IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

WI-LAN INC.,	§ § §	
Plaintiff,	§ §	
vs.	§ §	**CASE NO. 6:10-CV-521**
ALCATEL-LUCENT USA INC., ET AL.,	§ § § §	
Defendants.	§	

ORDER

Before the Court is Defendants' Motion for Clarification of the Construction of a Single Term in the Court's Claim-Construction Order (Dkt. No. 305). The Court **DENIES** the Motion. The Court held a *Markman* proceeding and issued an order construing the claims of the patents-in-suit. *Memorandum Opinion and Order*, 6:10-cv-521, Dkt. No. 200 (May 16, 2012). In that opinion, the Court construed time division multiplexing ("TDM") techniques as "techniques for allocating an interval of time within a predetermined frame period to a data item, based on one or more characteristics associated with the data item." Defendants now ask the Court to clarify this construction so as not to exclude TDM techniques that allocate data items based on *user identity* associated with the data items. Thus, Defendants ask the Court to either modify its construction of TDM techniques to "*all* techniques for allocating an interval of time within a predetermined frame period to a data item, based on one or more characteristics associated with the data item," or to hold that user identity is a characteristic associated with the data item.

Defendants argue that the term TDM technique, as used in the patent and advocated by Plaintiffs, encompasses a broad array of techniques and is not limited to a particular technique.

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Specifically, Defendants argue that the Court's construction did not exclude well-known techniques, such as time division multiple access ("TDMA"), where time slots are allocated to users in a defined, repeated sequence. Defendants contend that Plaintiffs first argued a broad construction of TDM techniques during claim construction, but now assert that the Court's construction, which adopted Plaintiff's proposal, limits TDM techniques to just one *specific type* of TDM, in which a data item is assigned a time slot based on the data item's size or importance.

Plaintiff responds that Defendants' request for clarification to include all types of TDM techniques would essentially enlarge the scope of the term by removing the limitation "based on one or more characteristics associated with the data item." Plaintiff also contends that Defendants' proposal that user identification constitutes "characteristics associated with the data item" is not supported by the intrinsic record. Instead, the Court's construction is supported by the examples in the specification that allocate time intervals based on the type or size of the data item.

The Court declines to adopt Defendants' proposed revised construction. Adding "all" to the Court's construction neither adds clarity, nor resolves the Parties' disputes. Instead, adding "all" might create confusion as to whether the term TDM techniques includes every TDM technique in existence. The Court previously rejected Defendants' proposed construction of: "methods in which a communication channel is shared among multiple wireless links by allowing each to use the channel for a given period of time in a defined, repeated sequence" because "[t]he specification and claims themselves do not limit TDM techniques to partitioning based on 'defined, repeated' divisions. Instead, the specification discusses that the invention can be used flexibly to address the individual needs of subscriber terminals on demand." *Memorandum Opinion and Order*, Dkt. No. 200 at 10,11. Although the Court's construction of

TDM techniques is broader than the construction Defendants advocated for during claim construction, it is not limitless. Thus, adding "all" does not clarify the Court's construction. Accordingly, the Court maintains the construction of TDM techniques as "techniques for allocating an interval of time within a predetermined frame period to a data item, based on one or more characteristics associated with the data item."

Furthermore, the Court will not define which specific characteristics are associated with the data item. However, since the Court's construction relied on the specification in rejecting Defendants' proposed construction, the Court clarifies that its construction of TDM techniques cannot be interpreted to exclude characteristics described in the specification. Specifically, the Court's construction is not exclusively limited to data size or type as a particular characteristic associated with the data item. As an example, the specification discloses in Figure 9B the use of predefined repeated sequences as a TDM technique. 6,088,326 Patent col. 15:40-45. Therefore, interpreting "characteristics associated with the data item" to be limited to data size or type would be inconsistent with the patent's specification.

For the foregoing reasons, the Court **DENIES** Defendants' Motion for Clarification of a Single Term in the Court's Claim Construction Order.

So ORDERED and SIGNED this 5th day of March, 2013.

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LEONARD DAVIS
UNITED STATES DISTRICT JUDGE