

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

MAXELL, LTD.,

Plaintiff,

v.

LENOVO GROUP LTD., LENOVO
(UNITED STATES) INC., AND
MOTOROLA MOBILITY LLC,
Defendants.

Case No. 6:21-cv-01169-ADA

JURY TRIAL DEMANDED

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

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I. INTRODUCTION

Lenovo's Reply Claim Construction Brief ("Reply Br.") is full of bluster and redundant arguments but lacks substance. Maxell does not need to "contort the claim language" to support its infringement positions. Maxell's infringement positions are strong—a fact that is underscored by the many smartphone manufacturers that have licensed these patents, including after having challenged the patents (and Maxell's same infringement positions) in litigation. In fact, even Lenovo licensed Maxell's patents for certain electronic products. Yet it refuses to license the patents for its smartphones despite having now incorporated many of the same functionalities in Lenovo and Motorola smartphones that prompted Lenovo to take a license for certain electronic products. As for the substantive arguments, Maxell addresses these in turn.

For the '292 Patent, Maxell embraces Judge Schroeder's claim construction decision and that is why Maxell stated in its Responsive Claim Construction Brief that it is willing to agree to Lenovo's proposed construction as long as it incorporates Judge Schroeder's explanation accompanying that decision. Resp. at 6 n.4. But Lenovo wants to ignore Judge Schroeder's rationales in an effort to misconstrue the claim language. The specification of the '292 Patent explicitly includes an embodiment where a value of zero will "have no effect on the determination." '292 Patent 3:67–4:3; 4:39–42. This is recited twice in the patent and the Federal Circuit requires that all such embodiments should be incorporated in the construction. That is why Judge Schroeder made clear in his claim construction opinion that these embodiments were included within his construction and why Maxell incorporated Judge Schroeder's rationale in its proposed construction.

With respect to the '209 Patent, even Lenovo agreed until after the deadline in the DCO for revised constructions (May 16, 2022) that the specification disclosed structures corresponding to the claims means-plus-function terms. Lenovo changed its tune when Maxell adopted the same structures proposed by Lenovo. And nowhere in its brief does Maxell assert that "extrinsic and expert

support” is a substitute for corresponding structure. Maxell’s proposed constructions start at the specification and its expert and extrinsic evidence only support what is already disclosed.

For the ‘417 Patent, Lenovo is ignoring the principals of claim differentiation and is limiting the claims to a single embodiment without identifying any disclaimer or disavowal of claim scope when it is clear that “closed condition” has a well-established plain and ordinary meaning. For the ‘645 Patent, Lenovo’s proposal is stuffing multiple figures into the claimed “corrector” when each of these Figures are identified as “examples” in the ‘645 Patent. This is because Lenovo admittedly wants to “wreck[] [Maxell’s] infringement read,” making clear that Lenovo is interested in manufacturing non-infringement positions, not construing terms based on principals of claim construction. And for the ‘695 and ‘212 Patents, Lenovo is caught trying to balance inconsistent positions by arguing that an apparatus claim of the ‘695 Patent requires mixing of method claim steps but then argues that the claims of the ‘212 Patent are indefinite for allegedly including method step, which it does not. These positions by Lenovo are irreconcilable.

Further, Lenovo wrongly asserts that Maxell is holding Lenovo to the claim construction positions of Apple. Maxell merely pointed out Lenovo’s counsel’s prior positions, taken on behalf of another client, to demonstrate where persons of ordinary skill in the art have been able to ascertain the claim scope with reasonable certainty for related patents with the same specification. This weighs against Lenovo establishing by clear and convincing evidence that these claims are invalid.

Lastly, Lenovo tries to defend its mistakes of briefing and arguing against the wrong constructions by pointing to where Maxell pasted a single incorrect **agreed** function in its brief. Yet, no disputes or arguments were included in any of the briefs for this agreed function. In contrast, Lenovo explicitly submitted arguments to this Court in its Opening Brief that do not need to be addressed because they fail to address Maxell’s actual proposed constructions.

