

1 IN THE UNITED STATES DISTRICT COURT
 2
 3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4 BRILLIANT INSTRUMENTS, INC.,

5 Plaintiff,

6 v.

7 GUIDETECH, INC., and RONEN SIGURA,

8 Defendants.

9 _____/
 10 AND ALL RELATED COUNTERCLAIMS
 11 _____/

No. C 09-5517 CW

ORDER ON CLAIM
 CONSTRUCTION,
 GRANTING BRILLIANT'S
 MOTION FOR SUMMARY
 JUDGMENT OF NON-
 INFRINGEMENT AND
 DENYING AS MOOT
 GUIDETECH'S MOTION
 FOR SUMMARY
 ADJUDICATION ON THE
 ISSUE OF ASSIGNOR
 ESTOPPEL
 (Docket Nos. 108 and
 119)

12
 13 Plaintiff and Counterclaim-Defendant Brilliant Instruments,
 14 Inc., and Defendant and Counter-Claimant GuideTech, Inc., seek
 15 construction of terms and phrases used in GuideTech's U.S. Patent
 16 Nos. 6,091,671 ('671 patent); 6,181,649 ('649 patent); and
 17 6,226,231 ('231 patent) (collectively, Asserted Patents). In
 18 addition, Brilliant moves for summary judgment of non-infringement
 19 of the Asserted Patents and GuideTech's United States Patent Nos.
 20 6,456,959 ('959 patent); 6,621,767 ('767 patent); 6,999,382 ('382
 21 patent); and 7,203,610 ('610 patent). GuideTech opposes
 22 Brilliant's motion in part and cross-moves for summary adjudication
 23 that Brilliant is precluded, based on the doctrine of assignor
 24 estoppel, from asserting that the Asserted Patents are invalid.
 25 The matters were heard on June 2, 2011. Having considered oral
 26 argument and the papers submitted by the parties, the Court
 27 construes the terms and phrases as set forth below. In addition,
 28 the Court GRANTS Brilliant's motion for summary judgment of non-

1 infringement. Because the products at issue in this case do not
2 infringe the Asserted Patents, Brilliant lacks standing to bring
3 invalidity counterclaims and they are dismissed for lack of subject
4 matter jurisdiction. GuideTech's cross-motion for summary
5 adjudication on the issue of assignor estoppel is DENIED as moot.

6 BACKGROUND

7 According to their specifications, the patents-in-suit concern
8 time interval analyzers (TIAs), which are testing instruments used
9 in the semiconductor industry to detect timing errors in integrated
10 circuits. These timing errors can present as anomalies in the
11 amplitude, phase or pulsewidth of signals produced by the
12 integrated circuit. Some testing instruments, such as counters or
13 oscilloscopes, only detect timing errors. TIAs, however, "can
14 monitor frequency changes and frequency deviation over time." See,
15 e.g., '671 patent, 2:17-18. In this way, TIAs can assist a user in
16 detecting a timing error and determining its source.

17 In 1998, Shalom Kattan founded Guide Technology, Inc., which
18 is not the same entity as GuideTech. He invented the technology
19 claimed by the patents-in-suit, which he assigned to Guide. In
20 2004, Kattan left his employment with Guide, but remained on its
21 board of directors. That same year, Kattan established Brilliant.
22 In 2005, Kattan left his position on Guide's board. On May 23,
23 2008, Guide sold its assets, which included the patents-in-suit, to
24 Ronen Sigura, who allegedly founded GuideTech.

25 Brilliant initiated this lawsuit on November 20, 2009, seeking
26 declarations that its products (hereinafter, Accused Products),
27 such as the BI200 and BI220, do not infringe the Asserted Patents
28 or the '671, '699 and '231 patents. GuideTech counterclaimed,

1 asserting that Brilliant's products infringe the Asserted Patents.
2 In response, Brilliant counterclaimed for a judgment that the
3 Asserted Patents are invalid. On June 3, 2010, Brilliant amended
4 its complaint to add Sigura as a Defendant, charging him with
5 intentional interference with prospective economic advantage,
6 intentional interference with contractual relations and violation
7 of California's Unfair Competition Law (UCL), Cal. Bus. Code
8 §§ 17200, et seq.

