

United States District Court,
N.D. Texas, Dallas Division.

HARRIS CORPORATION and, HARRIS CANADA, INC,
Plaintiffs.

v.

ERICSSON INC., Telefonaktiebolaget LM Ericsson and Ericsson Radio Systems AB,
Defendants.

No. CIV.A. 398CV2903M

Aug. 1, 2002.

Owner of patent describing method for cell phone to acquire data synchronization information sued competitor for infringement. Competitor counterclaimed that patent was invalid. After denial of competitor's motions for partial summary judgment, 194 F.Supp.2d 533, competitor requested further construction of claim. The District Court, Lynn, J., held that no further interpretation of claim was necessary.

Request denied.

No further interpretation of claim in patent for method for cell phone to acquire data synchronization information was necessary in infringement action, despite competitor's contention that phrase "information signals" in claim was not adequately construed by court in denying competitor's motions for partial summary judgment, where court had already determined that claim was not limited to two-step process.

MEMORANDUM ORDER

LYNN, District J.

Before the Court are two letter briefs submitted to the Court by the parties in this case. On June 12, 2002, Defendant Ericsson submitted a letter brief to the Court in which it seeks further construction of claim 2 of the '338 patent. Specifically, it requested that the Court further interpret the phrase "information signals the values of which for which minimize the sum of squares" in claim 2 of the '338 patent, and opine on the impact of the interpretation of that phrase on the scope of the other asserted claims of the '338 patent. On June 14, 2002, in response to Ericsson's letter, Harris averred that "Ericsson's assertions are merely another attempt to reintroduce the two-step process limitation into these claims, even though [the Court] already has been determined several times there is no such limitation." For the following reasons, the Court concurs with Harris that no further interpretation of claim 2 is necessary. The phrase "information signals" in claim 2 is not limited to a two-step process.

Ericsson filed two partial motions for summary judgment on the '338 patent. One dealt solely with its invalidity defenses and the other dealt with literal infringement and invalidity under 35 U.S.C. s. 112 para.

1. Following a two-day hearing on these and other motions before the Court, the Court denied Ericsson's Motion for Summary Judgment that the '338 patent was invalid. Ericsson essentially now argues that although the Court adopted the Special Master's interpretation of the term "estimates" to mean estimates having discrete values (not non-discrete as Ericsson suggested), it has not addressed the issue of whether the step of "producing estimates of information signals" is limited to the two-step equalization process described in the patent or whether it includes a single step process as well.

It is undisputed that the Ericsson accused products utilize the Maximum Likelihood Sequence Estimation ("MLSE") method of equalization, which employs a one-step process. Even before the December 1999 Markman hearing, Ericsson was arguing for different constructions of the term "time domain processing means" and the term "estimates" in an effort to limit the '338 patent to a two-step process. Ericsson now urges the Court to define "information signals" in the phrase "information signals the values of which for which minimize the sum of squares" in claim 2 to require nondiscrete values, so a two-step process is necessary. The Court has ruled on this issue as to "estimates," and sees no basis for a different result as to "information signals." FN1

FN1. Claim 2 depends from claim 1 and adds a limitation to the "time domain processing means" of claim 1. Claim 2 reads:

A communication system according to claim 1, wherein said processing means includes means for simulating the effect of said dispersive medium by an equalization function through which dispersive characteristics of said medium are defined and for producing, as estimates of said information signals, those information signals capable of being transmitted which are closest to information signals the values of which for which [sic] minimize the sum of the squares of the magnitude of successive sets of noise signals corresponding to received information and known signals, calculated in accordance with said prescribed relationship.

On March 29, 2000, the Special Master issued his Final Report and Recommendation on Claim Construction. On April 17, 2000, the Ericsson parties filed their Objections to the Special Master's Final Report and Recommendation on Claim Construction, and Harris thereafter responded. On March 23, 2001, the Court held a hearing on Ericsson's objections. At the hearing, Ericsson expressly asked the Court to consider two specific objections: (1) that the Final Report failed to address whether the term "estimates" means "discrete values selected from calculated nondiscrete values;" and (2) that the Final Report failed to address "whether information signals which minimize the sum of the squares" can have discrete values. Both parties filed post-hearing briefs. On May 29, 2001, the Court ordered, in part, the following with respect to the '338 claim:

The Court requests the Special Master to reconsider whether the phrase 'information signals the value of which for which [sic] minimize the sum of the squares' in *Claim Two* of United States Patent No. 4,365,338 requires further interpretation.