II. THE PROPER CONSTRUCTIONS OF THE DISPUTED TERMS

A. Disputed Terms in the ‘292 Patent

1. “combin[ing] / [ed]”

Maxell has always agreed with Judge Schroeder’s prior ruling. *Compare* Reply Br. at 3 (alleging “Maxell proposes a different, broader construction...at odds with Maxell’s prior position”) *with* Resp. at 4, 6 (stating how “Maxell agrees” with Judge Schroeder’s prior construction). “[W]e are, still debating [this] term” (Reply Br. at 2) because, contrary to Lenovo’s position, Judge Schroeder’s opinion that “a factor could be set to ‘0’ to provide ‘no effect’ for certain factors” should be accounted for in the construction here. *See Maxell Ltd. v. Huawei Device USA Inc.*, 297 F. Supp. 3d 668, 692 (E.D. Tex. 2018). Indeed, Maxell has offered to agree to Lenovo’s proposed construction with the understanding that Judge Schroeder’s guidance in *Huawei* also applies. *See* Resp. at 6 n.4. However, Lenovo will not agree. Instead, Lenovo contends that including Judge Schroeder’s opinion would cover “an embodiment [that] falls outside the scope of the claims.” *See* Reply Br. at 3. But this is at odds with claim construction law, which requires incorporating all embodiments discussed in the specification. *See Oatey Co. v. IPS Corp.*, 514 F.3d 1271, 1276 (Fed. Cir. 2008). Lenovo cannot contest that the ‘292 Patent discloses the “no effect” embodiment. *See* ‘292 Patent, at 3:64-4:3, 4:36-42. As explained by Judge Schroeder, this embodiment should be accounted for.

2. “GPS/cellular positioning results combining means . . .”

As with the prior term, the construction for the “combining means” in this term should account for the disclosed “no effect” embodiment. Lenovo’s remaining arguments for this term contradict themselves. Lenovo asserts that Maxell’s “current proposal is at odds with its proposed (and rejected) construction in the *Huawei* case,” effectively admitting that Maxell’s current position is different from its position in the *Huawei* case. Reply Br. at 5. In the same breath, Lenovo states that “Maxell’s proposal therefore...was rejected by Judge Schroeder before,” alleging that Maxell is putting forth a proposal that is the same as in the *Huawei* case. *Id.* Regardless, Maxell is not

attempting to relitigate its prior construction. Rather, the construction of this term should also be informed by Judge Schroeder’s guidance. *See Huawei*, 297 F. Supp. 3d at 694.

B. Disputed Terms in the ‘209 Patent

1. “object distance detecting means for detecting distance to an object”

First, Lenovo does not dispute that Maxell’s proposed structure is the same structure that Lenovo had proposed until changing it after the May 16th deadline. Second, Lenovo and its expert Dr. Katsaggelos do not dispute that the specification discloses the structure of object distance detecting circuit 11 using a focal point to form distance information. *See Reply Br.* at 7–8 (citing Katsaggelos Decl. ¶¶ 37-47); *see also* ‘209 Patent, 5:35–39. Both a circuit and the methodology for the circuit to calculate is disclosed. Thus, the inquiry should end here. The claim is definite.

But the ‘209 Patent goes further. It even identifies additional structure, *i.e.*, using distance sensors for detecting distance to an object. ‘209 Patent, 15:36-39 (“information obtained from various distance sensors can be also applied”); *see also* Richardson Decl. ¶ 61. Neither Lenovo nor Katsaggelos dispute that distance sensors were a known structure as explicitly disclosed in the intrinsic evidence. *See* Richardson Decl. ¶¶ 67–73; Katsaggelos Decl. ¶ 41. Thus, it is undisputed that the ‘209 Patent explicitly discloses multiple structures for detecting distance. And a patentee “need not disclose details of structures well known in the art” so long as some structure is disclosed. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339–40 (Fed. Cir. 2016)¹. Lenovo does not dispute that *Enfish* or *Skky* apply here and support a finding of sufficient structure. Lenovo, however, does mischaracterize Dr. Richardson’s testimony in an attempt to apply *Ergo*. Dr. Richardson did not state that different types of structures applied like *Ergo*’s expert who admitted that different types

¹ *See also Skky, Inc. v. MindGeek, s.a.r.l.*, 859 F.3d 1014, 1019 (Fed. Cir. 2017) (“it is sufficient if the claim term is used in common parlance or by persons of skill in the pertinent art to designate structure, even if the term covers a broad class of structures.”); *also Samsung Elecs. Am., Inc. v. Priusa Eng’g Corp.*, 948 F.3d 1342, 1354 (Fed. Cir. 2020) (“digital processing unit” is sufficient structure”); *R2 Solutions LLC v. Deezer S.A.*, 2022 WL 36240, at *30 (E.D. Tex. Jan. 4, 2022) (server is broad but sufficient structure); *Gesture Tech. Partners, LLC v. Huawei Device Co., Ltd.*, No. 2:21-CV-40-JRG, 2021 WL 4760632, at *9 (E.D. Tex. Oct. 12, 2021).