9 DISCUSSION

10 I. Claim Construction

11 A. Legal Standard

12 The construction of a patent is a matter of law for the Court.
13 Markman v. Westview Instruments, Inc., 517 U.S. 370, 372 (1996).
14 "It is a 'bedrock principle' of patent law that 'the claims of a
15 patent define the invention to which the patentee is entitled the
16 right to exclude.'" Phillips v. AWH Corp., 415 F.3d 1303, 1312
17 (Fed. Cir. 2005) (en banc) (quoting Innova/Pure Water, Inc. v.
18 Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1115 (Fed. Cir.
19 2004)). Accordingly, in construing disputed terms, the Court first
20 looks to the words of the claims. Vitronics Corp. v. Conceptronic,
21 Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). Generally, the Court
22 ascribes the words of a claim their ordinary and customary meaning.
23 Id. The Federal Circuit instructs that "the ordinary and customary
24 meaning of a claim term is the meaning that the term would have to
25 a person of ordinary skill in the art in question at the time of
26 the invention, i.e., as of the effective filing date of the patent
27 application." Phillips, 415 F.3d at 1313. Other claims of the
28 patent in question can also assist in determining the meaning of a

1 claim term. Id. at 1314. "Because claim terms are normally used
2 consistently throughout the patent, the usage of a term in one
3 claim can often illuminate the meaning of the same term in other
4 claims." Id.

5 The Federal Circuit also instructs that claims "must be read
6 in view of the specification, of which they are a part." Id. at
7 1315 (quoting Markman v. Westview Instruments, Inc., 52 F.3d 967,
8 979 (Fed. Cir. 1995) (en banc)). The specification must contain a
9 description of the invention that is clear and complete enough to
10 enable those of ordinary skill in the art to make and use it, and
11 thus the specification is "always highly relevant" to the Court's
12 claim construction analysis. Vitronics, 90 F.3d at 1582.
13 "Usually, [the specification] is dispositive; it is the single best
14 guide to the meaning of a disputed term." Id. In some cases, the
15 specification may reveal that the patentee has given a special
16 definition to a claim term that differs from its ordinary meaning;
17 in such cases, "the inventor's lexicography controls." Phillips,
18 415 F.3d at 1316. The specification also may reveal the patentee's
19 intentional disclaimer or disavowal of claim scope. "In that
20 instance as well, the inventor has dictated the correct claim
21 scope, and the inventor's intention, as expressed in the
22 specification, is regarded as dispositive." Id. However, claims
23 are not limited to the preferred embodiment described in the
24 specification. See SRI Int'l v. Matsushita Elec. Corp. of Am., 775
25 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc, plurality opinion).

26 While emphasizing the importance of intrinsic evidence in
27 claim construction, the Federal Circuit has authorized courts to
28 rely on extrinsic evidence, which consists of "all evidence

1 external to the patent and prosecution history, including expert
2 and inventor testimony, dictionaries, and learned treatises."
3 Phillips, 415 F.3d at 1317 (quoting Markman, 52 F.3d at 980).
4 While extrinsic evidence may be useful to the Court, it is less
5 significant than intrinsic evidence in determining the legally
6 operative meaning of claim language. Phillips, 415 F.3d at 1317-
7 18; see also C.R. Bard, Inc. v. U.S. Surgical Corp., 388 F.3d 858,
8 862 (Fed. Cir. 2004). Furthermore, extrinsic evidence is unlikely
9 to lead to a reliable interpretation of claim language unless
10 considered in the context of the intrinsic evidence. Phillips, 415
11 F.3d at 1319.

12 B. Analysis

13 Brilliant and GuideTech agree that certain terms should be
14 construed as follows: "current boost circuit" as "a circuit that
15 increases current flow to or from an electrical component,"
16 "measurement circuit" as "a circuit that performs a measurement,"
17 "processor circuit" as "a circuit that can perform logical
18 arithmetic operations," "shunt" as "a current switch," and "current
19 sink" as "a current source that draws an electrical current."¹
20 Brilliant and GuideTech also agree that "time interval analyzer" is
21 not a claim limitation. Based on the parties' agreement, the Court
22 adopts Brilliant and GuideTech's proposed constructions.

23 Brilliant and GuideTech dispute the meaning of five terms and
24 phrases.

25
26
27 ¹ Brilliant and GuideTech initially disputed the meaning of
28 "current sink." However, in its claim construction brief,
GuideTech agreed with Brilliant's proposed construction.

1 1. "signal channel"

2 The term "signal channel" appears in the '231 patent. There,
3 in claim 1, the term is used in the following context: "A time
4 interval analyzer for measuring time intervals between signal
5 events, said analyzer comprising: a signal channel that receives an
6 input signal;" '231 patent, 16:30-33. Although the term
7 does not appear in the '671 or '649 patents, Brilliant and
8 GuideTech agree that elements 12 and 14 in Figure 1 of both of
9 these patents are signal channels.

10 Brilliant defines a signal channel to be "a physical
11 collection of related components capable of acting independently to
12 perform a useful function on a signal." GuideTech defines it to be
13 "an electrical circuit that includes a signal path for transmitting
14 electrical signals and includes one or more parallel measurement
15 circuits."

16 Based on the parties' representations and concessions at the
17 claim construction hearing, the Court construes a signal channel to
18 be "an electrical circuit that includes a signal path for
19 transmitting electrical signals."

20 2. "defined within a signal channel"

21 The phrase "defined within a signal channel" does not appear
22 in any of the Asserted Patents. However, the abstract of the '231
23 patent states, "A time interval analyzer includes a signal channel
24 that receives an input signal. A plurality of measurement circuits
25 are defined within the signal channel in parallel with each other."
26 '231 patent, Abstract. Claim 1 of the '231 patent discloses, "A
27 time interval analyzer for measuring time intervals between signal
28 events, said analyzer comprising: a signal channel that receives an

1 input signal; a plurality of measurement circuits defined within
2 said signal channel in parallel with each other" Id.
3 16:30-35.

4 Brilliant proposes the following construction: "a component of
5 only one signal channel." GuideTech contends that the Court need
6 not construe this phrase. In the alternative, GuideTech argues,
7 the phrase should be defined to mean "present in a signal channel."

8 The Court finds that the phrase must be construed and that
9 Brilliant's construction is more accurate because it captures the
10 notion that measurement circuits are contained within a particular
11 signal channel. This understanding is supported by the claim
12 language and Figure 1, which shows that measurement circuits,
13 comprised of a comparator, multiplexer and interpolator, are
14 located within a given signal channel.

15 GuideTech contends that Brilliant's construction contradicts
16 the specification, which describes certain embodiments that have a
17 measurement circuit that relies on a continuous time counter and a
18 continuous event counter used by other measurement circuits. See
19 '231 patent, 3:54-59. However, that a measurement circuit may rely
20 on common counters does not mean that the circuit is not contained
21 within a particular signal channel. GuideTech also points to one
22 embodiment in which signals might cross channels so that certain
23 measurements can be made. This cross-channel function, however, is
24 not inconsistent with a measurement circuit being contained within
25 a particular signal channel.

26 GuideTech's definition is too broad and reads out the "defined
27 within" limitation. The phrase "present in" captures an embodiment
28 that has a measurement circuit that is present in more than one

1 channel, which is not supported by the claim language, the
2 specification or Figure 1.

3 Brilliant's proposed construction is not an adjectival phrase,
4 like the phrase at issue. Accordingly, the Court construes this
5 phrase to mean "contained within a signal channel."

6 3. "current source"

7 The term "current source" appears in the context of the
8 interpolator element claimed by the Asserted Patents. Brilliant
9 contends that a current source should be defined to be "an active
10 circuit that provides an electrical current that is independent of
11 the voltage across the circuit." GuideTech proposes the following
12 definition: "an electrical component that provides electrical
13 current."

