

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

PARKERVISION, INC.,

Plaintiff,

v.

MEDIATEK INC. and
MEDIATEK USA INC.,

Defendants.

Case No. 6:23-cv-00375-ADA

JURY TRIAL DEMANDED

**REPLY CLAIM CONSTRUCTION BRIEF
BY DEFENDANTS MEDIATEK INC. AND MEDIATEK USA INC.**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. TERMS PREVIOUSLY CONSTRUED	1
A. “storage module” / “energy storage element” (’686 patent, claim 11; ’528 patent, claims 1, 8, 9, 18, 19, 26, 27, 36).....	1
B. “switch” / “switching device” (’686 patent, claim 11; ’528 patent, claims 1, 5, 8, 17, 18, 19, 23, 26, 35, 36)	6
C. “coupled” (’686 patent, claim 11; ’528 patent, claims 1, 19).....	7
D. “matched filtering / correlating module” (’177 patent, claim 14)	9
E. “A system for frequency down-converting a modulated carrier signal to a baseband signal” (’528 patent, claim 1).....	10
F. “the energy discharged during any given discharge cycle is not completely discharged” (’528 patent, claims 9, 27)	11
III. ADDITIONAL TERMS TO BE CONSTRUED	12
A. “multi-platform module” (’686 patent, claim 11).....	12
IV. CONCLUSION.....	12

TABLE OF AUTHORITIES

	Page
CASES	
<i>Am. Med. Sys., Inc. v. Biolitec, Inc.</i> 618 F.3d 1354 (Fed. Cir. 2010).....	10, 11
<i>AX Wireless LLC v. Dell Inc.</i> , No. 2:22-cv-0277, 2023 WL 7490047 (E.D. Tex. Nov. 12, 2023).....	9
<i>B & B Hardware, Inc. v. Hargis Indus., Inc.</i> , 575 U.S. 138 (2015).....	4
<i>CBT Flint Partners, LLC v. Return Path, Inc.</i> , 654 F.3d 1353 (Fed. Cir. 2011).....	11, 12
<i>Chrimar Sys. Inc. v. Del, Inc.</i> , No. 6:15-cv-639, slip op. (E.D. Tex. Feb. 27, 2016)	9
<i>Evertz Microsystems Ltd. v. Lawo Inc.</i> , No. 19-302-MH-JLH, 2020 WL 4722993 (D. Del. Aug. 13, 2020).....	6
<i>Nestle USA, Inc. v. Steuben Foods, Inc.</i> , 884 F.3d 1350 (Fed. Cir. 2018).....	5
<i>Ottah v. Fiat Chrysler</i> , 884 F.3d 1135 (Fed. Cir. 2018).....	3
<i>Papst Licensing GMBH & Co. KG v. Samsung Elecs. Am., Inc.</i> , 924 F.3d 1243 (Fed. Cir. 2019).....	5
<i>ParkerVision Inc. v. Vidal</i> , 88 F.4th 969 (Fed. Cir. 2023)	2, 4, 5
<i>SourceProse Corp. v. AT&T Mobility, LLC</i> , No. A-11-cv-117, 2014 WL 2879694 (W.D. Tex. June 24, 2014).....	10, 11
<i>SynQor, Inc. v. Vicor Corp.</i> , 988 F.3d 1341 (Fed. Cir. 2021).....	4
<i>Teva Pharms. USA, Inc. v. Sandoz, Inc.</i> , 574 U.S. 318 (2015).....	3
<i>Uniloc USA, Inc. v. Motorola Mobility LLC</i> , 52 F.4th 1340 (Fed. Cir. 2022)	5
<i>Williamson v. Citrix Online, LLC</i> , 792 F.3d 1339 (Fed. Cir. 2015).....	4

TABLE OF AUTHORITIES

	Page
<i>XY, LLC v. Trans Ova Genetics</i> , 890 F.3d 1282 (Fed. Cir. 2018).....	4

