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

EON CORP. IP HOLDINGS, LLC, Plaintiff, v. LANDIS+GYR INC.; ACLARA POWER-LINE SYSTEMS INC.; ACLARA RF SYSTEMS INC.; ELSTER SOLUTIONS, LLC; ENERGYICT, INC.; ELSTER AMCO WATER, LLC; SILVER SPRING NETWORKS, INC.; ITRON, INC.; and TRILLIANT NETWORKS INC., Defendants.	)	Civil Action No. 6:11-cv-00317 (LED-JDL)

ORDER ON JOINT MOTION FOR ENTRY OF STIPULATION

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Court's claim constructions set forth in the Court's Prior Claim Construction Orders specifically referenced herein with respect to the '101, '546 and '491 Patents shall apply in this case with respect to the '491 Patent as follows, subject to Defendants' objections which are reserved and not waived with respect to any of the '101, '546, and '491 Patents:

1. The Court's prior construction of "modem" ("a device that modulates an analog carrier signal to encode digital information, and demodulates such a carrier signal to decode the transmitted digital information"), as set forth in the April 18, 2012 *T-Mobile* Order at 4-6, shall apply equally to the '491 Patent in this case. The parties shall not apply this construction in a

manner that is inconsistent with the Court's claim construction reasoning set forth in the February 8, 2012 *T-Mobile* Order at 7-14 and the April 18, 2012 *T-Mobile* Order at 4-6.

2. The Court's prior construction of "receiving a signal" / "not receiving a signal" ("The Court finds that Claims 5 and 17 speak for themselves. The claimed method determines whether a subscriber unit located within a base station geographic area associated with said local base station repeater cell (1) is, or (2) is not receiving a signal from the local base station repeater cell. The method steps listed after 'if said subscriber unit is not receiving a signal from said local base station repeater cell, performing the steps of' are not performed if the 'determining' step determines that 'said subscriber unit is receiving a signal from said local base station repeater cell'"), as set forth in the April 18, 2012 *T-Mobile* Order at 1-3, shall apply equally to the '491 Patent in this case. The parties shall not apply this construction in a manner that is inconsistent with the Court's claim construction reasoning set forth in the February 8, 2012 *T-Mobile* Order at 21-26, the April 18, 2012 *T-Mobile* Order at 1-3, and the September 7, 2012 *T-Mobile* Order.

3. The Court's prior construction of "unable to communicate directly" ("The Court finds that the claim language speaks for itself and the '491 patent discloses a binary system where the subscriber unit either communicates over Path A or Path B. For example, Claim 1 reads: 'a modem communicatively coupled to said local subscriber units and said local base station repeater cell for transferring said multiplexed synchronously related digital data messages of variable lengths between said set of local subscriber units and said local base station repeater cell if said local subscriber units are unable to communicate with said local base station repeater cell.' '491 Patent at 1:57-64. The claim language, on its face, sets a condition on the recited function of the modem. In the example above, 'for transferring and said multiplexed synchronously related digital data messages of variable lengths between said set of local

subscriber units and said local base station repeater cell if said local subscriber units are unable to directly communicate with said local base station repeater cell' means that the 'transferring function' is conditioned on whether 'said local subscriber units are unable to directly communicate with said local base station repeater cell.' Similarly, in Claim 12, the phrase 'for transferring data between said subscriber units and said digital transmitter' is conditioned on whether 'if said subscriber units are unable to communicate directly with said digital transmitter.' *See* '491 Patent at 8:31-35 (Claim 12). Moreover, in Claim 13, the phrase 'for transferring multiplexed synchronously related digital data messages of variable lengths between said at least one subscriber unit and said network hub switching center' is conditioned on whether 'if said at least one subscriber unit is unable to communicate directly with a local base station repeater cell.' *Id.* at 8:44-54."), as set forth in the Court's February 8, 2012 *T-Mobile* Order at 26-27, shall apply equally to the '491 Patent in this case. The parties shall not apply this construction in a manner that is inconsistent with the Court's claim construction reasoning set forth in the February 8, 2012 *T-Mobile* Order at 26-27 and the September 7, 2012 *T-Mobile* Order.

4. The Court's prior construction of "multiplexed" ("combined messages transmitted over a single channel"), as set forth in the August 11, 2010 *Sensus* Order at 46-47, the February 8, 2012 *T-Mobile* Order at 29-31, and the November 20, 2012 *Landis+Gyr* Order at 11, shall apply equally to the '491 Patent. The parties shall not apply this construction in a manner that is inconsistent with the Court's claim construction reasoning set forth in the August 11, 2010 *Sensus* Order at 46-47, the February 8, 2012 *T-Mobile* Order at 29-31, and the November 20, 2012 *Landis+Gyr* Order at 11.

5. The Court's prior construction of "base station broadcast signal" ("a wireless signal transmitted to all subscriber units and/or receivers"), as set forth in the November 20, 2012 *Landis+Gyr* Order at 9-10, shall apply equally to the '491 Patent. The parties shall not apply this construction in a manner that is inconsistent with the Court's claim construction reasoning set forth in the November 20, 2012 *Landis+Gyr* Order at 9-10.

