

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

The Honorable Doris Johnson Hines
Administrative Law Judge

In the Matter of

**Certain Video Capable Electronic Devices,
Including Computers, Streaming Devices,
Televisions, Cameras, and Components and
Modules Thereof**

Investigation No. 337-TA-1379

**COMMISSION INVESTIGATIVE STAFF'S OPENING CLAIM CONSTRUCTION
BRIEF**

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I. INTRODUCTION

In accordance with Ground Rule 7.2 (Order No. 2) and the Procedural Schedule (Order No. 13) in this investigation, the Commission Investigative Staff (“Staff”) respectfully submits this claim construction brief setting forth and explaining its proposed construction for the single disputed claim term in U.S. Patent No. 7,532,808 (the “’808 Patent” (Respondents’ Opening Claim Construction Brief at Millikan Dec., Exhibit 1)).¹ For the reasons discussed herein, the Staff submits that its proposed construction of “skip coding mode,” which was previously agreed to by all Parties in Investigation No. 337-TA-1208, is the most consistent construction with the intrinsic evidence, and therefore should be adopted.

The only issue for the ALJ to decide is whether the construction should include the words “and residual information can be provided for each skip mode macroblock” should be added to the construction proposed by the Staff and Complainants. They should not. As explained below, Respondents’ claim differentiation argument is based on an incorrect premise contradicted by axiomatic patent law and is an unnecessary and improper addition to the construction for “skip coding mode.”

II. PROCEDURAL HISTORY

The Complaint in this matter was filed by Nokia Technologies Oy and Nokia Corporation (collectively, “Nokia” or “Complainants”) on October 31, 2023. (EDIS Doc. ID 807342 “the Complaint”). The Complaint alleges a violation of Section 337 based on the importation and sale of certain video capable electronic devices, including computers,

¹ There are no disputed claim terms in the second patent asserted in this investigation, U.S. Patent No. 8,204,134 (the “’134 Patent”).

streaming devices, televisions, cameras, and components and modules thereof of Respondents HP, Inc. (“HP”), Amazon.com, Inc., and Amazon.com Services LLC (collectively, “Amazon”) (HP and Amazon will collectively be identified as “Respondents”) that infringe certain claims of the ’808 and ’134 Patents. The Commission issued a Notice of Investigation “NOI” that was published in the Federal Register on December 6, 2023. *See* 88 Fed. Reg. 84832-33.

On December 14, 2023, the ALJ set a 16-month target date for the investigation, *i.e.*, April 7, 2025. (Order No. 5, at 1.)

The ALJ issued a procedural schedule on January 9, 2024. (Order No. 13.) A *Markman* Hearing is scheduled for March 7, 2024. (*Id.*) An evidentiary hearing is scheduled for July 24-31, 2024. (*Id.*)

Respondents filed their Responses to the Complaint and Notice of Investigation on January 10, 2024. (HP: EDIS Doc. ID 811801; Amazon: EDIS Doc ID 811784.)

The parties exchanged lists of terms to be construed on January 22 and 25, 2024, and exchanged proposed constructions on January 30 and February 2, 2024. Only one claim term, “skip coding mode” was identified for construction by the Parties. The parties subsequently met and conferred regarding the proposed construction of “skip coding mode.” On February 9, 2024, the parties filed a Joint Chart of Agreed and Disputed Constructions. (EDIS Doc ID 813868.) The private parties filed their respective Opening Claim Construction Briefs on February 13, 2024. (Complainants’ Opening Claim Construction Brief, EDIS Doc. ID 814056 (“CMB”); Respondents’ Opening Claim Construction Brief, EDIS Doc. ID 814060 (“RMB”).) The private parties’ respective Responsive Claim Construction Briefs are due February 23, 2024. (Order No. 13 at 2.)

