

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AGERE SYSTEMS, INC.,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
BROADCOM CORPORATION,	:	No. 03-3138
Defendant.	:	

MEMORANDUM & ORDER

Schiller, J.

August 2, 2004

On July 20, 2004, the Court issued a Memorandum and Order (the “July 20 Order”) construing the claims at issue in this patent case pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), and requesting supplemental briefing regarding three specified claim terms. *Agere v. Broadcom*, Civ. No. 03-3138, 2004 WL 1658530, 2004 U.S. Dist. LEXIS 14187 (E.D. Pa. July 20, 2004). The Court now construes these three terms as set out below.¹

I. “MEANS INCLUDING ADDITIONAL REACTIVE ELEMENTS FOR CONNECTING THE SOURCE AND DRAIN ELECTRODES... TO ASSOCIATED POWER SOURCES” (‘195 patent, Claim 9)

In the July 20 Order, the Court determined that: (a) this is a means-plus-function term governed by 35 U.S.C. § 112 ¶ 6; (b) the function is to connect the source electrodes of a pair of MOS devices to an associated power source and to connect the drain electrodes of those MOS devices to a different power source; (c) the corresponding structures in the specifications are the low-impedance paths that include additional reactive elements, such elements being devices that behave like inductors or capacitors; and (d) corresponding structures are disclosed at col. 2, ll. 44-48, which

¹ All relevant legal and factual background concerning these claim constructions may be found in the July 20 Order. See *Agere*, 2004 WL 1658530, at *1-2, 2004 U.S. Dist. LEXIS 14187, at *4-9.

describes inductors 16 and 18 and capacitors 28 and 30 in figure 1. *See Agere*, 2004 WL 1658530, at *35, 2004 U.S. Dist. LEXIS 14187, at *124-26. The Court also directed the parties to brief the question of whether the specifications disclose any additional corresponding structures.

Broadcom proposes as additional structures col. 2, ll. 26-35, which describes inductors 16 and 18 in figure 1. Because the July 20 Order previously found elements 16 and 18 to be corresponding structures, the Court agrees with Broadcom that col. 2, ll. 26-35 is properly included in the construction as disclosing a corresponding structure.

Agere argues that additional corresponding structures are disclosed in col. 4, ll. 38-46, which describes inductors 64 and 66 and MOS devices 70 and 72 in figure 2. Elements 64 and 66 serve the same function in figure 2 as elements 28 and 30 serve in figure 1. (*Compare* ‘195 patent, col. 4, ll. 38-42 (“The source electrodes of the [MOS] devices . . . of fig. 2, as well as the bottom plates of the capacitors 64 and 66, are connected to a source 68 which is designated V_{SS} .”), *with id.*, col. 2, ll. 26-30, 44-46 (describing capacitors as connecting source electrodes of MOS devices to source V_{SS} .) Therefore, because there is no dispute that elements 28 and 30 are corresponding structures, elements 64 and 66 must be construed as corresponding structures as well.

Similarly, the description of elements 70 and 72 is parallel to that of elements 16 and 18. Elements 16 and 18 are described as connecting the drain electrodes of the MOS devices of figure 1 to a power source. (*See id.*, col. 2, ll. 30-35.) Elements 70 and 72 are described as connecting the drain electrodes of the MOS devices of figure 2 to ground (*id.*, col. 4, ll. 43-46), which the parties agree is a “power source” for purposes of this claim. *See Agere*, 2004 WL 1658530, at *34-35, 2004 U.S. Dist. LEXIS 14187, at *124. Thus, elements 70 and 72 are clearly described as performing the function of the “means including” term, i.e., connecting the drain electrodes of the MOS devices to

a power source.

Broadcom nonetheless objects that elements 70 and 72 cannot be corresponding structures because, unlike their inductor counterparts in figure 1, elements 70 and 72 are MOS devices, and therefore they are not “reactive elements” because they do not “behave like inductors or capacitors.” The Court notes that the parties’ original *Markman* briefing regarding the “reactive element” term focused on the question of whether such elements behave like inductors or capacitors, as Agere argued, or behave “primarily” as inductors or capacitors, as Broadcom contended. Importantly, Broadcom argued that the inclusion of the word “primarily” was crucial because it was needed to exclude elements with parasitic capacitance from the construction of “reactive elements.” (Broadcom Resp. at 103.) Prior to the conclusion of the *Markman* hearing, however, Broadcom assented to Agere’s construction of “reactive elements.” (Joint Submission of May 18, 2004 at 2.) Thus, by Broadcom’s own admission, the adopted construction includes parasitic capacitance, and it is undisputed that elements 70 and 72 have such capacitance. (Blalock Dep. at 215; Broadcom Resp. at 102.) Accordingly, the Court agrees with Agere that col. 4, ll. 36-46 of the ‘195 patent, describing elements 16, 18, 70, and 72 of figure 2, discloses structures corresponding to the “means including” term.

II. “ACCESS POINT” (‘311 patent, Claims 1, 2, 10)

In the July 20 Order, the Court: (a) rejected Broadcom’s argument that this term had a customary meaning to persons of skill in the art when the patent application was filed; and (b) rejected Agere’s construction as without evidentiary basis. *Agere*, 2004 WL 1658530, at *20-21, 2004 U.S. Dist. LEXIS 14187, at *71-74. In supplemental briefing, Agere contends that the Court

held the term to be incapable of proper construction, and that the claim is therefore invalid for indefiniteness. Agere's argument, however, misconstrues the Court's ruling. The Court did not hold that the term is incapable of construction; indeed, the invitation of supplemental briefing was premised on the fact that additional evidence might permit the Court to adopt a construction of value to the ultimate trier of fact. *Id.*, 2004 WL 1658530, at *47 n.76, 2004 U.S. Dist. LEXIS 14187, at *167 n.76 (“[T]he parties may file supplemental briefs regarding the construction of this term, including new or revised proposed constructions.”). Furthermore, the Court did not hold that Broadcom's construction was incorrect, but rather rejected Broadcom's sole contention that this construction represented the customary meaning of the term in 1991. *Id.*, 2004 WL 1658530, at *20, 2004 U.S. Dist. LEXIS 14187, at *73 (“Broadcom having presented no other evidence showing the existence of a customary meaning, the Court holds that this term had no such meaning in 1991.”). Accordingly, the Court clarifies that the July 20 Order did not find the instant term incapable of being construed, and instead examines the arguments and evidence provided on supplemental briefing in pursuit of a proper construction.

