

United States District Court,
S.D. California.

QUALCOMM INCORPORATED,
Plaintiff.

v.

BROADCOM CORPORATION,
Defendants.

Broadcom Corporation,
Counter-Claimant.

v.

Qualcomm Incorporated,
Counter-Defendant.

Civil No. 05CV1392-B(BLM)

Oct. 27, 2006.

Adam Arthur Bier, Christian E. Mammen, James R. Batchelder, Day Casebeer Madrid And Batchelder, Cupertino, CA, Barry Jerome Tucker, David E. Kleinfeld, Foley & Lardner LLP, James T. Hannink, Kathryn Bridget Riley, Randall Evan Kay, Brooke Beros, DLA Piper US, Heidi Maley Gutierrez, Higgs Fletcher And Mack, San Diego, CA, E. Joshua Rosenkranz, Nitin Subhedar, Brandon Hays Pace, Jaideep Venkatesan, Heller Ehrman, Evan R. Chesler, Richard J. Stark, Cravath Swaine And Moore LLP, Richard S. Taffet, Bingham McCutchen, New York, NY, Jason A. Yurasek, Perkins Coie LLP, San Francisco, CA, Kevin Kook Tai Leung, Law Office Of Kevin Kook Tai Leung, Cupertino, CA, Patrick Taylor Weston, McCutchen Doyle Brown And Enersen, Walnut Creek, CA, William F. Abrams, Bingham McCutchen, East Palo Alto, CA, for Plaintiffs.

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CLAIM CONSTRUCTION ORDER FOR UNITED STATES PATENT NUMBER 5,638,412

RUDI M. BREWSTER, Senior District Judge.

Pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), on September 25-28, 2006, the

Court conducted a Markman hearing concerning the above-titled patent infringement action regarding construction of the disputed claim terms for U.S. Patent Number 5,638,412 ("the '412 patent"). Plaintiff Qualcomm, Inc. was represented by the law firm of Day Casebeer Madrid & Batchelder LLP, and Defendant Broadcom Corp. was represented by the law firm of Wilmer Cutler Pickering Hale and Dorr LLP.

At the Markman hearing, the Court, with the assistance of the parties, analyzed the claim terms in order to prepare jury instructions interpreting the pertinent claims at issue in the '412 patent. Additionally, the Court prepared a case glossary for terms found in the claims and specification for the '412 patent considered to be technical in nature which a jury of laypersons might not understand clearly without a specific definition.

After careful consideration of the parties' arguments and the applicable statutes and case law, the Court **HEREBY CONSTRUES** the claims in dispute for the '412 patent and **ISSUES** the relevant jury instructions as written in Exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in Exhibit B, attached hereto.

IT IS SO ORDERED.

EXHIBIT A FN1

FN1. All terms appearing in bold face type and underlined have been construed by the court and appear with their definitions in the glossary in Exhibit B. The definition for each construed term appears in italics after its first use in the patent.

UNITED STATES PATENT NUMBER 5,638,412-CLAIM CHART

VERBATIM CLAIM LANGUAGE	COURT'S CONSTRUCTION
Claim 1	Claim 1
1. In a wireless communication system in which a first communication device originates a communication service with a second communication device, a method for negotiating service configuration, comprising the steps of:	which a first communication device originates a communication service with a second communication device, a method for negotiating service configuration, comprising [<i>including, but not limited to</i>] the steps of:
generating a request message indicative of a requested service configuration of said first communication device;	generating a request message indicative of a requested service configuration [<i>a common set of attributes for building and interpreting traffic channel frames including but not limited to data rates (transmission rates), frame formats (multiplex options) and types of services (service options)</i>] of said first communication device;
transmitting said request message;	transmitting said request message;
receiving said request message at said second communication device;	receiving said request message at said second communication device;
determining if said requested service configuration is acceptable to said second communication device in accordance with	determining if said requested service configuration is acceptable to said second communication device in accordance with current capabilities of said second