III. LEGAL STANDARDS

The purpose of claim construction is to explain disputed and material claim language in a way that will be useful to the decision maker. *See O2 Micro Int'l Ltd. V. Beyond Innovation Tech. Co. Ltd.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). “Only those claim terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy.” *Certain Wireless Devices with 3G Capabilities and Components Thereof*, Inv. No. 337-TA-800, Init. Det., 2013 WL 3961230, at *15 n.7 (Jul. 26, 2013) (citing *Vanderlande Indus. Nederland BV v. Int'l Trade Comm.*, 366 F.3d 1311, 1323 (Fed. Cir. 2004) and *Vivid Tech, Inc. v. American Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“*Certain Wireless Devices with 3G Capabilities*”).

While claim construction may involve underlying factual determinations, claim construction is ultimately a matter of law. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996); *see also Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 837-38 (2015). Claims should be given their ordinary and customary meaning as understood by a person of ordinary skill in the art, viewing the claim terms in the context of the entire patent. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (“*Phillips*”).

In some cases, the ordinary meaning of claim language is readily apparent and claim construction will involve “little more than the application of the widely accepted meaning of commonly understood words.” *Phillips*, at 1314. In other cases, claim terms have a specialized meaning and it is necessary to determine what a person of ordinary skill in the art would have understood the disputed claim language to mean by analyzing “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.” *Id.* (quoting *Innova / Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)).

Analysis of the claim language is not done in a vacuum. Instead, the claims “must be read in view of the specification, of which they are a part.” *Phillips*, at 1315 (quoting *Markman*, 52 F.3d at 979). The Federal Circuit has repeatedly confirmed that the specification is “the single best guide to the meaning of a disputed term.” *Phillips*, at 1315; *Vitronics Corp. v. Conception, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

It is only the claims that delimit a patentee’s right to exclude. *See e.g., Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 807 (Fed. Cir. 2002) (scope of a patent claim is defined by the claim language); *Markman*, 52 F.3d at 978. Therefore, “[w]hile claim terms are understood in light of the specification, a claim construction must not import limitations from the specification into the claims.” *Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1354 (Fed. Cir. 2012) (citing *Phillips*, 415 F.2d at 1323); *Varco, L.P. v. Pason Sys. USA Corp.*, 436 F.3d 1368, 1372-73 (Fed. Cir. 2006).

In addition to the intrinsic evidence, extrinsic evidence may also be considered if necessary or helpful for understanding how one skilled in the relevant art would understand the terms in the claim. *See, e.g. Phillips*, at 1317; *Markman*, 52 F.3d at 979. Extrinsic evidence consists of all evidence external to the patent and prosecution history, including “expert [and] inventor testimony, dictionaries, and technical treatises and articles.” *Vitronics*, 90 F.3d at 1584. That said, extrinsic evidence must not be used to contravene a construction that is compelled by the intrinsic evidence. Extrinsic evidence generally “is

unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence.” *See Phillips*, at 1319.

IV. U.S. PATENT NO. 7,532,808

A. BACKGROUND

1. Person of Ordinary Skill in the Art

In the Staff’s view, a person of ordinary skill in the art would have a bachelor’s degree in electrical engineering, computer engineering, computer science, or a comparable field of study, with about two years of experience with video coding or related technologies. More experience can substitute for less education, and vice versa. No party has argued that a proposed construction is contingent on the level of skill. The Staff also notes that the proposed person of ordinary skill in the art by each private party and the Staff is nearly identical with no substantive differences.

2. Background of the ’808 Patent

The ’808 Patent is titled “METHOD FOR CODING MOTION IN A VIDEO SEQUENCE,” and issued on May 12, 2009; The ’808 Patent claims priority to provisional application no. 60/365,072, filed on March 15, 2002. (’808 Patent, cover page.) The ’808 Patent is generally directed to communications systems and more particularly to motion compensation in video coding. (*Id.* at 1:9-11.)

The ’808 Patent relates to encoding and decoding digital video sequences for transmission over a network. (*Id.* at Background of the Invention, *generally.*) A digital video consists of a sequence of still images. (*Id.* at 1:15-16.) As the frame display rate increases, so will the number of images in the sequence. (*Id.* at 1:19-22.) With more images in the sequence, many of them will be quite similar, and include a significant amount of redundant information. (*Id.*) Given the amount of redundant information, the ’808 Patent seeks to

come up with a way to send all of the necessary information in the transmission of the video sequence, without transmitting duplicate information. (*Id.* at 15:1-7.) To accomplish this, the inventor of the '808 Patent developed a coding mode where different information is sent if there is zero motion (no motion) or non-zero motion (motion). (*Id.* at 17:43-53.) This mode is referred to in the patent and claims as the “skip mode” or “skip coding mode,” which is the term with the disputed construction.