All of the Ericsson parties' other objections to the Special Master's Final Report and Recommendation on Claim Construction are overruled and the Report is otherwise accepted in its entirety.

5/29/01 Order (emphasis added). On May 31, 2001, the Special Master sent a letter to the Court recommending that no further interpretation was necessary on claim 2.

In this letter, the Special Master discussed the construction of "information signals" in claim 2. "Information signals" appears three times. The first two times it appears, Ericsson argued it should be deemed as having discrete values. The third time, in the phrase "information signals the values of which for which minimize the sum of the squares," Ericsson argues "information signals" should be deemed as having nondiscrete values. The Special Master concluded that the third "information signal" is not per se discrete or nondiscrete because the claim does not specify that. Noting the lack of specificity in the claim, he found no reason for "information signals" to be limited to nondiscrete values:

I could not conclude that the term 'information signals' (third occurrence) in claim 2 is necessarily limited to nondiscrete values. The same is true for claim 45. The claims simply do not include that limitation. In my view, Ericsson's argument that its claim construction is necessary because the claims would otherwise lack enabling support in the specification lacks sufficient foundation in the present record.

5/31/01 Letter at 17. In response to this Letter, this Court stated that "[t]he Court will not at this time further construe 'information signals the value of which minimize the sum of the squares' in claim 2 of the '338 patent." 7/2/01 Letter.

Ericsson now asks the Court to construe whether the phrase "information signals" as used for the third time in the asserted claim requires the scope of the asserted claim to be limited to a two-step process. Ericsson essentially contends that if "estimates" are discrete values, then they are produced through a two-step process as to "information signals:" (1) nondiscrete values (referred to as "intermediate estimates" by the Special Master) representing the transmitted information signals must first be calculated; and (2) discrete values ("ultimate estimates" according to the Special Master) which are closest to the calculated nondiscrete values are then selected.

At the March 23, 2001 hearing, Ericsson sought a construction of "information signals" as nondiscrete. Harris argued the only way to obtain this construction was to define "closest to" as "necessarily different." Dr. Monsen, one of Ericsson's designated experts, testified that "closest to" did not preclude "equal," because "closest to" encompasses both estimates that are equal and estimates that are close to the transmitted discrete values; in other words, discrete and non-discrete estimates. A one-step process is not precluded under claim 2.

The two-step process was also addressed by the Special Master as to whether "estimates" were discrete.FN2 Ericsson first sought to define estimates as nondiscrete values. This was rejected by the Special Master. Final Report at 155. The Special Master also rejected Ericsson's argument that defining estimates to include discrete and nondiscrete values would eliminate the two-step nature of the '338. Though Ericsson is correct that this determination was not in reference to the phrase "information signals which minimize the sum of the squares" in claim 2, it is nonetheless related:

FN2. In its claim charts and before the Special Master, Ericsson asserted that "estimates"-in all contexts-were non-discrete values. Prior to the *Markman* hearing, Ericsson advanced its alternative "two step" limitation with regard to "estimates." Ericsson then argued that structural support for the "time domain processing means" (the means-plus-function element of claim 1 that produces "estimates") was fast array processor 37A and that the structural support for the "output conversion means" was support processor 37B. Because the "time domain processing means" produces the estimates, and because under Ericsson's alternative interpretation, "producing estimates" would be a two-step process, Ericsson changed its

assertions regarding the structural support for the "time domain processing means" to match Harris's position. Before this Court, at the hearing on objections to the Special Master's Final Report, Ericsson adopted a third position. Ericsson asked the Court to consider inventor testimony (Mr. McRae's testimony on claim language from the '338 invention that was patented twenty years ago) that redefined "estimates" to eliminate decision techniques such as MLSE. The Court's May 29, 2001 Order overruled this interpretation of to "estimates."

Ericsson also argues that Harris' proposed interpretation 'would eliminate the two step nature of the claimed process by eliminating the 'selection' step.' It does not. Interpreting the entirety of symbol processor 37 as providing the 'structural' support for 'time domain processing means' and interpreting 'estimates' as the output of symbol processor 37 does not exclude anything. It is a question of scope. The question is whether 'estimates' in claim 1 be restricted to the 'estimates' produced by FAP 37A though implementing equation (7), or whether 'estimates' should receive a broader construction that includes, but is not limited, to such 'estimates.'

Final Report at 161. The issues raised by Ericsson in its letter brief have effectively been decided. No further interpretation is necessary.

SO ORDERED.

N.D.Tex.,2002.

Harris Corp. v. Ericsson Inc.

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