of control devices existed that were “microprocessors, discrete circuits connected to stepper motors, and analog circuits.” Further, unlike *Ergo*, here, distance sensor is disclosed in the specification and as a specific structure in the examples provided by Dr. Richardson. These are all distance sensors not three different classes of circuitry. For this additional reason, Maxell is right.

2. “zoom value detecting means for detecting a zoom value of an optical system”

Like above, Lenovo does not dispute that Maxell’s proposed structure is the same structure that Lenovo had proposed. Further, the ‘209 Patent specifically discloses the known structure of “zoom value detecting circuit 12.” See ‘209 Patent at 5:39–43 (explaining that circuit 12 “detects a zoom value (magnification, focal distance, angle of view, etc.) according to the zoom lens of the camera lens 1 and forms zoom value information”); see also *id.* at 15:25-28 (“any parameter such as focal distance f , angle of view θ , zoom lens position P , or the like can be used [to detect zoom]”). The fact that Lenovo’s expert will take the position that a person of ordinary skill in the art would not recognize the disclosed “zoom value detecting circuit 12” as sufficient circuitry in the field of cameras is a clear indication that Dr. Katsaggelos’ opinions are not credible when in a 1995 patent, he himself disclosed a “zoom estimator 606” for “providing a zoom estimate” in his patent. U.S. Patent No. 5,717,463 at Fig. 6 (Ex. 14). Surely, a person having a degree in Electrical/Computer Engineering and at least two years of experience in the field of image processing would recognize “zoom value detecting circuit 12” as sufficient structure.

3. “object brightness detection means for detecting brightness of the object”

Again, Lenovo does not dispute that Maxell’s proposed structure is the same structure that was proposed by Lenovo. Further, Lenovo and its experts flatly ignore that the ‘209 Patent explicitly discloses the structure of “object brightness detecting circuit 13” that can detect brightness information using an “image pickup device” and/or “information obtained from various sensors such as illuminance sensor, luminance sensor, and the like.” ‘209 Patent at 15:33–36. None of these

disclosures can be characterized as a “black-box.” *See* Richardson Decl. ¶¶ 92–95. For example, Lenovo provides no explanation why the disclosed luminance sensors and illuminance sensors would not be sufficient structure to perform the claimed function of “detecting brightness of the object.” Aspects of such sensors and/or circuits within image systems were known in the art. Richardson Decl. ¶ 79 (citing Exs. E and F which disclose examples of object brightness detecting circuit (*e.g.*, “luminance signal processing unit 2”). Sufficient structure is disclosed.

4. “white balance controlling means . . .”

Lenovo does not dispute that: (1) Maxell’s proposed structure was proposed by Lenovo in this case; (2) instead of construing this term, Lenovo is seeking a summary judgment of invalidity for lack of enablement; (3) in its Opening Brief, Lenovo had identified the wrong functions of “form[ing] information for adjusting a control amount of white balance control and set[ting] it” (Op. Br. at 12); (4) the ‘209 Patent discloses sufficient structure for performing the claimed function of detecting an achromatic portion (Reply Br. at 10); and (5) the disclosed structure includes “execut[ing] software of a microcomputer or the like” (Richardson Decl. ¶111 (citing ‘209 Patent at 15:50–55)). While Lenovo and its expert allege that no algorithm is disclosed, Dr. Richardson and Maxell explained at length that multiple algorithms are disclosed in prose forms. *See* Resp. at 15–17 (citing Richardson Decl. ¶¶ 100–09). An algorithm can be disclosed “in any understandable terms including . . . in prose . . . or in any other manner.” *Noah Sys.*, at 1302, 1312.

With respect to the second claimed function and the only remaining disputed, Lenovo argues that: (1) Maxell does not identify “any circuitry or algorithm that might be responsible for **creating the gain control** signal (B)”; and (2) “[t]he specification also fails to disclose structure whereby white balance deviation information A impacts **the forming of gain control signal B.**” Reply Br. at 10 (emphasis added). Even if this were true, Maxell’s response is: so what?