B. DISPUTED CONSTRUCTION – “SKIP CODING MODE”

Staff's Construction	Complainants' Construction	Respondents' Construction
A coding mode in which a zero (non-active) motion vector or a non-zero (active) motion vector is associated with each skip mode macroblock, depending on the characteristics of the motion in image segments surrounding the macroblock in question.		a coding mode in which a zero (non-active) motion vector or a nonzero (active) motion vector is associated with each skip mode macroblock, depending on the characteristics of the motion in image segments surrounding the macroblock in question, and residual information can be provided for each skip mode macroblock

The Staff agrees with Complainants that the term “skip coding mode” should be construed as “A coding mode in which a zero (non-active) motion vector or a non-zero (active) motion vector is associated with each skip mode macroblock, depending on the characteristics of the motion in image segments surrounding the macroblock in question.” This construction was agreed on by all Parties to Investigation No. 337-TA-1208, where the '808 Patent was previously asserted. *Certain Electronic Devices, Including Computers, Tablet Computers, and Components and Modules Thereof*, 337-TA-1208, Commission Investigative Staff's Initial *Markman* Brief at 1 (Dec. 8, 2020). This construction is supported by the intrinsic record for the '808 Patent where the Applicant acted as their own lexicographer to define the term. ('808 Patent at 17:47-53).

The only issue for the ALJ to decide is whether the construction should also include the phrase “and residual information can be provided for each skip mode macroblock.” Residual information is information used for prediction error – in the ’808 patent specification, it is referred to as “prediction error information” – and can be used to reconstruct information that may have been lost in transmission. *See* CMB at Exhibit 2 (Orchard Dec.) at ¶ 18; RMB, Havlicek Dec. at ¶¶30-31. This is an addition of unclaimed material that is not necessary to distinguish the claims, as argued by the Respondents. RMB at 17-22.

1. The Patentee Acted as Their Own Lexicographer and Defined “Skip Coding Mode” in the Specification

Claim terms in a patent are generally given their ordinary and customary meaning, which is the meaning the terms would have to a person of ordinary skill in the art at the time of the invention. *Eon Corp. IP Holdings LLC v. Silver Spring Networks, Inc.*, 815 F.3d 1314, 1320 (Fed. Cir. 2016); *Ethicon Endo-Surgery, Inc. v. Covidien, Inc.*, 796 F.3d 1312, 1323 (Fed. Cir. 2015) (citing *Phillips*, 415 F.3d at 1312-1313). One exception to this general rule is when a patentee sets out a definition and acts as their own lexicographer. *Apple Inc. v. MPH Techs. Oy*, 28 F.4th 254, 259 (Fed. Cir. 2022) (quoting *Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012); *see also Grace Instrument Indus., LLC v. Chandler Instruments Co., LLC*, 57 F.4th 1001, 1010 (Fed. Cir. 2023) (the inventor’s lexicography governs) (citing *Phillips*, 415 F.3d at 1316).

The ’808 Patent Applicant acted as a lexicographer and set forth a definition for “skip coding mode” in the patent’s specification. The ’808 Patent specification expressly states:

According to the invention, the coding modes used by encoder 600 correspond to those provided in JM1 of the JVT codec (shown in Table 3), with the exception that the SKIP mode is modified in such a way that ***a zero (non-active) motion vector or a non-zero (active) motion vector is associated with each skip mode macroblock, depending on the characteristics of the motion in image segments surrounding the macroblock in question.***

