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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 LUFTHANSA TECHNIK AG,

10 Plaintiff,

11 v.

12 ASTRONICS ADVANCED ELECTRONIC
13 SYSTEMS CORP. and KID-SYSTEME
14 GMBH,

15 Defendants.

Case No. C14-1821RSM

ORDER DENYING MOTION FOR
RECONSIDERATION

16 This matter comes before the Court on Plaintiff Lufthansa Technik AG ('Lufthansa's')
17 'Motion for Clarification or Reconsideration of Claim Construction Ruling' Dkt. #128.
18 Lufthansa moves the Court to reconsider or clarify its April 25, 2016, Claims Construction
19 Order ('the Order'). Dkt. #122. Following the Order, Defendant Astronics Advanced Electronic
20 Systems ('AES') moved for Entry of Judgment (Dkt. #126); Lufthansa also moves for
21 clarification regarding the appropriateness of this Motion.
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23 In moving for reconsideration, Lufthansa argues that 'the Order contains two erroneous
24 conclusions..First the Order states that because 'one of ordinary skill in the art can only guess
25 what is covered and what is not.,the Court finds by clear and convincing evidence that the
26 claim language 'subsequent detection' is indefinite.'Second, the Order concludes that [Lufthansa]
27 disclaimed 'simultaneous detection' during prosecution of the patent.' *Id.* at 2-3 (citing Dkt. #122
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1 at 19) (emphasis in original). Regarding the first allegedly erroneous conclusion, Lufthansa
2 argues that “AES submitted *no evidence* to support its position that ‘subsequent detection’ is
3 indefinite.” *Id.* at 3. Lufthansa argues that AES’ expert refused to testify that the terms
4 “simultaneously” and “subsequent detection” are indefinite. *Id.* at 4. Lufthansa cites to *Verve v.*
5 *Crane Cams*, 311 F.3d 1116, 1119 (Fed. Cir. 2002) and other cases for the proposition that it is
6 “legally erroneous. to find a term indefinite based solely on the intrinsic record without regard to
7 what a skilled artisan would understand the term to mean.” *Id.* Lufthansa argues that “[t]he
8 notion that a skilled artisan could not ascertain the scope of the ‘016 patent is contrary to the
9 record,” and that the Court “should not enter judgment without more development of the record
10 and an evidentiary hearing.” *Id.* at 5. Lufthansa cites to several cases for the proposition that
11 “deciding the dispositive effect of indefiniteness is more appropriately tackled at summary
12 judgment.” *Id.* at 6. Regarding the second allegedly erroneous conclusion, Lufthansa points out
13 that the Order states that Lufthansa amended the claims “at least in part, to get around a prior
14 patent, ‘the Crane Patent,” but that the Order also states that Lufthansa “fails to explain why it
15 made these amendments.. These statements are irreconcilable, but more importantly,
16 [Lufthansa] *did* explain why ‘subsequent’ was added to the claims.” *Id.* at 6-7. Lufthansa argues
17 that “[t]he Order criticizes [Lufthansa]’s interpretation of ‘subsequent’ as having no temporal
18 meaning .But that criticism is unfounded. ‘Subsequent’ is used throughout the patent to indicate a
19 numerical, rather than temporal, element...[Lufthansa’s expert] made this point very clearly in
20 his deposition.” *Id.* at 7. Finally, Lufthansa argues that “even if there were some disclaimer of
21 claim scope, the most [Lufthansa] could have disclaimed was exactly a zero time difference..
22 because Crane is a single-pin detection system with a zero time difference and without any
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1 tolerance or error margin.” *Id.* (citing *3M Innovative Proprs. Co. v. Avery Dennison Corp.*, 350
2 F.3d 1365, 1372-73 (Fed. Cir. 2003)).

3 In requesting clarification, Lufthansa argues that: the above conclusions by the Court
4 require “clarification or reconsideration;” that AES’ pending Motion for Entry of Judgment is
5 “premature;” that AES’ Motion “ignores that the day after the Order issued, this Court granted
6 [Lufthansa’s] motion for jurisdictional discovery from KID and included AES in that ruling;” and
7 that “the Court did not intend the Order to be a dispositive ruling on [Lufthansa’s] patent claims.”
8 Dkt. #128 at 2.

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10 “Motions for reconsideration are disfavored.” LCR 7(h)(1). “The court will ordinarily
11 deny such motions in the absence of a showing of manifest error in the prior ruling or a
12 showing of new facts or legal authority which could not have been brought to its attention
13 earlier with reasonable diligence.” *Id.*

