

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

MAXELL, LTD.,

Plaintiff,

v.

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

Defendants.

Case No. 5:23-cv-00092-RWS

JURY TRIAL DEMANDED

**PLAINTIFF MAXELL, LTD.'S
REPLY CLAIM CONSTRUCTION BRIEF**

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Exhibit V	Exhibit to Samsung's RCC at Dkt. No. 76-22 (Transcript of June 25, 2024 Deposition of Dr. Jon Weissman)
Exhibit X	Exhibit to Samsung's RCC at Dkt. No. 76-24 (Dr. Shields' Claim Construction Declaration)
Exhibit 50	U.S. Patent No. 7,945,850 from <i>MasterMine</i> , 874 F.3d 1309 (Fed. Cir. 2017)
Exhibit 51	Commission Investigative Staff's Rebuttal Markman Brief in ITC Investigation No. 337-TA-1215, dated January 19, 2021.

TABLE OF ABBREVIATIONS

RCC	Samsung Responsive Claim Construction Brief (D.I. 76)
MCC	Maxell's Claim Construction Brief

Samsung’s proposal to rewrite claim terms and allegations of indefiniteness or disclaimer should be rejected.¹ Samsung has not met its burden to justify its positions. Samsung’s rewritten claims are not supported by the intrinsic evidence and, further, Samsung has not overcome the presumption that the ordinary and accustomed meaning is the proper one unless lexicography or disavowal applies. For indefiniteness, Samsung does not distinguish the controlling case law and/or ignores critical arguments and thus does not meet the clear and convincing standard. Further, Samsung does not meet the “exacting” standard of a clear and unambiguous disclaimer.

I. THE ’815 PATENT TERMS

A. “the processor generates a group of video information . . . video information”

Samsung points to “Netflix” and Maxell’s “infringement contentions” to limit this claim by requiring the group of video information to include three different categories of video information. RCC at 2-3. There is no support in the intrinsic record to always require three different categories. For example, the claimed “group of video information” may include two pieces of video information 402 and 502, as shown in Figs. 6-7 of the ’815 Patent. Samsung’s proposal requires three, and would exclude this embodiment. Thus, Samsung’s proposal should be rejected.

B. “character”

It is undisputed that Samsung’s proposal includes terms—“control code” and “one unit of information”—a proposal that finds no support in the intrinsic record. RCC at 3-5. Samsung also cites to “ASCII” or “Unicode” standards to narrow the scope without any evidence that the intrinsic record requires limiting the “character” to such standards. Samsung also alleges that displaying the “character” cannot correspond to displaying a graphic of “Batman” when there is no such restriction in the patent. In fact, Samsung’s expert conceded that “like other symbols [an emoji]

¹In view of the RCC, there are no disputed terms with respect to the ’757 Patent.

would be considered by a POSITA to be a character.” Ex. 9 at 50:1-18. Further, Dr. Bederson explains that the disclosed character “ALL PROGRAM INFORMATION” or “MOTHER” appear as “textual labels” on the display. Ex. C, ¶46. There is no limit as to how many units of information are to be used to display “textual labels.” ’815 Patent, Fig. 4 (disclosing text (401), emojis (402), graphics (403, 404)). The claimed “character” is not limited to “one unit of information.”

C. “receiving . . . information that is encrypted”

Samsung inserts a temporal limitation when the claim provides no indication as to the time when second video information is encrypted. *See* MCC at 7-8. Samsung’s proposal is improper.

D. “being deleted from the first group of video information”

Samsung’s proposal redefines “delete” with terminology—reversing and unregistering—that is not in the ’815 Patent. MCC at 8-10. Samsung cites a PTAB decision in support, but that construction—under the broadest reasonable interpretation—is inclusive of deletion. *Id.* at 9 (“does not necessarily require deleting underlying AV data.”); *see also* RCC at 7-9. Samsung concedes there is nothing improper in asserting different constructions in an IPR and at district court (RCC at 13-14), but improperly seeks collateral estoppel. *In re Freeman*, 30 F.3d 1459, 1465 (Fed. Cir. 1994). The different standard applied by the PTAB prevents expansion of collateral estoppel here because the claim construction issues have not actually been litigated. *Cf. Skyhawk Techs., LLC v. Deca Int’l Corp.*, 828 F.3d 1373, 1376 (Fed. Cir. 2016). Also, the issues are not identical across the two proceedings because of differences between the claims at issue.