14 Brilliant offers no evidence to support the additional
15 limitation of voltage independence. It is true that extrinsic
16 evidence indicates that current sources are not voltage sources and
17 that theoretical, "perfect" current sources provide a constant
18 current, irrespective of the voltage across a circuit. See, e.g.,
19 Behiel Decl., Ex. O, at 9 ("A perfect current source is a two-
20 terminal black box that maintains a constant current through the
21 external circuit, regardless of load resistance or applied
22 voltage."). However, the same evidence states that, in practice,
23 "current sources . . . have a limit to the voltage they can provide
24 . . . , and in addition they do not provide absolutely constant
25 output current." Id. Thus, while a current source will provide
26 current, regardless of the voltage across the circuit, the current
27 may be affected by the voltage, contrary to what Brilliant's
28 construction suggests. Nothing in the Asserted Patents indicates

1 that a current source provides current at a constant rate.

2 Brilliant contends that GuideTech's proposed definition is
3 inaccurate because it permits a battery, which is a voltage source,
4 to be regarded as a current source. This is incorrect. Under
5 GuideTech's construction, a current source provides current. A
6 battery provides voltage, which produces current. Providing
7 current and producing current are not the same concepts.

8 Accordingly, the Court adopts GuideTech's definition and
9 construes "current source" to refer to "an electrical component
10 that provides electrical current."

11 4. "operatively disposed in parallel"

12 Like "current source," the phrase "operatively disposed in
13 parallel" is used in the context of the interpolators claimed by
14 the Asserted Patents. The pertinent claim language discloses an
15 interpolator that is comprised of, among other things, "a
16 capacitor; a shunt; wherein said shunt and said capacitor are
17 operatively disposed in parallel with respect to said first current
18 circuit." '231 patent, 18:41-45.

19 Brilliant and GuideTech agree that the phrase discloses
20 alternative paths for current. They dispute, however, whether the
21 phrase requires a common destination and whether a change in
22 voltage affects voltage in the various paths. Brilliant advances
23 the following construction: "forming alternative signal paths
24 between the same source and destination, wherein the same voltage
25 change occurs across both paths." Brilliant points to the ordinary
26 meaning of "parallel" in the field of the Asserted Patents, which
27 is "an arrangement of the components, as resistances, of a circuit
28 in such a way that all positive terminals are connected to one

1 point and all negative terminals are connected to a second point,
2 the same voltage being applied to each component." Webster's
3 Encyclopedic Unabridged Dictionary 1407 (2001). GuideTech's
4 proposal omits any discussion of a common destination or voltage,
5 arguing that the phrase should be construed to mean "arranged in a
6 manner capable of forming alternative paths of current such that
7 current can flow across one or the other path." GuideTech notes
8 that the modifier "operatively" indicates that the shunt and
9 capacitor are not actually "disposed in parallel," but rather
10 "operate as though they are parallel." GuideTech's Cl. Constr. Br.
11 at 12:10. See Innova/Pure Water, 381 F.3d at 1118 ("In the absence
12 of modifiers, general descriptive terms are typically construed as
13 having their full meaning.").

14 Figure 4 and the specification do not support Brilliant's
15 additional limitation that requires the paths to terminate at the
16 same destination. Nor do Figure 4 and the specification indicate
17 that the "same voltage change occurs across both paths." Figure 4
18 shows the shunt and capacitor to be on alternate paths of current.
19 However, these alternate paths do not terminate at the same
20 destination, nor do they have the same voltage running across them.
21 See Kaliski Decl., Ex. B ¶ 103 (Brilliant's infringement expert
22 stating that "the voltage across the shunt is not necessarily the
23 same as the voltage across capacitor"). Nevertheless, Brilliant
24 insists that any "change in voltage across one path will be
25 experienced by each element." Brilliant's Cl. Constr. Br. at
26 13:17. No evidence supports this view. Brilliant points to
27 language in the specification indicating that, as the capacitor
28 discharges, "the voltage level at pin 2 of diode bridge 124 drops."

1 '649 patent, 9:51-52. However, there is no evidence that pin 2 of
2 the diode bridge is "operatively disposed in parallel" in the same
3 manner as the shunt and capacitor.²

4 Brilliant contends that GuideTech's construction, which does
5 not mention voltage level changes, fails to account for the
6 "parallel" limitation in the claim language. This is incorrect.
7 GuideTech's proposal accounts for "parallel" by disclosing
8 alternative paths for current and indicating the location of the
9 shunt and capacitor.