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15 Regarding the first allegedly erroneous conclusion that the claim language “subsequent
16 detection” is indefinite the Court begins with the understanding that it is empowered to review
17 intrinsic and extrinsic evidence and reach legal conclusions, even if those conclusions were not
18 reached by either party’s expert witness. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct.
19 831, 837, 190 L. Ed. 2d 719 (2015); *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.
20 Cir. 1995) (en banc), *aff’d*, 517 U.S. 370, 116 S. Ct. 1384, 134 L. Ed. 2d 577 (1996); *see also*
21 *Phillips v. AWH Corp.*, 415 F.3d 1303, 1324 (Fed. Cir. 2005) (en banc) (extrinsic evidence may
22 not be used “to contradict claim meaning that is unambiguous in light of the intrinsic evidence”).
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24 The Court’s conclusion as to this claim’s indefiniteness is based primarily on “the language of the
25 claim, the remainder of the patent, and the prosecution history,” but is also based on AES’
26 argument that “the claim is left trying to cover an ambiguous range of time, and that one of
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1 ordinary skill in the art can only guess what is covered and what is not,” which in turn was
2 quoted from AES’ briefing and based on citations to the testimony of both expert witnesses.
3 Dkt. #122 at 19; Dkt. #63 at 28-29. Lufthansa appears to believe that, because AES’ expert
4 testified that he was *not* providing an opinion that the terms ‘simultaneously’ and ‘subsequent
5 detection’ are indefinite,” AES “failed to provide any evidence of a skilled artisan’s understanding.”
6 Dkt. #128 at 4 (emphasis in original). This is incorrect. *See, e.g.*, Dkt. #63 at 28-29 (citing
7 depositions of both expert witnesses on the topic of a skilled artisan’s understanding). The
8 Court is free to interpret the opinions of the expert witnesses and reach its own legal
9 conclusions. Given this, Lufthansa has failed to show how the Court’s conclusion, or the Order
10 generally, are manifestly erroneous under *Verve* and related cases.
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13 Lufthansa has also failed to show why an evidentiary hearing is necessary to resolve
14 this issue. The Court has already reviewed the submitted expert reports; Lufthansa makes no
15 mention of new facts; the Court finds it far more likely that the requested evidentiary hearing
16 would simply allow Lufthansa to reiterate stale legal arguments regarding the construction of
17 the contested claims. Further, Lufthansa has known of AES’ indefiniteness arguments since at
18 least the Joint Claim Construction and Prehearing Statement (Dkt. #63), and has had repeated
19 opportunities to argue that the Court should reserve ruling on this issue for summary judgment
20 but has failed to do so until this Motion for Reconsideration. Lufthansa fails to argue that the
21 Court engaged in manifest error by ruling on indefiniteness at the claims construction stage.
22 The Court believes it was fully briefed on the indefiniteness issue and, for the same reasons as
23 previously stated, will not hear further argument.
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26 Regarding the second allegedly erroneous conclusion, that Lufthansa disclaimed
27 “simultaneous detection” during prosecution of the patent, the Court finds that its Order did note
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1 state irreconcilable findings. The Court found that Lufthansa removed the term simultaneous
2 and added the term subsequent at least in part to get around the Crane Patent *and* that Lufthansa
3 failed to explain why it made these amendments. Dkt. #122 at 18-19. Lufthansa argues that it
4 did attempt to explain why it made these amendments in briefing and at the Markman Hearing.
5 Perhaps the Court's Order would have been clearer if it had stated that Lufthansa failed to
6 "adequately" or "convincingly" explain why it made these amendments. Nevertheless, the Court
7 finds that Lufthansa is essentially arguing that it disagrees with the Court's Order, but these
8 arguments fail to show that the Court engaged in manifest error. Lufthansa fails to convince
9 the Court that "subsequent" does not have a temporal meaning when used in the same sentence as
10 the word "time;" and the Court refuses to follow the testimony of Lufthansa's expert over the
11 word's "ordinary and customary meaning." *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13
12 (Fed. Cir. 2005) (en banc); *see also ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed.
13 Cir. 2003) (in construing a claim term's ordinary meaning, the context in which a term is used
14 must be considered). Lufthansa's argument that "even if there were some disclaimer of claim
15 scope, the most [Lufthansa] could have disclaimed was exactly a zero time difference;" stands in
16 the face of the ambiguous language of the claim (*e.g.*, the word subsequent) and does not
17 change the Court's conclusion that "the claim is left trying to cover an ambiguous range of time,
18 and that one of ordinary skill in the art can only guess what is covered and what is not." *See*
19 Dkt. #122 at 19.

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24 The Court next turns to Lufthansa's request or requests for clarification. The Court finds
25 that, to the extent Lufthansa moves for clarification regarding the Court's conclusions, the Court
26 has clarified them above. To the extent Lufthansa argues that AES' pending Motion for Entry
27 of Judgment is procedurally invalid, such arguments are properly raised in Response to that
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1 Motion and the Court will reserve its ruling. The Court wishes to clarify that its Claims
2 Construction Order was limited to claims construction, and did not itself reach a ruling on
3 Lufthansa's patent claims.

4 Lufthansa does not demonstrate manifest legal error or present new facts or legal
5 authority which could not have been brought to the Court's attention earlier with reasonable
6 diligence. Accordingly, Lufthansa's Motion for Reconsideration (Dkt. #128) is DENIED.
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9 DATED this 13th day of May 2016.

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12 RICARDO S. MARTINEZ
13 CHIEF UNITED STATES DISTRICT JUDGE
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