

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

HISENSE USA CORPORATION,

Plaintiff,

v.

BRIGHTPLUS VENTURES LLC,

Defendant.

Civil Action No.: 1:22-cv-02774-TCB

Jury Trial Demanded

BRIGHTPLUS VENTURES LLC,

Counter-Claim Plaintiff

v.

HISENSE USA CORPORATION,
HISENSE CO. LTD., HISENSE
INTERNATIONAL (HK) CO. LTD.,
HISENSE VISUAL TECHNOLOGY
CO., LTD., and TVS REGZA
CORPORATION,

Counter-Claim Defendants.

Civil Action No.: 1:22-cv-02774-TCB

Jury Trial Demanded

HISENSE'S OPENING CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Declaratory Judgment Plaintiff and Counter-Claim Defendants (collectively “Hisense”) respectfully submit their opening claim construction brief. For the reasons explained below, the Court should adopt Hisense’s proposed constructions of the disputed claim terms.

II. FACTUAL BACKGROUND

A. The Parties

Brightplus recently acquired the asserted patents from a third party. Brightplus does not itself invent, make, or sell anything; its “business” is filing lawsuits. Hisense, on the other hand, is an innovative company that markets consumer products including award winning televisions. Hisense USA, located in this District, filed its complaint for a declaratory judgment of non-infringement after Brightplus sent it a letter threatening to sue.

B. The Asserted Patents

Brightplus asserts that Hisense’s television products infringe nine patents: (1) U.S. Patent No. 7,690,812 (“812 Patent”) (Ex. 1); (2) U.S. Patent No. 7,872,705 (“705 Patent”) (Ex. 2); (3) U.S. Patent No. 8,177,382 (“382 Patent”) (Ex. 3); (4) U.S. Patent No. 8,294,075 (“075 Patent”) (Ex. 4); (5) U.S. Patent No. 8,330,710 (“710 Patent”) (Ex. 5); (6) U.S. Patent No. 8,941,331 (“331 Patent”) (Ex. 6); (7) U.S. Patent No. 9,605,835 (“835 Patent”) (Ex. 7); (8)

U.S. Reissued Patent No. RE42,598 (“598 Patent”) (Ex. 8); and (9) U.S. Patent No. RE45,796 (“796 Patent”) (Ex. 9) (collectively, “the Asserted Patents”).

III. LEGAL STANDARD

The Federal Circuit in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc) set forth the standard for construing patent claims. The words in a claim are generally given “their ordinary and customary meaning.” *Id.* at 1312. The ordinary and customary meaning of a claim term is the meaning that the term would have “to a person of ordinary skill [POSA] in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Id.* at 1313. Focusing on how the terms are understood by the POSA in the art provides an “objective baseline from which to begin claim construction.” *Id.* The POSA in the art is deemed to have read the claim term both “in the context of the particular claim in which the disputed term appears” and “in the context of the entire patent, including the specification.” *Id.*

The relevant sources of evidence include “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.

First, “the claims themselves provide substantial guidance as to the meaning of particular claim terms.” *Phillips*, 415 F.3d at 1314.

Second, “the specification is always highly relevant to the claim construction analysis” and usually “is the single best guide to the meaning of a disputed term.” *Phillips*, 415 F.3d at 1315 (internal quotation marks omitted). When the specification reveals “a special definition” given to a claim term by the patentee that differs from the meaning it would otherwise possess, then “the inventor’s lexicography governs.” *Id.* at 1316. In other cases, “the specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor,” in that instance as well, “the inventor has dictated the correct claim scope, and the inventor’s intention, as expressed in the specification, is regarded as dispositive.” *Id.*

Third, courts should also consider the patent’s “prosecution history,” which is part of the intrinsic evidence, and comprises “the complete record of the proceedings before the PTO.” *Phillips*, 415 F.3d at 1317. In particular, “the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Id.*; *Chimie v. PPG Indus., Inc.*, 402 F.3d 1371, 1384 (Fed. Cir. 2005) (“The purpose of consulting the

prosecution history in construing a claim is to exclude any interpretation that was disclaimed during prosecution.”) (internal quotation marks omitted).

Finally, extrinsic evidence, such as expert testimony, may sometimes “establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field.” *Phillips*, 415 F.3d at 1318.

IV. DISPUTED CLAIM TERMS

The parties dispute the meaning of twelve claim terms. Dkt. 49-2.

A. U.S. Pat. No. 8,294,075 and U.S. Pat. No. 9,605,835¹

1. “extend ... arranged parallel to ...” (’075 claims 1 and 17)

Hisense’s Proposed Construction	Brightplus’ Proposed Construction
the entirety of each of the reflector sheet, diffuser sheet, and brightness enhancement film is not generally curved, and the entirety of each is parallel to the principal plane of the lighting panel	Plain and ordinary meaning. In the alternative, “the reflector sheet, the diffuser sheet and brightness enhancement film are positioned parallel to the main display plane of the lighting panel”

The dispute between the parties here centers on what it means for certain components of the claimed lighting panel to “extend and [be] arranged parallel to the principal plane of the lighting panel,” namely whether the

¹ The ’835 patent stems from the ’075 patent where the specifications are shared. Thus, the terms in section IV.A are briefed across both patents.

entirety of the sheet or film must be parallel to the principal plane, or whether just some part must be parallel. The parties do not dispute what the principal plane of the lighting panel is. Nor do they dispute what the components are (reflector and diffuser sheets, and brightness enhancement films).

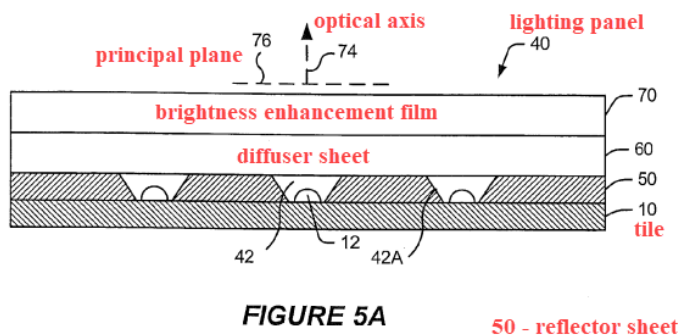
Hisense's proposal gives meaning to the term in a way that is consistent with the intrinsic and extrinsic evidence, and it squarely addresses the parties' dispute. Brightplus' proposal does neither. Brightplus' alternative construction also fails because it simply replaces "extended and arranged" with the vague (and incorrect) term "positioned."

a) The intrinsic evidence reveals that the entire film or sheet is parallel.

The claims, specification, and prosecution all indicate that the entire film or sheet is parallel to the principal plane of the lighting panel.