I. INTRODUCTION

This is the second of three patent cases ParkerVision brought against MediaTek in this Court furthering its strong-arm strategy of exacting settlements. In this case, all three patents are already expired, making ParkerVision’s claim construction positions even more outlandish. ParkerVision would have this Court overturn a binding Federal Circuit claim construction (storage module / energy storage element). ParkerVision also asks this Court to repudiate its own prior construction (coupled). And ParkerVision pretends as if the PTAB did not construe another two terms (switch / switching device). Beyond that, ParkerVision ignores almost every argument in MediaTek’s opening brief. ParkerVision instead just cut and pasted from its previous briefs even though those paste jobs mostly had nothing to do with any argument made by MediaTek. For the reasons set forth below and in its opening brief, MediaTek’s constructions should be adopted.

II. TERMS PREVIOUSLY CONSTRUED

A. “storage module” / “energy storage element” (’686 patent, claim 11; ’528 patent, claims 1, 8, 9, 18, 19, 26, 27, 36)

The irony of ParkerVision’s “storage module” argument should not be lost on the Court. After excoriating MediaTek for “just reiterat[ing] the *exact same* arguments . . . this court has heard (and rejected) so many times before” (ECF 37 at 1 (emphasis in original)), ParkerVision proceeds with eight pages of the *exact same* arguments for “storage module” that this Court heard and rejected three months ago. Not only that, these are the same arguments the Federal Circuit heard and rejected in a *precedential* decision just four months ago. This Court need not reconsider the issue. The Federal Circuit’s decision binds this Court to its holding and presents a textbook case of issue preclusion. The Court should adopt MediaTek’s construction as it did in *ParkerVision v. MediaTek I*.

In December 2023, the Federal Circuit held that ParkerVision acted as its own lexicographer and defined “storage element” as “an element of a system that stores non-negligible amounts of energy from an input EM signal.”¹ *ParkerVision Inc. v. Vidal*, 88 F.4th 969, 978 (Fed. Cir. 2023) (“*PV-Vidal Appeal*”). ParkerVision had sought a construction that would limit “storage element” to an element *of an energy transfer system*. *Id.* at 974–75. Rejecting ParkerVision’s argument, the Federal Circuit found lexicography based on disclosure in a family member (U.S. 6,061,551) that was incorporated by reference into the patent at issue in that appeal (U.S. 7,110,444). *Id.* at 972, 974. The relevant disclosure from the ’551 Patent is reproduced below.

[1.] FIG. 82A illustrates an exemplary energy transfer system 8202 for down-converting an input EM signal 8204. [2.] The energy transfer system 8202 includes a switching module 8206 and a storage module illustrated as a storage capacitance 8208. [3.] The terms storage module and storage capacitance, as used herein, are distinguishable from the terms holding module and holding capacitance, respectively. [4.] Holding modules and holding capacitances, as used above, identify systems that store negligible amounts of energy from an under-sampled input EM signal with the intent of “holding” a voltage value. [5.] ***Storage modules and storage capacitances, on the other hand, refer to systems that store non-negligible amounts of energy from an input EM signal.***

Id. at 976 (reproducing ’551 Patent, 66:55-67) (emphasis and enumeration added by Federal Circuit). The court found that sentences [1.] and [2.] were exemplary statements, which did not limit “storage modules” to “energy transfer systems.” *Id.* at 977-978. Instead, the court found that this “critical paragraph clearly expresses an intent to define the term ‘storage element’ in sentence 5.” *Id.* at 976. On that basis, the court construed “storage element” according to the express definition in sentence [5.]. *Id.* at 977–78.

In the present case, ParkerVision seeks the same construction that it sought and lost in *PV-Vidal Appeal*. (ECF 37 at 2.) As it did there, ParkerVision argues that a “storage module” is limited

¹ ParkerVision has not here or in any other cases distinguished between “storage module,” “storage element,” “energy storage element,” or any other variation. (See, e.g., ECF 37 at 3 n.2.)

to being an element *of an energy transfer system*. (ECF 37 at 2-8.) Remarkably, ParkerVision premises its argument on ***the exact same paragraph*** that the Federal Circuit held contained lexicography ***rejecting*** ParkerVision’s construction. (ECF 37 at 5 (reproducing ’528 Patent, 73:9-22).)² While ParkerVision relies on this paragraph as it appears in the ’528 Patent specification, it is word-for-word identical to the paragraph that the Federal Circuit analyzed. (*Compare* ’528 Patent, 73:9-22 *with* ’551 Patent, 66:55-67.) Further, the ’551 Patent is also incorporated by reference into both the ’542 and ’686 Patents, so the same analysis from the Federal Circuit decision applies here. (’528 Patent, 1:30-34; ’686 Patent, 9:38-50.)

