

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT TACOMA

4 EAGLE HARBOR HOLDINGS, LLC,
and MEDIUSTECH, LLC,

5 Plaintiffs,

6 v.

7 FORD MOTOR COMPANY,

8 Defendant.

CASE NO. C11-5503 BHS

ORDER ADOPTING CLAIM
CONSTRUCTIONS

9
10 This matter comes before the Court on Plaintiffs Eagle Harbor Holdings, LLC and
11 MediusTech, LLC's, ("Plaintiffs") objections and motion to modify and adopt order of
12 the special master regarding claim construction (Dkt. 169) and Defendant Ford Motor
13 Company's ("Ford") motion to adopt-in-part and modify-in-part the special master's
14 claim construction order (Dkt. 171). The Court has considered the pleadings filed in
15 support of and in opposition to the motions and the remainder of the file and hereby
16 grants in part and denies in part the motions for the reasons stated herein.

17 **I. PROCEDURAL HISTORY**

18 On June 30, 2011, Plaintiffs filed a complaint for patent infringement against
19 Ford. Dkt. 1. On October 20, 2011, Plaintiffs filed an Amended Complaint asserting
20 U.S. Patents Nos. 6,615,137, 6,629,033, 6,778,073 ("073 Patent"), 7,146,260, 7,778,739,
21 7,793,136, 8,006,117, 8,006,118, 8,006,119, 8,020,028, and 8,027,268 (the "268
22 Patent") (the "Patents in Suit"). Dkt. 33.

1 On February 24, 2012, Plaintiffs filed a second amended complaint asserting the
2 Patents in Suit. Dkt. 61. On February 25, 2013, the parties agreed to a stipulated
3 dismissal of Plaintiffs' claim of infringement of the 6,629,033 patent. Dkt. 135.

4 On March 18, 2013, the Court appointed Lawrence Graham as a Special Master to
5 assist the Court with the issues of claim construction. Dkt. 140.

6 On May 10, 2013, both parties filed opening claim construction briefs. Dkts. 145
7 & 148. On May 31, 2013, both parties responded. Dkts. 151 & 153.

8 On June 14, 2013 and July 11, 2013, the Special Master held claim construction
9 hearings. Dkts. 160 & 164. On July 29, 2013, the Special Master filed his order
10 regarding claim constructions of terms of the Patents in Suit.

11 On August 19, 2013, Plaintiffs filed objections to two of the Special Master's
12 proposed constructions (Dkt. 169) and Ford filed objections to three of the proposed
13 constructions (Dkt. 171). On September 16, 2013, the parties responded. Dkts. 173 &
14 174.

15 **II. DISCUSSION**

16 The parties disputed the construction of the following twelve terms: kinematic
17 state, steering queue, processor for selectively connecting . . . audio sources,
18 multiprocessor system, distributed processing system, application, select and identify,
19 reconfigure/configure to run an application, dynamically configure . . . application, take
20 over control and operation of the new device, processes the data received from the
21 additional audio source, and link. With regard to the terms that neither party has objected
22

1 to or requested modification, the Court grants the motions to adopt the special master’s
2 constructions.

3 **A. Processing Audio**

4 The parties disputed two phrases in the ‘073 Patent and three claims in the ‘268
5 Patent regarding the processing of audio sources.

6 **1. Claim 1, ‘073 Patent**

7 Claim 1 of the ‘073 consists of four phrases. Dkt. 1, Exh. D, col. 7. The last
8 phrase provides as follows:

9 a processor for selectively connecting a first one of the identified audio
10 sources identified on the display to a first set of the audio output devices
and selectively connecting a second one of the audio sources to a second set
of the audio output devices.

11 *Id.* The parties disputed the construction of this phrase, and the special master construed
12 the phrase as follows:

13 a processor for selectively connecting a first one of the identified audio
14 sources identified on the display to a first set of the audio output devices
15 **while** selectively connecting a second one of the audio sources to a second
set of the audio output devices.

16 Dkt. 165 at 30 (emphasis added). Plaintiffs object to the special master’s substitution of
17 “while” for “and.” Dkt. 169 at 5–10.