First, the specification, the single most important piece of evidence in understanding claim terms and claim scope, consistently and uniformly describes in every relevant embodiment that the *entirety* of the recited film or sheet is parallel to the principal plane. *See* '075 Patent (Ex. 4), Figs. 5A, 5B, 6A, 7; 10:63-11:9; 11:28-35; 11:40-43; 11:47-49; 11:59-65; 12:29-38; 12. Figure 5A discloses that "lighting panel 40 may further include a brightness

enhancement film 70 separated from the tile 10 and the reflector sheet 50 by a diffuser sheet 60.” ’075 Patent, 11:28-30. The specification states that the “optical axis 74...is perpendicular to the principal plane 76 of the lighting panel 40[.]” ’075 Patent, 11:64-65. These same axes are also shown in annotated Fig. 5A, shown here. Each of these disclosures show the entirety of the films and sheets parallel to principal plane.



Second, the prosecution history resolves this dispute because the Applicant unambiguously stated that the claims require the entirety of the sheet or film to be parallel to the principal plane and to not be generally curved.

More specifically, the Applicant first added the element “wherein the reflector sheet and the brightness enhancing film both extend in parallel to the principal plane of the lighting panel” during prosecution of the parent application of the ’075 patent. Ex. 10 (Applicant Response Jan. 5, 2009) at 2; *Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1349 (Fed. Cir. 2004) (holding “the prosecution history of one patent is relevant to an understanding of the scope of a common term in a second patent stemming

from the same parent application.”); *see also* Ex. 11 ('075 File History: Applicant Response May 17, 2011) at 2. These terms were added by the Applicant to distinguish the claims over prior art, US 2007/0188425 (Ex. 12), disclosing a lighting panel that had reflectors perpendicular to the principal plane as shown below:

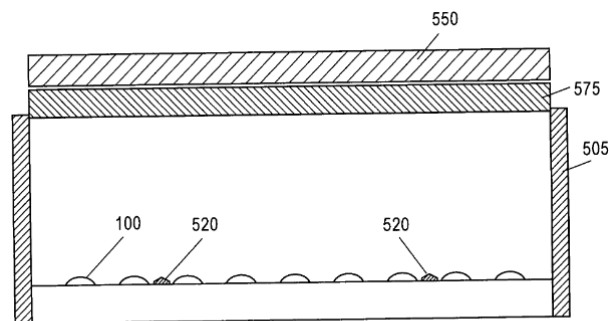
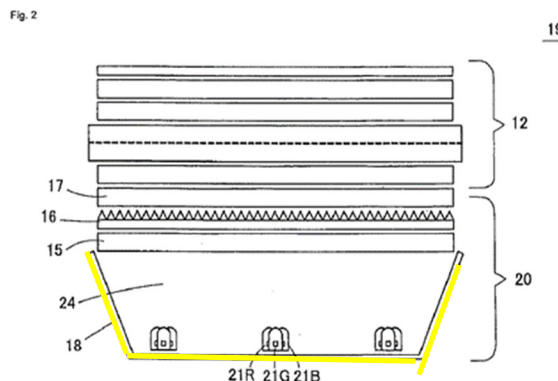


FIG. 5

Next, during prosecution of the '075 Patent, the Applicant admitted that the term “extend and are arranged parallel” was not disclosed by an angled reflector sheet as shown here:

Ex. 11 (Applicant Response May 17, 2011 at 4).

In distinguishing the claim language from the prior art, “Ayabe” (Ex. 13), the Applicant stated that “the reflective elements [] are



generally curved and do not satisfy the recitation that ‘the reflector sheet, the diffuser sheet and brightness enhancement film extend and are arranged parallel to the principal plane of the lighting panel[.]’” Ex. 11 (Applicant Response May 17, 2011); *see* Ex. 13 (Ayabe) at Fig. 2.

Thus, by Applicant’s own admission and arguments, perpendicular **or** angled reflector sheets do not extend and are not arranged parallel to the principal plane of the lighting panel because the entirety of the sheet is not parallel to the principal plane. That is the exact concept captured only by Hisense’s proposal. In contrast, Brightplus’ proposal violates the cardinal sin of claim construction by attempting to recapture subject matter that the Applicant explicitly gave up in securing allowance of the claim. *Bell Atl. Network Servs., Inc. v. Covad Communications Group, Inc.*, 262 F.3d 1258, 1266, (Fed. Cir. 2001) (limiting claimed “transceiver” to the three stated modes, because of arguments made by patentee to overcome prior art).

b) The extrinsic evidence also supports Hisense’s proposed construction.

Even the extrinsic evidence Brightplus identified contradicts Brightplus’ own proposal. For example, Brightplus relies on dictionary definitions that provide that a plane is “flat.” *Webster’s New Dictionary*, (Dkt. 49-2 at 4-5 (“Plane – adj. 1 flat level 2 of or having to do with flat surfaces or

points, lines, etc. on them [plane geometry] – n. 1 a flat, level surface 2 a level of achievement, etc. 3 short for AIRPLANE”).

Further, Brightplus recognizes that when two things are parallel, they do not intersect when extended. Rather, the entirety of the two objects lie or move in the same direction and never meet. *See, e.g., The Merriam-Webster Dictionary*, 2004 (Dkt. 49-2 at 5 (“1Parallel – adj 1: lying or moving in the same direction by always the same distance apart 2: similar in essential parts – parallelism n”); *Webster’s New Dictionary*, 2003 (*Id.* (“Parallel – adj. 1 extending in the same direction and at the same distance apart, so as never to meet 2 similar or corresponding”).

2. “on” (’075 claims 1 and 17; ’835 claims 1 and 18)

Hisense’s Proposed Construction	Brightplus’ Proposed Construction
directly on the other element or intervening elements may be present	directly on, or on with intervening elements present

The specifications explicitly define “on”. ’075 Patent (Ex. 4), 6:47-51; ’835 Patent (Ex. 7), 6:66-7:3. Only Hisense’s proposal tracks that definition:

Hisense's Proposed Construction	Specification
directly on the other element or intervening elements may be present	"on" or extending "onto" another element, it can be directly on or extend directly onto the other element or intervening elements may also be present."

As “the inventor’s lexicography governs,” the Court should adopt the inventor’s and Hisense’s definition. *Phillips* 415 F.3d at 1316.

Confusingly, Brightplus’ proposed construction omits a critical and important object, namely “the other element”. This leads to an absurd result. For example, under Brightplus’ proposal, the term “a brightness enhancement film on the reflector” in claim 1 would read “a brightness enhancement film directly on or on with intervening elements present.” ’075, claim 1; ’835, claim 1. This construction omits the object or thing upon which the claimed structure is “on.” Brightplus’ proposed construction does not clarify the term, rather it muddies it. It should be rejected.