Moreover, while ParkerVision re-represents its failed arguments from *PV-Vidal Appeal* here, it does not begin to address two legal infirmities with its position. First, while ParkerVision encourages this Court to reject the Federal Circuit’s “incorrect[]” construction (ECF 37 at 6.), ParkerVision does not explain how this Court would do so in the face of binding appellate-court precedent. Claim construction is ultimately an issue of law, so a claim construction ruling by the Federal Circuit in one case is binding as *stare decisis* in other cases. *See Ottah v. Fiat Chrysler*, 884 F.3d 1135, 1139-1140 (Fed. Cir. 2018) (finding that earlier Federal Circuit claim construction ruling (in *Verifone* case) was binding as *stare decisis* on district court in different action). That is especially true here where the claim construction was reached based strictly on the intrinsic record, *i.e.*, lexicography in the specification itself. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318,

² ParkerVision even presents nearly word-for-word the same arguments as appeared in its appeal brief in *PV-Vidal Appeal*. ParkerVision’s present arguments in Section III(A)(1) titled “The intrinsic evidence supports the Court’s prior construction” (ECF 37 at 2-6), are lifted nearly whole cloth from its appeal arguments in Section VIII(A)(1) titled “The intrinsic evidence supports ParkerVision’s construction” (Brief of Appellant ParkerVision, Inc. at 55-59, *ParkerVision Inc. v. Vidal*, No. 22-1548 (Fed. Cir. July 15, 2022) (ECF No. 19).) ParkerVision’s argument about the different section headings in the specification (ECF 37 at 8), is factually identical to the specification analyzed by the Federal Circuit. (’528 Patent, 17:13-21; ’551 Patent, 11:18-23.)

331 (2015) (“when the district court reviews only evidence intrinsic to the patent . . . the judge’s determination will amount solely to a determination of law”).³

Second, even setting aside the fact that the Federal Circuit decision is precedential, ParkerVision’s arguments are foreclosed by issue preclusion. The “general rule [of issue preclusion] is that ‘when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.’” *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015) (quoting Restatement (Second) of Judgments § 27, p. 250 (1980) (cleaned up)); *SynQor, Inc. v. Vicor Corp.*, 988 F.3d 1341, 1349 (Fed. Cir. 2021) (confirming application of *B & B* approach to patent cases). A PTAB decision has issue-preclusive effect upon being affirmed by the Federal Circuit. *See XY, LLC v. Trans Ova Genetics*, 890 F.3d 1282, 1294 (Fed. Cir. 2018) (holding same for finding of invalidity).

ParkerVision does not and cannot reasonably contest that issue preclusion applies here. First, the construction of “storage element” was actually litigated and determined by a valid and final judgment. ParkerVision litigated this construction before the PTAB, *PV-Vidal Appeal*, 88 F.4th at 974–75, and as explained above, this construction is the same issue presented by here. The construction was determined in a valid and final judgment by the Federal Circuit. *Id.* at 969.⁴ Second, the construction of “storage element” was essential to the judgment—the court affirmed

³ ParkerVision’s claim that oral argument is set for May 9, 2024 at the Federal Circuit in the appeal of IPR2021-00990 is incorrect. (ECF 37 at 2.) No oral argument is yet scheduled in that appeal. *See ParkerVision, Inc. v. TCL Indus. Holdings Co., Ltd.*, No. 23-1415 (Fed. Cir.) (appeal from IPR2021-00990). Further, any change in the claim construction in that appeal would require an *en banc* ruling. *See, e.g., Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1347 n.3 (Fed. Cir. 2015) (“overruling of prior precedent can only be done by the court *en banc*”).

