United States District Court, S.D. California.

QUALCOMM INCORPORATED, Plaintiff. v. BROADCOM CORPORATION, Defendants. Broadcom Corporation, Counter-Claimant. v. Qualcomm Incorporated, Counter-Defendant. Civil No. 05CV1392-B(BLM)

Oct. 27, 2006.

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CLAIM CONSTRUCTION ORDER FOR UNITED STATES PATENT NUMBER 5,638,412

RUDI M. BREWSTER, Senior District Judge.

Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996), on September 25-28, 2006, the

Court conducted a Markman hearing concerning the above-titled patent infringement action regarding construction of the disputed claim terms for U.S. Patent Number 5,638,412 ("the '412 patent"). Plaintiff Qualcomm, Inc. was represented by the law firm of Day Casebeer Madrid & Batchelder LLP, and Defendant Broadcom Corp. was represented by the law firm of Wilmer Cutler Pickering Hale and Dorr LLP.

At the Markman hearing, the Court, with the assistance of the parties, analyzed the claim terms in order to prepare jury instructions interpreting the pertinent claims at issue in the '412 patent. Additionally, the Court prepared a case glossary for terms found in the claims and specification for the '412 patent considered to be technical in nature which a jury of laypersons might not understand clearly without a specific definition.

After careful consideration of the parties' arguments and the applicable statutes and case law, the Court **HEREBY CONSTRUES** the claims in dispute for the '412 patent and **ISSUES** the relevant jury instructions as written in Exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in Exhibit B, attached hereto.

IT IS SO ORDERED.

EXHIBIT A FN1

FN1. All terms appearing in bold face type and underlined have been construed by the court and appear with their definitions in the glossary in Exhibit B. The definition for each construed term appears in italics after its first use in the patent.

VERBATIM CLAIM LANGUAGE	COURT'S CONSTRUCTION
Claim 1	Claim 1
1. In a wireless communication system in	which a first communication device originates a
which a first communication device originates	communication service with a second communication device,
a communication service with a second	a method for negotiating service configuration, <i>comprising</i> [
communication device, a method for	<i>including, but not limited to</i>] the steps of:
negotiating service configuration, comprising	
the steps of:	
generating a request message indicative of a	generating a request message indicative of a requested
requested service configuration of said first	service configuration [a common set of attributes for
communication device;	building and interpreting traffic channel frames including
	but not limited to data rates (transmission rates), frame
	<i>formats</i> (multiplex options) and <i>types of services</i> (service
	<i>options)</i>] of said first communication device;
transmitting said request message;	transmitting said request message;
receiving said request message at said second	receiving said request message at said second communication
communication device;	device;
determining if said requested service	determining if said requested service configuration is
configuration is acceptable to said second	acceptable to said second communication device in
communication device in accordance with	accordance with current capabilities of said second

