
Nos. 03-1269, 03-1286

**United States Court of Appeals
for the Federal Circuit**

EDWARD H. PHILLIPS,

Plaintiff/Appellant,

v.

AWH CORPORATION, HOPEMAN BROTHERS, INC., AND LOFTON CORPORATION,

Defendants/Cross-Appellants.

**On Appeal From The United States District Court
For The District of Colorado (Krieger, J.)
Civil Action No. 97-MK-212**

**BRIEF OF *AMICUS CURIAE*
INFINEON TECHNOLOGIES NORTH AMERICA CORP.**

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CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rules 47.4 and 26.1, counsel for *amicus curiae* Infineon Technologies North America Corp. hereby certifies:

1. The full name of every party represented by me in this proceeding is Infineon Technologies North America Corp.
2. The party listed above is the real party in interest.
3. *Amicus curiae* Infineon Technologies North America Corp. is a wholly owned subsidiary of Infineon Technologies AG, a publicly traded company with its headquarters in Germany. Infineon Technologies AG has no parent corporation, and Wachovia Trust Company is the only publicly held company that owns more than 10% of its stock.
4. The names of all law firms and the partners or associates that are expected to appear for *amicus curiae* in this Court are:

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Dated: September 20, 2004

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Infineon Technologies North America Corp. is a wholly owned subsidiary of Infineon Technologies AG, a manufacturer of semiconductor memory devices. As might be expected in this heavily patented sector, Infineon and its corporate affiliates both own patents and license technology patented by others. As an entity that appears as both a plaintiff and a defendant in patent cases, Infineon thus has a compelling interest in the development of clear and consistent rules of claim construction, so that it can protect its own patents from infringement and avoid infringing patents owned by others. The relative roles of the specification and extrinsic dictionary definitions in claim construction is an issue that arises in virtually every case.

In one such pending case, Infineon (along with other manufacturers of semiconductor memory devices) has been sued by Rambus Inc., a company that develops and licenses memory technologies. The district court granted summary judgment in Infineon's favor with respect to infringement, relying on a line of cases that looks first and foremost to the specification to give meaning to disputed claim terms. *Rambus Inc. v. Infineon Techs. AG*, Civ. Action No. 3:00cv524, 2001 WL 34138091 (E.D. Va. Mar. 15, 2001) (unpublished) (citing, *inter alia*, *Markman v. Westview Instr., Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996); *Vitronics Corp. v. Conceptor, Inc.*, 90 F.3d 1576, 1582 (Fed.

Cir. 1996); *Toro Co. v. White Consolidated Indus., Inc.*, 199 F.3d 1295, 1299 (Fed. Cir. 1999)). A panel of this Court, however, reversed, relying on a different line of cases that looks first and foremost to an extrinsic dictionary definition for the presumptive “ordinary meaning” of a disputed claim term, and looks to the specification only to determine whether the inventor “clearly disclaim[ed] or disavow[ed]” the chosen dictionary definition. *Rambus Inc. v. Infineon Techs. AG*, 318 F.3d 1081, 1094-95 (Fed. Cir. 2003) (citing *Inverness Med. Switz. GmbH v. Princeton Biomeditech Corp.*, 309 F.3d 1365, 1372 (Fed. Cir. 2002)). The case is now on remand in the district court, where the new trial is scheduled to begin on November 15, 2004.

INTRODUCTION AND SUMMARY OF ARGUMENT

At issue in this appeal are two venerable principles of patent law: (1) the principle that the specification provides the best guide to the meaning of a disputed claim term, and (2) the principle that the specification cannot be used to import a limitation into an otherwise unambiguous claim. Recent decisions by panels of this Court have brought these two principles into conflict, by looking to extrinsic dictionaries, rather than the specification, as the first step in construing disputed claim terms, reasoning that the dictionary provides the presumptive “ordinary meaning” of a disputed claim term, and that looking first to the specification would impermissibly import unstated limitations into a claim. *Amicus curiae* respectfully

suggests that this approach is misguided, and that two venerable principles described above can readily be reconciled by an approach that looks first and foremost to the specification to construe disputed claim terms.