18 In this case, the special master concluded that claim 1 includes a simultaneity
19 limitation. Dkt. 165 at 21–28. First, the special master concluded that the specification
20 “lacked sufficient clarity” and “provides little guidance as to the interpretation” of the
21 claim on the issue of simultaneous connections. *Id.* at 22–23. Plaintiffs, however,
22 contend that there is “strong intrinsic evidence in support of [their] construction”

1 Dkt. 169 at 7. The Court disagrees because, at most, the specification discloses an
2 embodiment in support of Plaintiffs’ construction. The disclosure of an embodiment
3 does not provide guidance on the issue of whether that particular embodiment is within
4 the scope of the particular claim at issue. Therefore, the Court adopts the special
5 master’s conclusion that the specification is inconclusive on the issue of simultaneous
6 connections.

7 After addressing the specification, the special master turned to the prosecution
8 history, which is the last piece of intrinsic evidence that a court should consider when
9 construing the claims of the patent. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed.
10 Cir. 2005). The prosecution history provides evidence of how the U.S. Patent and
11 Trademark Office (“PTO”) and the inventor understood the patent. *Id.* In certain
12 instances, the prosecution history may provide guidance of an applicant’s intent to
13 specifically limit the scope of a given claim term. *Id.* at 1319. For example,

14 where the patentee has unequivocally disavowed a certain meaning to
15 obtain his patent, the doctrine of prosecution disclaimer attaches and
16 narrows the ordinary meaning of the claim congruent with the scope of the
17 surrender.

18 *Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003). The Federal
19 Circuit, however, has “declined to apply the doctrine of prosecution disclaimer where the
20 alleged disavowal of claim scope is ambiguous.” *Id.*; *Rexnord Corp. v. Laitram Corp.*,
21 274 F.3d 1336, 1347 (Fed. Cir. 2001) (refusing to limit the ordinary meaning of the claim
22 because the alleged disclaimer in the file wrapper was at best “inconclusive”).

1 In this case, Plaintiffs assert that the special master based the simultaneity
2 limitation on a disavowal of claim scope. Dkt. 169 at 7 (“the Special Master erred in
3 concluding that there was a clear, unambiguous, and unequivocal disclaimer of claim
4 scope.”) The special master, however, correctly concluded that the finding of a
5 disavowal was not necessary because “the remarks [in the prosecution history] confirm
6 the construction that would already be discerned from the claim language and written
7 description.” Dkt. 165 at 27. In other words, the special master consulted the
8 prosecution history “as support for” the plain reading of the claim and not “to limit the
9 meaning of a claim term that would otherwise be read broadly.” *800 Adept, Inc. v. Murex*
10 *Securities, Ltd.*, 539 F.3d 1354, 1364–1365 (Fed. Cir. 2008). Therefore, the Court rejects
11 Plaintiffs’ contention that the special master incorrectly found disavowal based on the
12 prosecution history.

13 With regard to the plain reading of the claim, the Court agrees with the special
14 master’s construction. One of ordinary skill in the art would read the word “and” as
15 requiring the first set of sources and devices to be connected at the same time as the
16 second set of sources and devices. This reading is especially true in light of the
17 prosecution history, which in part provides as follows:

18 Selecting different speaker locations is different from selecting
19 different audio sources for different speakers. [Plaintiffs’ invention] allows
20 a passenger in a rear part of the vehicle to listen to a portable CD player on
21 rear speakers while a drive[r] can listen to a cell phone on the front
22 speakers. This is not possible with the audio systems described in [the prior
art].

1 Dkt. 90-1 at 87. Substituting the word “while” for “and” clarifies this meaning.

2 Therefore, the Court adopts the special master’s construction for claim 1 of the ‘073
3 Patent.

4 **2. Claim 10, ‘073 Patent**

5 The special master concluded that no construction was required for the disputed
6 phrase in claim 10 of the ‘073 Patent. Dkt. 165 at 30. Ford objects and argues that the
7 construction should be consistent with the construction of the phrase in claim 1 because
8 the terms are substantively identical. Dkt. 171 at 5-10. The terms are not substantively
9 identical and claim 10 includes the additional limitation of assigning priority values.

10 Therefore, neither the principle of consistency nor the prosecution history requires claim
11 10 to be construed identical to claim 1. The Court denies Ford’s motion on this issue.