E. “the first group of video information being configured to allow a user to edit”

In this litigation, Samsung’s expert concedes that “[i]n context, it seems reasonably certain that the latter is intended” by this term (Ex. 10 ¶ 62; *see also* Ex. 9 at 56:11-57:11); the latter being that this term means “the group of video information is itself to be edited.” Ex. 10 ¶ 62. This is the same understanding held by Maxell’s expert. RCC at 10 (citing to Ex. H). Samsung never disputes

that antecedent basis is used to clarify it is the “group of video information” itself that is configured to be edited. *Id.* at 10-11. Maxell is simply stating the fact that the claim is directed to an “information processing apparatus.” Samsung also does not dispute that the specification describes editing as a user adding or deleting video information in a playlist, *i.e.*, a group. *See* MCC at 11.

F. “user profile” / “user profiles”

Samsung’s argument hinges on the fact that the disclosures in the patent describing a “user profile” are allegedly already recited in the claim, thus rendering the user profile limitation superfluous. RCC at 11-14. Samsung is wrong. The limitations Samsung points to are directed to the content being displayed as part of a graphical user interface. ’815 Patent, Cl. 1 (“a processor for controlling the display to display”); RCC at 12. One limitation is about what is displayed; the user profile limitation is about what is being associated in memory with the user profile. These are two different aspects of the claims. Samsung never addresses the disclosures of the patent that clearly disclose user profiles but are not recited in the alleged “superfluous” limitations. *See* MCC at 12-13. Nowhere does Samsung explain how displaying user interface elements is superfluous to storing of user dedicated folders, hierarchical directories, and user-defined information. RCC at 11-14. Samsung does not even dispute that these disclosures of the patent are consistent with the implementation of user profiles in Windows NT. *See* MCC at 12-13; *see also* RCC 11-14.

II. THE ’590/’241 PATENT TERMS

A. Allegedly mixed apparatus-method claims

Samsung’s indefiniteness arguments allege that: (1) the “wherein” clause requires user action; and (2) claim differentiation dictates that because the claim recites “capable of” in some instances, the absence of “capable of” in other instances indicates a method step. Both arguments fail under *MasterMine*, which is controlling and which Samsung fails to distinguish. Moreover, “[t]he scope of the *IPXL* doctrine is narrow.” *Targus Int’l. LLC v. Victorinox Swiss Army, Inc.*,

2021 WL 1737531, at * 9 (D. Del. May 3, 2021). And, “[c]laim differentiation is a guide, not a rigid rule. If a claim will bear only one interpretation, similarity will have to be tolerated.” *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1538 (Fed. Cir. 1991). Samsung’s stitching together of these narrow doctrines fails to reach the requisite clear and convincing standard.

First, Samsung fails to establish why *MasterMine* is not controlling when the “wherein” clause under dispute includes almost **identical** recitation of the “system’s capability to receive and respond to user selection.” See MCC at 19-21 (comparing asserted and *MasterMine* claims). The reexamination file history does not distinguish *MasterMine* because Maxell never stated the claims require that the user use the controller, as the claims in *IPXL*. *Id.* Rather, Maxell distinguished the “control processor 210” of Tee from the claimed controller because Tee does not disclose that “**the controller affirmatively** ‘assign[ed] a connection to the first radio communication circuit for transmitting the video.’” Ex. M at 21. Maxell even acknowledges that Tee discloses a user input, just that it occurs **after** control processor 210 has assigned a connection. *Id.* at 23. The reexamination history affirms that the “wherein” clause recites a controller’s capability to receive and respond to a user indication just like the capability of the “reporting module” in *MasterMine* to receive a user selection. MCC at 19-20. While *MasterMine* (MCC at 23-24) involves claim language similar to “controller controls” and a user input as a condition, the cases Samsung cites refer to a “user” followed by a verb directed to that user’s actions, making it fall within the narrow confines of *IPXL*.² The asserted claims never refer to a user performing such an action.

Second, Samsung’s claim differentiation argument also fails, including with respect to the limitations of “circuits receive” and “apparatus executes,” because, like the asserted claims recite

² See, e.g., *Visible Connections, LLC v. Zoho Corp.*, 418 F. Supp. 3d 155, 165 (W.D. Tex. 2019) (“wherein the host **user only** selects”); see also *In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1318 (Fed. Cir. 2011) (“callers digitally enter data” or “callers provide”); *Lone Star Tech. Innovations, LLC v. Asustek Comput. Inc.*, 2020 WL 6811484, at *14 (E.D. Tex. July 31, 2020) (“a viewer . . . operating said master control device”).