⁴ The court’s decision was precedential, ParkerVision did not seek rehearing, and mandate has issued. Mandate Issued, *ParkerVision Inc. v. Vidal*, No. 22-1548 (Fed. Cir. Feb. 5, 2024) (ECF No. 60).

the PTAB’s Final Written Decision because after affirming the construction of “storage element,” it held that this claim element was disclosed by the prior art reference Tayloe. *Id.* at 981–82. Third, while the parties differ here from in the Federal Circuit appeal, ParkerVision is bound by “non-mutual” issue preclusion, “the label assigned when the loser in the first case is precluded from relitigating an issue even in a later action that does not involve its first-case adversary.” *Papst Licensing GMBH & Co. KG v. Samsung Elecs. Am., Inc.*, 924 F.3d 1243, 1251 n.2 (Fed. Cir. 2019); *see also Uniloc USA, Inc. v. Motorola Mobility LLC*, 52 F.4th 1340, 1347 (Fed. Cir. 2022) (non-mutual issue preclusion available if precluded party “had a ‘full and fair’ opportunity to litigate the issue in the first action”). The Federal Circuit’s construction is conclusive.

The present case aligns closely with the Federal Circuit decision in *Nestle USA, Inc. v. Steuben Foods, Inc.*, 884 F.3d 1350 (Fed. Cir. 2018). In *Nestle*, the court heard an appeal revolving around the construction of the term “aseptic” in the “’486 patent.” *Id.* at 1351. The parties had disputed the construction of the same term, “aseptic,” in an earlier appeal on the “’013 patent.” *Id.* The court found that issue preclusion applied as to the construction of “aseptic” for the ’486 patent, based on the earlier litigation. This was true even though the ’486 and ’013 patents were not identical and were not direct relatives, sharing only a priority claim to a common provisional application. *Id.* Issue preclusion applied because “critically, the two patents also provide identical lexicography for the term ‘aseptic’ in their specification.” *Id.* at 1351–52 (“Hereafter, ‘aseptic’ will refer to the FDA level of aseptic.”).

As in *Nestle*, the term under construction (“storage element” or its variations treated by all parties as identical) is the same as in the *PV-Vidal Appeal*, and the lexicographic statement is the same. *Compare PV-Vidal Appeal*, 88 F.4th at 976–78, with (’528 Patent, 73:9-22; ’668 Patent,

9:38-50 (incorporating '551 Patent by reference)). ParkerVision is thus precluded from re-litigating that issue here.

In sum, ParkerVision's arguments are wrong on the substance for the reasons explained in *PV-Vidal Appeal* and precluded by multiple dispositive issues of law. Further, despite ParkerVision repeatedly urging the Court to "maintain its prior construction," (ECF 37 at 8; *id.* at 2), this Court's most recent construction of "storage element" **rejected** ParkerVision's position and adopted the Federal Circuit's construction. (*See* Ex. 24, Court's Preliminary Constructions, Jan. 17, 2024.) This Court should adopt its prior, and most recent, construction of this term consistent with MediaTek's position.

B. "switch" / "switching device" ('686 patent, claim 11; '528 patent, claims 1, 5, 8, 17, 18, 19, 23, 26, 35, 36)

ParkerVision relies on attorney say-so to argue that "switch"—a common term in the electronics field—must be construed to include "as dictated by an independent control input," contrary to the understanding of a POSITA. (ECF 36-18, ¶ 40 (Hashemi Decl.).) ParkerVision, however, fails to clarify what is meant by "independent." ParkerVision also contends, based on nothing more than generic annotations to the patents' figures, that the claimed control signal must be "independent." For example, ParkerVision argues that a control signal connected to the output path of a diode switch is "independent," without explaining any reason why this is so. (ECF 37 at 10 (citing Figs. 28C and 28D)); *Evertz Microsystems Ltd. v. Lawo Inc.*, No. 19-302-MH-JLH, 2020 WL 4722993, at *5 (D. Del. Aug. 13, 2020) ("Lawo's proposed [of 'input processor'] construction is unhelpful and [] the reference to a "combined packetized signal stream" potentially introduces more ambiguity and may even cause more confusion over what the phrase means, particularly since it's not used in the patent"). Likewise, ParkerVision argues that the optional feedback loop in Figure 69 shows "independence," even though the output signal indisputably affects the control