The claimed function is “controlling gain of the chrominance signal in accordance with a shift amount of white balance detected from the achromatic portion.” There is no recitation in this function of “creating [a] gain control signal” or “impact[ing] the forming of gain control signal.” The claimed function requires controlling gain of a **chrominance signal** (colored portion of image signal), not creating or forming a gain control signal. And the ‘209 Patent provides detailed disclosures on how the gains of the chrominance signals (*i.e.*, color signals) are controlled using shift amount in white balance (*i.e.*, white balance deviation). *See* Richardson Decl. ¶105 (citing ‘209 Patent at 2:9–22 (explaining that a feedback control can be setup to correct white balance deviation which can be used to change the gains of primary color signals (also described in detail and with reference to intrinsic record in Japanese Patent No. 2532968 at 6:48–58)); *see also* ‘209 Patent at 5:52–61 (emphasis added) (explaining that gains of primary color signals are controlled based on a result of a comparison of object distance and a threshold (also described in detail at 6:59–67 and 7:6–26)); *see also* Richardson Decl. ¶106. Thus, sufficient structure is disclosed.

C. Disputed Terms in the ‘417 Patent

1. The Preamble of Claim 1 Is Not Limiting.

Maxell did not misapply *Stride Rite*. *See* Reply Br. at 10-11. Maxell quoted this case for the proposition that ““antecedent basis alone is not determinative of whether a preamble is limiting,”” and that statement remains accurate. *See* Resp. at 18 (quoting *Shoes by Firebug LLC v. Stride Rite Children’s Grp., LLC*, 962 F.3d 1362, 1368 (Fed. Cir. 2020)). Although *Stride Rite* ultimately concluded that one preamble there was limiting, it did so because that preamble was “essential to understanding the structural limitations of the illumination system.” *Stride Rite*, 962 F.3d at 1368. *Stride Rite* also declined to find the identical preamble of a second claim limiting when “the body of [that claim] recite[d] a structurally complete invention.” *Id.* at 1367.

Such is the case for the '417 Patent. Though the preamble recites that a mobile terminal capable of being in both an “open condition” and a “closed condition,” so does the claim body. *See* '417 Patent at 6:66-7:4 (claim 1) (“when the mobile terminal is in the open condition . . . when the mobile terminal is in the closed condition.”) Lenovo makes too much of the preamble’s use of the word *changed*. It is not true that “[t]he preamble’s use of the phrase ‘changed from an open condition into a closed condition’ (emphasis added) confirms that the mobile terminal must be able to physically move between the open and closed conditions.” Reply at 11. The body of the claim already confirms this capability by specifying that certain features occur “when the mobile terminal is in the open condition” and that other features occur “when the mobile terminal is in the closed condition.” The claim body thus implicitly already requires the capability of changing. The preamble says nothing that the body does not.

Regardless of whether “the body of claim 1 does not provide any structural limitations for changing from an open condition ‘into’ a closed condition” (*id.*), neither does the preamble. The preamble merely describes a method of use of the mobile terminal and likewise does not explain, “how the mobile terminal physically changes from an open condition into a closed condition.” *See id.* Lenovo is reading in limitations that simply are not there, and the preamble’s recitation of changing is redundant of the more-detailed limitations in the body of the claim. It not limiting.

Because a person of ordinary skill would fully comprehend the claimed invention without reference to the preamble, it is not essential and thus not limiting. *See Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002); *Ancora Techs., Inc. v. LG Elecs., Inc.*, 2020 U.S. Dist. LEXIS 150002, at *20 (W.D. Tex. Aug. 19, 2020) (finding that a claim’s preamble introducing terms used in its body was not limiting); *Gestion Proche, Inc. v. Dialight Corp.*, 2017 U.S. Dist. LEXIS 65617, at *6 (E.D. Tex. May 1, 2017) (when “[d]eletion of the preamble does not affect the definition or operation of the claimed invention,” the preamble does not limit the claim).

2. “closed condition”

Lenovo’s four arguments for rewriting “closed condition” as “folded” each fail.

