

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTEL CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00-796-RRM
)	
BROADCOM CORPORATION,)	
)	
Defendant.)	

MEMORANDUM OPINION

J. Andrew Huffman, Esquire, Fish & Richardson P.C., Wilmington, Delaware; John E. Gartman, Esquire, Juanita Brooks, Esquire, Christopher S. Marchese, Esquire, and Shelley Wessels, Esquire, Fish & Richardson P.C., San Diego, California; counsel for Intel Corporation.

Richard H. Morse, Esquire, Josy Ingersoll, Esquire, and John W. Shaw, Esquire, Young, Conaway, Stargatt & Taylor, Wilmington, Delaware; Ron E. Shulman, Esquire, Michael A. Ladra, Esquire, David S. Steuer, Esquire, Irwin R. Gross, Esquire, and James C. Yoon, Esquire, Wilson Sonsini Goodrich & Rosati, Palo Alto, California; Raphael V. Lupo, Esquire and Vera Elson, Esquire, McDermott, Will & Emery, Washington, D.C.; Terrence P. McMahon, Esquire, McDermott, Will & Emery, Menlo Park, California; counsel for Broadcom Corporation.

Wilmington, Delaware
Dated: December 6, 2001

McKELVIE, District Judge

This is a patent case. On August 30, 2000, plaintiff Intel Corporation initiated this patent infringement suit against defendant Broadcom Corporation alleging that Broadcom is infringing, inducing infringement, or committing acts of contributory infringement of one or more claims of five patents owned by Intel. The five patents are U.S. Patent Nos. 4,823,201 (the '201 patent); 4,975,830 (the '830 patent); 5,894,410 (the '410 patent); 5,079,630 (the '630 patent); and 5,134,478 (the '478 patent). Three of the patents, the '201, the '630, and the '478, relate to digital video encoding and decoding. The '830 patent relates to computer networking. The '410 patent relates to a semiconductor chip packaging structure.

In order to simplify the issues before the jury and to shorten the length of the jury trial, the court required that the trial proceed in two parts. The first trial, which began on November 28, 2001 and is currently ongoing, covers the '830 and the '201 patents. A subsequent trial will cover the remaining three patents.

On September 24, 2001, the court heard oral argument in accordance with the mandate of Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996), that patent claim interpretation is an issue that lies exclusively within the province of the court. On November 6, 2001, the court issued two claim construction opinions, which respectively construed the asserted claims of the '830 and '201 patents. See Intel Corp. v. Broadcom Corp., C.A. 00-796, 2001 WL 1388437 (D. Del. Nov. 6, 2001) ("830 Markman") (construing the claims of the '830 patent); Intel Corp. v. Broadcom Corp., C.A. 00-796, 2001 WL 1388439 (D. Del. Nov. 6, 2001) ("201 Markman") (construing the claims of the '201 patent).

I. ISSUES CURRENTLY BEFORE THE COURT

During the course of the trial, the parties continue to disagree on the proper meaning of two of the claim terms construed by the court in the '830 Markman opinion. In a letter dated December 4, 2001, Intel's counsel has requested that the court make curative instructions to remedy what Intel deems to be two mis-characterizations of the court's claim construction by Broadcom.

First, with respect to claim 1 of the '830 patent, Intel points out that in Broadcom's opening statement, counsel stated that "[A]ll of the nodes on [an infringer's] network had to use the same language or the same format. And this common language, this common format, the patent calls the default format . . . [a]nd what that claim term means is that is a common language that [can be used by] every node connected to the *network*." Tr. Transcript 192:2-193:6 (November 28, 2001) (emphasis added). Intel contends that this characterization of the court's construction of the term "default format" wrongly gives the jury the impression that a "default format" may only be identified in claim 1 by examining every node in an entire network. However, this conflicts with the court's holding in its '830 Markman opinion that one need only examine every node of the "plurality of nodes" claimed in the patent, where a plurality is defined as three or more.

Second, with respect to claim 15 of the '830 patent, Intel contends that Broadcom's representations to the jury regarding the "adapted to supplement" language of claim 15 are also misleading because, in contrast to the court's holding that "this language requires that the claimed network interface have the *capability* to augment a node," counsel for Broadcom has indicated to the jury through questions on cross-examination that there is a requirement that a "real live" node actually be augmented. See, e.g., Tr. Transcript 1029:8-1031:10 (December 3, 2001).

This supplemental claim construction memorandum is intended to resolve these two issues by further clarifying the language of the court’s ’830 Markman opinion. After reviewing that opinion, the court finds that, according to the claim language as construed by the court in its earlier opinion, (1) the term “default format,” as used in claim 1, is a characteristic that is directed only at the claimed “plurality of nodes” and not at every node connected to the network; (2) the term “adapted to supplement,” as used in claim 15, means that the claimed network interface is capable of supplementing a node; there is no requirement that it actually supplement a node. The next section will briefly review the underlying reasoning that supports this finding.