signal: “down-converted signal 1308B is used as feedback 6906 to control the frequency and phase relationship between the EM signal 1304 and the energy transfer signal.” (Ex. 36-4 at 127:59–62.) ParkerVision also generally points to certain language in the claims as supporting its construction—“input control signal,” “first control signal,” and “a control input—but it never explains how this language requires “an *independent* control input.”

Further, the PTAB recently rejected ParkerVision’s arguments regarding “switch” in IPR2021-00346, concerning U.S. Patent No. 8,190,108. (Ex. 25 at 12–26.) In that IPR, the PTAB provided: “we do not agree with the Patent Owner that ‘switch’ should be *limited* to require ‘an independent control input.’” (*Id.* at 23 (emphasis in original).) The Board reasoned that the ’108 patent’s disclosures demonstrated a “control input” need not always be independent. More specifically, the patent’s written description contained a passage that “[i]f the switch is controlled by an electronic signal, it is typically a different signal than the signals connected to either terminal of the switch.” As a result, “the control input need not *always* be ‘independent.’” (*Id.* at 20–21, 23 (emphasis in original).) Because the ’686 patent and ’528 patent incorporate by reference the passage the PTAB found determinative (via their incorporation of U.S. Patent No. 6,091,940, to which the ’108 patent claims priority), the Court should adopt the PTAB’s reasoning here as well. (*See* ECF 36-2 at 1:53–54; ECF 36-4 at 1:38–40; Ex. 26 (U.S. Patent No. 6,091,940) at 7:57–60.) The Court should reject ParkerVision’s proposed construction.

C. “coupled” (’686 patent, claim 11; ’528 patent, claims 1, 19)

The Court just construed the term “coupled” consistent with MediaTek’s construction in the *ParkerVision v. Realtek I* case. The Court should reject ParkerVision’s request for a do-over. The Court should thus construe “coupled” to mean “directly connected or connected through a wire (or a closed switch).”

In rejecting this Court’s prior construction, ParkerVision incorrectly argues that “the Court’s prior construction would exclude express embodiments described in the ’686 and ’528 patent specifications.” (ECF 37 at 12.) ParkerVision contends that embodiments would be excluded because “intermediate component(s) (such as a resistor) [can] exist[] between two components,” pointing to Figure 33 of the ’686 patent and Figure 70 of the ’528 patent. (ECF 37 at 12.) But the subject matter to which ParkerVision points is irrelevant to the claim language at issue here: “a storage module coupled to said switch” (’686 patent, claim 11) and “a [] switch coupled to a [] control signal” (’528 patent, claim 1, 19).⁵ More specifically, ParkerVision points to a resistor coupled between a reference potential 3308, a UFT module 2620, and a filter 3306 (Figure 33) and to a matching circuit between a voltage source and a switch (Figure 70). But neither shows a component interposed between a switch and control signal, or a switch and a storage module, and so neither shows the Court’s prior construction excludes embodiments with respect to the disputed claim limitations.

Moreover, ParkerVision has no answer for the Court’s reasoning underlying its prior construction: “Every electrical component in a circuit is necessarily indirectly connected to all other components that it is not directly coupled to. As such construing ‘coupled’ to include indirect connection would render ‘coupled’ to be meaningless as all components are already indirectly connected to the components that they are not directly connected to.” (Ex. 27 at 25 (citations omitted).) Accordingly, the Court should adopt its prior construction of “coupled.”

⁵ The relevant claim language is almost identical to the language at issue in *ParkerVision v. Realtek I* with respect to the ’835 patent: “switch ... coupled to [a] storage element.” (Ex. 27 at 24.)