It is not true, as Lenovo contends that “closed condition” must be construed as “folded” simply because “no other embodiment discloses closed or open conditions.” Reply Br. at 12. It is blackletter law that, “[e]ven when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using ‘words or expressions of manifest exclusion or restriction.’” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004) (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed. Cir. 2002)). As recently as 2019, the Federal Circuit “expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment.” *Continental Circuits LLC v. Intel Corp.*, 915 F.3d 788, 797 (Fed. Cir. 2019) (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc)). Lenovo offers no reason to deviate from this precedent by importing the limitations of the Figure 4 embodiment into the claims. Its first argument should be rejected.

Lenovo’s second argument fares no better. According to Lenovo, the specification’s use of *often* in relating the closed condition to standby mode means that the closed condition has nothing to do with standby mode. *See* Reply Br. at 12. Not so. The specification teaches that the mobile terminal is in standby mode when in the closed condition (whether “often” or always), and this plainly expresses the inventors’ intent for “closed condition” to mean more than just “folded.” *See, e.g.*, ‘417 Patent at 5:51-53 (“in the closed condition, the cellular phone is often on standby (waiting) for cellular phone communications...”). Were Maxell seeking to construe “closed condition” as “standby mode,” Lenovo may have a point. But that is not the issue; rather, the issue is whether “closed condition” should be accorded its full scope consistent with the specification, including

“folded” and “standby” arrangements, as well as other “closed” conditions. Lenovo’s attempts to pick and choose from among the intrinsic evidence should be rejected.

Next, Lenovo has given no reason to overcome the presumption of claim differentiation here. Though Lenovo cites cases noting that claim differentiation may be overcome “when the specification or prosecution history dictates a contrary conclusion,” Lenovo offers no evidence for why this presumption should be cast aside for the ‘417 Patent. *See* Reply Br. at 13. Lenovo’s efforts to distinguish claim 7 from claim 1 under its construction for “closed condition” do not alter this conclusion, and Lenovo’s attempts to somehow tie claim 7 to the “internal components of Figure’4 foldable structure” is perplexing and unjustified. *See id.* Claim 7 merely provides that the mobile terminal has a “folded” structure—the very same limitation that Lenovo would import into claim 1 through its proposed construction for “closed condition.” Without more, the presumption of claim differentiation should apply here.

Finally, Lenovo would disregard Maxell’s extrinsic evidence simply because “many of [Maxell’s] proposed dictionary definitions are used in a context unrelated to mobile phones.” *Id.* Lenovo is wrong again. The dictionary definitions Maxell proposed are within the field of computing and electrical engineering. That these technical dictionaries are not specific to “mobile phones” is no reason to disregard them. *See, e.g., Vanderlande Indus. Nederland BV*, 366 F.3d at 1321 (Fed. Cir. 2004) (distinguishing between *general-usage* dictionaries and *technical, art-specific* dictionaries). Particularly here, where Lenovo fails to provide any contrary extrinsic evidence, Maxell’s submissions should be credited.

3. “specific processing”

Lenovo’s three arguments for “specific processing” are each unavailing. First, it is not true that the mere use of the word *herein* makes a sentence definitional, and *Intercept Pharmaceuticals* did not so hold. Instead, the District of Delaware found certain language in a specification

definitional, not only because it used the phrase “as used herein,” but also because it appeared “in a section of the specification entitled ‘Definitions,’” which is not the case for the ‘417 Patent. *See Intercept Pharms., Inc. v. Apotex Inc.*, No. 20-cv-1105, 2022 WL 856859, at *3 (D. Del. Mar. 23, 2022). In any case, the phrase at issue there (“as used herein”) does not appear in the ‘417 Patent—only “herein” is used. *See* ‘417 Patent at 2:65.

Lenovo also falls back on the same flawed reliance on *Sinorgchem* as an excuse to disregard the clear “for example” language used to describe “specific processing.” *See* Reply Br. at 14. But Maxell already addressed this issue in its response: *Sinorgchem Co. v. International Trade Commission* merely held that “vague language cannot override the express definitional language,” *see* 511 F.3d 1132, 1137-38 (Fed. Cir. 2007), but there is nothing “vague” about the ‘417 Patent’s use of “for example” when referring to certain types of specific processing.

Lenovo has also not overcome the presumption of claim differentiation for “specific processing.” The supposedly “definitional” language Lenovo leans on for this term is inconclusive at best, and such lack of certainty cannot overcome claim differentiation. *See Absolute Software, Inc. v. World Computer Sec. Corp.*, No. A-09-CV-142-LY, 2014 WL 496879, at *11 (W.D. Tex. Feb. 6, 2014) (“claim differentiation is at its strongest where the limitation sought to be read into an independent claim already appears in a dependent claim”).