6. The Court's prior construction of "switching means" (function: "selecting a communication path within said network/communication path" and structure: "electronic switch 13 and equivalents"), as set forth in the February 8, 2012 *T-Mobile* Report & Recommendation at 6-9, shall apply equally to the '491 Patent in this case. The parties shall not apply this construction in a manner that is inconsistent with the Court's claim construction reasoning set forth in the February 8, 2012 *T-Mobile* Report & Recommendation at 6-9.

7. The Court's prior holding that "cell site divided into a plurality of subdivided zones" "needs no construction and should be construed pursuant to its plain and ordinary meaning," as set forth in the November 20, 2012 *Landis+Gyr* Order at 18-19, shall apply equally to "cell subdivided sites," "cell subdivision sites," and "cell site divided into a plurality of subdivided zones" in the '491 Patent. The parties shall not interpret these terms in a manner that is inconsistent with the Court's claim construction reasoning set forth in the November 20, 2012 *Landis+Gyr* Order at 18-19.

8. The Court's prior construction of "receive only receiver unit" ("a receiver for receiving transmissions") and "receive only digital receiver" ("a receiver for relaying digital communications"), as set forth in the February 8, 2012 *T-Mobile* Order at 31-32, shall apply equally to the '491 Patent. The parties shall not apply these constructions in a manner that is inconsistent with the Court's claim construction reasoning set forth in the August 11, 2012

Sensus Order at 39-42, the February 8, 2012 *T-Mobile* Order at 31-32, and the November 20, 2012 *Landis+Gyr* Order at 6-9.

9. The Court's prior construction of "low power" ("a maximum effective radiated power of less than twenty Watts"), as set forth in the November 20, 2012 *Landis+Gyr* Order at 25-27, shall apply equally to "limited power" in the '491 Patent. The parties shall not apply this construction in a manner that is inconsistent with the Court's claim construction reasoning set forth in the November 20, 2012 *Landis+Gyr* Order at 25-27.

10. The Court's prior holding that "predetermined base station geographic area" and "predetermined geographic area" "do not require construction because their meanings are clear in the context of the claims and will be readily understandable to the jury," as set forth in the November 20, 2012 *Landis+Gyr* Order at 16-18, shall apply equally to "predetermined geographic area" and "predetermined base station geographic area" in the '491 Patent. The parties shall not interpret these terms in a manner that is inconsistent with the Court's claim construction reasoning set forth in the November 20, 2012 *Landis+Gyr* Order at 16-18.

11. The Court's prior construction of "point-to-point communication" ("a communication link between [the claimed devices]"), as set forth in the November 20, 2012 *Landis+Gyr* Order at 21-25, shall apply equally to "point-to-point communication between said local base station repeater cell and said subset of said local subscriber units" in the '491 Patent. The parties shall not apply this construction in a manner that is inconsistent with the Court's claim construction reasoning set forth in November 20, 2012 *Landis+Gyr* Order at 21-25.

12. The Court's prior construction of "synchronously related" ("related in time and/or frequency"), as set forth in the November 20, 2012 Order at 10-12, shall apply equally to the '491 Patent. The parties shall not apply this construction in a manner that is inconsistent with

the Court's claim construction reasoning set forth in the November 20, 2012 *Landis+Gyr* Order at 10-12.

13. The Court's prior holding that "portable" and "mobile" "do not require construction because their meanings are clear in the context of the claims and will be readily understandable to the jury," as set forth in the November 20, 2012 *Landis+Gyr* Order at 19-21, shall apply equally to the '491 Patent. The parties are not to interpret these terms in a manner that is inconsistent with the Court's claim construction reasoning as set forth in the November 20, 2012 *Landis+Gyr* Order at 19-21.

14. The parties' request to have this Court construe more than ten (10) terms of the asserted claims of the '491 Patent is hereby granted. Specifically, the Court will permit the parties to brief for construction up to one (1) additional disputed term in the '491 Patent that Defendants have identified. The parties' Patent Rule 4-3 Joint Claim Construction and Prehearing Statement shall include the agreed-upon terms above, as well as no more than one additional disputed term for which one or more of the parties will seek a construction.

15. Defendants filed a motion earlier in this case seeking to brief more than ten terms in the '101 and '546 Patents (Dkt. No. 155). The Court denied such motion in an Order advising the parties that after the Court issues a claim construction order on the ten terms briefed and argued at a claim construction hearing held on September 6, 2012, the parties could request, if necessary, and the Court would consider whether to allow the parties to brief additional claim terms in the '101 and '546 Patents (Dkt. No. 178). Defendants are currently determining whether to request that the Court permit briefing of additional terms in the '101 and '546 Patents and they will present any such request to the Court by motion before February 28, 2013. Plaintiff reserves the right to object to and oppose any such request by Defendants.

The parties expressly reserve, do not waive, and have not waived any objections to, rights to seek reconsideration of, or rights to appeal the constructions contained herein, including without limitation their right to seek the claim constructions the parties have previously proposed and will propose in their forthcoming Patent Rule 4-3 Joint Claim Construction and Prehearing Statement and their right to rely upon the record cited therein. For the avoidance of doubt, this Stipulation and Proposed Order is not intended to replace or affect in any way the normal procedure to be followed later in this case in connection with the Pretrial Order with respect to the establishment of jury instructions regarding the meaning of claim terms in the '101, '546 and '491 Patents.

So ORDERED and SIGNED this 4th day of March, 2013.

JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE