

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ICPillar LLC,

Plaintiff,

v.

Arm Ltd. and Arm, Inc.,

Defendants.

Civil Action No. 1:23-cv-00282-ADA

JURY TRIAL DEMANDED

Plaintiff ICPillar's Sur-Reply Claim Construction Brief

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I. Introduction.

For “categorized input and output characteristics,” Arm fails to defend its attempt to import a hierarchical database into claim 1 and 8 of the ’899 patent. Reply at 1-3. For all other terms, Arm either has no substantive position on the meaning of the disputed language (and is reflexively objecting to ICPillar’s proposed constructions) or Arm is refusing to disclose the substance of its positions. In either case, Arm cannot successfully show that ICPillar’s proposed constructions depart from the plain and ordinary meaning of the claim language without explaining what Arm contends the plain and ordinary meaning to be and how it is different from ICPillar’s proposed constructions.

II. Disputed terms and phrases.

A. “categorized input and output characteristics...”

Arm continues to quibble with the use of “qualities” in ICPillar’s proposed construction, but Arm does not actually dispute that the ordinary meaning of “characteristic” includes “quality.” Reply at 1-2.

Arm argues: “In stark contrast to ICPillar’s proposal, Arm’s construction properly accounts for the plain claim language requiring that the ‘input and output characteristics’ of the electronic device be ‘categorized.’” Reply at 2. This argument does not make sense. ICPillar’s proposal expressly requires “categorized characteristics or qualities of inputs and outputs of an electronic device,” whereas Arm’s proposal removes the claim term “categorized.”

Arm argues that its proposed requirement that the input and output characteristics be “selected from a hierarchical classification database” is “unquestionably correct.” Reply at 2. Arm fails to demonstrate this. Arm does not actually contend that the plain and ordinary meaning of “categorized” requires the use of a “hierarchical classification database” (or any database for that matter). *Id.* Nor does Arm even purport to identify any special definition or

disclaimer in the specification or prosecution history that would require Arm’s proposed limitation. *Id.* at 2-3. That should be, and is, the end of the story when it comes to this issue. *Trs. of Purdue Univ. v. Stmicroelectronics Int’l N.V.*, No. 6:21-CV-00727-ADA-DTG, 2023 U.S. Dist. LEXIS 188644, at *3-4 (W.D. Tex. Oct. 10, 2023) (“The ‘only two exceptions to [the] general rule’ that claim terms are construed according to their plain-and-ordinary meaning are when the patentee (1) acts as his/her own lexicographer or (2) disavows the full scope of the claim term either in the specification or during prosecution.” (quoting *Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012))).

Yet Arm persists with its argument—on the sole ground that “the ’899 Patent repeatedly and exclusively describes ‘categorized’ in relation to the ‘hierarchical database.’” Reply at 3 (citing passages from the ’899 specification). This is a classic error and a “cardinal sin” of claim construction—importing limitations into the claims. *Maxell, Ltd. v. Amperex Tech. Ltd.*, No. W-21-CV-00347-ADA, 2022 U.S. Dist. LEXIS 204753, at *4 (W.D. Tex. Nov. 10, 2022) (“One of the cardinal sins of patent law [is] reading a limitation from the written description into the claims.” (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1320 (Fed. Cir. 2005))).

Making matters worse, the ’899 specification does not “exclusively describe[] ‘categorized’ in relation to the ‘hierarchical database,’” as Arm asserts. Reply at 3. The Summary of Invention section of the patent discloses numerous “aspects of the invention” that include “categorized input and output characteristics” and contains no reference to a hierarchical database. ’899 col. 4:62-5:2; col. 5:21-33; col. 5:46-52. It is only in the Detailed Description of the Preferred Embodiments section of the patent, which is what Arm relies on (Reply at 3, n. 3), that the hierarchical database embodiment is disclosed. And that does not provide a basis for importing a hierarchical database into claims that do not recite one. *Maxell*, 2022 U.S. Dist. LEXIS 204753, at *4 (W.D. Tex. Nov. 10, 2022) (“[I]t is improper to read limitations from a

preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.” (citing *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004))).