The key insight here, *amicus* respectfully suggests, is that there is no such thing as the “ordinary meaning” of a word divorced from its context. As none other than the high priest of textualism, Justice Scalia, has explained, it is a “fundamental principle of ... language itself ... that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *Deal v. United States*, 508 U.S. 129, 132 (1993). In a patent, the specification provides that critical context with respect to the inventor’s use of a disputed claim term. The specification, thus, is just as much as a source of meaning as a dictionary. And looking first and foremost to that intrinsic source of meaning, rather than an extrinsic source of meaning (like a dictionary definition), is the only approach that serves the public notice function of patents. Indeed, there is generally no such thing as “an” extrinsic dictionary definition; rather, there are many extrinsic dictionaries, and most provide *multiple* definitions of words, so the choice of a particular definition depends largely on context—the very context that is implicit in the specification. Turning to an extrinsic dictionary definition for a term’s presumptive “ordinary meaning” without first consulting the specification thus opens the door to litigation-driven cherry-picking, and utterly subverts the

public notice function of the intrinsic patent documents. And giving the intrinsic specification primacy over an extrinsic dictionary is entirely consistent with the venerable principle that the specification cannot be used to import limitations into claim terms. *Some* point of reference is necessary to ascertain the meaning of disputed claim terms, and the question here is whether the intrinsic specification or an extrinsic dictionary should provide the initial and primary point of reference. Looking first and foremost to the intrinsic specification under these circumstances no more “imports” a limitation into a claim term than looking first to an extrinsic dictionary definition.

STATEMENT OF THE ISSUES ADDRESSED BY *AMICUS CURIAE*

Amicus curiae addresses the following question presented by the Court in its July 21, 2004 order soliciting briefing:

“1. Is the public notice function of patent claims better served by referencing primarily to technical and general purpose dictionaries and similar sources to interpret a claim term or by looking primarily to the patentee’s use of the term in the specification? If both sources are to be consulted, in what order?”

ARGUMENT

THE PUBLIC NOTICE FUNCTION OF PATENT CLAIMS IS BEST SERVED BY LOOKING FIRST AND FOREMOST TO THE INTRINSIC SPECIFICATION, NOT AN EXTRINSIC DICTIONARY DEFINITION, TO INTERPRET CLAIM TERMS.

The question presented in this case, *amicus curiae* respectfully submit, already has been answered by more than a century of Supreme Court caselaw emphasizing the primary role of the intrinsic specification in claim construction. *See, e.g., Bates v. Coe*, 98 U.S. 31, 38 (1878) (“[I]n case of doubt or ambiguity it is proper in all cases to refer back to the descriptive portion of the specification to aid in solving the doubt or ascertaining the true intent and meaning of the language employed in the claims.”); *Schriber-Schroth Co. v. Cleveland Trust Co.*, 311 U.S. 211, 217 (1940) (“The claims of a patent are *always* to be read or interpreted in the light of its specifications.”) (emphasis added); *United States v. Adams*, 383 U.S. 39, 49 (1966) (“[I]t is fundamental that claims are to be construed in light of the specifications.”); *Markman v. Westview Instr., Inc.*, 517 U.S. 370, 389 (1996) (claim construction involves a “necessarily sophisticated analysis of the whole document, required by the standard construction rule that a term can be defined only in a way that comports with the instrument as a whole.”).

This Court, sitting both *en banc* and in panels, has reiterated this point in cases too numerous to list exhaustively. *See, e.g., Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, ___ F.3d ___, 2004 WL 1925607, at *9 (Fed. Cir. Aug. 31, 2004)

“A claim limitation is always construed in light of the specification, whatever the form of the claim.”); *Kinik Co. v. ITC*, 362 F.3d 1359, 1365 (Fed. Cir. 2004) (“The words of patent claims have the meaning and scope with which they are used in the specification and the prosecution history.”); *Toro*, 199 F.3d at 1299 (“[W]ords of ordinary usage must nonetheless be construed in the context of the patent documents.”); *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477-78 (Fed. Cir. 1998) (“When the meaning of a term is sufficiently clear in the patent specification, that meaning shall apply. ... The best source for understanding a technical term is the specification from which it arose, informed, as needed, by the prosecution history.”); *Vitronics*, 90 F.3d at 1582 (“[I]t is always necessary to review the specification Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.”); *Markman*, 52 F.3d at 978-79 (noting that patents are “fully integrated written instrument[s],” and thus “[c]laims must be read in view of the specification, of which they are a part”); *Grain Processing Corp. v. American Maize Prods. Co.*, 840 F.2d 902, 908 (Fed. Cir. 1988) (“All claims must be construed in light of the specification and the prosecution history.”); *Slimfold Mfg. Co. v. Kinkead Indus., Inc.*, 810 F.2d 1113, 1116 (Fed. Cir. 1987) (“Claims are not interpreted in a vacuum, but are part of and read in light of the specification.”).