current capabilities of said second communication device;	communication device;
generating a response message in accordance with said determination;	generating a response message in accordance with said determination;
transmitting said response message from said second communication device and receiving said response message at said first communication device; and	transmitting said response message from said second communication device and receiving said response message at said first communication device; and
determining, at said first communication device, whether to establish communication with said second communication device based on said response message,	determining, at said first communication device, whether to establish communication with said second communication device based on said response message,
wherein said messages are transmitted over a common channel provided for general messaging services between communication devices of said wireless communication system,	wherein said messages are transmitted over a common channel [<i>a paging channel (a channel for one way communication of messages from a base station to a mobile station) or an access channel (a channel for one way communication of messages from a mobile station to a fixed station)</i>] provided for general messaging services between communication devices of said wireless communication system,
and wherein if said response message rejects said requested service configuration said method further comprises the step of communicating service negotiation messages over a traffic channel, said traffic channel being a communication channel allocated for communication between said first and second communication devices.	rejects said requested service configuration said method further comprises the step of communicating service negotiation [<i>a process of bilateral negotiation of a service configuration, if possible</i>] messages over a traffic channel, said traffic channel being a communication channel allocated for communication between said first and second communication devices.
Claim 3	Claim 3
3. The method of claim 1, wherein said service configuration provides a forward link multiplex option.	3. The method of claim 1, wherein said service configuration provides a forward link [connection from the base station to the mobile station] multiplex option [instructions which control the way in which the information bits of the forward and reverse traffic channel frames, respectively, are divided into various types of traffic].
Claim 4	Claim 4
4. The method of claim 1, wherein said service configuration provides a reverse link multiplex option.	4. The method of claim 1, wherein said service configuration provides a reverse link [<i>connection from the mobile station to the base station</i>] multiplex option .
Claim 5	Claim 5
5. The method of claim 1, wherein said service configuration provides forward link transmission rates.	5. The method of claim 1, wherein said service configuration provides forward link transmission rates.
Claim 6	Claim 6
6. The method of claim 1, wherein said service configuration provides reverse link transmission rates.	6. The method of claim 1, wherein said service configuration provides reverse link transmission rates.

Claim 7	Claim 7
7. The method of claim 1, wherein said service configuration provides a service option.	7. The method of claim 1, wherein said service configuration provides a service option [<i>the formal definition of the way in which traffic bits are processed by the mobile station and base station</i>].
Claim 9	Claim 9
9. The method of claim 8, wherein the identity of said traffic channel is provided in said channel assignment message.	9. The method of claim 8, wherein the identity of said traffic channel is provided in said channel assignment message [<i>a message indicating whether a proposed service configuration has been accepted or rejected</i>].
Claim 10	Claim 10
10. The method of claim 1, wherein said first communication device is a mobile station and said request message is transmitted over an access channel.	10. The method of claim 1, wherein said first communication device is a mobile station and said request message is transmitted over an access channel .
Claim 11	Claim 11
11. The method of claim 1, wherein said first communication device is a base station and said request message is transmitted over a paging channel.	11. The method of claim 1, wherein said first communication device is a base station and said request message is transmitted over a paging channel .
Claim 13	Claim 13
13. The method of claim 1, wherein said second communication device is a base station and said response message is transmitted over a paging channel.	13. The method of claim 1, wherein said second communication device is a base station and said response message is transmitted over a paging channel .
Claim 14	Claim 14
14. The method of claim 1, wherein said first communication device is a mobile station and said request message is transmitted over an access channel and wherein said second communication device is a base station and said response message is transmitted over a paging channel.	14. The method of claim 1, wherein said first communication device is a mobile station and said request message is transmitted over an access channel and wherein said second communication device is a base station and said response message is transmitted over a paging channel .
Claim 16	Claim 16
16. In a wireless communication system in which a first communication device originates a communication service with a second communication device, a system for negotiating service configuration, comprising service request generator means for generating a request message indicative of a service configuration of a predetermined set of first communication device service configurations at said first communication device;	16. In a wireless communication system in which a first communication device originates a communication service with a second communication device, a system for negotiating service configuration, comprising <i>service request generator means for generating a request message indicative of a service configuration of a predetermined set of first communication device service configurations at said first communication device</i> [This is a means-plus-function limitation. The function is generating a request message indicative of a service configuration of a predetermined set of first communications device service configurations at said first communication device. The