D. “matched filtering / correlating module” (’177 patent, claim 14)

The Court should reject ParkerVision’s proposed, ninety-eight word construction. MediaTek’s opening brief explained in detail why ParkerVision’s construction of “matched filtering / correlating module” is erroneous. MediaTek specifically walked through the arguments ParkerVision presented to the Middle District of Florida, and demonstrated numerous errors with those arguments. (ECF 36 at 8–12.) ParkerVision’s Responsive Brief, however, is a mere copy-and-paste job of its arguments to the Middle District of Florida. (*Compare* ECF 37 at 15–18, *with* ECF 36-21 at 24–28.) In other words, ParkerVision failed to respond to the arguments in MediaTek’s opening brief in any substantive way. Because ParkerVision failed to provide a meaningful response to MediaTek’s opening brief, it should not be able to do so in a sur-reply (when MediaTek will have no opportunity to respond). *See, e.g., AX Wireless LLC v. Dell Inc.*, No. 2:22-cv-0277, 2023 WL 7490047, at *7 (E.D. Tex. Nov. 12, 2023) (“While Ax Wireless cites *Chrimar Sys. Inc. v. Del, Inc.*, No. 6:15-cv-639, slip op. (E.D. Tex. Feb. 27, 2016) in its sur-reply, this is a new argument raised for the first time only in its sur-reply and is therefore waived.”).

ParkerVision, for example, makes no attempt to show why it is proper to attach limitations onto the term “matched filtering / correlating module” from specification-embodiments (e.g., requirements of “linear time-variant circuitry,” “switch,” etc.), let alone why it would be proper to do so using embodiments that are distinct from the specification’s “matched filtering/correlating” embodiment. (ECF 36 at 9-12 (discussing ParkerVision’s reliance on “Finite Time Integrating” and “RC processing” embodiments).)

Additionally, ParkerVision briefly contends that its construction is warranted because the term “matched filter / correlating module” “is not straightforward nor does it have a plain and ordinary meaning.” ParkerVision cites only one portion of the ’177 patent’s specification to support this argument: “[T]he description of the present invention contained herein is a unique and

specific application of matched filter theory, sampling theory, and frequency domain techniques. It is not taught or suggested in the present literature.” (ECF 37 at 15 (citing ECF 36-3 at 130:4–9).) But this excerpt generically refers to the overall “invention” rather than specifically to the term “matched filter / correlating module,” and it does not justify adopting ParkerVision’s flawed and inflated, *ninety-eight word* proposed construction. *See SourceProse Corp. v. AT&T Mobility, LLC*, No. A-11-cv-117, 2014 WL 2879694, at *10–11 (W.D. Tex. June 24, 2014) (rejecting forty-nine word construction because that proposed construction “would impose a narrowing that is not directly supported in the claim language as interpreted in view of the specification”).

E. “A system for frequency down-converting a modulated carrier signal to a baseband signal” (’528 patent, claim 1)

Recognizing the Court’s prior constructions, MediaTek reiterates that ParkerVision failed to make any effort to overcome the presumption that a preamble is not limiting.⁶ *See, e.g., Am. Med. Sys., Inc. v. Biolitec, Inc.* 618 F.3d 1354, 1358 (Fed. Cir. 2010). ParkerVision fails to even acknowledge this presumption. ParkerVision’s primary argument on this term—that “direct” down conversion is required by claim 1—demonstrates that claim 1’s preamble is not limiting. This is because direct down conversion is already required *by the body* of claim 1. As MediaTek demonstrated in its opening brief, the body of claim 1 recites a structurally complete system. (ECF 36 at 13.) This structurally complete system takes a “modulated carrier signal” and outputs down-converted in-phase and inverted in-phase “*baseband* signal portion[s].” (ECF 36-4 at 192:37–38,

⁶ In both *ParkerVision v. LG* and the *Intel 108* case, ParkerVision argued that the construction should be “plain and ordinary meaning”—just as MediaTek argues here. But ParkerVision changed its tune after the Court *sua sponte* found that the preamble is limiting. Those matters, however, involved different issues and arguments, namely whether “frequency down-converting” required “sampling at less than or equal to twice the frequency of the modulated carrier signal.” (*See* ECF 36-12 at 34; 36-10 at 3 (construing “System for frequency down-converting.”).)