B. U.S. Patent No. 7,690,812**1. “configured to conform to a shape of a protruding feature” (’812 claims 1 and 15)**

Hisense’s Proposed Construction	Brightplus’ Proposed Construction
the reflector sheet overlays (e.g., by deformation), and has the same shape, outline, or contour of a protruding feature	Plain and ordinary meaning. In the alternative, “reflector sheet that provides cover and relief for a shape of a protruding feature on the [solid state lighting] tile”

The ’812 patent relates to solid state lighting devices that comprise a lighting source (usually an LED), a substrate on which the LED is mounted, and a reflector sheet or film that is bound to or overlays the substrate.

The ’812 patent describes the relationship between these components and has examples explaining how these components relate to each other. It provides three basic embodiments or disclosures. First, the ’812 patent describes holes or “apertures” in the reflector sheet so that the LEDs can shine light into the device. ’812 Patent (Ex. 1), 5:16-29. Second, the ’812 patent describes a rigid reflector sheet that is formed with relief areas so that the reflector sheet can cover and go over protruding features in the substrate, such as wires or rivets. *Id.* at 5:5-16. Third, the ’812 patent describes a deformable reflector sheet that can conform to a protruding feature such that

the reflector sheet ends up having the same shape or outline as the underlying feature. *Id.* at 6:25-39.

The claim term at issue here recites a reflector sheet “configured to conform to a shape of a protruding feature[.]” Thus, the term claims the third embodiment described above. Other claims of the ’812 patent claim other aspects of what the ’812 patent discloses. Not content with the scope of the asserted claim, Brightplus attempts to expand the claim at issue by reading out the conforming limitation. This is plainly improper.

a) The intrinsic evidence supports Hisense’s construction

As previewed, the specification discloses two strategies for dealing with protrusions in the substrate. One is to create relief areas in the rigid substrate to cover a protrusion. The other is to use a deformable reflector sheet that will conform to the protrusion.

In describing an embodiment with a rigid and relatively thick reflector sheet, the specification detailed how to create relief areas in the reflector sheet to cover a protrusion. *See, e.g.*, ’812 Patent, 5:9-18. (“The reflector sheet 14 may include recesses 14B configured to provide relief for surface protrusions, such as an LWI 18. The recesses 14B may be molded into the reflector sheet 14 and/or created by removing material from the reflector

sheet as a step in a manufacturing process”). This embodiment is shown in FIG. 3 reproduced below.

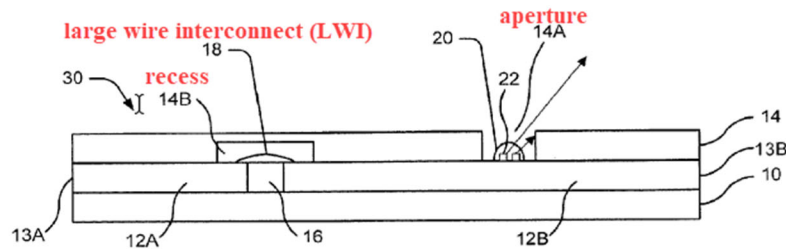


FIGURE 3

Id. at Fig. 3 (annotated).

In describing a second strategy for dealing with protrusions, the specification describes thin, deformable reflector sheets with rubber-like (“elastomeric”) properties. ’812 patent, 6:25-30 (describing “polymeric, elastomeric,

thermoplastic and/or thermoset” reflector

sheets). The specification

further provides that

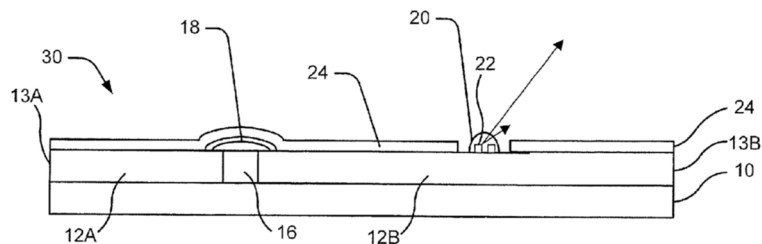


FIGURE 4

these reflector sheets include a “deformation characteristic that can provide conformance to [a] surface protrusion[.]....” *Id.* at 6:33-36. The specification even shows a thin reflector sheet conforming to an underlying protrusion in Fig. 4 which is reproduced here. Notably, reflector sheets with deformable

characteristics stand in stark contrast to rigid reflector sheets with relief areas as the latter might “press against the [protrusion], potentially causing the [protrusion] to break or pull away from the substrate...” whereas the former have deformable characteristics that conform to the protrusion.

Compare Fig. 3 with Fig. 4 and accompanying descriptions.

The prosecution of the claims further supports Hisense’s construction. For example, during prosecution, Applicant added the conforming language to differentiate its claims from prior art. Applicant Response July 2, 2009 (Ex. 14) at 3. And in allowing the revised claim, the Examiner explained that he or she understood the term “conform” to mean something that gives “the same shape, outline or contour to[.]” Office Action August 27, 2009 (Ex. 15) at 5, 8 citing *Webster’s Ninth New Collegiate Dictionary*, 1983. Applicant then later adopted the Examiner’s definition using that very same definition to explain how an aperture in a reflector sheet does not conform to the underlying feature because it would not have the same shape, outline or contour. *See* Applicant Response October 26, 2009 (Ex. 16) at 2 (referencing Fig. 4, “an aperture over the LW1 18 would not have the same shape, outline or contour as the LW1 18.”) (emphasis added).

Despite Applicant adopting the Examiner’s definition of the term, Brightplus now tries to re-write the claims by proposing an unduly broad

understanding of the term conforming and one that contradicts the way the Applicant understood the term when securing the patent.

b) The extrinsic evidence supports Hisense's construction

Finally, none of Brightplus' extrinsic evidence definitions support a definition of "cover and relief." Rather, that evidence support Hisense's construction. *See, e.g., The Merriam-Webster Dictionary and Webster's New Dictionary* (Dkt. 49-2 at 7).²

C. U.S. Patent No. 8,941,331

1. "a first light and a second light" ('331 claim 17)

Hisense's Proposed Construction	Brightplus' Proposed Construction
first and second light[s] have different wavelengths	Plain and ordinary meaning. In the alternative, "[at least a first string of solid state lighting devices configured to emit] a first light, and [a second string of solid state lighting devices configured to emit] a second light"

² "Conform – vb 1: to be similar or identical; also: AGREE 2: to obey customs or standards; also: COMPLY – conformable adj – conformist adj. *The Merriam-Webster Dictionary ...*

Conform – vt. 1 to make similar 2 to bring into agreement – vi. 1 to be or become similar 2 to be in agreement 3 to act in accordance with accepted rules, customs, etc. -conformism n. -conformist n. *Webster's New Dictionary[.]*"

The '331 Patent's specification, claims, and prosecution history each indicate, unequivocally, that by reciting that a "first string" emits a "first light" and that a "second string" emits a "second light," the Applicant intended that the "first and second lights" must be of different wavelengths (i.e., different colors).