	<i>corresponding structure is service negotiators 20 and/or 40, Figure 2; and/or service negotiator (column 3, line 2); and/or column 8, lines 33-34 (service negotiator 20); and/or column 9, lines 64-65 (service negotiator 40); and/or column 8, lines 19-23.];</i>
transmitter means for transmitting said request message;	<i>transmitter means for transmitting said request message [This is a means-plus-function limitation. The function is transmitting said request message. The corresponding structure is a transmitter and an antenna.];</i>
receiver means for receiving said transmitted message at said second communication device;	<i>receiver means for receiving said transmitted message at said second communication device [This is a means-plus-function limitation. The function is receiving transmitted message at said second communication device. The corresponding structure is an antenna and a receiver.];</i>
service control means for determining if said service configuration request is acceptable to said second communication device in accordance with current capabilities of said second communication device;	<i>service control means for determining if said service configuration request is acceptable to said second communication device in accordance with current capabilities of said second communication device [This is a means-plus-function limitation. The function is determining if said service configuration request is acceptable to said second communication device in accordance with current capabilities of said second communication device. The corresponding structure is service negotiator 20 and/or 40, Figure 2; and/or service negotiator (column 3, line 2); and/or column 8, lines 33-34 (service negotiator 20); and/or column 9, lines 64-65 (service negotiator 40); and/or column 8, lines 19-23.];</i>
service response generator for generating a response message in accordance with said determination; and	service response generator for generating a response message in accordance with said determination; and
second transmitter means for transmitting said response message wherein said request message and said response message are transmitted over a common channel and wherein said common channel is provided for general messaging services between communication devices of said wireless communication system, and also wherein if said response message rejects said requested service configuration said system communicating service negotiation messages over a traffic channel, said traffic channel being a communications channel allocated for conducting communications	<i>second transmitter means for transmitting said response message wherein said request message and said response message are transmitted over a common channel and wherein said common channel is provided for general messaging services between communication devices of said wireless communication system, and also wherein if said response message rejects said requested service configuration said system communicating service negotiation messages over a traffic channel, said traffic channel being a communications channel allocated for conducting communications [This is a means-plus-function limitation. The function is transmitting said response message. The corresponding structure is a transmitter and an antenna.]</i>
Claim 17	Claim 17
17. The system of claim 16, wherein said service configuration provides a forward link multiplex option.	17. The system of claim 16, wherein said service configuration provides a forward link multiplex option.