41–43, 48, 52–54, 61–65.) ParkerVision’s construction is thus unnecessary to give meaning to the claim, since that meaning is already supplied by the body of claim 1.

ParkerVision also argues “modulated carrier signal” provides antecedent basis, but it does not explain how, even if that is so, the remainder of the preamble would be limiting. *Id.* at 18. “Modulated carrier signal” in the preamble is unspecific and provides no “context essential to understand the meaning” of the claim. *See Am. Med. Sys.*, 618 F.3d at 1359 (generic use of “photosensitive vaporization of tissue” in preamble and subsequent use of “the tissue” in claim-body did not “define or refine the scope of the asserted claims”).

F. “the energy discharged during any given discharge cycle is not completely discharged” (’528 patent, claims 9, 27)

While MediaTek appreciates the Court’s prior construction in the *Intel 108* case, ParkerVision’s response both fails to address the arguments raised by MediaTek in its opening brief and demonstrates why ParkerVision’s construction is improper. ParkerVision repeats nearly verbatim its arguments from the *Intel 108* case to justify its attempt to re-write claims 9 and 27. (Ex 28 at 33-35.) But as MediaTek explained, “[a] district court can correct [an obvious error in] a patent only if (1) the correction is not subject to reasonable debate based on consideration of the claim language and the specification and (2) the prosecution history does not suggest a different interpretation of the claims.” *See, e.g., CBT Flint Partners, LLC v. Return Path, Inc.*, 654 F.3d 1353, 1358 (Fed. Cir. 2011) (citations omitted).

Even though MediaTek cited *CBT Flint Partners* in its Opening Brief, ParkerVision’s Responsive Brief made no effort to show that an obvious and correctable error exists or that its proposed construction is “not subject to reasonable debate.” ParkerVision instead argues that its claim re-write is defensible because the ’528 patent’s specification describes that “not *all* of the energy is discharged during any given discharge cycle” and so it contends that the “energy

discharged” in claims 9 and 27 must be interpreted to account for the “remaining undischarged energy.” (ECF 37 at 22.) But ParkerVision fails to recognize that claims 8 and 26 (from which claims 9 and 27 depend) already account for this—by reciting that only “a portion of the transferred energy is discharged during the discharging part of the cycle for each respective switch device when the switching device is off.” (ECF 36-4 at 193:24–26.) ParkerVision’s requested re-write of claims 9 and 27 thus rests on an erroneous foundation. Accordingly, ParkerVision’s construction of “the energy discharged ... is not completely discharged” is subject to reasonable debate, and more logically refers to something other than “remaining undischarged energy,” *e.g.*, energy consumption through resistance. ParkerVision’s attempt to redraft claim 9 and 27 should be rejected. *CBT Flint*, 654 F.3d at 1358.

III. ADDITIONAL TERMS TO BE CONSTRUED

A. “multi-platform module” (’686 patent, claim 11)

ParkerVision’s only complaint regarding MediaTek’s proposed construction is that it uses “communications protocol OR bearer service,” rather than “communications protocol AND/OR bearer service.” (ECF 37 at 22-23 (“MediaTek provides no justification to re-define the term to exclude embodiments where the platform is *both* a communications protocol *and* a bearer service.”).) MediaTek’s use of “or”, however, was not intended to be an exclusive disjunctive, and MediaTek’s is fine with “and/or.” MediaTek attempted to resolve this dispute with ParkerVision by proposing the use of “and/or,” but ParkerVision rejected this proposal. (Ex. 29.) MediaTek’s construction should be adopted.

IV. CONCLUSION

For the reasons set forth above, the Court should adopt MediaTek’s proposed constructions.

Dated: April 15, 2024

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CERTIFICATE OF SERVICE

It is hereby certified that on this 15th day of April, 2024, a true and correct copy of the foregoing document, MediaTek's Reply Claim Construction Brief, via the Court's CM/ECF system.

/s/ Matthew C. Bernstein

Matthew C. Bernstein