It is irrelevant that, in Lenovo’s view, “one skilled in the art would not be able to discern the scope of ‘specific processing’ without resorting to the specification.” Reply Br. at 15. That a skilled artisan would consult the specification for additional clarity does not justify importing limitations from the specification. *See Teleflex*, 299 F.3d at 1324 (finding that it is “a ‘cardinal sin’ of claim construction [to] import[] limitations from the written description into the claims”).

D. Disputed Corrector Terms in the ‘645 Patent

Lenovo is correct, the relevant inquiry is whether the corresponding structure is disclosed in the specification and **clearly linked** to or associated with the recited function. *Rain Computing, Inc. v. Samsung Elecs. Am., Inc.*, 989 F.3d 1002, 1007 (Fed. Cir. 2021). Therefore, the fact that CPU 7 is disclosed in the specification for performing “general processing of the portable telephone” has no relevance to whether this corresponds to the structure of the claimed correctors that perform the functions of correcting video input signal. The plain language of the claim makes clear, that these general processing functions of CPU 7 correspond to unclaimed embodiments. There is no link, let alone “clear link” between the claimed correctors and their image corrections functions and the functions of, for example, receiving a call or initializing a tuner.

As explained by Dr. Richardson, when CPU 7 is **clearly linked** to the claimed functions of correcting video input signal, it is disclosed in the ‘645 Patent to not be a general purpose computer but a processor that “conducts video decoding processing and audio decoding processing.” Richardson Decl. at ¶118 (citing ‘645 Patent, 4:37–38). Even, Lenovo’s own expert, Dr. Franzon admits that these functions have nothing to do with the claimed correcting functions. Franzon Decl. ¶¶ 49–50. Put simply, CPU 7 is disclosed to be an audio/video decoder/processor for purposes of performing the claimed video correction functions, and this is sufficient structure.

Moreover, Lenovo and its expert Dr. Franzon are also incorrect in alleging that the claim should be narrowed to include the entirety of Figures 13, 17, and 18 as the proposed structure when the ‘645 Patent itself discloses these Figures to be just “examples,” and not limiting disclosures. Richardson Decl. ¶121; Rep. Br. at 27. Lenovo argues that these “non-limiting examples” should be imported into the claim because they are clearly linked to the claim. Reply Br. at 17. Even this is incorrect. If anything, Figures 34 or 44 of the ‘645 Patent are linked to CPU 7 because “FIG. 34 is a flow diagram showing an example of processing **conducted in a CPU**” (‘645 Patent at 3:11–12) and

“FIG. 44 is a flow diagram showing an example of processing conducted in a CPU” (‘645 Patent at 3:31–32). Lenovo and Dr. Franzon are completely silent about these disclosures, instead importing Figures describing “**example** of [luminance correction/hue correction/saturation correction] conducted in modulator.” It does not make sense to limit the proposed structure to Figures describing examples of processes conducted in a “modulator” when the modulator is disclosed to be alternatively implemented in CPU 7. ‘645 patent at 12:63–67. All Lenovo says about this is that the disclosed implementation without PEQ circuit cannot be correct because “no algorithm [is] disclosed. Reply Br. at 17. But as explained by Dr. Richardson, numerous algorithms **are** disclosed in the ‘645 Patent that Lenovo simply chooses to ignore and not address in its brief. *See* Resp. Br. at 27; *see also* Richardson Decl. ¶128. Accordingly, Maxell’s proposed construction should be adopted.

E. Disputed Terms in the ‘695 Patent

1. “a demultiplexer . . . each audio data sequence”

Lenovo admits that “the stream ID may be obtained at the same time as other information.” Reply Br. at 18. If, as Maxell demonstrated in its responsive brief, it is this stream ID that contains the claimed method of compression and encoding, Lenovo has shown precisely why its proposed construction is wrong. Further, Lenovo has failed to show why the PID rather than the stream ID is the attribute information to be extracted, nor has Lenovo shown why it would not be possible to simultaneously extract the PID, as it all but admits is possible for the stream ID. *See* Reply Br. at 18 n. 2. To the contrary, the portion of the specification cited by Lenovo discloses that the property or attribute is other information written in a PMT (program map table) along with the PID. *See* ‘695 patent at 6:51-55. Indeed, the specification discloses that the PMT may contain the PID, the audio data, together with the property and attribute. *Id.* Lenovo has conceded that certain header files (the stream ID) may be extracted simultaneously with “other information” (such as an audio data sequence), and there is nothing special about the PID that would prohibit its simultaneous extraction

as well. Lenovo’s argument that these extractions occur in a particular order would exclude this possibility and are incorrect. Without express lexicography or prosecution history estoppel—neither of which Lenovo argues here—it is improper to limit the claim as Lenovo proposes. *See Thorner v. Sony Comp. Ent’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

