

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

EMPIRE TECHNOLOGY DEVELOPMENT
LLC

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC.

Defendants.

Case No. 2:23-cv-00427-JRG-RSP

**PLAINTIFF EMPIRE TECHNOLOGY DEVELOPMENT LLC'S
P.R. 4-2 DISCLOSURES**

Pursuant to P.R. 4-2 and the Court's Docket Control Order (Dkt. 25), Plaintiff Empire Technology Development LLC ("Empire") hereby provides the following disclosure of preliminary proposed constructions of the claim terms, phrases, and clauses in U.S. Patent Nos. 8,798,120 (the "'120 Patent") and 8,565,331 (the "'331 Patent") that the parties collectively have identified for claim construction purposes ("Proposed Constructions"). Empire's Proposed Constructions are attached as Appendix A. Empire reserves the right to amend or otherwise supplement its Proposed Constructions, including after receiving additional discovery in this matter, and also in response to the claim constructions that are being concurrently provided by Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, "Samsung").

Empire has also provided a preliminary identification of extrinsic evidence. It reserves the right to rely on any evidence identified by Samsung, including evidence identified in Samsung's P.R. 4-2 disclosures, Samsung's claim construction briefing, or at any claim construction hearing. Empire also reserves the right to identify additional extrinsic evidence to offer in rebuttal to the proposed constructions and extrinsic evidence offered by Samsung. Empire further reserves the right to identify additional extrinsic evidence that is obtained through further discovery in this matter, including deposition testimony obtained from any third parties, such as the named inventors of the patents-in-suit and/or any expert witnesses. Empire further reserves the right to revise its disclosure of extrinsic evidence in view of any additional relevant information learned through relevant proceedings before the United States Patent and Trademark Office, and any orders of the Court in this matter. Consistent with Local Patent Rule 4-2(c), Empire reserves the right to supplement, revise, modify, or otherwise finalize these disclosures based on meet and confer sessions and to facilitate the preparation of a Joint Claim Construction and Prehearing Statement.

Samsung has indicated that it may seek a motion to amend or supplement its invalidity contentions based on Empire's Amended Infringement Contentions and discovery produced by third parties following service of Empire's original invalidity contentions. (Dkt. 42). Once Samsung puts Empire on notice of its amended invalidity theories, Empire reserves the right to identify additional terms, phrases, and/or clauses for construction.

Empire will identify intrinsic support for its proposed constructions at the time identified by the Court's Docket Control Order, including references to the claims, specifications, and prosecution histories of the patents-in-suit.

Pursuant to P.R. 4-2(b), Empire identifies Dr. Robert Akl as a supporting expert in this case for the patents-in-suit. Dr. Akl may provide testimony regarding claim construction and a person of ordinary skill in the art at the time of the filing of the patents-in-suit. Dr. Akl may discuss why (1) Empire's constructions are consistent with how one of ordinary skill in the art would understand the terms, phrases, and/or clauses in the context of the patents in which they are used and (2) Samsung's constructions are not consistent with how one of ordinary skill in the art would understand the terms, phrases, and/or clauses in the context of the patents in which they are used. For terms that Samsung contends do not comply with 35 U.S.C. § 112, if any, Empire may offer the testimony of Dr. Akl to explain how one of ordinary skill in the art would have understood that the terms, phrases, and/or clauses and the patents in which they are used do comply with 35 U.S.C. § 112. For terms that Samsung contends are governed by 35 U.S.C. § 112(f), if any, Empire may offer the testimony of Dr. Akl to explain how one of ordinary skill in the art would have understood the terms, phrases, and/or clauses, the patents in which they are used, and explain why the terms should not be governed by 35 U.S.C. § 112(f). Empire reserves the right to rely upon additional rebuttal testimony from Dr. Akl with respect to the patents-in-suit.

By identifying Dr. Akl, Empire does not waive any right and is not precluded from relying on another expert who may provide a declaration or testimony addressing the issues identified herein. Empire also reserves the right not to rely on the testimony of any expert. Empire may also rely on all documents cited in the '120 Patent and the '331 Patent and related patents, patent publications, file histories, and applications, all documents cited in IPR2024-00896 and IPR2024-00897, and all documents produced by the parties to date.