Claim 18	Claim 18
18. The system of claim 16, wherein said service configuration provides a reverse link multiplex option.	18. The system of claim 16, wherein said <i>service configuration</i> provides a <i>reverse link multiplex option</i> .
Claim 19	Claim 19
19. The system of claim 16, wherein said service configuration provides forward link transmission rates.	19. The system of claim 16, wherein said <i>service configuration</i> provides <i>forward link</i> transmission rates.
Claim 20	Claim 20
20. The system of claim 16, wherein said service configuration provides reverse link transmission rates.	20. The system of claim 16, wherein said <i>service configuration</i> provides <i>reverse link</i> transmission rates.
Claim 21	Claim 21
21. The system of claim 16, wherein said service configuration provides a service option.	21. The system of claim 16, wherein said service configuration provides a service option.
Claim 22	Claim 22
22. The system of claim 16, wherein said response message is transmitted within a channel assignment message.	22. The system of claim 16, wherein said response message is transmitted within a <i>channel assignment message</i> .
Claim 23	Claim 23
23. The system of claim 22, wherein the identity of said traffic channel is provided in said channel assignment message.	23. The system of claim 22, wherein the identity of said traffic channel is provided in said <i>channel assignment message</i> .
Claim 24	Claim 24
24. The system of claim 16, wherein said first communication device is a mobile station and said request message is transmitted over an access channel.	24. The system of claim 16, wherein said first communication device is a mobile station and said request message is transmitted over an <i>access channel</i> .
Claim 27	Claim 27
27. The system of claim 16, wherein said second communication device is a base station and said response message is transmitted over a paging channel.	27. The system of claim 16, wherein said second communication device is a base station and said response message is transmitted over a <i>paging channel</i> .
Claim 28	Claim 28
28. The system of claim 16, wherein said first communication device is a mobile station and said request message is transmitted over an access channel and wherein said second communication device is a base station and said response message is transmitted over a paging channel.	28. The system of claim 16, wherein said first communication device is a mobile station and said request message is transmitted over an <i>access channel</i> and wherein said second communication device is a base station and said response message is transmitted over a <i>paging channel</i> .

EXHIBIT B

UNITED STATES PATENT NUMBER 5,638,412-GLOSSARY OF TERMS

TERM	DEFINITION
access channel	a channel for one way communication of

	messages from a mobile station to a fixed station
channel assignment message	a message indicating whether a proposed service configuration has been accepted or rejected
common channel	a paging channel or an access channel
comprising	including, but not limited to
data rates	transmission rates
forward link	connection from the base station to the mobile station
frame formats	multiplex options
multiplex option	instructions which control the way in which the information bits of the forward and reverse traffic channel frames, respectively, are divided into various types of traffic
paging channel	a channel for one way communication of messages from a base station to a mobile station
receiver means for receiving said transmitted message at said second communication device	This is a means-plus-function limitation. The function is receiving transmitted message at said second communication device. The corresponding structure is an antenna and a receiver.
reverse link	connection from the mobile station to the base station
second transmitter means for transmitting said response message wherein said request message and said response message are transmitted over a common channel and wherein said common channel is provided for general messaging services between communication devices of said wireless communication system, and also wherein if said response message rejects said requested service configuration said system communicating service negotiation messages over a traffic channel, said traffic channel being a communications channel allocated for conducting communications	This is a means-plus-function limitation. The function is transmitting said response message. The corresponding structure is a transmitter and an antenna.
service configuration	a common set of attributes for building and interpreting traffic channel frames including but not limited to data rates, frame formats and types of services
service control means for determining if said service configuration request is acceptable to said second communication device in accordance with current capabilities of said second communication device	This is a means-plus-function limitation. The function is determining if said service configuration request is acceptable to said second communication device in accordance with current capabilities of said second communication device. The corresponding structure is service negotiator 20 and/or 40, Figure 2; and/or service negotiator (column 3, line 2); and/or column 8, lines 33-34 (service

	negotiator 20); and/or column 9, lines 64-65 (service negotiator 40); and/or column 8, lines 19-23.
service negotiation	a process of bilateral negotiation of a service configuration, if possible
service option	the formal definition of the way in which traffic bits are processed by the mobile station and base station
service request generator means for generating a request message indicative of a service configuration of a predetermined set of first communication device service configurations at said first communication device	This is a means-plus-function limitation. The function is generating a request message indicative of a service configuration of a predetermined set of first communications device service configurations at said first communication device. The corresponding structure is service negotiators 20 and/or 40, Figure 2; and/or service negotiator (column 3, line 2); and/or column 8, lines 33-34 (service negotiator 20); and/or column 9, lines 64-65 (service negotiator 40); and/or column 8, lines 19-23.
transmitter means for transmitting said request message	This is a means-plus-function limitation. The function is transmitting said request message. The corresponding structure is a transmitter and an antenna.
types of services	service options

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