

## Federal Circuit Patent Bulletin: *Atlas IP, LLC v. Medtronic, Inc.*

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October 29, 2015

*"Mixed use of singular and plural language is a recognized source of likely ambiguity."*

On October 29, 2015, in *Atlas IP, LLC v. Medtronic, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Moore, Reyna, Taranto\*) affirmed-in-part, reversed-in-part, and remanded the district court's summary judgments that Medtronic did not infringe U.S. Patent No. 5,371,734, which related to a protocol for controlling wireless network communications between a hub and remotes, and that claim 21 of the '734 patent was not invalid. The Federal Circuit stated:

Atlas does not dispute that the judgment of non-infringement of claim 21 must be affirmed if, under the "establishing" and "transmitting" limitations of clauses [b] and [c], the endpoint of the communication cycle must be communicated to the remotes before any remote transmits frames to the hub. Infringement therefore turns entirely on a claim-construction issue. When construing claim terms, "[w]e generally give words of a claim their ordinary meaning in the context of the claim and the whole patent document; the specification particularly, but also the prosecution history, informs the determination of claim meaning in context, including by resolving ambiguities; and even if the meaning is plain on the face of the claim language, the patentee can, by acting with sufficient clarity, disclaim such a plain meaning or prescribe a special definition." . . .

Claim 21 states that first the hub establishes communication cycles, which consist of three intervals: (a) when the hub is allowed to transmit frames to the remotes, (b) when the remotes are allowed transmit frames to the hub, and (c) when each remote is expected to receive a frame from the hub. And then the hub transmits information to the remotes to establish those intervals. If the hub does not define the intervals when the hub will transmit to the remotes and when each remote will transmit to the hub, multiple communicators (e.g., the hub and a remote or two remotes) could transmit simultaneously and their signals would collide. Thus, the hub-sent information must indicate both the start and end time of the intervals of each communication cycle.

To fulfill the core claimed function of power saving, each remote must know when its receiver and transmitter can be off and must be on, which naturally, perhaps necessarily, calls for the scheduling information to arrive before any remote transmissions begin. The claim confirms that the transmittal of information must allow for this power-saving function when it indicates, in language mixing the plural and singular, that a remote powers off its transmitter for times other than when it is allowed to transmit, and similarly for the receiver for times

when it is expected to receive, “by using the information transmitted from the hub.” [T]his makes clear that the hub must set up a schedule of intervals and send that schedule to the remotes before the transmission-opportunity slots for the remotes arrive. . . .

Atlas invokes the doctrine of claim differentiation, pointing to independent claims 1, 12, 14, and 34 as containing more explicit references requiring the hub to define intervals in advance. Although sometimes that doctrine (which counsels against constructions that render some claim language superfluous) is important in claim construction, it cannot support Atlas’s position on claim construction here. The claims invoked do not at all suggest any notion of establishing as mere initiating. Moreover, each of the invoked claims contains language that, under Atlas’s arguments, avoids a conclusion of superfluity under the construction of the “establishing” and “transmitting” limitations at issue here.

In any event, we have been cautious in assessing the force of claim differentiation in particular settings, recognizing that patentees often use different language to capture the same invention, discounting it where it is invoked based on independent claims rather than the relation of an independent and dependent claim, and not permitting it to override the strong evidence of meaning supplied by the specification. Here, claim differentiation is not significant enough to alter our conclusion on whether the claimed scheduling information must be sent before remotes begin transmission. [W]e affirm the summary judgment of non-infringement.

A distinct issue of claim construction is presented by the district court’s summary-judgment rejection of Medtronic’s invalidity challenges to claim 21. The court held that language in clause [b], “communication cycles, each of which has intervals during which the hub and the remotes transmit and receive frames,” requires, as a matter of “plain meaning,” that “the hub and the remotes transmit and receive frames during each communication cycle, not that the hub and the remotes simply may do so during a communication cycle as Medtronic argues.” [T]he district court’s construction is ambiguous on its face. It might be read to require that, in each cycle, every remote transmits a frame or, more narrowly, that at least one remote does so. But neither party suggests that the district court’s construction has the every-remote meaning, and Atlas itself does not suggest that the claim language can have that meaning. Rather, both treat the district court as having agreed with Atlas’s reading, expressly acknowledged by the district court, that, during each cycle, at least one remote must transmit a frame. . . .

Ordinary usage of comparable expressions indicates that the language here does not have a “plain meaning” requiring some remote to transmit a frame in each cycle. . . . The need for context-based interpretation is confirmed by the imprecisions about plurals and conjunctions found in claim language other than clause [b]. . . . Mixed use of singular and plural language is a recognized source of likely ambiguity. Again, context is needed to obtain clarification.

The district court did not rely on anything for its construction except the claim words understood in isolation. Neither has Atlas, in this court, identified any substantial basis in the usual contextual considerations—notably, other claim language and the specification—to support the claim construction on which the district court’s validity ruling rests. In fact, as soon as the analysis widens its focus to examine the context, the answer to the claim-construction question here becomes clear: the language sets aside times in which things are allowed to

happen, as in the sentences about classrooms and courtrooms noted above. In particular, the claim language requires only that each cycle have one or more intervals in which remotes are allowed to transmit. . . . We therefore reject the district court's construction of the clause [b] claim language on which it relied to reject Medtronic's invalidity challenge to claim 21 on summary judgment. We reverse the grant of summary judgment of no anticipation or obviousness and remand for further proceedings in light of the proper construction, requiring only (as relevant here) that there be intervals in which remotes are permitted to transmit frames.