The specification describes the different strings of lights as being different colors. For example, the Summary of the Invention indicates:

A lighting system according to some embodiments of the invention includes a lighting panel including a ***first string*** of solid state lighting devices configured to emit ***red light***, a ***second string*** of solid state lighting devices configured to emit ***green light***, and a ***third string*** of solid state lighting devices configured to emit ***blue light***

'331 Patent (Ex. 6), 4:1-8.

In fact, configuring each string to emit a different wavelength or color is ***necessary*** to achieve the result of the invention: "provid[ing] a lighting source that generates a ***white light*** having a high color rendering index, so that objects illuminated by the lighting panel may appear more natural." '331 Patent, 2:8-11; *see also* 2:17-21 ("When red, green and blue light emitting devices are energized simultaneously, the resulting combined light may appear white....") It simply would not make sense to implement the invention

using strings of light of the same color, as doing so would not achieve white light through blending.

Indeed, the specification consistently, and without exception, describes the different strings of lights as being different colors. *See, e.g.*, '331 Patent, 7:12-19 (The LED chips 16A-16D may include at least a **red** LED 16A, a **green** LED 16B and a **blue** LED 16C.) (emphasis added).

Figure 3 of the '331 Patent depicts the different strings of LEDs, which are described again as being of different colors:

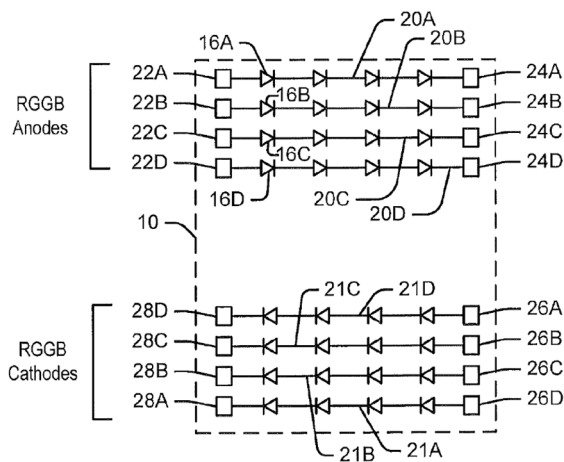


FIGURE 3

'331 Patent, 7:43-52 (describing “blue LEDs 16A”, “green LEDs 16B”, and “red LEDs 16C”).

Similar is true with respect to Figure 4, which depicts “bar assemblies” each including four strings of LEDs, described yet again as being of different colors. *See* '331 Patent, 8:61-67; 7:1-4 (“...each bar

assembly 30 may include four strings 23 of LEDs (i.e. one red, two green and one blue). Alternatively, each bar assembly 30 may include three strings 23 of LEDs (i.e. one red, one green and one blue”).

Claim 22 of the '331 Patent is consistent with this construction wherein the terms first light and second light specify the *specific* different wavelengths of the first/second lights, lending further support to the understanding that the strings of light must be different colors.

The prosecution history of the '331 Patent further evidences the understanding that the recited lights must be of different wavelengths. For example, in the Office Action dated August 8, 2013, at page 5, the Examiner wrote:

Regarding claim 47, Bruning et al disclose in figures 3-4, a lighting system, comprising: at least two of solid state lighting devices that are respectively configured to emit *at least a first light (Red)* and *a second light(green)*, respectively;

Ex. 17. The Examiner thus indicated his understanding that the recited first light and second light must be different colors. Importantly, the Applicant did not object. Response to Office Action dated November 8, 2013 (Ex. 18), at 8-13.

Brightplus' proposal to accord the claim phrase only its “plain and ordinary meaning” should be rejected for the simple reason that it does not clearly connote that the lights must be different colors. Moreover, Brightplus'

“alternative” proposed construction is illogical on its face, as the disputed claim term is not the various strings of lights but rather what they must emit: at least a “a first light and a second light.”

For the foregoing reasons, the Court should construe “a first light and a second light” as requiring that the recited lights be of different wavelengths.

2. “a pulse width modulation (PWM) controller that is coupled to the first current supply circuit and the second current supply circuit and that is configured to generate, for each of the first current supply circuit and the second current supply circuit, a first PWM control signal and a second PWM control signal that are supplied to the each of the at least first and second strings” (’331 claim 17)

Hisense’s Proposed Construction	Brightplus’ Proposed Construction
A PWM controller generates two PWM signals. The PWM signals are pulse width modulated signals and not frequency modulated. Both PWM signals generated by the PWM controller are supplied to the first string. Both PWM signals generated by the PWM controller are supplied to the second string. The same signal (current or voltage) spaced apart in time are not different signals.	Plain and ordinary meaning. In the alternative, a “PWM control signal” means a “signal that controls pulse width modulation” A “PWM controller” means a “controller that affects the width of pulses.” “Current supply circuit” means “circuit that supply current.” “Coupled” means “connected directly or through intervening elements.”

The parties fundamentally dispute whether a **single** PWM signal is “supplied to each of the at least first and second strings (Brightplus’ position), or whether **both** PWM signals are “supplied to each of the at least first and second strings” (Hisense’s position). Brightplus’ position (a single PWM signal supplied to each string) is ***expressly contradicted by the plain language of the claims*** and is otherwise unsupported by the Specification and prosecution history.

Claim 17 of the ’331 Patent requires “a [PWM] controller . . . configured to generate . . . a ***first PWM control signal*** and a ***second PWM control signal that ARE supplied TO THE EACH of the at least first and second strings.***” As a matter of grammar, the claim cannot encompass supplying only a **single** PWM signal “to each of the at least first and second strings. *See, e.g., Medtronic, Inc. v. Guidant Corp.*, No. CIV.00-1473 MJD/JGL, 2004 WL 1179338, at *19 (D. Minn. May 25, 2004) (“The claim does not state ‘one or more cardiac cycles.’ Had the claim included that language, there would be no question that the claim was intended to include the singular.”).

