

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

**AKOUSTIS TECHNOLOGIES, INC. AND
AKOUSTIS, INC.,**

Plaintiff,

vs.

QORVO, INC.,

Defendant.

Civil Action No. 2:23-cv-00180-JRJ-RSP

JURY TRIAL

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Plaintiffs Akoustis Technologies, Inc. and Akoustis, Inc. (“Akoustis”) and Defendant Qorvo, Inc. (“Qorvo”) file this joint claim construction and prehearing statement pursuant to the First Amended Docket Control Order (Dkt. 49).

The claim construction hearing, which is currently scheduled for July 23, 2024 at 9 a.m. before Magistrate Judge Roy Payne, is set to address the disputed terms of asserted U.S. Patent No. 7,250,360 (the “’360 Patent”).

A. P.R. 4-3(a)(1): Agreed Claim Constructions

In accordance with Patent Rule 4-2(c), the Parties met and conferred to narrow the issues and begin finalizing preparation of this Joint Claim Construction and Prehearing Statement. The Parties have agreed to the following constructions:

Term:	Agreed Construction:
Claim 1 in its entirety; order of steps a)-d)	Claim 1’s steps a)-d) must be performed in order.
Claim 1 preamble	Claim 1’s preamble is limiting.

B. P.R. 4-3(a)(2): Proposed Constructions for Terms in Dispute

The Parties' respective proposed constructions for disputed terms are listed below. The Parties' respective identifications of evidence are provided in Exhibit A (for Akoustis) and Exhibit B (for Qorvo).

#	Term	Akoustis' Proposed Construction	Qorvo's Proposed Construction
1	epitaxial layer (claims 1 and 9)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"a layer having a crystalline structure in a specific orientation relationship relative to the substrate"
2	lattice mismatched substrate (claim 1)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"a crystalline substrate with a lattice constant that differs from the epitaxial layer"
3	a substrate / the substrate / said substrate (claims 1, 2, 6, 10)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"the lattice mismatched substrate" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
4	pre-treating (claims 1, 6, and 10)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary. A POSITA would understand this term in light of the entire patent and claim to involve forming a layer of material or something approximating a layer of material and not merely droplets.	"wetting" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.

#	Term	Akoustis' Proposed Construction	Qorvo's Proposed Construction
5	a surface of the substrate (claim 1)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"an area on the substrate's surface upon which a layer may be grown"
6	at an elevated growth temperature (claim 1)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary. A POSITA would understand this term in light of the entire patent and claim to involve a temperature sufficient for depositing a desired element or compound using chosen reactant(s).	Indefinite pursuant to 35 U.S.C. 112, 2nd ¶
7	prior to introducing a group V reactant or a group VI reactant (claim 1)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"prior to introducing any group V or group VI reactant" -OR- "prior to introducing the group V or group VI reactant recited in step c)" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
8	nucleation layer (claims 1, 7, and 12)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A layer between the buffer layer and wetted substrate made from the reactants chosen in steps b) and c)" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.

#	Term	Akoustis' Proposed Construction	Qorvo's Proposed Construction
9	buffer layer (claims 1 and 12)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A layer between the nucleation and epitaxial layers that transitions at least in part the lattice constant of the lattice mismatched substrate to that of the epitaxial layer." If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
10	group II reactant (claims 1 and 10)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A reactant including an element from Group II of the periodic table or a compound thereof" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
11	group III reactant (claims 1, 3, 4, and 10)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A reactant including an element from Group III of the periodic table or a compound thereof" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
12	group V reactant (claims 1, 12, and 13)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A reactant including an element from Group V of the periodic table or a compound thereof" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
13	group VI reactant (claims 1 and 12)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A reactant including an element from Group VI of the periodic table or a compound thereof" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
14	gallium reactant (claims 3 and 6)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A reactant including gallium or a compound thereof" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.

#	Term	Akoustis' Proposed Construction	Qorvo's Proposed Construction
15	aluminum reactant (claims 3 and 6)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A reactant including aluminum or a compound thereof" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
16	boron reactant (claim 3)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A reactant including boron or a compound thereof" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
17	indium reactant (claim 3)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"A reactant including indium or a compound thereof" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
18	growing / grow / grown (claims 1 and 12)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"Creating a layer of material upon a workpiece via chemical reactions between reactants or reactants and the workpiece" / "Create a layer of material upon a workpiece via chemical reactions between reactants or reactants and the workpiece" / "A layer of material is created upon a workpiece via chemical reactions between reactants or reactants and the workpiece" If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.
19	preheating said substrate in hydrogen (claim 10)	Plain and ordinary meaning, <i>e.g.</i> , not indefinite and no further construction necessary.	"After step a) and before step b), exposing the substrate to hydrogen at the growth temperature to clean the surface of the substrate." If not construed in this manner, indefinite pursuant to 35 U.S.C. 112, 2nd ¶.

C. P.R. 4-3(a)(3): Anticipated Length of Claim Construction Hearing

The claim construction hearing is currently scheduled for July 23, 2024 at 9 a.m. before Magistrate Judge Roy Payne. The Parties anticipate that the claim construction hearing will last approximately three hours, with the time split evenly between parties.

D. P.R. 4-3(a)(4): Anticipated Witnesses at the Claim Construction Hearing

The Parties do not expect to present live testimony of witnesses at the claim construction hearing.

E. P.R. 4-3(a)(5): Other Issues

Plaintiff: Plaintiffs do not presently believe that there are any issues that need to be taken up at a prehearing conference prior to the claim construction hearing.

Qorvo's Motion to Dismiss need not be discussed at a prehearing conference. As to the first issue in Qorvo's Motion to Dismiss (failure to join Cornell), Akoustis informed Qorvo on March 25 that Akoustis and Cornell seek leave to add Cornell as a plaintiff. Qorvo has thus far refused to agree to Cornell's addition without delaying trial, and Akoustis plans to file a motion for leave to add Cornell this week. As to the second issue in Qorvo's Motion to Dismiss (failure to state a claim), Akoustis believes the Court's denial of Qorvo's motion to strike Akoustis' infringement contentions on similar grounds (Dkt. 70) is dispositive.

Qorvo: Qorvo's June 26, 2023 Motion to Dismiss (Dkt. 17) for: (i) failure to join the patent owner (Cornell and related entities) as plaintiffs; and (ii) failure to state a claim, remains pending. Qorvo's motion is ripe for a prehearing conference, and granting it would eliminate the need for claim construction to proceed.

Recently, Counsel for Plaintiffs offered to join the patent owner and other related entities as named plaintiffs to the case. Qorvo contends that adding new plaintiffs many months after the

deadline for doing so requires a schedule extension to avoid prejudicing Qorvo.¹ Plaintiff informed Qorvo that it opposes any extension that would move the trial date. If the patent owner is added as a party, Qorvo's Motion to Dismiss would be mooted as to the first issue addressed in its Motion to Dismiss (failure to join Cornell as a plaintiff), but not as to the second issue (failure to state a claim).

Dated: April 30, 2024.

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¹ Qorvo subpoenaed the patent owner and related Cornell entities in December 2023. To date, Cornell has not produced a single document. Qorvo was preparing a motion to compel compliance with its subpoenas when counsel for Akoustis informed Qorvo that it planned to move to join the patent owner and related entities eight months after the Scheduling Order's deadline for doing so.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on April 30, 2024.

/s/ John B. Campbell
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