In recent years, however, panels of this Court occasionally have given extrinsic dictionary definitions primacy over the intrinsic specification in construing disputed claim terms. *See, e.g., Rambus*, 318 F.3d at 1094-95; *Inverness*, 309 F.3d at 1371-72; *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202-04 (Fed. Cir. 2002). These decisions hold that extrinsic dictionaries provide a claim term's presumptive "ordinary meaning," which governs unless "clearly disclaim[ed] or disavow[ed]" by the specification. *See, e.g., Rambus*, 318 F.3d at 1094-95 (citing *Inverness*, 309 F.3d at 1372); *Texas Digital*, 308 F.3d at 1202-05. A contrary approach, these decisions declare, would impermissibly read limitations from the specification into the claim term. *See, e.g., Rambus*, 318 F.3d at 1088-89; *Texas Digital*, 308 F.3d at 1204.

This latter line of cases is in direct and irreconcilable conflict with the former line of cases. The former ("*Markman*") line of cases holds that a court should consult the specification *before* consulting an extrinsic dictionary, and that recourse to such a dictionary is permissible only if it does not contradict the meaning given by the specification. *See, e.g., Multiform Desiccants*, 133 F.3d at 1477-78; *Vitronics*, 90 F.3d at 1582. The latter ("*reverse-Markman*") line of cases, in contrast, holds that a court should consult an extrinsic dictionary *before* consulting the specification, and that the specification is relevant only to the extent it clearly disclaims or disavows the meaning provided by the extrinsic dictionary.

See, e.g., Rambus, 318 F.3d at 1094-95; *Inverness*, 309 F.3d at 1371-72; *Texas Digital*, 308 F.3d at 1202-04. Both lines of cases cannot be correct.

The problem, *amicus* respectfully submits, lies with the core assumption underlying the reverse-*Markman* line of cases: that an extrinsic dictionary definition provides the presumptive “ordinary meaning” of a disputed claim term, and that the inventor serves as his own lexicographer *only* when he clearly disclaims or disavows this presumptive ordinary meaning in the specification. That assumption contradicts the “fundamental principle of ... language itself ... that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *Deal v. United States*, 508 U.S. 129, 132 (1993) (Scalia, J.). Although the Supreme Court most often invokes this fundamental principle in the context of statutory construction, *see, e.g., Jones v. United States*, 527 U.S. 373, 389 (1999); *Davis v. Michigan Dep’t of Treasury*, 489 U.S. 803, 809 (1989), it is equally true in the context of claim construction, *see, e.g., Markman*, 52 F.3d at 987 (analogizing statutory construction and claim construction). In both contexts, the key point is the same: the “ordinary meaning” of words simply cannot be determined “in a vacuum.” *Tyler v. Cain*, 533 U.S. 656, 662 (2001). Accordingly, a particular extrinsic dictionary definition cannot be deemed to provide the “ordinary meaning” of a disputed claim term before that

term's context has been assessed by reference to the entire patent, including the specification.

By thus giving disputed claim terms context, the specification *itself* in effect acts as a dictionary. *See, e.g., Liquid Dynamics Corp. v. Vaughan Co.*, 355 F.3d 1361, 1367 (Fed. Cir. 2004) (“The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication.”) (quoting *Vitronics*, 90 F.3d at 1582); *Jack Guttman, Inc. v. Kopykake Enters., Inc.*, 302 F.3d 1352, 1360 (Fed. Cir. 2002) (same); *Bell Atlantic Network Servs., Inc. v. Covad Communications Group*, 262 F.3d 1258, 1268 (Fed. Cir. 2001) (same); *Dow Chem. Co. v. Sumitomo Chem. Co.*, 257 F.3d 1364, 1373 (Fed. Cir. 2001) (same); *Hockerson-Halberstadt, Inc. v. Avia Group Int’l, Inc.*, 222 F.3d 951, 955 (Fed. Cir. 2000) (same). To be sure, the specification does not always purport to define words expressly in the manner of a dictionary. But the specification necessarily uses words in the same context as the claims, and thereby defines disputed claim terms *implicitly*. “Even when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents.” *Novartis Pharms. Corp. v. Abbott Labs.*, 375 F.3d 1328, 1334 (Fed. Cir. 2004) (internal quotation omitted); *see also Bell Atlantic*, 262 F.3d at 1268 (“The specification acts as a dictionary” by either “expressly defin[ing]