UNITED STATES PATENT NUMBER 5,638,412-CLAIM CHART

current capabilities of said second communication device:	communication device;	
generating a response message in accordance	generating a response message in accordance with said	
with said determination.	determination.	
transmitting said response message from said	transmitting said response message from said second	
second communication device and receiving	communication device and receiving said response message	
said response message at said first	at said first communication device: and	
communication device: and		
determining, at said first communication	determining, at said first communication device, whether to	
device, whether to establish communication	establish communication with said second communication	
with said second communication device based	device based on said response message.	
on said response message,		
wherein said messages are transmitted over a	wherein said messages are transmitted over a <i>common</i>	
common channel provided for general	channel [a paging channel (a channel for one way	
messaging services between communication	communication of messages from a base station to a mobile	
devices of said wireless communication	station) or an access channel (a channel for one way	
system,	communication of messages from a mobile station to a fixed	
	station)] provided for general messaging services between	
	communication devices of said wireless communication	
	system,	
and wherein if said response message rejects	rejects said requested service configuration said method	
said requested service configuration said	further comprises the step of communicating service	
method further comprises the step of	negotiation [a process of bilateral negotiation of a service	
communicating service negotiation messages	<i>configuration, if possible</i>] messages over a traffic channel,	
over a traffic channel, said traffic channel	said traffic channel being a communication channel allocated	
being a communication channel allocated for	for communication between said first and second	
communication between said first and second	communication devices.	
communication devices.		
Claim 3 Claim 3		
3. The method of claim 3. The method of clai	m 1, wherein said service configuration provides a forward	
1, wherein said service link [connection from	the base station to the mobile station] multiplex option	
configuration provides a linstructions which c	ontrol the way in which the information bits of the forward	
forward link multiplex and reverse traffic ch	annel frames, respectively, are divided into various types of	
option. [traffic].		
	m 4	
4. The method of claim 1, wherein said 4. If	e method of claim 1, wherein said service configuration	
service configuration provides a reverse prov	des a <i>reverse link</i> [connection from the mobile station to the	
Chrise 5	station] multiplex option.	
5. The method of claim 1, wherein said service	5. The method of claim 1, wherein said service	
configuration provides forward link transmissi	on <i>conjiguration</i> provides <i>jorwara unk</i> transmission	
rates.	rates.	
Claim 0	Claim 0	
D. The method of claim 1, wherein said service	o. The method of claim 1, wherein said service	
configuration provides reverse link transmissio	<i>conjiguration</i> provides <i>reverse link</i> transmission rates.	
rates.		

Claim 7	Claim 7			
7. The method of claim 1,	7. The metho	d of cla	im 1, wherein said <i>service configuration</i> provides a	
wherein said service	service optio	n [the]	formal definition of the way in which traffic bits are	
configuration provides a service	processed by	the mo	bile station and base station].	
option.	Ĩ		-	
Claim 9	Claim 9			
9. The method of claim 8, where	in 9. The m	nethod c	of claim 8, wherein the identity of said traffic channel is	
the identity of said traffic channel	el is provided	l in said	channel assignment message [a message indicating	
provided in said channel assignm	nent <i>whether</i>	a prope	osed service configuration has been accepted or	
message.	message.			
Claim 10	U U	-	Claim 10	
10. The method of claim 1, when	ein said first		10. The method of claim 1, wherein said first	
communication device is a mobil	le station and	said	communication device is a mobile station and said	
request message is transmitted ov	ver an access		request message is transmitted over an <i>access channel</i> .	
channel.				
Claim 11			Claim 11	
11. The method of claim 1, when	ein said first		11. The method of claim 1, wherein said first	
communication device is a base	station and sa	id	communication device is a base station and said	
request message is transmitted ov	ver a paging		request message is transmitted over a <i>paging channel</i> .	
channel.	100			
Claim 13			Claim 13	
13. The method of claim 1, when	ein said secor	nd	13. The method of claim 1, wherein said second	
communication device is a base	station and sa	id	communication device is a base station and said	
response message is transmitted	over a paging	[response message is transmitted over a <i>paging</i>	
channel.	186	,	channel.	
Claim 14			Claim 14	
14. The method of claim 1, when	ein said first		14. The method of claim 1, wherein said first	
communication device is a mobil	le station and	said	communication device is a mobile station and said	
request message is transmitted ov	ver an access		request message is transmitted over an <i>access channel</i>	
channel and wherein said second	communicat	ion	and wherein said second communication device is a	
device is a base station and said response message is base st		base station and said response message is transmitted		
transmitted over a paging channe	el.	-	over a <i>paging channel</i> .	
Claim 16		Claim	16	
16. In a wireless communication	system in	16. In a	a wireless communication system in which a first	
which a first communication dev	vice	commu	inication device originates a communication service	
originates a communication serv	ice with a	with a	second communication device, a system for negotiating	
second communication device, a	system for	service	configuration, comprising	
negotiating service configuration	, comprising			
service request generator means	for	service	request generator means for generating a request	
generating a request message ind	licative of a	messag	e indicative of a service configuration of a	
service configuration of a predet	ion of a predetermined set predete		etermined set of first communication device service	
f first communication device service <i>configur</i>		configu	urations at said first communication device [This is a	
configurations at said first communication <i>means-plus-function limitation. The function</i>		<i>-plus-function limitation. The function is generating a</i>		
device; request message indicative of a service configuration of a				
predetermined set of first communications device service				
		configu	urations at said first communication device. The	