“capable of” in some instances and not others, the “reporting module” claim in *MasterMine* recites “a database **adapted to**” and “a programmable processor **adapted to**” but then did not recite a reporting module adapted to. *See* Ex. 50 (cl. 8). Instead, like the asserted claims recite “controller controls,” “circuits receive,” and “apparatus executes,” the claim in *MasterMine* recites “reporting module . . . receives . . . [and] generates.” *Id.* Such functional language does not render an apparatus claim indefinite as supported by numerous CAFC decisions. *See* MCC at 21-22; *HTC Corp. v. IPCOM GmbH & Co., KG*, 667 F.3d 1270, 1273 (Fed. Cir. 2012). Indeed, *Puff Corp. v. SHO Products, LLC* addresses Samsung’s argument and confirms that “the fact that claim 1 lists so many capabilities suggests a claim strategy rooted in describing capabilities” even when the claim language does not recite “capable of” in certain instances of the claim., 2023 WL 5505031, at *14 (C.D. Cal. Mar. 3, 2023). None of the limitations at issue describe a method step, but merely claim a capability of the controller, communication circuits, and apparatus and fall squarely within the permissible realm of *MasterMine*, *HTC Corp.*, *MEC*, and *UltimatePointer* (*see* MCC at 21-22).

Third, Samsung does not provide any expert testimony rebutting the facts that the asserted claims are analogous to Samsung’s own claims. *See* MCC at 23-24. Samsung is taking contradictory positions by seeking patents with similar apparatus claims and then arguing that such claims are indefinite when they are asserted against Samsung. *Id.*

B. “wherein when an indication . . . the video”

See supra at 4 (explaining that the reexamination file history is distinguishing the capabilities between control processor 210 of Tee and the controller of the asserted claims that “**affirmatively** ‘assign[ed] a connection to the first radio communication circuit for transmitting the video.’”). Samsung’s negative limitation directly contradicts the claim language requiring that the “controller assigns a connection,” and the reexamination file history is consistent with the claim language. Samsung has not met the “exacting” standard of a clear and unambiguous disclaimer

that would justify the inclusion of a “disfavored” negative limitation. *See* MCC at 24-25.

III. THE ‘086 PATENT—INFORMATION TERMS

Samsung cannot show that Maxell clearly, unambiguously disclaimed “information about a user’s fingerprint.” At best, Samsung argues that one possible interpretation of the record could suggest disclaimer—but the law deems that insufficient. *See 3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013) (“Where an applicant’s statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable.”); *Poly-Am., L.P. v. API Indus., Inc.*, 839 F.3d 1131, 1136 (Fed. Cir. 2016) (“Ambiguous language cannot support disavowal.”). Samsung’s arguments are also belied by the clear statements Maxell made during prosecution. *See* Ex. 42 at 2 (“Applicant cancelled claims ... to overcome the alleged impermissible broadening, not because Applicant agreed with the Examiner’s rejections ... and not because Applicant agreed to disclaim claim scope of claims 8-34 during prosecution.”). Finally, Samsung has not refuted the testimony of Maxell’s expert, Dr. Wobbrock, showing that the patent’s specification supports Maxell’s position. Considering the entirety of the prosecution history, Maxell made no clear, unambiguous disclaimer. Samsung’s proposal should be rejected.³

Samsung is mistaken about the law. Samsung’s view that the mere cancelling of a claim—for any purpose—triggers disclaimer is not the law. In each case Samsung cites, it was the cancellation of claims in addition to some other act or omission that gave rise to disclaimer. *See, e.g., Schriber-Schroth Co. v. Cleveland Tr. Co.*, 311 U.S. 211, 220 (1940) (cancellation plus failure to urge applicant was inventor of feature); *AstraZeneca AB v. Mylan Pharms Inc.*, 19 F.4th 1325, 1333-34 (Fed. Cir. 2021) (claims narrowed multiple times and emphasis that the new limitation

³ Samsung’s counsel (DLA Piper) advanced the same arguments in prior proceedings at the U.S. International Trade Commission in ITC Inv. No. 337-TA-1215. But the Office of Unfair Import Investigations (the “Staff”) disagreed. *See* Ex. 51 at 1 (“Apple argues that . . . Maxell disclaimed ‘information corresponding to a fingerprint of the user’ and that any construction broad enough to encompass ‘information corresponding to a fingerprint of the user’ would render the claims invalid for lack of written description In the Staff’s view, neither argument has merit.”).