10 Accordingly, the Court construes the phrase "operatively
11 disposed in parallel" as "arranged in a manner capable of forming
12 alternative paths of current such that current can flow across one
13 or the other path."

14 5. "parallel outputs"

15 Brilliant and GuideTech's dispute over defining this term
16 arises from their disagreement over how to construe "parallel."
17 Brilliant argues that this term should be defined to mean
18 "alternative output signal paths to a common destination, wherein
19 the same voltage changes occur across both paths." GuideTech
20 proposes the following definition: "outputs that are arranged such
21 that a current path divides between the outputs."

22 For the reasons stated above, the Court adopts GuideTech's
23 definition. Accordingly, "parallel outputs" is construed to mean
24 "outputs that are arranged such that a current path divides between
25 the outputs."

26

27

28 ² Indeed, Figure 4 shows that pin 2 is located before the
alternate paths leading to the shunt and capacitor branch off.

1 II. Motions for Summary Judgment and Summary Adjudication

2 A. Legal Standard

3 Summary judgment is properly granted when no genuine and
4 disputed issues of material fact remain, and when, viewing the
5 evidence most favorably to the non-moving party, the movant is
6 clearly entitled to prevail as a matter of law. Fed. R. Civ.
7 P. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
8 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
9 1987).

10 The moving party bears the burden of showing that there is no
11 material factual dispute. Therefore, the court must regard as true
12 the opposing party's evidence, if supported by affidavits or other
13 evidentiary material. Celotex, 477 U.S. at 324; Eisenberg, 815
14 F.2d at 1289. The court must draw all reasonable inferences in
15 favor of the party against whom summary judgment is sought.
16 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
17 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
18 1551, 1558 (9th Cir. 1991).

19 Material facts which would preclude entry of summary judgment
20 are those which, under applicable substantive law, may affect the
21 outcome of the case. The substantive law will identify which facts
22 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
23 (1986).

24 Where the moving party does not bear the burden of proof on an
25 issue at trial, the moving party may discharge its burden of
26 production by either of two methods. Nissan Fire & Marine Ins.
27 Co., Ltd., v. Fritz Cos., Inc., 210 F.3d 1099, 1106 (9th Cir.
28 2000).

1 The moving party may produce evidence negating an
2 essential element of the nonmoving party's case, or,
3 after suitable discovery, the moving party may show that
4 the nonmoving party does not have enough evidence of an
5 essential element of its claim or defense to carry its
6 ultimate burden of persuasion at trial.

7 Id.

8 If the moving party discharges its burden by showing an
9 absence of evidence to support an essential element of a claim or
10 defense, it is not required to produce evidence showing the absence
11 of a material fact on such issues, or to support its motion with
12 evidence negating the non-moving party's claim. Id.; see also
13 Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 885 (1990); Bhan v.
14 NME Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991). If the
15 moving party shows an absence of evidence to support the non-moving
16 party's case, the burden then shifts to the non-moving party to
17 produce "specific evidence, through affidavits or admissible
18 discovery material, to show that the dispute exists." Bhan, 929
19 F.2d at 1409.

20 If the moving party discharges its burden by negating an
21 essential element of the non-moving party's claim or defense, it
22 must produce affirmative evidence of such negation. Nissan, 210
23 F.3d at 1105. If the moving party produces such evidence, the
24 burden then shifts to the non-moving party to produce specific
25 evidence to show that a dispute of material fact exists. Id.

26 If the moving party does not meet its initial burden of
27 production by either method, the non-moving party is under no
28 obligation to offer any evidence in support of its opposition. Id.
This is true even though the non-moving party bears the ultimate
burden of persuasion at trial. Id. at 1107.

1 Where the moving party bears the burden of proof on an issue
2 at trial, it must, in order to discharge its burden of showing that
3 no genuine issue of material fact remains, make a prima facie
4 showing in support of its position on that issue. UA Local 343 v.
5 Nor-Cal Plumbing, Inc., 48 F.3d 1465, 1471 (9th Cir. 1994). That
6 is, the moving party must present evidence that, if uncontroverted
7 at trial, would entitle it to prevail on that issue. Id.; see also
8 Int'l Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1264-65 (5th
9 Cir. 1991). Once it has done so, the non-moving party must set
10 forth specific facts controverting the moving party's prima facie
11 case. UA Local 343, 48 F.3d at 1471. The non-moving party's
12 "burden of contradicting [the moving party's] evidence is not
13 negligible." Id. This standard does not change merely because
14 resolution of the relevant issue is "highly fact specific." Id.