	corresp Figure column 9, lines 19-23.]	onding structure is service negotiators 20 and/or 40, 2; and/or service negotiator (column 3, line 2); and/or 8, lines 33-34 (service negotiator 20); and/or column 64-65 (service negotiator 40); and/or column 8, lines ;
transmitter means for transmitting said request message;	transmi [This is transmi structur	<i>tter means for transmitting said request message</i> <i>a means-plus-function limitation.</i> The function is tting said request message. The corresponding <i>te is a transmitter and an antenna.</i>];
receiver means for receiving said transmitted message at said second communication device;	receiver said sec function message corresp	r means for receiving said transmitted message at cond communication device [This is a means-plus- n limitation. The function is receiving transmitted e at said second communication device. The onding structure is an antenna and a receiver.];
service control means for determining if said service configuration request is acceptable to said second communication device in accordance with current capabilities of said second communication device;	service configu commun of said function service commun of said structur service 33-34 (2 (service	control means for determining if said service pration request is acceptable to said second nication device in accordance with current capabilities second communication device [This is a means-plus- n limitation. The function is determining if said configuration request is acceptable to said second nication device in accordance with current capabilities second communication device. The corresponding re is service negotiator 20 and/or 40, Figure 2; and/or negotiator (column 3, line 2); and/or column 8, lines service negotiator 20); and/or column 9, lines 64-65 regotiator 40); and/or column 8, lines 19-23.];
service response generator for generating a response message in accordance with said determination; and	service in accoi	response generator for generating a response message dance with said determination; and
second transmitter means for transmitting said response message wherein said request message and said response message are transmitted over a common channel and wherein said common channel is provided for general messaging services between communication devices of said wireless communication system, and also wherein if said response message rejects said requested service configuration said system communicating service negotiation messages over a traffic channel, said traffic channel being a communications channel allocated for conducting communications	second message wherein wireless respons configu message commun commun The fun corresp	transmitter means for transmitting said response e wherein said request message and said response e are transmitted over a common channel and a said common channel is provided for general ing services between communication devices of said is communication system, and also wherein if said e message rejects said requested service tration said system communicating service negotiation es over a traffic channel, said traffic channel being a nications channel allocated for conducting nications [This is a means-plus-function limitation. ction is transmitting said response message. The onding structure is a transmitter and an antenna.]
Claim 17		Claim 17
17. The system of claim 16, wherein said serv configuration provides a forward link multiple option.	ice ex	17. The system of claim 16, wherein said service configuration provides a forward link multiplex option.

Claim 18	Claim 18
18. The system of claim 16, wherein said service	18. The system of claim 16, wherein said <i>service</i>
configuration provides a reverse link multiplex	configuration provides a reverse link multiplex
option.	option.
Claim 19	Claim 19
19. The system of claim 16, wherein said service	19. The system of claim 16, wherein said <i>service</i>
configuration provides forward link transmission	configuration provides forward link transmission
rates.	rates.
Claim 20	Claim 20
20. The system of claim 16, wherein said service	20. The system of claim 16, wherein said <i>service</i>
configuration provides reverse link transmission	configuration provides reverse link transmission rates.
rates.	
Claim 21	Claim 21
21. The system of claim 16, wherein said service	21. The system of claim 16, wherein said service
configuration provides a service option.	configuration provides a service option.
Claim 22	Claim 22
22. The system of claim 16, wherein said response	22. The system of claim 16, wherein said response
message is transmitted within a channel assignment	message is transmitted within a <i>channel assignment</i>
message.	message.
Claim 23	Claim 23
23. The system of claim 22, wherein the identity of	23. The system of claim 22, wherein the identity of
said traffic channel is provided in said channel	said traffic channel is provided in said <i>channel</i>
assignment message.	assignment message.
Claim 24	Claim 24
24. The system of claim 16, wherein said first	24. The system of claim 16, wherein said first
communication device is a mobile station and said	communication device is a mobile station and said
request message is transmitted over an access	request message is transmitted over an access channel.
channel.	
Claim 27	Claim 27
27. The system of claim 16, wherein said second	27. The system of claim 16, wherein said second
communication device is a base station and said	communication device is a base station and said
response message is transmitted over a paging	response message is transmitted over a <i>paging</i>
channel.	channel.
Claim 28	Claim 28
28. The system of claim 16, wherein said first	28. The system of claim 16, wherein said first
communication device is a mobile station and said	communication device is a mobile station and said
request message is transmitted over an access	request message is transmitted over an <i>access channel</i>
channel and wherein said second communication	and wherein said second communication device is a
device is a base station and said response message is	base station and said response message is transmitted
transmitted over a paging channel.	over a <i>paging channel.</i>

