

Keywords: claim construction, ordinary meaning, claim differentiation, domestic industry, international trade commission, licensing activities

General: The domestic industry requirement of 19 U.S.C. § 1337 necessary to give make 19 U.S.C. § 1337 applicable may be satisfied by substantial licensing activities alone. Also, claim differentiation creates a strong presumption that a claim term in an independent claim is different from a similar claim term in a dependent claim unless the specification has defined the terms as equivalent or differentiation has been clearly disavowed.

Interdigital Communications LLC v. ITC

103 U.S.P.Q.2d 1610 (Fed. Cir. 2012)

Decided August 1, 2012

I. Facts

InterDigital Communications LLC (“InterDigital”) is a developer of wireless technologies for mobile devices and networks. InterDigital asked the International Trade Commission (“ITC”) for relief under 19 U.S.C. § 1337 for the unlawful importation of patent infringing CDMA handsets by Nokia Inc. and Nokia Corp. (collectively referred to as “Nokia”). At issue were patents 7,190,966 (“the ’966 patent”) and 7,286,847 (“the ’847” patent). The ’847 patent is a continuation of the ’966 patent. The patents are generally directed to a “handshake” portion of a wireless communication using Code Division Multiple Access (“CDMA”). The ’966 and ’847 patents discuss a power ramp-up strategy intended to reduce interference and power consumption by transmitting communications at increasing power levels while also reducing the tendency to overshoot a power level that allows for a connection between a device and a base station.

The case was assigned to an administrative law judge (“ALJ”) who conducted an evidentiary hearing and construed the claims. Claim 1 of the ’966 patent, which the ALJ and the Federal Circuit examined as a representative claim, recites:

1. A wireless code division multiple access (CDMA) subscriber unit comprising:

transmitter configured such that, when the subscriber unit is first accessing a CDMA network and wants to establish communications with a base station associated with the network over a communication channel to be indicated by the base station, the transmitter successively transmits signals until the subscriber unit receives from the base station an

indication that a transmitted one of the signals has been detected by the base station, wherein each transmission of one of the signals by the transmitter is at an *increased power level* with respect to a prior transmission of one of the signals;

the transmitter further configured such that the transmitter transmits to the base station a message indicating to the base station that the subscriber unit wants to establish the communications with the base station over the communication channel to be indicated by the base station, the message being transmitted only subsequent to the subscriber unit receiving the indication, wherein each of the successively transmitted signals and the message are generated using a same *code*;

and wherein each of the successively transmitted signals is shorter than the message. (Emphasis added.)

The ALJ found that the recitation “increased power level” meant a continuous power increase such that “the power level of a code signal increases during transmission.” Additionally, the ALJ found that the claim term “code” should be interpreted as “a spreading code or a portion of a spreading code.” However, when determining whether infringement occurred, the ALJ stated that Nokia’s discretely-increased “scrambling” codes were not equivalent to the codes of the claims because Nokia’s codes were not “used or intended to be used to increase the bandwidth of another signal” and were not used to spread data or perform channelization. Moreover, the ALJ ruled that the domestic industry requirement of 19 U.S.C. § 1337 (a)(2) was satisfied by InterDigital’s licensing activities in the United States. However, based on the foregoing claim construction, the ALJ found that InterDigital had not proved infringement. The ITC issued an order finding no infringement, and InterDigital appealed.

II. Issue

1. Did the ALJ err in finding that InterDigital had not proven infringement?
2. Did the ALJ err in finding that industry occurred in the United States based on licensing alone?

III. Discussion

1. Yes. Under the ordinary meaning rule, claim terms should be generally given their ordinary meaning as understood by persons skilled in the art at the time of invention unless the patentee acts as their own lexicographer or disavows

the ordinary scope of the meaning. The majority in *Interdigital* found that neither of the exceptions applied and that the claim terms “increased power level” and “code” should be construed according to their plain and ordinary meanings without reading limitations from dependent claims into the independent claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (en banc). Furthermore, the majority emphasized that claim differentiation provides a presumption against reading a limitation from a dependent claim into an independent claim unless strong contrary evidence of definitional language or disavowal occurs in the specification.

With respect to the claim recitation of “increased power level,” the Federal Circuit noted that the ALJ’s construction of increasing power level during transmission required that the power level increase continuously thereby excluding discrete power increasing systems, such as Nokia’s, from infringing the claims of the ’966 and ’847 patents. However, the majority noted that the language of the claims were broad enough to be construed to cover both continuous and discrete increases in power level. The majority also noted that although the specification used the word “continuously,” continuous increases were not mandated because the term “continually” was also used to describe the increases in power. The majority also noted that although inventor notes contained embodiments illustrating discrete increases of power level, and the specification only discussed embodiments with continuous increases, the claims were sufficiently broad to cover both continuous and discrete increases of power, because there was no clear disavowal of the discrete increases of power required to prevent interpretation under the ordinary meaning rule.

With respect to the claim recitation of “code,” the majority noted that the plain meaning of code is “a sequence of bits or chips.” The majority also noted that claim 5 of the ’966 patent explicitly recited that the code is a spreading code. The majority, ITC, and dissent all agreed that a presumption that the claim term code of claim 1 was different from the claim term spreading code of claim 5 under the doctrine of claim differentiation. However, the dissent and the ITC found the presumption to be overcome because the specification did not recite any codes used in the power ramp-up other than spreading codes or codes created from spreading codes. The majority found the ITC reasoning to be unpersuasive. Instead, the majority found that the strong presumption was not overcome due to its belief that the ITC misunderstanding the ordinary meaning of spreading codes used in the specification. The majority believed that there was a fundamental difference between the ITC’s (and dissent’s) understanding of the term spreading codes and one skilled in the art’s understanding of the term. The majority noted that the term spreading code is loosely used in the wireless technology industry. For example, one inventor’s testimony stating that it is common in the industry to refer to all codes used in broadband CDMA systems as spreading codes. Instead, the majority appeared to believe that spreading code in the specification merely referred to any code transmitted at a higher rate than the data rate of the

communication. Under this construction, the court found that Nokia's scrambling codes would be construed as spreading codes as understood in the art regardless of whether the scrambling codes spread data or not.

2. No. According to 19 U.S.C. § 1337(a)(2), application of 19 U.S.C. § 1337(1)(B)-(E) only apply if domestic industry is established in the United States relating to articles containing protected intellectual property rights. Nokia argued that the domestic industry requirement cannot be based on licensing activities alone. However, the majority noted that 19 U.S.C. § 1337(a)(3)(C) specifically states that domestic industry exists if substantial investment in engineering, research and development, or *licensing* exists in the U.S. In support of this holding, the majority noted legislative history that explicitly states that subparagraph C was specifically added to overrule previous ITC decisions holding that licensing activities was not sufficient to satisfy the domestic industry requirement. Furthermore, the majority noted that the ITC has decided numerous cases stating that substantial licensing is sufficient in the fifteen years since the subparagraph C has been added.

IV. Conclusion

The Federal Circuit concluded that Nokia's domestic industry arguments were without merit based on legislative and judicial history stating that substantial licensing activities were sufficient domestic industry to allow the ITC to hear 19 U.S.C. § 1337 matters. The Federal Circuit also found that the strong presumption of claim terms in an independent claim being different from claim terms in dependent claims created by claim differentiation was not overcome. The court reversed and remanded the case, with instructions for the ITC to decide the case based on the majority's claim construction.

19 U.S.C. §1337(a)(3), as amended in 1988 describes the "industry in the United States" as follows:

[A]n industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.