B. “a memory of a processor...”

ICPillar’s responsive brief demonstrated that the “a” in this phrase must be construed as “one or more” under binding precedent. Resp. Br. at 4-7; *Salazar v. AT&T Mobility LLC*, 64 F.4th 1311, 1315 (Fed. Cir. 2023) (“[T]he indefinite article ‘a’ means ‘one or more’ in open-ended claims containing the transitional phrase ‘comprising.’” (internal citation omitted)).

Unable to refute this showing, Arm now suggests that ICPillar was attacking a straw man. Reply at 3 (“Despite devoting over five pages to this claim term, ICPillar (i) misses the point of Arm’s *Salazar*-based argument” which applies “regardless of whether the claims recite only one ‘processor’ (as is the case here) or multiple processors.”). ICPillar did not attack a straw man. Arm clearly argued for limiting the claims to the use of a *single* memory and a *single* processor:

Plaintiff’s attempt to transform the plain and ordinary meaning of the claim language requiring a single “memory” and a single “processor” into “one or more” memories and processors is improper and should be rejected.

Opening Br. at 9 (emphasis added). And ICPillar firmly rebutted that argument (Resp. Br. at 4-7), as demonstrated by the lack of any rejoinder from Arm on the issue, other than the meager “(as is the case here)” parenthetical shown above. Reply at 3. Accordingly, there is no genuine dispute that the “a” in “a memory” and “a processor” in ’899 claim 1 and ’657 claim 1 means “one or more.”¹

¹ Later in its Reply, when making a different argument (about the use of “associated with” in ICPillar’s proposed construction) Arm confusingly switches gears to assert that “the construction advanced by ICPillar would render the ‘one or more’ language in independent claims 8 of the ’899 Patent and 9 of the ’657 Patent superfluous.” Reply at 6. This argument

Arm then pivots to arguing that “*Salazar* requires that the *same processor* is required to perform *each step* of the claimed methods” (Reply at 3, emphasis by Arm), and even claims that ICPillar appears to agree with this requirement. *Id.* at 4 (quoting Response at 5 with a liberal use of ellipses). ICPillar’s brief explained the ruling in *Salazar* and then stated:

This ruling has no applicability to this case, where there is no dispute about whether the “analyzing by the processor” and “outputting by the processor” elements require that at least one processor be capable of performing each of the claimed functions.

Resp. Br. at 5. The reason there is no dispute about this issue is because Arm has not proposed *any* such construction for the claim language at issue (“a memory of a processor programmed by software commands to design a hardware integrated circuit and associated operating software”), much less one that would mimic the “same processor” / “each step” construction that was given for the claims at issue in *Salazar*. And to the extent Arm is attempting to offer such a proposed construction now, that attempt has been waived and must be rejected. *Maxell, Ltd.*, 2022 U.S. Dist. LEXIS 204753, at *69 (W.D. Tex. Nov. 10, 2022) (“Arguments raised for the first time in a reply brief . . . are waived.” (quoting *United States v. Jackson*, 426 F.3d 301, 304 n.2 (5th Cir. 2005) (ellipses in original))).

Arm continues to complain about ICPillar’s use of “instances” of memory in its proposed construction. Reply 4 (“[T]he bald *ipse dixit* of ICPillar’s attorneys does not justify injecting language into the claims” that is “improper and inconsistent with the term’s plain meaning.”). This objection is without any substance or support itself. Arm is simply objecting to object.

fails. The use of one word or phrase in one independent claim does not render the use of a different word or phrase in another independent claim superfluous simply because the meaning of the former and latter are equivalent or interchangeable. *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380-81 (Fed. Cir. 2006) (“It is not unusual that separate claims may define the invention using different terminology, especially where (as here) independent claims are involved.” (internal citation omitted)).