terms used in the claims *or ... defin[ing] terms by implication*”) (quoting *Vitronics*, 90 F.3d at 1582) (emphasis added).

It is wrong, in other words, to suppose that an inventor serves as his own lexicographer *only* when he “clearly disclaim[s] or disavow[s]” an extrinsic dictionary definition. *See, e.g., Rambus*, 318 F.3d at 1094-95; *Inverness*, 309 F.3d at 1372; *Texas Digital*, 308 F.3d at 1202-05. Rather, an inventor *always* serves as his own lexicographer, in the sense that he necessarily uses words in a particular context. As the Supreme Court explained over a century ago:

Th[e] construction of the patent is confirmed by the avowed understanding of the patentee, expressed by him, or on his [be]half, when his application for the original patent was pending.... [W]hen a patent bears on its face a particular construction, inasmuch as the specification and claims are in the words of the patentee, ... such a construction may be confirmed by what the patentee said when he was making his application.

Goodyear Dental Vulcanite Co. v. Davis, 102 U.S. 222, 227 (1880) (quoted in *Markman*, 52 F.3d at 980); *see also Anderson v. International Eng'g & Mfg., Inc.*, 160 F.3d 1345, 1348-49 (Fed. Cir. 1998) (“A word describing patented technology *takes its definition from the context in which it was used by the inventor.*”) (emphasis added); *Multiform Desiccants*, 133 F.3d at 1477 (specification shows “the framework of the invention as viewed by the inventor”). The intrinsic dictionary provided by the inventor in the specification—whether it implicitly or explicitly defines the terms—provides a far more sure and reliable source of

meaning than an extrinsic dictionary definition. *See, e.g.*, 6 Ernest Bainbridge Lipscomb III, *Walker on Patents* § 21:32, at 373 (3d ed. 1987) (specification entitled to greater weight than dictionary in claim construction “because the patentee presumably knew the description, and may not have known [of] the dictionary, and because the reader of a patent may reasonably be expected to consult the description before he consults the dictionary”).

This Court, however, need not resolve whether an intrinsic or extrinsic definition is preferable as a matter of abstract hermeneutics, because the answer here is ultimately driven by the public notice function of patent law. The whole point of patent law, after all, is “to promote the Progress of Science and useful Arts,” U.S. Const. art. I § 8 cl. 8, by giving an inventor exclusive rights to his invention for a limited period of time, in exchange for disclosing that invention to the public. *See, e.g., Pfaff v. Wells Elec., Inc.*, 525 U.S. 55, 63 (1998); *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 151 (1989). This “carefully crafted bargain,” *Pfaff*, 525 U.S. at 63, however, breaks down if the public is not on notice of the invention. The bottom line, thus, is that “[a] patent holder should know what he owns, and the public should know what he does not.” *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 731 (2002).

There can be no doubt that the public notice function of patent law is best served by a rule that gives interpretive primacy to an intrinsic definition set forth in

the specification over an extrinsic definition subsequently plucked from a dictionary. Whereas the intrinsic specification is part of “the public record of the patentee’s claim” examined by the Patent & Trademark Office (“PTO”), *Vitronics*, 90 F.3d at 1583, extrinsic dictionary definitions are not. Because “the public is entitled to rely” on that public record, *id.*, it provides the best source of the meaning of disputed claim terms. “In other words, competitors are entitled to review the public record, apply the established rules of claim construction, ascertain the scope of the patentee’s claimed invention and, thus, design around the claimed invention.” *Bell & Howell Document Mgmt. Prods. Co. v. Altek Sys.*, 132 F.3d 701, 706 (Fed. Cir. 1997) (quoting *Vitronics*, 90 F.3d at 1583). One skilled in the art should be able to pick up a patent and know what is claimed by referencing the claims and specification without resorting to one of thousands of extrinsic dictionary definitions that may or may not be available to him. *See id.* at 705-06 & n.5.