EXHIBIT B

UNITED STATES PATENT NUMBER 5,638,412-GLOSSARY OF TERMS

TERM access channel

DEFINITION

a channel for one way communication of

	messages from a mobile station to a fixed station
channel assignment message	a message indicating whether a proposed service
	configuration has been accepted or rejected
common channel	a paging channel or an access channel
comprising	including, but not limited to
data rates	transmission rates
forward link	connection from the base station to the mobile
	station
frame formats	multiplex options
multiplex option	instructions which control the way in which the
	information bits of the forward and reverse
	traffic channel frames, respectively, are divided
	into various types of traffic
paging channel	a channel for one way communication of
	messages from a base station to a mobile station
receiver means for receiving said transmitted message	This is a means-plus-function limitation. The
at said second communication device	function is receiving transmitted message at said
	second communication device. The
	corresponding structure is an antenna and a
	receiver.
reverse link	connection from the mobile station to the base
	station
second transmitter means for transmitting said	This is a means-plus-function limitation. The
response message wherein said request message and	function is transmitting said response message.
said response message are transmitted over a common	The corresponding structure is a transmitter and
channel and wherein said common channel is provided	an antenna.
for general messaging services between communication	
devices of said wireless communication system, and also	
wherein it said response message rejects said requested	
service configuration said system communicating	
traffic channel being a communications channel	
allocated for conducting communications	
service configuration	a common set of attributes for building and
	interpreting traffic channel frames including but
	not limited to data rates frame formats and types
	of services
service control means for determining if said service	This is a means-plus-function limitation. The
configuration request is acceptable to said second	function is determining if said service
communication device in accordance with current	configuration request is acceptable to said
capabilities of said second communication device	second communication device in accordance
	with current capabilities of said second
	communication device. The corresponding
	structure is service negotiator 20 and/or 40,
	Figure 2; and/or service negotiator (column 3,
	line 2); and/or column 8, lines 33-34 (service

	negotiator 20); and/or column 9, lines 64-65 (service negotiator 40); and/or column 8, lines
service negotiation	a process of bilateral negotiation of a service configuration, if possible
service option	the formal definition of the way in which traffic bits are processed by the mobile station and base station
service request generator means for generating a request message indicative of a service configuration of a predetermined set of first communication device service configurations at said first communication device	This is a means-plus-function limitation. The function is generating a request message indicative of a service configuration of a predetermined set of first communications device service configurations at said first communication device. The corresponding structure is service negotiators 20 and/or 40, Figure 2; and/or service negotiator (column 3, line 2); and/or column 8, lines 33-34 (service negotiator 20); and/or column 9, lines 64-65 (service negotiator 40); and/or column 8, lines 19-23.
transmitter means for transmitting said request	This is a means-plus-function limitation. The
message	tunction is transmitting said request message. The corresponding structure is a transmitter and an antenna.
types of services	service options

S.D.Cal.,2006. Qualcomm Inc. v. Broadcom Corp.

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