12 **3. The ‘268 Patent**

13 The parties disputed terms in claims 1, 11, and 21 of the ‘268 Patent. The special
14 master construed the terms as follows:

15 As used in the ‘268 patent, the limitation “process the data received
16 from the additional audio source,” found in claim 1, must occur
17 concurrently with the limitation “process the data received from the audio
18 source.”

17 The limitation “process the data received from the third data source,”
18 found in claim 11, must occur concurrently with the limitation “process the
19 data received from the second data source.”

19 The limitation “processes the identified data types received from the
20 additional audio source,” found in claim 21, must occur concurrently with
21 the limitation “processes the identified data types received from the audio
22 source.”

21 Dkt. 165 at 77. Plaintiffs object to the inclusion of the concurrent limitations. Dkt. 169
22 at 10–15.

1 First, Plaintiffs argue that any disavowal of claim scope was not clear and
2 unequivocal. Dkt. 169 at 11–12. The special master’s construction, however, is **not**
3 based on the principle of prosecution history disclaimer. The special master only referred
4 to the prosecution history to provide support for the plain reading of the claim.
5 Therefore, the Court denies Plaintiffs’ motion on this issue.

6 Second, Plaintiffs argue that the concurrency limitation is “otherwise unsupported
7 by the patent claims and specifications.” Dkt. 169 at 11, 13–15. The Court disagrees.
8 With regard to claims 1 and 21, they refer to an “additional” audio source, which conveys
9 the idea of dealing with concurrent sources. Finding that one of ordinary skill in the art
10 would understand the claim to include such a requirement is reasonable. Plaintiffs’
11 arguments to the contrary are unpersuasive. With regard to claim 11, it refers to
12 processing multiple data sources. Although the claim does not include the word
13 “additional,” the plain reading of the claim conveys the idea that the data from the
14 multiple sources is processed concurrently. Therefore, the Court denies Plaintiffs’
15 motion on this issue and adopts the special master’s constructions.

16 **B. “kinematic state”**

17 The special master construed the term “kinematic state” to mean “one or more of
18 distance, position, velocity, acceleration, deceleration, and/or direction.” Dkt. 165 at 11.
19 “Ford respectfully submits that this is incorrect for three reasons.” Dkt. 171 at 11.
20 Ford’s arguments are based on extrinsic evidence, intrinsic evidence, and the purpose of
21 the invention. *Id.* at 11–14. With regard to the intrinsic evidence, Ford’s argument is
22 based on embodiments wherein the kinematic state includes a combination of variables

1 and reading the patent specification so that it is internally consistent. Ford concedes that
2 the specification discloses an embodiment wherein the kinematic state is position data
3 alone (Dkt. 171 at 12 (citing 165 at 6)), but contends that the particular sentence in
4 question “cannot be read in isolation.” Dkt. 171 at 12. The Court disagrees because
5 construing the claim term to cover this disclosure does not render the specification
6 internally inconsistent. While it is true that the majority of the disclosed embodiments
7 refer to embodiments with multiple variables, the inventor is entitled to the entire scope
8 of his disclosures, which includes determining kinematic state by position alone.
9 Therefore, the Court denies Ford’s motion on this issue.

10 With regard to the extrinsic evidence, Ford’s arguments are based on dictionary
11 definitions of “kinematic.” Dkt. 171 at 11. Dictionaries and other external sources can
12 be useful in claim construction, “so long as the dictionary definition does not contradict
13 any definition found in or ascertained by a reading of the patent documents.” *Phillips v.*
14 *AWH Corp.*, 415 F.3d 1303, 1322–23 (Fed. Cir. 2005) (quoting *Vitronics Corp. v.*
15 *Conceptronic, Inc.*, 90 F.3d 1576, 1584 n.6 (Fed. Cir. 1996)). Adopting Ford’s extrinsic
16 evidence would contradict a construction ascertained by reading the patent. Therefore,
17 the Court denies Ford’s motion on this issue.

18 With regard to the purpose of the invention, Ford argues that the “the claimed
19 collision avoidance system would not work if ‘kinematic state’ could be merely position
20 data alone.” Dkt. 171 at 14 (citing ‘137 Patent, col. 8, ll. 26–28). The special master
21 adequately addressed this argument (Dkt. 165 at 7–8). Moreover, the Court agrees with
22 Plaintiffs that “[n]othing in the patent precludes the application of the disclosed

1 techniques to avoid collisions with stationary objects using position data alone in
2 circumstances where it can be assumed or inferred that the object is, in fact, stationary.”
3 Dkt. 173 at 14. Therefore, the Court denies Ford’s motion on this issue and adopts the
4 special master’s construction of the term “kinematic state.”