Allowing an inventor to broaden a claim’s scope by reference to an extrinsic dictionary definition undermines the process and “would make ... meaningless” the public’s right to rely on the intrinsic record. *Id.* (quoting *Vitronics*, 90 F.3d at 1583). The result is that “[t]he public [would] be deprived of rights supposed to belong to it, *without being clearly told what it is that limits these rights.*” *Markman*, 517 U.S. at 390 (quoting *Merrill v. Yeomans*, 94 U.S. 568, 573 (1877))

(emphasis added). That result is antithetical to the public notice function of patent law. Moreover, it “would be unfair to competitors who must be able to rely on the *patent documents themselves*, without consideration of [extrinsic evidence], in ascertaining the scope of a patentee’s right to exclude.” *Southwall Techs. Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1578 (Fed. Cir. 1995). As the Supreme Court has explained, “[t]he limits of a patent must be known for the protection of the patentee, the encouragement of the inventive genius of others and the assurance that the subject of the patent will be dedicated ultimately to the public.” *General Elec. Co. v. Wabash Appliance Corp.*, 304 U.S. 364, 369 (1938). Reliance on extrinsic evidence, rather than the specification, in construing claims creates a “zone of uncertainty which enterprise and experimentation may enter only at the risk of infringement claims [which] would discourage invention.” *United Carbon Co. v. Binney & Smith Co.*, 317 U.S. 228, 236 (1942); *see also Bates*, 98 U.S. at 39 (“Accurate description of the invention is required by law, for several important purposes: 1. That the government may know what is granted, and what will become public property when the term of the monopoly expires. 2. That licensed persons desiring to practise the invention may know during the term how to make, construct, and use the invention. 3. That other inventors may know what part of the field of invention is unoccupied.”).

For just this reason, this Court has long emphasized that the intrinsic evidence (including the specification) is entitled to interpretive primacy over the extrinsic evidence (including extrinsic dictionaries). Only *after* consulting the specification—which, in contrast to extrinsic dictionary definitions, *is* part of the patent’s public record—may a court consult the extrinsic evidence. *See, e.g., Novartis*, 375 F.3d at 1335 (“Although extrinsic evidence may be used by the court to help understand the disputed limitation, it may not be used to vary, contradict, expand, or limit the claim language from how it is defined, *even by implication*, in the specification or file history.”) (emphasis added); *Zodiac Pool Care, Inc. v. Hoffinger Indus., Inc.*, 206 F.3d 1408, 1414 (Fed. Cir. 2000) (“The Court turns to extrinsic evidence only when the intrinsic evidence is insufficient to establish the clear meaning of the asserted claim.”); *Renishaw PLC v. Marposs Societa Per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998) (“[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty.”); *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1346 (Fed. Cir. 1998) (“Because the intrinsic record is clear [from the specification], we do not give weight to an inconsistent dictionary definition.”); *Multiform Desiccants*, 133 F.3d at 1478 (“Courts must exercise caution lest dictionary definitions ... be converted into technical terms of art having legal, not linguistic, significance.... When the specification explains and defines a term used

in the claims, without ambiguity or incompleteness, there is no need to search further for the meaning of the term.”); *Bell & Howell*, 132 F.3d at 705-06 (“When construing a claim, a court should look first to the intrinsic evidence.... When the intrinsic evidence is unambiguous, it is improper for the court to rely on extrinsic evidence.”); *Vitronics*, 90 F.3d at 1582 (“It is well-settled that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record, *i.e.*, the patent itself, including the claims, the specification and, if in evidence, the prosecution history.”); *Markman*, 52 F.3d at 979-80 (holding that intrinsic evidence “is of primary significance in understanding the claims,” and extrinsic evidence can be considered only when the intrinsic evidence does not provide a clear answer); *see also Walker on Patents* § 21:32, at 373 (specification entitled to greater weight than dictionary in claim construction “because the reader of a patent may reasonably be expected to consult the description before he consults the dictionary”). Indeed, the Supreme Court has expressly ratified this approach, holding that a court considering extrinsic evidence must ascertain whether it “fully comports *with the specification* and claims and so will preserve the patent’s internal coherence.” *Markman*, 517 U.S. at 390 (emphasis added).