II. DISCUSSION

A. Does the court’s construction of the claim term “default format” mean that every node on the network must be able to communicate with every other node on the network?

The relevant portion of claim 1 of the ’830 patent recites:

A computer communications system for transferring data between a plurality of nodes comprising:

- (a) a communications medium;
- (b) a plurality of nodes coupled to said communication medium
- ...

wherein each of said nodes has a format set comprised of one or more formats . . . [and]

wherein each of said format sets includes at least one default format . . . [and]

wherein at least one default format is included in the format sets of each of said nodes.

’830 patent, col. 11:23-55.

It is clear from the language of claim 1 that each of the above “wherein” clauses refers to limitations directed at the “said” – meaning above-mentioned – “plurality of nodes.” The term “plurality of nodes” was construed by the court to require “at least three nodes,” two of which are supplemented nodes and one of which is a default node. '830 Markman, 2001 WL 1388437 at *10. Because the element of the claimed “communications system” at issue here is satisfied when there are three nodes coupled to a communication medium which can all communicate to each other using the “default format,” the fact that other nodes are connected to the medium which cannot “talk to each other” is not relevant to whether that network infringes claim 1. The appropriate inquiry is therefore directed only at the “plurality of nodes” covered by the patent.

It appears that Broadcom has drawn from the following statements the proposition that under the court’s '830 Markman ruling, claim 1 requires that all nodes on a network must share a common format:

- “The '830 invention, as a whole, is directed at enabling *all nodes* to communicate with each other using a compatible and optimal transfer format.” Id. at *27. (emphasis added).
- “[T]he court finds that the meaning of the term “default format” is a common format that *every node* coupled to the communication medium can use to transfer data to *every other node* coupled to that medium.” Id. (emphasis added).

While the court did not explicitly state so in these lines, the use of the term “nodes” in both statements refers not to all nodes on a given network, but to those nodes included in the claimed “plurality of nodes,” which was construed to require at least three nodes. Because all of the wherein phrases in claim 1 are directed at the “plurality of nodes,” latter constructions of the terms within those phrases apply requirements only to those nodes. In sum, because the claimed invention is directed only

to a computer communications system comprised of a plurality of nodes, these are the only relevant nodes for the purposes of claim 1.

The first statement above is a general statement about the purpose of the '830 invention. There is, however, no requirement imposed by the claim language that all nodes on a network be included in the "plurality of nodes" claimed. Rather, the claims only require the inquiry to focus on "at least three" nodes having the claimed characteristics. In the second statement above, the phrase "every node coupled to the communication medium" is meant to refer only to nodes that are included in the "plurality of nodes" that is called for by the claim language. Characteristics of other nodes on the network that are not included in the "plurality of nodes" are irrelevant to the claimed "computer communication system."

B. Does the court's construction of the claim term "adapted to supplement" mean that there is a requirement that a "real live" node actually be augmented?

Claim 15 recites, in relevant part:

A network interface for interfacing a network having nodes and for supplementing the nodes of the network . . .

wherein said network interface is adapted to supplement a node selected from said nodes by adding at least one supplemental format to the format set of said selected node.

'830 patent, col. 12:62-13:24.

The court construed the above "wherein" phrase in two parts. The court first found that the claim term "adapted to supplement" means the claimed network interface must be *capable* of supplementing a node; there is no requirement that it actually supplements the node. Thus, "[a]n interface is adapted to supplement if its use can create a supplemented node." '830 Markman, 2001 WL 1388437 at *

31. The court then went on to construe the second portion of the phrase and found that “to supplement a node selected from said nodes by adding said at least one supplemented format to the format set of said selected node” means that the node that the network interface is capable of supplementing may be supplemented either by adding at least one supplemented format to the format set of an existing node or by adding at least one supplemented format to the format set of a previously connected networked node that is subsequently reconnected to the network through the claimed network interface card. Id. With respect to this second portion of the disputed phrase, the key claim construction dispute in the briefing concerned whether the network interface could supplement a node by adding a new node or whether it had to add a format to an already existing node. Based on the limiting language, “selected from said nodes,” the court construed that portion of the phrase to mean that the node had to be connected to the communication medium at some time (either an existing node or a node that was previously connected and then re-connected using the network interface card).

Taken together, the complete construction of the phrase is that the claimed network interface must be *capable* of supplementing either by adding a format to an existing node or adding a format to a node that was previously connected and then re-connected using the network interface card. Some of Broadcom’s questions of witnesses indicate that it has focused only on the second part of the court’s construction of this phrase and thus understands the phrase in claim 15 to mean that the network interface must actually be placed into a network in order to read onto the claims. This erroneously ignores the court’s construction of the “adapted to supplement” language. As the court stated in its ’830 Markman opinion, based on that claim language, in order to satisfy claim 15, the network interface only must be *capable* of supplementing, or augmenting, a node.