Moreover, the Applicant ***disclaimed*** the claim scope which Brightplus seeks now to capture through claim construction. “Where an applicant argues that a claim possesses a feature that the prior art does not possess in order to

overcome a prior art rejection, the argument may serve to narrow the scope of otherwise broad claim language.” *Rheox, Inc. v. Entact, Inc.*, 276 F.3d 1319, 1325 (Fed. Cir. 2002) (“Explicit arguments made during prosecution to overcome prior art can lead to narrow claim interpretations”); *Ekchian v. Home Depot, Inc.*, 104 F.3d 1299, 1304 (Fed. Cir. 1997) (“[S]ince, by distinguishing the claimed invention over the prior art, an applicant is indicating what the claims do not cover, he is by implication surrendering such protection.”).

Specifically, in the Response to Office Action dated June 3, 2014, at page 10, the Applicant distinguished a prior art reference called “Yen” from the claims of ’331 Patent on the basis of Applicant’s contention that “Yen is wholly silent regarding ***multiple signals*** (first PWM control signal and second PWM control signal) ***being provided to a single one of the current drivers.***” Ex. 19. The Applicant’s disclaimer was clear and unambiguous, and precludes Brightplus’ position. *Seachange Int’l, Inc. v. C-COR, Inc.*, 413 F.3d 1361, 1372-75 (Fed. Cir. 2005).

Additionally, Hisense anticipates that Brightplus – recognizing that the plain language of the claim requires ***two*** PWM signals for every string – will argue that a ***single*** signal ***spaced apart in the time domain*** can constitute ***multiple*** signals, in an effort to broaden the scope of its claim to

capture infringement. Brightplus' position must be rejected as lacking any support in the intrinsic record.

Accordingly, the Court should adopt Hisense's proposed construction.

D. Patent No. 7,872,705

1. "waveguide element" ('705 claim 1)

Hisense's Proposed Construction	Brightplus' Proposed Construction
An element designed to confine and direct light to the whole panel using internal reflection.	light spreading element

The intrinsic evidence and all relevant extrinsic evidence indicate that the plain and ordinary meaning of "waveguide element" in the context of the '705 Patent is "an element designed to confine and direct light to the whole panel using internal reflection."

The '705 Patent describes waveguides as follows:

A waveguide element is a device utilized to guide optical waves from a light entry region to a transmissive surface or exit region of the waveguide element. A waveguide 55 element may comprise a hollow structure with a reflective internal surface; alternatively, a waveguide may be substantially solid in nature. Glass, quartz, plexiglass, and other optically transmissive materials may be employable in the fabrication of transmissive portions of waveguides, with 60 reflective materials such as metals further employed to fabricate reflective portions. Other materials such as glass and plastic may be employed to fabricate additional portions of the waveguide. To minimize loss of light from the waveguide

element from an area other than the transmissive surface or 65 exit region, the waveguide element may also be surrounded in whole or in part by a material such as plastic to reflect any light back into the element.

'705 Patent (Ex. 2), 5:53-6:1. The '705 Patent further teaches that waveguides confine and direct light by "total internal reflection":

At least a portion of a waveguide may be substantially planar or tubular in shape, or of any other configuration known to those of skill in the art. Total internal reflection is desirable, such that all the light supplied to the waveguide element from associated light source(s) is transmitted out of the waveguide element via the transmissive surface.

'705 Patent, 6:2-8.

Hisense's expert witness Dr. Jack Josefowicz, an expert with decades of experience in the field of optics, including LEDs and LED backlighting, considered these disclosures among the rest of the of the '705 Patent, and understands them to be entirely consistent with the plain and ordinary meaning of waveguides in the context of LCD backlighting, which are optical elements that "confine and direct light" using "internal reflection" from a source point to the whole panel. Declaration of Jack Josefowicz Ph.D. re Claim Construction, ¶ 32. Specifically, the excerpts indicate that waveguides transmit light rays or waves from one point to another using total internal reflection so that all the light that is transmitted through the waveguide passes through it without any loss of intensity. Josefowicz, ¶ 32.

Additionally, each of the waveguide embodiments described in the '705 Patent is consistent with this plain and ordinary meaning of a waveguide, i.e., “an element designed to confine and direct light to the whole panel using internal reflection.” Josefowicz, ¶ 34.

For example, Figure 2 of the '705 Patent depicts waveguide element 14 and LCD panel 12. ('705 patent (Ex. 2), 12:51-57).

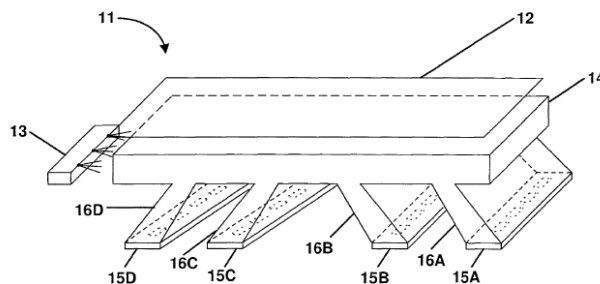


FIG.2

The patent describes: “[i]n FIG. 2, the first light source 13 provides light to a light entry region located along a lateral edge of the waveguide element 14 and additional strips of LED packages 15A-15D are optically coupled to the waveguide element 14 along light entry regions on extensions 16A-16D of the waveguide element 14.” '705 Patent, 12:57-62.³

³ Figure 3 is similar to Figure 2 except for the fact that the waveguide element's extensions are curved rather than straight, allowing for a thinner overall LCD and backlighting system relative to the embodiment of Figure 2. '705 Patent, 12:31-13:2, 13:5-9.

Further the patent consistently and uniformly describes waveguide devices that confine and direct light using internal reflection. *See* Fig. 6B (depicting a waveguide element with waveguide layers 44A-44B and LCD panel 42) and accompanying description at 7:49-62; Fig. 7 B (depicting waveguide element with waveguide layers 54A-54C and LCD panel 52) and accompanying description at 8:16-31; Figs. 8B and 8C (depicting a waveguide element with waveguide layers 64A-64D and LCD panel 62) and accompanying description 8:52-9:3; and Fig. 9B (depicting a waveguide element with waveguide layers 74A-74D and LCD panel 72) and accompanying description at 9:17-32. In each embodiment, the waveguide element and its constituent layers use internal reflection to confine and direct light from a light entry region to the LCD panel. Josefowicz, ¶ 34.

