

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

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

**MEMORANDUM & ORDER**

**Schiller, J.**

**August 20, 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). *Agere v. Broadcom*, Civ. No. 03-3138, 2004 WL 1658530, 2004 U.S. Dist. LEXIS 14187 (E.D. Pa. July 20, 2004). Presently before this Court is Agere’s motion for reconsideration of the July 20 Order’s construction of the “information-carrying symbol” and square law terms. For the following reasons, Agere’s motion is denied.

**I. STANDARD OF REVIEW**

Motions for reconsideration should be granted “sparingly,” *AstraZeneca AB v. Mut. Pharm. Co.*, Civ. A. No. 00-4731, 2002 U.S. Dist. LEXIS 20311, at \*4 (E.D. Pa. Oct. 3, 2002), and only when one of the following grounds is established:

- (1) an intervening change in the controlling law;
- (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or
- (3) the need to correct a clear error of law or fact or to prevent manifest injustice.

*Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (internal citations omitted). Accordingly, a motion for reconsideration should not “raise new arguments that

could have been made in support of the original motion,” *McNeal v. Maritank Philadelphia, Inc.*, No. Civ. A. 97-0890, 1999 WL 80268, at \*4, 1999 U.S. Dist. LEXIS 895, at \*13 (E.D. Pa. Jan. 29, 1999), or ask the court to “rethink a decision that it has already made,” *Tobin v. Gen. Electric Co.*, No. Civ. A. 95-4003, 1998 WL 31875, at \*2, 1998 U.S. Dist. LEXIS 693, at \*4 (E.D. Pa. Jan. 27, 1998).

## **II. DISCUSSION**

### **A. “Information-carrying symbols”**

Agere argues that this Court’s construction of “information-carrying symbols” imposes a negative limitation on the plain and ordinary meaning of the claim term in contravention of the law of claim construction. Agere’s position mischaracterizes this Court’s analysis, which was rooted in the intrinsic record “beginning with the claim language itself.” *Agere*, 2004 WL 1658530, at \*9. Recognizing that the modifier “information-carrying” is itself a limitation on the word symbol, i.e., that the modifier must have some meaning that differentiates these symbols from non-information-carrying symbols, this Court endeavored to determine the content of this limitation and whether it includes preamble symbols. The construction proposed by Agere, based on the broad dictionary definition of information as “data that are transmitted by signals via telecommunication channels,” did not resolve this question. In fact, Agere’s definition was rejected because it only served to substitute “data-carrying” for “information-carrying” and provided no assistance to the trier-of-fact in determining whether preamble symbols are included in the term “data.” *See id.* at 10 n.14. In contrast, the Court utilized the technical dictionary definition upon which Broadcom relied because it provided content to the modifier “information-carrying” that comported with both the claim language and expert testimony concerning the role of preamble symbols in the transmission scheme

of the '786 patent.<sup>1</sup> Accordingly, Agere presents no error of law or fact warranting reconsideration.

## **B. Square Law**

Agere also seeks reconsideration of the Court's interpretation of the "square law" term on the grounds that the Court did not permit Agere to present evidence supporting its revised construction. On the contrary, however, Agere's post-*Markman* brief included discussion of this very term (*see* Agere's Post-*Markman* Br. at 19-20), and Agere was free to present any evidence it liked in support thereof. Furthermore, even if Agere felt constrained to omit evidence from its post-*Markman* brief, Agere could have filed any such evidence in its original briefs in order to challenge Broadcom's construction. In other words, given that Agere found Broadcom's construction objectionable from the beginning of the case, Agere should have filed expert reports and other evidence showing the flaws of this construction. Instead, Agere's expert report provided no reason to reject it (Blalock Rep. ¶¶ 29-30), and Agere's deposition of Broadcom's expert provided a single "admission" that, as discussed in the Court's *Markman* opinion, failed to advance Agere's construction or debunk that of Broadcom. *Agere*, 2004 WL 1658530, at \*33 n.52. In total, therefore, the Court sees no reason to allow Agere to reopen the construction of this term with evidence that could have been presented in a timely manner.

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<sup>1</sup> Agere also notes two allegedly factual errors in the Court's July 20 Order. Although Agere suggests that "this Court appears to have concluded that the claims at issue only cover *transmitters*," (Agere's Mot. for Recons. at 3), a review of the July 20 Order reveals that this is clearly not the case. *Agere*, 2004 WL 1658530, at \*10 (describing role of receivers in '786 patent.) Furthermore, despite Agere's contention that this Court improperly resolved factual disputes regarding the role of preamble symbols, the factual underpinnings of the Court's analysis, most of which were cited from Agere's expert report (*see id.*), were undisputed.

### **III. CONCLUSION**

For the foregoing reasons, Agere's motion for reconsideration is denied. An appropriate Order follows.

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<b>BROADCOM CORPORATION,</b>	:	<b>No. 03-3138</b>
<b>Defendant.</b>	:	

**ORDER**

**AND NOW**, this **20<sup>th</sup>** day of **August, 2004**, upon consideration of Plaintiff Agere Systems Inc.'s Motion for Reconsideration, Defendant Broadcom Corporation's response, and for the foregoing reasons, it is hereby **ORDERED** that:

Agere Systems Inc.'s Motion for Reconsideration (Document No. 88) is **DENIED**.

**BY THE COURT:**

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**Berle M. Schiller, J.**