15 B. Brilliant's Motion for Summary Judgment of Non-
16 Infringement

17 Brilliant seeks summary judgment that the Accused Products do
18 not infringe the patents-in-suit. GuideTech opposes Brilliant's
19 motion only insofar as it concerns the Asserted Patents. GuideTech
20 does not oppose Brilliant's motion to the extent it is directed at
21 the '959, '767, '382 and '610 patents. Accordingly, Brilliant's
22 motion is granted as to these patents.

23 With respect to the Asserted Patents, Brilliant asserts that
24 GuideTech cannot prove literal infringement or infringement under
25 the doctrine of equivalents. "To establish literal infringement,
26 'every limitation set forth in a claim must be found in an accused
27 product, exactly.'" Becton, Dickinson & Co. v. Tyco Healthcare
28 Group, LP, 616 F.3d 1249, 1253 (Fed. Cir. 2010) (quoting Southwall

1 Techs., Inc. v. Cardinal IG Co., 54 F.3d 1570, 1575 (Fed. Cir.
2 1995)). "Thus, if any claim limitation is absent from the accused
3 device, there is no literal infringement as a matter of law."
4 Becton, 616 F.3d at 1253 (citation and editing and internal
5 quotation marks omitted).

6 An accused product may also infringe under the doctrine of
7 equivalents. Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 339
8 U.S. 605, 608 (1950). The doctrine generally applies where the
9 differences between an element of the accused product and the
10 asserted claim limitation are "insubstantial to one of ordinary
11 skill in the art." Searfoss v. Pioneer Consol. Corp., 374 F.3d
12 1142, 1150 (Fed. Cir. 2004) (citation and internal quotation marks
13 omitted). However, the doctrine may not be invoked, and summary
14 judgment of non-infringement is appropriate, where the theory of
15 equivalents "would entirely vitiate a particular claim element."
16 Id. at 1150-51 (internal citations omitted).

17 1. '231 Patent

18 Brilliant contends that the Accused Products cannot infringe
19 the '231 patent because they are not TIAs with "a plurality of
20 measurement circuits defined within [a] signal channel," '231
21 patent, 16:33-34, or with "a processor circuit . . . configured to
22 receive and compare . . . time signals from said measurement
23 circuits to each other to determine a time interval," id., 40-48.
24 Because Brilliant's first argument is dispositive, the Court need
25 not consider its second.

26 Brilliant proffers evidence that the Accused Products have
27 only one measurement circuit contained within each signal channel
28 and, as a result, do not satisfy this limitation. See, e.g.,

1 Kaliski Reply Decl., Ex. A ¶ 18.

2 GuideTech does not offer evidence that each signal channel
3 contains more than one measurement circuit. Instead, GuideTech
4 notes that the Accused Products can perform a "one-channel-two-
5 edge" function, which requires use of two "timetagging" circuits.
6 GuideTech considers these circuits to be measurement circuits.
7 Chin Decl., Ex. 10, at BI000858. GuideTech insists that a signal
8 channel with only one measurement circuit would be useless because
9 two measurements are required to determine an interval. West Decl.
10 ¶ 10. These arguments are unavailing. Although the one-channel-
11 two-edge function requires use of the Accused Products' two
12 measurement circuits, it does not follow that both measurement
13 circuits are contained within a single channel. Indeed, Dr.
14 Burnell G. West, GuideTech's infringement expert, states that the
15 BI200 has "at least two measurement circuits," which "are within
16 either signal channel A or signal channel B as shown in Figure 2"
17 of the BI200 Datasheet.³ West Decl., Ex. 1, App'x D, at A2. He
18 does not contend that the measurement circuits are contained within
19 a given channel. Thus, there is not a genuine issue of material
20 fact as to whether the Accused Products literally meet this
21 limitation.