excluding disavowed subject matter was “critical”); *REckitt Benckiser Inc. v. Watson Labs., Inc.*, 430 Fed. Appx. 871, 876 (Fed. Cir. 2011) (cancellation plus distinguished prior art). Samsung’s disclaimer theory also runs counter to the law that “prosecution disclaimer made on the same limitation in an ancestor application will attach” to another patent only when “the same claim limitation is at issue.” *Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1333 (Fed. Cir. 2003); *see also Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 980 (Fed. Cir. 1999). But the limitations at issue here and during prosecution of RE’830 are not the same:

’086 Limitations	Limitation at Issue During RE830
“[first/second] information [necessary for/relating to] an identification of the user”	“the first information corresponding to a fingerprint of the user” <i>See</i> Ex. S (Jan. 29, 2019 Preliminary Amendment) at 5 (claim 8)

Samsung ignores important facts. According to Samsung, during prosecution of RE’830 (1) Maxell amended claims to add “corresponding to a fingerprint of the user”; (2) the claims were rejected for lack of written description; and (3) Maxell cancelled the claims. *See* RCC at 25. But the examiner’s rejection was based on an alleged impermissible broadening of scope, both because the new claims omitted certain limitations from the prior claim set, and because method claims were added where none had been presented prior. *See* Ex. 40 at 3-4. Samsung also overlooks that Maxell provided an express reason for cancelling of claims: to overcome the broadening reissue rejection, not disclaimer. *See* Ex. 42 at 2 (patentee also expressly disagreed with the § 112 rejection). While Samsung labels them as “boilerplate,” *see* RCC at 26, Maxell’s statements go beyond the generic reservation of rights in *REckitt Benckiser* and *Raffel*. *See REckitt Benckiser*, 430 Fed. Appx. at 876 (noting only that claims were “cancelled to facilitate prosecution”); *Raffel Sys., LLC v. Man Wah Holdings Ltd., Inc.*, 2020 WL 3184026, at *8 (E.D. Wis. June 15, 2020) (finding language “without prejudice to or disclaimer of subject matter therein,” without more, to be boilerplate). In other words, here, the applicant specifically tailored its responses to the rejections at issue. None of Samsung’s cases finds disclaimer under these circumstances.

Samsung also argues disavowal is appropriate “[b]ecause the applicant knew how to claim ‘fingerprint information,’ but chose not to.” RCC at 26. But Maxell also knew that “information necessary for identification of / relating to a user” was broad enough to encompass fingerprint information. *See* Ex. 38 (Wobbrock Decl.) at ¶¶ 52-65 (explaining a POSITA would understand the specification teaches fingerprint information as being a part of the claimed invention).

Samsung fails to rebut Dr. Wobbrock’s testimony. Dr. Wobbrock explains how the ’086 Patent’s specification provides ample support for the reading of a fingerprint. Ex. 38 (Wobbrock Decl.) at ¶¶ 68-70. Samsung neither disputes, nor offers an expert of its own to challenge, Dr. Wobbrock’s testimony.⁴ Dr. Wobbrock’s opinions are well supported by the specification, which teaches that it is possible to distinguish between the differences in finger input from individual to individual. *See* ’086 Patent at 4:61-5:1.⁵ This too supports rejection of Samsung’s proposal.

IV. THE ’161 PATENT–COLLATION UNIT AND CHRONOLOGICAL LIST TERMS

A. “chronological list of network devices” is not indefinite

Samsung’s RCC and the specification of the ’161 Patent make clear that the term “a chronological list of network devices connected to the network” has a plain and ordinary meaning—a listing of network devices in a particular order based on events. *See* MCC at 34-35.

Samsung argues that it is unclear if the chronology suggested in the “chronological list” is based on (1) “lists of device names in a particular order” or (2) “instead are chronologically ordered lists of *events* corresponding to network devices.” RCC at 30. But these are not actually two separate and distinct alternatives for ordering. The particular order of devices in the “chronological list” is based on the order of occurrence of events for those particular devices. For example, one

⁴ In prior proceedings involving the ’086 Patent, Staff agreed with Maxell that the specification describes identifying a fingerprint: “[t]he ’086 Patent explains that it is possible to determine the ‘contact range’ of a finger touch by determining which rows and columns in an array of sensors have been touched by the user’s finger.” Ex. 51 at 4.

⁵ While Samsung claims that prosecution disclaimer can “override” the disclosure of preferred embodiments in the specification, RCC at 29, that disclaimer must still be clear and unambiguous. Here, it is not.

embodiment in Figure 4 “lists log information that indicates device names (UDNs) 42 in plain text format in chronological order 41 in which SSDP alive packets were received.” ’161 Patent, 6:49-51. Samsung’s expert does not even discuss Figure 4 on this dispute. *See* Ex. X, ¶¶34-67.