5 **C. Multiprocessor Terms**

6 The parties requested the special master to construe the terms “multiprocessor
7 system,” a “multiprocessor network,” or “a processor system, wherein a processor is
8 coupled to at least a second processor.” The special master found the terms to be
9 introductory preambles, and, “[a]s such, they should be given their plain and ordinary
10 meaning as defined by the limitations that follow these terms, and need not be separately
11 construed.” Dkt. 165 at 38. Ford objects to this conclusion and requests that the Court
12 construe the terms by adopting its proposed constructions. Dkt. 171 at 14–22.

13 Whether to treat a preamble term as a claim limitation is “determined on the facts
14 of each case in light of the claim as a whole and the invention described in the patent.”
15 *Storage Tech. Corp. v. Cisco Sys., Inc.*, 329 F.3d 823, 831 (Fed. Cir. 2003). Generally, a
16 preamble is not limiting if it “offers no distinct definition of any of the claimed
17 invention’s limitations, but rather merely states, . . . the purpose or intended use of the
18 invention.” *Pitney Bowes, Inc. v. Hewlett–Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir.
19 1999). A preamble may be limiting, however, “if it recites essential structure or steps, or
20 if it is ‘necessary to give life, meaning, and vitality’ to the claim.” *Catalina Marketing*
21 *Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (quoting *Pitney*
22 *Bowes, Inc.*, 182 F.3d at 1305). For instance, “[w]hen limitations in the body of the claim

1 | rely upon and derive antecedent basis from the preamble, then the preamble may act as a
2 | necessary component of the claimed invention.” *NTP, Inc. v. Research in Motion, Ltd.*,
3 | 418 F.3d 1282, 1306 (Fed. Cir. 2005) (quoting *Eaton Corp. v. Rockwell Int’l Corp.*, 323
4 | F.3d 1332, 1339 (Fed. Cir. 2003)).

5 | In this case, Ford argues that the special master’s determination that the terms are
6 | non-limiting preambles “reads the alleged invention out of the claims.” Dkt. 171 at 16.
7 | The special master, however, concluded that a “person of ordinary skill in the art would
8 | understand that the limitations following the preamble or the ‘configured to’ transition
9 | would define the requirements of the multiprocessor system.” Dkt. 165 at 36–37. The
10 | Court agrees and finds that adopting Ford’s additional limitations would only add
11 | unnecessary and redundant limitations. Moreover, Ford requests that, for the terms in
12 | question, the Court apply the special rules of construction instead of the general rule that
13 | preambles are not limiting. Ford has failed to persuade the Court that the special rules
14 | should apply to these terms. Therefore, the Court denies Ford’s motion on this issue.

15 | Ford also argues that the special master is incorrect because the terms appear in
16 | both the preamble and the body of the claims in question. Dkt. 171 at 20. While Ford is
17 | correct that case law supports the proposition that duplicative use of a preamble term or
18 | phrase in the body of a claim specifically limits the scope of that claim, there is no case
19 | law for the proposition that the construction of the second, more limiting use of a term
20 | should be applied to every other use of the term throughout six patents. Herein lies the
21 | problem with the parties’ agreement that the terms “should be interpreted to mean the
22 | same thing.” In order to correctly apply the law and dispense of any prejudice to Ford,

1 the Court will allow an additional request by motion to construe specific duplicative uses
2 of these terms. Ford must identify a standalone term that is not in a preamble and is not
3 followed by the “configured to” phrase. With this limited exception, the Court adopts the
4 special master’s constructions of these terms.

5 **III. ORDER**

6 Therefore, it is hereby **ORDERED** that Plaintiffs’ objections and motion to
7 modify and adopt order of the special master regarding claim construction (Dkt. 169) and
8 Ford’s motion to adopt-in-part and modify-in-part the special master’s claim construction
9 order (Dkt. 171) are **GRANTED in part** and **DENIED in part** as stated herein, and the
10 Court **ADOPTS** the special master’s claim constructions (Dkt. 165).

11 Dated this 13th day of November, 2013.

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BENJAMIN H. SETTLE
United States District Judge