'808 Patent at 17:43-53 (emphasis added). “While a patentee may act as his own lexicographer and redefine claim terms away from their ordinary meaning, he is required to clearly express his intent to do so in the written description. *Certain Batteries and Electrochemical Devices Containing Composite Separators, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-1087, Order No. 23 (Claim Construction Order) at 20 (June 11, 2018) (citing *Merck & Co. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, 1370 (Fed. Cir. 2005).) Here, the Applicant explicitly describes what the skip coding mode is according to the invention. They described what the skip mode was before the invention, and then expressed clear intent to divert from that understanding, and how they intended to divert. Notably, there is no mention of residual information as being a necessary (or unnecessary) part of skip coding mode as Respondents propose. “When a patentee defines a claim term, the patentee’s definition governs, even if it is contrary to the conventional meaning of the term.” *Honeywell Int’l, Inc. v. Universal Avionics Sys. Corp.*, 493 F.3d 1358, 1361 (Fed. Cir. 2007).

Respondents’ appear to argue that claim differentiation *assumes* that residual information can never be used with skip coding mode unless it is explicitly incorporated into the claim language. The specification describes the lack of prediction error (residual) information in skip coding mode in one embodiment:

Depending on the coding mode, the compressed video data included in the bit-stream for an INTER-coded macroblock may comprise a combination of

VLC encoded prediction error information² for each block, motion vector information for the macroblock (or sub-blocks) and encoded control information including an indication of the coding mode used to encode the macroblock in question. *If a macroblock is encoded in skip mode, no prediction error or motion vector information relating to the macroblock is included in the bit stream.*

'808 Patent at 20:46-55 (emphasis added). However, the claim language uses permissible language for the use of prediction error information, generally. *Id, infra*. Notably, nowhere in the intrinsic record explicitly disclaims the use of error coding information entirely.³ Accordingly, the silence in the claim regarding residual information leaves open many different design choices that are not disclaimed by the specification.

2. The Claims Support the Staff and Complainants' Proposed Construction

Construing claim terms begins with the language of the claim, as it would have been understood by one of ordinary skill in the art at the time of the invention. *Akzo Nobel Coatings, Inc. v. Dow Chem. Co.*, 811 F.3d 1334, 1339 (Fed Cir. 2016) (citing *Phillips*, 415 F.3d at 1312-1313). In this case, the relevant independent claims are silent about residual information and the relevant dependent claims provide a negative limitation that bars the use of residual information. There is nothing in the plain language of the claims that

² Prediction error information is a form of residual information. *Supra*.

³ Complainants appear to argue that the patentee only contemplated not using residual information with the skip coding mode and it is inherent in the claim. *See CMB, generally*. Even if this is true, it is still improper to change the scope of the independent claim solely due to the doctrine of claim differentiation. *Retractable Techs., Inc. v. Becton, Dickinson & Co.*, 653 F.3d 1296, 1305 (Fed. Cir. 2011) (“any presumption created by the doctrine of claim differentiation ‘will be overcome by a contrary construction dictated by the written description or prosecution history,’ *Seachange Int’l v. C-COR, Inc.*, 413 F.3d 1361, 1369 (Fed. Cir. 20054)”).

requires the addition of “and residual information can be provided for each skip mode macroblock” into the construction of “skip coding mode.”

a. Respondents’ Proposed Construction is Based on an Improper Legal Premise

The basis of Respondents’ argument to add “and residual information can be provided for each skip mode macroblock,” is “[b]ecause [the dependent claims] specif[y] that no residual information is provided, [the independent claims] *must* allow providing residual information. RMB at 18 (emphasis in original). But what Respondents fail to acknowledge is that in the parlance of patent law, the transition “comprising” creates a presumption that the recited elements are only a part of the device, that the claim does not exclude additional, unrecited elements. *Crystal Semiconductor Corp. v. TriTech Microelectronics Int’l Inc.*, 246 F.3d 1336, 1348 (Fed. Cir. 2001). Independent claims 1, 7, 10, and 16 all use the transition “comprising.” ’808 Patent at 25:10, 26:11, 26:53, 37:55. Those claims also do not recite any use or lack thereof of “residual information.” *Id.* Therefore, in practicing the claims, residual information may or may not be used. *Crystal Semiconductor Corp.*, 246 F.3d at 1348.