The relevant extrinsic evidence also supports Hisense’s proposed construction. Dr. Josefowicz consulted various technical dictionaries, each which confirms the plain and ordinary meaning of “waveguide element,” as elucidated by the ’705 Patent. Josefowicz, ¶ 37. For example, McGraw Hill’s Dictionary of Scientific and Technical Terms defines waveguide as, “[b]roadly, a device which **constrains or guides** the propagation of electromagnetic waves along a path defined by the physical construction of the waveguide” Josefowicz, ¶ 38 (citing McGraw Hill’s Dictionary of

Scientific and Technical Terms (Ex. 20)). And Wiley’s Electrical and Electronics Engineering Dictionary defines waveguide as “[a] material medium whose physical boundaries *confine and direct* propagating electromagnetic waves.” Josefowicz, ¶ 39 (citing Wiley’s Electrical and Electronics Engineering Dictionary (Ex. 21)).

Brightplus’ proposed construction, on the other hand, is contrary to the term’s plain and ordinary meaning. A POSA would never have considered the term “waveguide element” to mean “light spreading element.” Waveguides do not “spread” light. Josefowicz, ¶ 41. Rather, they confine and direct light along the core of the waveguide, as confirmed by the intrinsic evidence and the dictionary definitions. Josefowicz, ¶ 41.

It is possible that Brightplus seizes on two instances of disclosure in the ’705 Patent, indicating that waveguides may be used to spread light. But the patent’s recitation of “spreading” light in those instances simply refers to a waveguide’s ability to direct light from one location to another location. Josefowicz, ¶ 42. It is also possible that Brightplus, through its incorrect proposed construction, may be attempting to capture a “lens,” also taught by the patent, within the scope of the “waveguide element” term. Concave lenses “spread” light as that phrase is used in the field of optics, but a lens is not a waveguide. Josefowicz, ¶ 44. A lens is an optical component through which

light passes and refracts at the incident surface and exit surface. Josefowicz, ¶ 44. Depending on the shape and refractive index of the lens, the light may be spread or focused as it exits the lens. Josefowicz, ¶ 44. A lens does not confine or direct light rays within its core, nor is there total internal reflection. Josefowicz, ¶ 44. There is only refraction. Josefowicz, ¶ 44.

Additionally, the '705 patent discusses lenses separately from waveguides, where it teaches that the “LED package,” which is not part of the waveguide, may also include a “lens.” '705 Patent, 11:16-18.

Brightplus' submitted definitions are contrary to its proposal that the recited “waveguide element” term means “light spreading element.” For example, Brightplus has submitted a definition from the *Modern Dictionary of Electronics*, Sixth Edition, defining “waveguide” as “[a] system of material designed to confine direct electromagnetic waves in a direction determined by its physical boundaries.” This definition, as a POSA would expect, does not suggest that waveguides “spread” light, but rather that they “confine and direct light.” Josefowicz, ¶ 47; Dkt. 49-2 at 15.

Also, for example, Brightplus has submitted a definition from the McGraw-Hill Dictionary of Scientific and Technical Terms, Seventh Edition, defining “waveguide” as, “[b]roadly, a device which constrains or guides the propagation of electromagnetic waves along a path defined by the physical

construction of the waveguide.” Dkt. 49-2 at 15-16. Here too, Brightplus’ submitted definition does not suggest that waveguides “spread” light, but rather that they “constrain or guide” light, which is akin to “confining and directing light.” Josefowicz, ¶ 48.

Brightplus may attempt to argue that dependent claim 30 of the ’705 Patent supports its proposed construction, given claim 30 recites that “at least one waveguide element comprises a prism.” However, there is no tension between claim 30 and Hisense’s proposed construction, as claim 30 clearly recites that the “waveguide element” ***comprises*** a prism, not that the “waveguide element” ***is*** a prism. *See also* Josefowicz, ¶¶ 49-53

For the foregoing reasons, the Court should construe “waveguide element” as meaning “an element designed to confine and direct light to the whole panel using internal reflection.”

2. “light entry regions” (’705 claim 1)

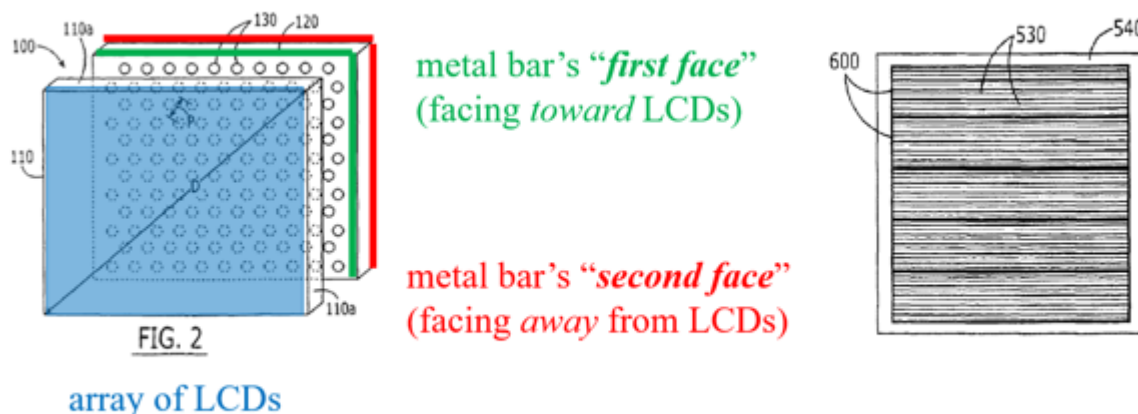
Hisense’s Proposed Construction	Brightplus’ Proposed Construction
openings in a physical device that allow light to enter the device so that it can be guided (confined and directed by reflection)	regions for receiving light

Claim 1 of the '705 Patent requires “a plurality of light entry regions.” Further claim 1 requires at least two “strips” of LEDs which each “emit light into the at least one waveguide element” at respective “light entry regions.” Brightplus’ proposed construction reflects a possible effort to construe “light entry regions” independently and in isolation from the rest of the claim language, in order to allow it to argue to the jury that *any region* that receives light satisfies the phrase regardless whether the light entering that region is “confined and directed” through the waveguide to the panel using internal reflection. *See* Section IV. D. 1 (“waveguide element”). For the benefit of the jury, and consistent with the invention of the '705 Patent, the Court should construe “light entry regions” to mean “openings in a physical device that allow light to enter the device so that it can be guided (confined and directed by reflection).”

E. RE 42,598

RE 42,598 and RE 45,796 were “reissued” from U.S. Patent No. 7,322,732. 35 U.S.C. § 251 (“Reissue of Defective Patents”) provides that when a patent “is, through error, deemed wholly or partly inoperative or invalid” the USPTO shall “reissue the patent for the invention disclosed in the original application.” RE 45,796 was filed as a “continuation” of RE 42,598 (*see* face of RE 45,796, Ex. 9), and they share a common specification.