2. “which is designated by [a/the] user”

The claims do not require a user to designate anything—and Lenovo has pointed to no claim language to the contrary. Instead, the limitation at issue merely identifies which audio data sequence is to be extracted from among the universe of possible audio data sequences. The claim uses a nonrestrictive clause (“which is designated by a user”) to make this identification. Thus, the claims require no action on the part of a user.

Nothing in the claim shows “that the user must have affirmatively acted.” Reply Br. at 19. Regardless, whatever user action may be necessary to designate a particular audio data sequence is not part of the ‘695 Patent’s claims. Had the claims recited a limitation to the effect of “wherein an audio data sequence is designated by a user,” Lenovo might have a point—but the claims say nothing like this. For the same reason, it is irrelevant whether “[t]he specification confirms that the user must perform the act of designating the audio data sequence,” *id.*, what matters is the claim language, which is devoid of any affirmative step requiring user designation.

Lenovo’s efforts to distinguish *MasterMine* also fail. Just as the claims in *MasterMine* “ma[d]e reference to user selection” and “d[id] not explicitly claim the user’s act of selection,” so too do the ‘695 Patent’s claims merely reference user designation without actually claiming it. *See MasterMine Software, Inc. v. Microsoft Corp.*, 874 F.3d 1307, 1316 (Fed. Cir. 2017). Maxell already explained how *MasterMine* aligns with the instant facts far better than *IPXL Holdings*, *Katz*, and *Visible Connections* (*see* Resp. at 32-33), but Lenovo failed to dispute those points. At bottom, infringement of the ‘695 Patent’s claims occurs when one provides an infringing system. Lenovo

fails to advance a single credible argument that can overcome the plain claim language here: the system infringes when it contains a particular audio data sequence, one that is “designated by a user,” not when the user actually designates that sequence.

F. Disputed “Wherein” Clause Terms in the ‘212 Patent

When Lenovo wants to limit an apparatus claim by requiring a sequence of steps it has no problem conceding “under the law, apparatus claims often contain functional language that can ‘limit the claims without using the means-plus-function format.’” Reply Br. at 17. This is precisely Maxell’s position here. The functional limitation about issuing an indication is limiting the claim by indicating a capability of the controller to control the assignment of the transmission rate.

Contrary to Lenovo’s assertion of confusion about the scope of infringement (*id.* at 21), the claim is infringed when the accused product includes a controller that has a control unit with the capability to control transmission rate when an indication is issued. This Court has found such claims as definite. For example, in *U.S. Well Services, Inc. v. Halliburton Co.*, the parties disputed whether the phrases “performing/performs electric motor diagnostics to prevent damage” and “performs electric motor diagnostics” made the asserted claims indefinite for reciting a method step in a system claim. 2022 WL 819548, at *9 (W.D. Tex. Jan. 17, 2022). The Court noted that “claims are not indefinite mixed method-apparatus claims when the functional language of a claim merely describes the structure and capabilities of the claimed apparatus.” *Id.*; see also *UltimatePointer, L.L.C. v. Nintendo Co.*, 816 F.3d 816, 827 (Fed. Cir. 2016) ([T]he ‘data generating’ limitations only indicate that the associated structures have this capability . . . and do not require that any data be actually generated by the user.”). The same is true for claims 1 and 4 of the ‘212 Patent, *i.e.*, they merely identify a capability of the control unit. See *Visible Connections, LLC*, 418 F. Supp. 3d at 166 (W.D. Tex. 2019) (stating that claims “merely contain[ing] permissible functional language to describe the capabilities of the claimed system” are permissible under *MasterMine*) (citation omitted).

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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 11th day of July, 2022, with a copy of this document via the Court's CM/ECF system.

/s/ Jamie B. Beaber
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