22 Nor is there a triable issue concerning infringement under the
23 doctrine of equivalents. West contends that the "physical
24 placement of accused measurement circuits is equivalent to being of
25 only one signal channel because such placement performs
26 substantially the same function . . . in substantially the same way

27
28 ³ West represents that the BI220 has a "substantially similar"
configuration. West Decl., Ex. 1, App'x D, at A2.

1 . . . to achieve the same result." West Decl., Ex. 2 ¶ 13.

2 Although this might be true, accepting this theory of equivalency
3 would vitiate entirely the limitation that measurement circuits be
4 contained within a single channel.

5 Accordingly, as a matter of law, the Accused Products do not
6 infringe the '231 patent, either literally or under the doctrine of
7 equivalents. Brilliant is entitled to summary judgment of non-
8 infringement as to the '231 patent.

9 2. '671 Patent

10 Brilliant maintains that the Accused Products do not infringe
11 the '671 patent because they do not practice a "first current
12 circuit having a constant current source," '671 patent, 16:53, or a
13 shunt and capacitor "operatively disposed in parallel with respect
14 to said first current circuit," *id.*, 16:62-63. Because Brilliant's
15 second argument is dispositive, the Court need not consider the
16 first.

17 Brilliant points to a schematic of the BI200 that West
18 annotated during his deposition, which Brilliant contends shows the
19 accused capacitor to be a part of the first current circuit. Thus,
20 Brilliant argues, the capacitor cannot be "operatively disposed in
21 parallel with respect to the first current circuit" because it is a
22 part of that circuit. GuideTech does not dispute that West
23 indicated that, in the BI200, the capacitor is part of the first
24 current circuit.

25 As explained above, the Court construes "operatively disposed
26 in parallel" to mean "arranged in a manner capable of forming
27 alternative paths of current such that current can flow across one
28 or the other path." West's representation that the capacitor is

1 part of the first current circuit indicates that the capacitor is
2 not on an alternative path on which current flows from the first
3 current circuit. Indeed, GuideTech's expert on Brilliant's
4 invalidity contentions, Sassan Tabatabaei, confirms that the
5 capacitor that the '671 patent claims is not part of the first
6 current circuit, but rather on an "alternative path[] of current
7 from the first current circuit." Tabatabaei Decl. ¶ 18.

8 West's testimony that the capacitor is part of the first
9 current circuit precludes a finding of infringement, either
10 literally or under the doctrine of equivalents. Accordingly,
11 Brilliant is entitled to summary judgment of non-infringement of
12 the '671 patent.

13 3. '649 Patent

14 Like the '671 patent, the '649 patent discloses an
15 interpolator with a shunt and capacitor "operatively disposed in
16 parallel with respect to said first current circuit." Thus, for
17 the reasons stated above, Brilliant is entitled to summary judgment
18 of non-infringement of the '649 patent.

19 CONCLUSION

20 For the foregoing reasons, the Court construes the disputed
21 claim language in the manner explained above and GRANTS Brilliant's
22 motion for summary judgment of non-infringement (Docket No. 108).
23 Because Brilliant's Accused Products do not infringe the Asserted
24 Patents, it lacks standing to bring invalidity counterclaims and
25 they are therefore dismissed for lack of subject matter
26 jurisdiction. Accordingly, GuideTech's motion for summary
27 adjudication on the issue of assignor estoppel is DENIED as moot
28 (Docket No. 119). Brilliant's evidentiary objections are OVERRULED

1 as moot.

2 In their June 29, 2011 stipulation, the parties agreed that,
3 if the Court were to grant Brilliant's motion for summary judgment
4 of non-infringement, Brilliant would seek leave to dismiss its
5 state law claims in this action so that they could be consolidated
6 with GuideTech's claims in state court. In accordance with their
7 agreement, within three days of the date of this Order, the parties
8 shall file a stipulation seeking the dismissal without prejudice of
9 Brilliant's remaining state law claims. See Fed. R. Civ. P.
10 41(a)(1)(A)(ii). Thereafter, judgment will enter accordingly, and
11 the Clerk will be directed to close the file.

12 IT IS SO ORDERED.

13
14 Dated: 8/11/2011



CLAUDIA WILKEN
United States District Judge