Claim 46 covers a flat panel display having a “front face” comprising a planar array of LCD devices and a “back face” comprising “at least one solid block.” Ex. 8 at claim 46. The solid block forming the back of the flat panel has two opposing faces that “extend parallel” to the array of LCDs: the first face faces “toward” the array of LCD devices and the second face faces “away from” the array of LCD devices. *Id.* The first face of the solid block, *i.e.*, the one facing toward the array of LCDs, has a plurality of LEDs mounted on it. Ex. 8 at 7:45-65; *id.* at Figs. 1 & 2. Instead of utilizing a unitary metal block as shown below in Figure 2 (on the left), the device may utilize “a plurality of solid metal block bars 600” (Ex. 8 at 8:6-22) to mount the array of backlighting LEDs, as shown below in Figure 6 (on the right):



Claim 46 covers usage of “solid block bars” to mount the backlighting LEDs, and the two disputed terms are in its final clause: “wherein the at least one

solid block comprises a plurality of solid block bars that are [1] ***arranged face-to-face*** to be [2] ***congruent to the planar array of LCD devices.***

1. “arranged face-to-face” (’598 claim 46)

Hisense’s Proposed Construction	Brightplus’ Proposed Construction
Indefinite. Alternatively, “front face of one bar is stacked against the back face of another bar in a direction perpendicular to the array of LCD devices”	Plain and ordinary meaning. In the alternative, “aligned widthwise or lengthwise in a plane.”

a) Claim 46 Is Indefinite

Even though RE 42,598 was reissued, it remains “defective” as indefinite because of admissions Applicant made in the follow-on reissue with respect to the term, “arranged face-to-face.”

The Patent Office and Applicant extensively discussed this term during prosecution of RE 45,796, which again, was filed as continuation of RE 42,598. In the discussion the Patent Owner admitted that the phrase “arranged face-to-face” was indefinite.

That happened when the Applicant amended the claims in the later reissued RE 45,796 to recite bars connected “end-to-end,” *instead of* bars “arranged face-to-face” as is recited in claim 46 of RE 42,598. *Compare* Ex.

22 (June 27, 2011, claim 28) (“a plurality of solid [metal] block bars that are arranged face-to-face”) *with* Ex. 23 (April 2, 2012, new claim 53) (“a plurality of bars that are connected end-to-end”). The examiner opined that the new “end-to-end” claims were invalid (under 35 U.S.C. §§ 112, 251) because a plurality of bars or tiles “that are connected end-to-end is not supported by the Specification” and not supported by the parent patent from which the application was being reissued. Ex. 24 (November 20, 2012) at 2-3.

In response, the Applicant stated that the phrase “face-to-face” was “***clearly in error***” because the plurality of bars shown in the figures are connected “end-to-end” and are ***not*** arranged “face-to-face.” As it explained, if the plurality of bars on which the LEDs are mounted were “oriented face-to-face” then, nonsensically, “***some of the LEDs would be covered by another tile or block, or the LEDs would radiate in two opposition directions, contrary to Figures 1-5 and the associated passages of the specification.***” Ex. 25 (January 2, 2013 Response) at 6. The Applicant requested “***to delete the erroneous ‘face-to-face’ language***” phrase from the specification and stated that it “***regret the confusion that may have***

been created.” *Id.*⁴ These statements apply with full force to claim 46 of RE 42,598 because it recites “face-to-face.” *See McClain v. Ortmyer*, 141 U.S. 419, 425 (1891) (statements by patentee in prosecuting a second application limited scope of the discussed term as recited in patentee’s first patent); *CVI/Beta Ventures, Inc. v. Tura LP*, 112 F.3d 1146, 1159 (Fed. Cir. 1997) (finding statements made during reexamination of a second patent “compelling” as to the meaning of a claim term recited in the parent patent); *cf. Kao Corp. v. Unilever U.S., Inc.*, 441 F.3d 963, 973 n.5 (Fed. Cir. 2006) (using subsequently filed application to construe claims in earlier patent).

Because Applicant admitted that bars “attached face-to-face” is “clearly in error,” “contrary to Figures 1-5 and the associated passages of the specification,” causes “confusion,” and nonsensical, claim 46 is indefinite. *See Synchronoss Techs., Inc. v. Dropbox, Inc.*, 987 F.3d 1358, 1366-67 (Fed. Cir. 2021) (finding “nonsensical” claims indefinite); *Trustees of Columbia Univ. in City of New York v. Symantec Corp.*, 811 F.3d 1359, 1367 (Fed. Cir. 2016) (same). Adopting Brightplus’ proposal—under which “face-to-face” effectively would mean “end-to-end”—would “require rewriting the claims,” but it is not

⁴ *See also* Ex. 26 (July 31, 2013 Response) at 7 (Applicant stating that a prior art reference cited by the examiner discloses solid block bars “that are mounted face-to-face” which “is opposite” to bars mounted “end-to-end”).

the Court’s “function to rewrite claims to preserve their validity.”

Synchronoss, 987 F.3d at 1367 (internal quotation marks omitted).

**b) Alternatively, “Arranged Face-to-Face” Means
“the Front Face of One Bar is Stacked Against
the Back Face of Another Bar in a Direction
Perpendicular to the Array of LCD Devices.”**

If the phrase “arranged face-to-face” can be given a definite meaning, it means that the “front face of one bar is stacked against the back face of another bar in a direction perpendicular to the array of LCD devices.” Indeed, the “face” of a claimed bar is the surface of the bar extending “*parallel* to the planar array of LCD devices.” Ex. 8, claim 46.

For its part, Brightplus erroneously proposes that the term means “aligned widthwise or lengthwise in a plane”—which effectively means that the bars are connected “end-to-end.” But again, the Applicant stated unequivocally that the bars in RE42,598’s figures are *not* arranged “face-to-face” (as recited in claim 46 of RE42,598) but are instead arranged “end-to-end” (as recited in claim 46 of RE45,796). As it explained, arranging the bars “face-to-face” would mean that “some of the LEDs would be covered by another tile or block, or the LEDs would radiate in two opposition directions, contrary to Figures 1-5 and the associated passages of the specification.” See Ex. 25 (January 2, 2013 Response) at 6. The logic of these statements

requires that “face-to-face” means the front face of one bar is stacked against the back face of the next bar. This is stacking *perpendicular* to the plane of the LCDs and not in the plane as Brightplus would now have it.