Samsung claims it is unclear “whether the chronological list term is a broad one that can include just one entry for each device on a network, or must be a list of network events in which devices can be listed more than once.” RCC at 31.⁶ But the fact that multiple possibilities exist for listing the devices chronologically based on events (*i.e.*, one entry per device *v.* multiple entries as shown in exemplary Fig. 4) does not render the claims indefinite. *See CyWee Grp., Ltd. v. Huawei Device Co. Ltd.*, 2018 WL 6419484, at *20 (E.D. Tex. Dec. 6, 2018) (“That the claim is drafted broadly enough to cover multiple embodiments does not render the claim indefinite.”).⁷

Samsung’s argument that POSITA would be unsure which events must be included on the chronological list (*see* RCC at 30-31) is belied by its own brief. As acknowledged by Samsung, the ’161 Patent discloses three examples of events that a POSITA can use to list the device names in a particular order (*i.e.*, a “chronological list”): “network devices (1) joining/participating on the network, (2) leaving/departing from the network, and (3) periodically transmitting ‘alive’ messages on the network.” *See* RCC at 32 (citing to the ’161 Patent, 4:65-5:34, 6:30-63).

Finally, Maxell’s plain and ordinary meaning construction for “chronological list” is consistent with the opinion of *Samsung’s own expert* who identifies the “events” (described as “rules”) that would qualify as “home network information.” *See* Ex. X, ¶¶ 40-48. Further, he identifies an alternative construction that is consistent with three events disclosed in the

⁶ Dr. Weissman’s testimony on “home network” is not ambiguous. *See* RCC at 30, citing Ex. V, 9:10-17:23. Dr. Weissman answered hypotheticals and concluded that, if all elements of claim 1 are met in an office building rather than a home, including “home network information,” then an office building’s network could infringe claim 1. *See id.*
⁷ *See, e.g., BASF Corp. v. Johnson Matthey Inc.*, 875 F.3d 1360, 1367 (Fed. Cir. 2017) (“breadth is not indefiniteness”) (citation omitted); *dunhumby USA, LLC v. emnos USA Corp.*, 2015 WL 1542365, at *29 (N.D. Ill. Apr. 1, 2015) (a claim is not indefinite when it covers broad possibilities and multiple embodiments).

specification as ways of generating a home network information with a chronological list. *Id.* at ¶67. Thus, there is nothing ambiguous or unclear about the '161's Patent disclosure for this term.

B. The '161 Patent Discloses Sufficient Structure

Consistent with Federal Circuit precedent (*e.g.*, *Finisar*), the '161 Patent unambiguously discloses in detail three algorithms that perform a comparison between two datasets in prose and flowchart (Fig. 7). *See* MCC at 32. Based on the intrinsic evidence, including numerous comparison examples (Ex. 43, ¶¶ 90-91), even Samsung's expert was able to identify the type of algorithm. *See* Ex. X, ¶ 82 ("longest common substring."). The patent further provides various examples on how the three algorithms can be implemented. *See* MCC at 33-34 (citing to Ex. 43, ¶¶ 88, 92, 94, 96). *Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1385 (Fed. Cir. 2011) actually supports Maxell's position. In *Typhoon*, the Federal Circuit held the "means for cross referencing" term definite based on the description of the algorithm in prose. *Id.* at 1386. The court further held that "[i]t is not disputed that the steps are carried out by known computer-implement[ed] operations, and are readily implemented by persons of skill in computer programming." *Id.* The result is the same here. Samsung takes issue with *simplicity* of the disclosed algorithms but does not actually dispute that the algorithms are *disclosed*. Yet Samsung does not cite any law establishing that more detailed disclosures or complex algorithms are required. Here, both experts agree that comparison techniques were well-known to POSITAs at the time of the invention. *See* MCC at 32-33; *see also* Ex. 50, 89:20-94:9 (Shields acknowledging that a POSITA would know different comparison algorithms). *Blackboard, Inc. v. Desire2Learn, Inc.* is inapposite as the specification in that case had "no description of the structure or the process" for the relevant term. *See* 574 F.3d 1371, 1383 (Fed. Cir. 2009). On the other hand, Samsung does not rebut Maxell's reliance on *Enfish* and *Amtel* that allow for a POSITA to rely on known techniques and mechanisms to satisfy the algorithm requirement under § 112. *See* MCC at 33.

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 17th day of July, 2024, with a copy of this document via the Court's CM/ECF system.

/s/ Jamie B. Beaber

Jamie B. Beaber