As a practical matter, moreover, a major problem with giving an extrinsic dictionary definition the leading role in claim construction is that there is often no such thing as “a” dictionary definition at all. Rather, “[d]ictionaries are often of

little assistance because they give multiple and alternative definitions of words.” 5A Donald S. Chisum, *Chisum on Patents* § 18.03[2][b][i][B], at 18-138 (2003); *see also MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 225-29 (1994) (rejecting idiosyncratic dictionary definition of word “modify”); *Anderson*, 160 F.3d at 1348 (“[D]ictionary definitions of ordinary words are rarely dispositive of their meanings in a technological context.”). Thus, reliance on a multitude of dictionaries, some of which might or might not include a meaning intended by the inventor, brings no certainty to the law, but simply invites a “battle of the dictionaries.”

In addition, extrinsic dictionary definitions are potentially misleading because the meaning of words (especially technical and scientific terms) is not static. To determine the meaning of particular claim terms, thus, would require consulting an extrinsic dictionary definition contemporaneous with the patent, which may not be easy or even feasible for members of the public, who may seek to construe claims years after they were written. As the Supreme Court has explained, “[t]he dictionary does not always keep abreast of the inventor. It cannot. Things are not made for the sake of words, but words for things.” *Festo*, 535 U.S. at 731 (internal quotation omitted). The intrinsic specification, in contrast, always provides insight into the meaning of the disputed claim terms as used in the specific context of the patent.

Finally, looking first and foremost to the intrinsic specification rather than an extrinsic dictionary to define a disputed claim term is entirely consistent with the venerable principle that a specification cannot be used to import an unstated limitation into a claim. *Some* point of reference is necessary to give meaning to words, and the question presented here is whether the intrinsic specification or an extrinsic dictionary definition should serve as the primary point of reference. Looking primarily to the intrinsic specification for guidance under these circumstances does not “import” a limitation into a claim term, any more than would looking primarily to an extrinsic dictionary definition.

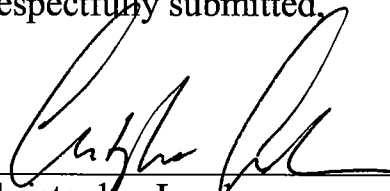
The bottom line here is that the recent line of cases giving extrinsic dictionary definitions interpretive primacy over the intrinsic specification in claim construction, *see, e.g., Rambus*, 318 F.3d at 1094-95; *Inverness*, 309 F.3d at 1371-72; *Texas Digital*, 308 F.3d at 1204, turns the law upside down, and forces inventors, patent examiners, the public, and the courts down an erroneous and ultimately inconclusive path. Accordingly, *amicus* respectfully requests this Court to return the law in this area to its traditional moorings, and to confirm the longstanding principle that the intrinsic specification is entitled to interpretive primacy over extrinsic dictionary definitions.

CONCLUSION

For the foregoing reasons, the Court should hold that in interpreting a claim term, courts look primarily to the intrinsic evidence, particularly the patentee's use of the term in the specification, and can only consider extrinsic evidence, including dictionary definitions, secondarily, if at all.

September 20, 2004

Respectfully submitted,



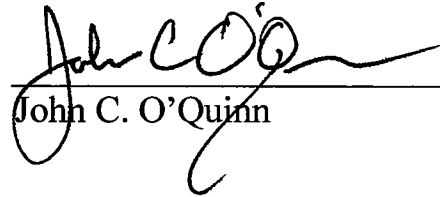
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the brief is proportionately spaced, has a typeface of 14 points or more, and contains 4,121 words.



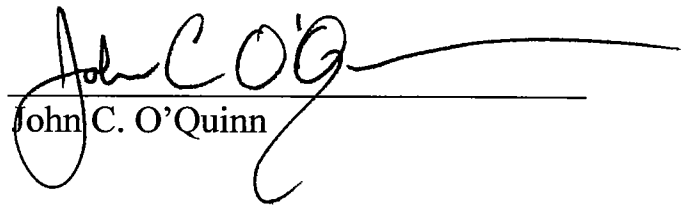
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 20th day of September 2004, he caused two copies of the Brief of *Amicus Curiae* Infineon Technologies North America Corp. to be served upon the following attorneys by U.S. mail:

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