However, the claim language, the specification, and the prosecution history discussed above, decisively foreclose Brightplus’ argument. *See Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324-25 (Fed. Cir. 2003) (“But where the patentee has unequivocally disavowed a certain meaning to obtain his patent, the doctrine of prosecution disclaimer attaches and narrows the ordinary meaning of the claim congruent with the scope of the surrender.”); *Rheox, Inc.*, 276 F.3d at 1325-27 (finding claim did not cover “triple superphosphate,” an embodiment expressly disclosed in the written description, because the patentee cancelled a claim covering “triple superphosphate” and expressly disclaimed that compound in its arguments to the examiner to gain patent allowance).

2. “congruent to the planar array of LCD devices” (’598 claim 46)

Hisense’s Proposed Construction	Brightplus’ Proposed Construction
having the same size and shape as the planar array of LCD devices	positioned to cover substantially the same area as the planar array of LCD devices

The term “congruent” should be given its accepted meaning of “having the same size and shape.” Brightplus seeks to redefine “congruent” in two ways that are divorced from the context of the patent and contrary to the word’s plain and ordinary meaning. First, Brightplus seeks to delete any same “shape” requirement. Second, it seeks to water down the “same size” requirement to only mean covering “substantially the same area.”

Simple hypotheticals show that Brightplus’ construction is incorrect. A triangle is not “congruent” to a square—even if those different shapes cover the same area. Similarly, a square having an area of 4 square inches is not congruent to a square having an area of 4.1 square inches—even though the two shapes are identical, and their areas are “substantially” the same. Congruency requires more than “covering substantially the same area.”

Moreover, the patent’s figures uniformly and consistently show that the bar (or collective “plurality of bars” as shown in Figure 6) used to mount the LEDs has the same shape and size as the array of LCDs. *See* Ex. 8, Figs. 1-6.

Further, during prosecution of the parent patent, the examiner indicated that the “prior art does not teach or suggest” a “plurality of solid metal block bars arranged face-to-face congruently to the planar array of LCD devices.” Ex. 27 (June 26, 2007 Office Action) at 12. The Applicant then amended all claims to include such a limitation. Ex. 28 (August 15, 2007

Response to Office Action) at 4 (*see* claim 17). Subsequently, in prosecution of RE 42,598, Applicant attempted to delete “congruent to” from the claims. Ex. 29 (October 13, 2010 Office Action) at 4-5. The examiner found that this violated the “recapture rule,” which prohibits an Applicant from “recapturing” claim scope that had been “surrendered” in the prosecution of the original patent. *See id.* The Applicant then re-inserted “congruent to” (Ex. 30 (Dec. 23, 2010 Response to Office Action) at 14), and the examiner allowed the claims. Ex. 31 (March 22, 2011 Notice). Here, Brightplus, via its re-definition of “congruent,” again seeks to impermissibly recapture claim scope that was surrendered during prosecution. Namely, under Brightplus’ proposed construction of “congruent,” the claimed block bar would *not* have to be the same *shape* as the array of LCDs at all, nor would it have to be the *same size* (it would merely have to cover “substantially” the same area).

Finally, even the dictionary cited *by Brightplus* confirms that the plain and ordinary meaning of “congruent” is “geometric figures of the same shape and size.” Dkt. 49-2 at 19. All other record contemporaneous general purpose and technical dictionaries agree.⁵ Brightplus does not, and cannot, cite evidence supporting its litigation-inspired re-definition of “congruent.”

⁵ Ex. 32 (Collins Dictionary of Mathematics) (“having **identical size and shape** so they may be **exactly** superimposed”); Ex. 33 (Collins English

F. RE 45,796**1. “the plurality of solid metal block bars being connected end-to-end” (‘796 claim 46)**

Hisense’s Proposed Construction	Brightplus’ Proposed Construction
An end of each of the plurality of bars is physically connected to an end of at least one adjoining bar	Plain and ordinary meaning In the alternative, “the plurality of solid metal block bars being connected such that one end of a solid metal block bar is positioned next to an end of another solid metal block bar”

Claim 46 of RE 45,796 recites “a plurality of solid metal block bars, a respective one of which includes first and second opposing faces and four ends therebetween, the plurality of solid metal block bars being connected end-to-end in the flat panel, the plurality of solid metal block bars including mating surfaces therebetween . . .” The claim specifies that each bar has two opposing faces (*i.e.*, the sides parallel to the array of LEDs) and four “ends.”

The claim does not merely require one end of a bar to be “positioned next to” an “end of another solid metal block bar” as Brightplus would have it. Rather, the claim requires that the bars are “*connected* end-to-end in the flat panel.” That the bars are “connected” means that they are in physical

dictionary) (“having **identical shapes** so that **all points correspond**”); Ex. 34 (Cambridge Advanced Learner’s Dictionary) (“a shape in mathematics that has **the same shape and size** as another”) (emphasis added in each).

contact, and Hisense’s proposed construction is therefore more precise and faithful to the intrinsic evidence.

The specification also supports Hisense’s position. First, Figure 6 shows that the plurality of bars (600) are physically and directly connected end-to-end with no gaps between them. Second, the specification states that “solid metal block bars 600 and/or tiles 700 may be maintained in place by the frame 540 and/or by various interconnection schemes, including mating surfaces and/or fasteners on the bars and/or tiles that can provide mechanical and/or electrical interconnection of the LED devices 130 on the various bars 600 and/or tiles 700.” While the specification provides alternatives for maintaining the bars “in place” that may not require the bars to be physically connected to each other (*e.g.*, using the frame), it also describes use of “mating surfaces and/or fasteners on the bars” and claim 46 expressly requires that the plurality of solid metal block bars are “connected end-to-end in the flat panel” and include “mating surfaces therebetween.”

2. “including mating surfaces therebetween” (’796 claim 46)

Hisense’s Proposed Construction	Brightplus’ Proposed Construction
The surfaces at the end of the bars that are in contact	including surfaces for joining as a pair

As discussed above with the term “the plurality of solid metal block bars being connected end-to-end,” the claim requires that the ends of the bars are in direct physical contact. Hisense’s proposed construction is more precise because it requires that the surfaces “are in contact.” Indeed, the Applicant distinguished the claims over prior art cited by the examiner because the bars of the prior art were “spaced apart from one another.” Ex. 35 (April 2, 2012 Response) at 8-9. The Applicant thus disclaimed any claim scope where the ends of the bars are not physically and directly connected. *Omega Eng’g*, 334 F.3d at 1324-25. Brightplus’ proposal says nothing about the ends of the bars being “in contact” and therefore should be rejected.

V. CONCLUSION

For the foregoing reasons, Hisense respectfully requests that the Court adopt Hisense’s proposed constructions of the disputed claim terms.

Dated: July 10, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2023, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which automatically sends email notification of such filing to the following attorneys of record:

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