Arm also continues to protest the use of “associated with” in ICPillar’s proposed construction, for no apparent reason other than to accuse ICPillar of “injecting” language into the claims. Reply at 5. Significantly, Arm does not address or rebut ICPillar’s assertion that “the former phrase [“associated with”] more clearly conveys that the memory need not be located *within* or *form part of* the processor. Rather, the memory is “of” the processor in that it is associated with and used by the processor. ’899 Fig 11; *id.* at 16:47-17:3.” Resp. Br. at 8.

C. “parameter” terms

Arm continues to rail against the use of “relating to.” Reply at 6-9. But Arm refuses to explain what the plain and ordinary meaning of the parameter terms is if it is not the words used by ICPillar’s proposed constructions. *Id.* This is not an issue of who has the “burden” (as Arm asserts)—no one does, this is a *Markman* proceeding, not summary judgment. This is an issue of Arm failing to actually articulate its position. If “one or more parameters associated with an electronic device relating to the control of the electronic device” does not reflect the ordinary meaning of “control type parameter associated with an electronic device,” then what does? Arm has no answer. Not for this term or for the other parameter terms. Arm is simply objecting to every minute detail of ICPillar’s proposed constructions by reflex.

For “input type parameter,” Arm again takes a detour into ICPillar’s infringement contentions. Reply at 8. If Arm wants to argue in this case that a “memory system input” does not meet the “input type parameter” limitation of the claims, it is free to hire an expert to provide that opinion. But Arm provides no legal or factual basis for the Court to adopt this non-infringement opinion (which is meritless) in its claim construction order. Nor does Arm provide any basis for its related non-infringement argument that an input parameter for an “optional sub-component” of an electronic device is not an input parameter for that electronic device. Reply at 8. That’s equivalent to arguing that a “smoke detector for a house” is not met by a smoke

detector that is placed in the living room of a house. The argument makes no sense, and it has no place in this claim construction proceeding.²

D. “fabless development kit”

ICPillar demonstrated that its proposed construction reflects the ordinary meaning of the constituent words of this phrase as read in light of the specification. Resp. Br. at 14-16. In reply, Arm continues to assert a mixture of arguments that are neither coherent nor persuasive. Reply at 9-10. And Arm continues to argue for the “plain and ordinary meaning” but, with one small exception, refuses to articulate what that meaning is and how it differs from ICPillar’s proposed construction. *Id.* The exception is Arm’s criticism that ICPillar’s proposed construction “appears to foreclose a single piece of software as the claimed ‘fabless development kit.’” *Id.* at 10 (citing Opening Brief at 16-17). There is no argument in Arm’s opening brief (at pages 16-17 or elsewhere) about whether the “fabless development kit” can be a “single piece of software.” Opening Br. at 14-17. Moreover, ICPillar’s proposed construction properly recites “a collection of software applications or programs” because the word “kit” conveys the presence of a collection or set of such tools, not just a single tool. ’657 at 10:26-34 (“[T]he FDK [fabless development kit]...may function similarly to a so called software development kit...[A] software development kit is typically *a set of software development tools.*” (emphasis added)).³

² Arm no longer attempts to argue that “input type parameter” refers to inputs that result from a user interaction with the device. Opening Br. at 12.

³ The word “kit” is not a technical term. Its use connotes a collection or set of items across a broad range of contexts. <https://www.merriam-webster.com/dictionary/kit> (“kit: (1) a collection of articles usually for personal use [a travel kit]; (2) a set of tools or implements [a carpenter’s kit]; (3) a set of parts to be assembled or worked up [a model-airplane kit]; (4) a packaged collection of related material [a convention kit]”); Merriam-Webster’s Collegiate Dictionary, Eleventh Edition (2014) (same).

III. Conclusion.

ICPillar’s proposed constructions represent the plain and ordinary meaning of each disputed term or phrase. Arm’s proposed construction for “categorized input and output characteristics” clearly does not. For all other terms, Arm’s global objection to ICPillar’s proposals—without revealing its own position on the actual meaning of the disputed terms and phrases—strongly suggests that Arm is withholding its contentions as to the meaning of the claim language until it serves expert reports. This approach is improper and should be roundly rejected.

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Respectfully submitted

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