Broadcom's construction of “access point” as “an element in a network that provides access to the network infrastructure” is clearly supported by both intrinsic and extrinsic evidence. Most importantly, the claim language itself supports this construction, as all three claims at issue describe the access point at the communicative link between the wireless terminal nodes and the remainder of the network. (‘311 patent, col. 19, l. 64-col. 20, l. 5 (describing access point as delivering messages and transmitting beacons from network to wireless node), col. 20, ll. 10-15, 36-41 (same).) In addition, the evidence provided by Broadcom in its initial *Markman* briefing, while insufficient to establish a customary meaning of the term in 1991, supports Broadcom's position that its

construction was, at the least, shared by some persons of skill in the art at that time. (*See* Broadcom Opening Ex. O at 23 (Ken Biba, *A Hybrid Wireless MAC Protocol Supporting Asynchronous and Synchronous MSDU Delivery Services*, IEEE 802.11 (Sept. 1991)) (defining access point as “control[ing] access to the infrastructure”).) Finally, the contemporaneous technical evidence provided by Broadcom’s supplemental brief further bolsters its construction. (*See, e.g.*, Broadcom Fourth Supplemental Br. Ex. B at AS158286-88 (defining access point as fixed transceiver providing radius of communicative functionality for wireless user devices).) In total, therefore, the Court finds that Broadcom’s proposed construction is supported by both the claim language and extrinsic evidence, and it is accordingly adopted.

III. “TRELLIS ENCODING ONES OF THE AGGREGATED BITS TO IDENTIFY, FOR EACH OF THE PLURALITY OF SYMBOLS, A RESPECTIVE SUBSET FROM WHICH THAT SYMBOL IS TO BE CHOSEN” (‘154 patent, Claim 1)

As a preliminary matter, the July 20 Order appears to have caused some consternation on the part of Broadcom, which suggests that its proposed construction of this term may have been misunderstood by the Court. This concern is misplaced: The Court arrived at its holding through careful consideration of Broadcom’s argument that each group of trellis-encoded bits is used to identify a single symbol subset. To the extent that confusion arose from the Court’s citation to col. 14, ll. 22-31 of the ‘154 patent, the Court reiterates its interpretation of this specification as “disclaim[ing] potential limitations of the subset-identification process on the basis of the specified embodiments of that process.” *Agere*, 2004 WL 1658530, at *40, 2004 U.S. Dist. LEXIS 14187, at *144-45. In other words, the Court did not cite this specification as a direct contradiction of Broadcom’s construction, but rather as a manifestation of the patentee’s express intent to include as

many embodiments of the subset-identification process as possible within the language of the claim term, thereby indicating that Broadcom's proposed limitation of the term to its embodiments was improper. Nonetheless, the Court, acknowledging that its claim construction included potentially confusing language regarding "successive identification of symbol subsets," clarifies that this holding was intended to indicate only that the instant term's ambiguity must, as discussed above, be broadly construed to include the possibility of identifying of multiple subsets per group of trellis-encoded bits.

In light of this clarification, the Court finds that the construction proposed by Agere, "trellis encoding some of the aggregated bits to identify one or more subsets from which one or more symbols is to be chosen," is consistent with the July 20 Order. This construction could, however, be interpreted to imply incorrectly that more than one symbol subset may be associated with a particular symbol. Thus, the Court adopts a slightly modified version of Agere's proposed construction: "trellis encoding some of the aggregated bits to identify one or more subsets, from each of which one symbol is to be chosen."

IV. CONCLUSION

For the reasons set out above, the Court amends its July 20 Order with regard to the "means including," "access point," and "trellis encoding" terms. An appropriate Order follows.

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BROADCOM CORPORATION,	:	No. 03-3138
Defendant.	:	

ORDER

AND NOW, this 2nd day of **August, 2004**, upon consideration of Plaintiff Agere Systems Inc.'s Supplemental Brief, Defendant Broadcom Corporation's Fourth Supplemental Claim Construction Brief, and the parties' Joint Submission of July 26, 2004, it is hereby **ORDERED** that:

1. The Court's Order of July 20, 2004 (Document No. 81) is amended as follows:
 - a. "Means including additional reactive elements for connecting the source and drain electrodes . . . to associated power sources" ('195 patent, claim 9) shall be construed to include additional corresponding structures at col. 2, ll. 26-35 and col. 4, ll. 38-46.
 - b. "Access point" ('311 patent, claims 1, 2, 10) shall be construed as "an element in a network that provides access to the network infrastructure."
 - c. "Trellis encoding ones of the aggregated bits to identify, for each of the plurality of symbols, a respective subset from which that symbol is to be chosen" ('154 patent, claim 1) shall be construed as "trellis encoding some of the aggregated bits to identify one or more subsets, from each of which one symbol is to be chosen."

2. In all other respects, the Court's Order of July 20, 2004 shall remain in effect.

BY THE COURT:

Berle M. Schiller, J.