Dated: October 9, 2024

Respectfully submitted,

/s/ Nathaniel Browand

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2024 all counsel of record are being served with a copy of the foregoing document via electronic mail.

/s/ Nathaniel Browand
Nathaniel Browand

APPENDIX A

No.	Claim Term, Phrase, or Clause	Proposed Construction	Extrinsic Evidence
1.	“wherein the controller is configured to receive a control signal and, in accordance with the control signal, to select between a multiple-input multiple-output (MIMO) mode ... and a single-input multiple-output (SIMO) mode ...” ’120 Patent, Claims 25 and 29	No construction required; plain and ordinary meaning; not governed by 35 U.S.C. § 112(f)	Expert declaration and testimony of Dr. Robert Akl Invention disclosure 5507 (Empire_ 0000838-850) Newton’s Telecom Dictionary (2008) control signal 2. In modem communications, control signals are modem interface signals used to announce, start, stop or modify a function. Random House Webster’s College Dictionary (2001) accordance 1. agreement; conformity: <i>in accordance with the rules.</i> The American Heritage Dictionary (1982) accordance 1. Agreement; conformity: <i>in accordance with your instructions.</i>

			Webster's II New College Dictionary (1999) accordance 1. Agreement: conformity The New Oxford American Dictionary (2001) accordance PHRASES in accordance with in a manner conforming with Microsoft Encarta College Dictionary (2001) accordance 1 CONSENSUS consensus as to the right course of action 2 ADHERENCE TO CORRECT PROCESS conformity with specified procedures or actions
2.	“a power consumption of the first and second circuitry” '120 Patent, Claims 25 and 29	No construction required; plain and ordinary meaning; not governed by 35 U.S.C. § 112(f)	Expert declaration and testimony of Dr. Robert Akl Invention disclosure 5507 (Empire_ 0000838-850)
3.	“an idle power consumption of the mobile station” '120 Patent, Claims 25 and 29	No construction required; plain and ordinary meaning; not governed by 35 U.S.C. § 112(f)	Expert declaration and testimony of Dr. Robert Akl Invention disclosure 5507 (Empire_ 0000838-850)

			Telecom Dictionary (2007) Idle Mode A period of time that a mobile radio is not required to transmit or receive data. During the idle period, a mobile radio may measure the channel quality of other radio channels. Newton's Telecom Dictionary (2008) idle 1. Not being used but ready.
4.	“pilot symbol” '331 Patent, Claims 1 and 5	No construction required; plain and ordinary meaning; not governed by 35 U.S.C. § 112(f)	Expert declaration and testimony of Dr. Robert Akl Invention disclosure 5522 (Empire_ 0000946-56)
5.	“a channel matrix of the communications channel” '331 Patent, Claims 1 and 5	No construction required; plain and ordinary meaning; not governed by 35 U.S.C. § 112(f)	Expert declaration and testimony of Dr. Robert Akl Invention disclosure 5522 (Empire_ 0000946-56)
6.	“replicated data” '331 Patent, Claims 1 and 5	“duplicated data”	Expert declaration and testimony of Dr. Robert Akl Invention disclosure 5522 (Empire_ 0000946-56)

		The American Heritage Dictionary of the English Language (2006) replicate 1. To duplicate, copy, reproduce, or repeat. Bloomsbury English Dictionary (2004) replicate 1. . . . to make an identical version of something repeatedly and exactly, or do something in exactly the same way 2. . . . to undergo a repetition or reproduction Longman Dictionary of American English (2008) replicate to do or make something again, so that you get the same result or make an exact copy Merriam-Webster's Collegiate Dictionary (2008) replicate <i>vb</i> DUPLICATE, REPEAT Oxford English Dictionary (1991) replicate <i>v.</i> 2. a. To repeat, reproduce ... b. To make a replica of
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			Shorter Oxford English Dictionary on Historical Principles (2007) replicate <i>adjective</i> 3 . . . Of the nature of a replica or copy. replicate <i>verb</i> 1 . . . Do or say again, repeat. . . . 4 . . . Make a replica of . . . c . . . Imitate; make or be a model or replica of . . . d . . . Copy or reproduce exactly. Random House Webster's College Dictionary (2005) replicate 2. to repeat, duplicate, or reproduce.
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