Dependent claims 30, 41, 49, and 60 each recite “wherein no residual information is provided for the first segment in the encoded bitstream.” ’808 Patent at 29:42-45, 31:1-3, 32:10-12, 33:39-41. This is a negative limitation that indicates infringement only occurs for those dependent claims if residual information is *not* provided for the first segment in the encoded bitstream. Negative limitations are limitations that recite an element that is expressly and deliberately excluded, and negative limitations are permitted by the United States Patent and Trademark Office. *See* Manual of Patent Examining Procedure § 2173.05(i) (“So long as the boundaries of the patent protection sought are set forth

definitely, albeit negatively, the claim complies with the requirements of 35 U.S.C. 112(b) or pre-AIA 35 U.S.C. 112, Second Paragraph.”).⁴

Applying this axiomatic patent law doctrine, there are no invalidity concerns for the dependent claims as written, without the Respondents’ proposed addition to the construction of “skip coding mode.” If the person implementing the invention chooses to use residual information, they may still infringe the independent claims. If they do not use residual information, they may infringe both the independent and dependent claims.

Accordingly, the claims allow for the option to use residual information without the additional clause “wherein no residual information is provided for the first segment in the encoded bitstream” is added to the construction of “skip coding mode” and there is no invalidity concern as asserted by Respondents. *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1383 (Fed. Cir. 2008) (“The patentee chooses the language and accordingly the scope of his claims. . . . we cannot construe these particular claims to encompass the preferred embodiment or other illustrated embodiments. Courts cannot rewrite claim language.”)

b. The Doctrine of Claim Differentiation Does Not Necessitate Adding “And Residual Information Can Be Provided For Each Skip Mode Macroblock” to the Construction

Although Respondents appear to argue that claim differentiation dictates the addition of the clause “and residual information can be provided for each skip mode macroblock” to the construction of “skip coding mode” to provide for claim differentiation, this is not in fact, necessary to comply with the claim differentiation doctrine. The doctrine

⁴ Issues with negative limitations in claims most often arise with written description challenges. The dependent claims at issue here are fully supported by the written description. *See* ’808 Patent at 20:52-55.

of claim differentiation “is ultimately based on the common sense notion that different words or phrases used in separate claims are presumed to indicate that the claims have different meanings and scope.” *Karlin Tech., Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968, 971-72 (Fed. Cir. 1999). The silence regarding residual information in the independent claims, and the subsequent negative limitation in the dependent claims demonstrates that the patentee did not limit the use of residual information in the independent claim, and restricted its use in the dependent claim. The explicit language added by the Respondents is not necessary.

Accordingly, the cases cited by respondents actually support the Staff and Complainants’ proposed construction. In *Phillips*, Respondents admit that what the Federal Circuit did was to ensure that the independent claims supported alternate angles for the “baffles.” RMB at 21, *citing* 415 F.3d at 1324. The same is true here – the independent claim inherently allows for the use or lack thereof of residual information merely by being silent.

Littelfuse, Inc. v. Mersen USA EP Corp. also supports the Staff and Complainants’ construction. In that case, the independent claims required an end cap, and the dependent claim required that the cap be a single, contiguous piece of conductive material. 29 F.4th 1376, 1380 (Fed. Cir. 2022). In light of the dependent claims, the Federal Circuit found that the end cap is not confined to multiple pieces of material since the specification does not preclude the use of a single-piece apparatus. *Id.* at 1381. The same is true in this case, regardless of whether the Respondents’ clause is added. To give the independent claims in the ’808 Patent their full scope of claimed material, there is no reason to include the clause requested by Respondents.

V. CONCLUSION

Thus, for the reasons set out above, the ALJ should adopt the Staff's and Complainants' proposed construction for the term "skip coding mode."

Respectfully submitted,

/s/ Marissa R. Ducca

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February 20, 2024

CERTIFICATE OF SERVICE

The undersigned certifies that on February 20, 2024, she caused the foregoing

COMMISSION INVESTIGATIVE STAFF'S OPENING CLAIM CONSTRUCTION BRIEF

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copies uploaded to Box in accordance with Ground Rule 1.10.2.1, and serving the same upon the
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