will be to the specification of the ’251 Patent.

The ’251 Patent and the ’751 Patent share the same title and abstract. The title is “Play control of content on a display device” and the Abstract states:

A system for presenting and controlling content on a display device includes a network, a server system coupled to the network and comprising one or more servers, a display device coupled to the network and having a display, and a personal computing device operable to transmit a first message according to a specified format over the network to the server system. The server system stores an association between the personal computing device and the display device. The first message identifies user-selected content and a media player to play the content. The server system is operable, in response to receiving the first message from the personal computing device, to provide to the display device a second message identifying the user-selected content and the media player to play the content. In response to receiving the second message, the display device is operable to obtain a first media player needed to play the content, to load the media player and to present the content on the display.

The ’934 Patent also bears the title “Play control of content on a display device,” however, the Abstract differs as follows:

A system for controlling playback of various types of content includes a first computing device that provides a unique identifier to a second computing device to establish an association there between. By virtue of the established association, the second computing device can send one or more messages to the first computing device, the one or more messages referencing a piece of content associated with a first media playing element of a plurality of media playing elements, and one or more commands corresponding to the first media playing element. The first computing device can select the first media playing element based on the received one or more messages, and control how the first media playing element plays the referenced piece of content utilizing the one or more commands.

## II. LEGAL STANDARDS

“[T]he 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)). “[T]he court has the power and obligation to construe as a matter of law the meaning of language used in the patent claim.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*); *aff’g*, 517 U.S. 370, 390 (1996).

To ascertain the meaning of claims, courts look to three primary sources: the claims, the specification, and the prosecution history. *Id.* at 979. The specification must contain a written description of the invention that enables one of ordinary skill in the art to make and use the invention. *Id.* A patent’s claims must be read in view of the specification, of which they are a part. *Id.* For claim construction purposes, the description may act as a sort of dictionary, which explains the invention and may define terms used in the claims. *Id.* “One purpose for examining the specification is to determine if the patentee has limited the scope of the claims.” *Watts v. XL Sys., Inc.*, 232 F.3d 877, 882 (Fed. Cir. 2000).

When construing claims, “[t]here is a heavy presumption that claim terms are to be given their ordinary and customary meaning.” *Aventis Pharm. Inc. v. Amino Chems. Ltd.*, 715 F.3d 1363, 1373 (Fed. Cir. 2013) (citing *Phillips*, 415 F.3d at 1312–13). Courts must therefore “look to the

words of the claims themselves . . . to define the scope of the patented invention.” *Id.* (citations omitted). “[T]he 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.” *Phillips*, 415 F.3d at 1313. This “person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Id.*

The patentee is free to be his own lexicographer, but any special definition given to a word must be clearly set forth in the specification. *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1388 (Fed. Cir. 1992). As the Supreme Court stated long ago, “in case of doubt or ambiguity it is proper in all cases to refer back to the descriptive portions of the specification to aid in solving the doubt or in ascertaining the true intent and meaning of the language employed in the claims.” *Bates v. Coe*, 98 U.S. 31, 38 (1878). Although the specification may indicate that certain embodiments are preferred, particular embodiments appearing in the specification will not be read into the claims when the claim language is broader than the embodiments. *Electro Med. Sys., S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 1054 (Fed. Cir. 1994).

The prosecution history also continues to play an important role in claim interpretation. Like the specification, the prosecution history helps to demonstrate how the inventor and the United States Patent and Trademark Office (“PTO”) understood the patent. *Phillips*, 415 F.3d at 1317. Because the file history, however, “represents an ongoing negotiation between the PTO and the applicant,” it may lack the clarity of the specification and thus be less useful in claim construction proceedings. *Id.* Nevertheless, the prosecution history is intrinsic evidence that is relevant to the determination of how the inventor understood the invention and whether the

inventor limited the invention during prosecution by narrowing the scope of the claims. *Id.*; see *Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1350 (Fed. Cir. 2004) (noting that “a patentee’s statements during prosecution, whether relied on by the examiner or not, are relevant to claim interpretation”).

Intrinsic evidence, therefore, is the primary resource for claim construction. See *Power-One, Inc. v. Artesyn Techs., Inc.*, 599 F.3d 1343, 1348 (Fed. Cir. 2010) (citing *Phillips*, 415 F.3d at 1312). But for claim terms with less-apparent meanings, courts consider “those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean[,] [including] the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” *Phillips*, 415 F.3d at 1314 (quoting *Innova*, 381 F.3d at 1116). In those situations, “the district court will need to look beyond the patent’s intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period.” *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015) (citation omitted). “In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factual findings about that extrinsic evidence. These are the ‘evidentiary underpinnings’ of claim construction that we discussed in *Markman*, and this subsidiary factfinding must be reviewed for clear error on appeal.” *Id.* (citing 517 U.S. 370).

However, the intrinsic record may not be sacrificed in favor of extrinsic evidence. According to *Phillips*, reliance on dictionary definitions, for example, at the expense of the specification had the effect of “focus[ing] the inquiry on the abstract meaning of words rather than on the meaning of claim terms within the context of the patent.” *Id.* at 1321.

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