United States District Court,
N.D. Illinois, Eastern Division.

BINGO BRAIN, INC,
Plaintiff.
v.
CALIFORNIA CONCEPTS, INC., Applied Concepts, Inc., Anthony E. Maczko d/b/a Bingo 2000, and Bingo Solutions, Inc., and Bingo Concepts, Inc,
Defendants.

Jan. 24, 2002.

MEMORANDUM OPINION AND ORDER

PALLMEYER**, District J.**

The parties to this case are competitors in the market for hand-held devices that allow bingo players to monitor multiple bingo cards at the same time. In its September 16, 1999 complaint, Plaintiff Bingo Brain, Inc., asserted that Defendants' "Bingo Mate" product infringes at least one of the nineteen claims of Plaintiff's patent, U.S. Patent No. 4,786,151 (the "Patent or the " '151 Patent"). Plaintiff withdrew several of its claims, however, and the court dismissed another. What remains of this suit is Plaintiff's allegation that the Bingo Mate infringes Claim 18 of the '151 Patent, a claim dependent on independent Claim 13 of the Patent. In June of 2001, the court conducted a *Markman* hearing at which the parties presented their respective interpretations of Claims 13 and 18. *See* Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed.Cir.1995) (*en banc*), *aff'd,* 517 U.S. 370 (1996). Following is the court's construction of those claims.

BACKGROUND

The court presumes a basic familiarity with the game of bingo, but will review some key terms for clarity. Each "bingo card" is a square divided into a 5x5 matrix of 25 squares, 24 of which have numbers from 1 to 99 printed in them, while the square in the center of the bingo card has no number. ('151 Patent, Col.1, lines 24-31.) A bingo player wins a game by being the first player to match a series of five numbers in a row, either horizontally, diagonally, or vertically (or in some other pattern specified by the bingo hall), with the numbers called out by the bingo "caller," who calls out randomly generated numbers to the bingo players. The configuration of numbers on each bingo card (that is, the combination of numbers and their respective positions on the card) is what distinguishes one bingo card from another. (Defendants' Claim Construction Brief (hereinafter, "Def.Brief") at 3-4; Bingo Brain, Inc.'s *Markman* Brief Re: United States Patent No. 4,768,151 (hereinafter, "Plf. *Markman* Br.") at 1.) For each unique number configuration, bingo card manufacturers use a corresponding identification number so that each bingo card made up of the same number configuration will be marked with the same identification number. FN1 (Def. Brief at 4.)

FN1. It is not clear from the record to what extent the identification numbers that correspond to certain

number configurations are standardized in the bingo card manufacturing industry.

A "sheet" of bingo cards is a piece of paper on which multiple bingo card configurations are printed in rows and columns. ('151 Patent, Col. 1, lines 50-56.) Sheets of bingo cards are compiled into "pads," and players purchase one or more such pads before play begins. ('151 Patent, Col. 1, lines 49-50.) The first sheet of the pad is used in the first game and then discarded, the second sheet in the second game, and so on. ('151 Patent, Col. 1, lines 51-55.) In printing sheets of bingo cards and assembling them into pads, card manufacturers utilize patterns of fixed displacement between the identification numbers to arrange the various bingo cards into rows and columns on each sheet, and each sheet into pads. (Def. Brief at 4.) Each manufacturer establishes its own fixed displacements between the identification numbers as the numbers progress across a row of bingo cards on a sheet, a different fixed displacement as the numbers progress down a column of bingo cards, and yet another fixed displacement moving between sheets in a pad. (Id.) These fixed displacement patterns make it possible to predict the identification numbers of each of the bingo cards in a pad of sheets from the identification number of the first card.

Plaintiff Bingo Brain, Inc. obtained the '151 Patent on August 20, 1988. The Patent is directed to a hand-held electronic device for managing "at least two bingo cards." ('151 Patent Abstract.) Use of such a device became expedient with the rise of commercial bingo as more and more people played the game and wished to play multiple cards at one time in order to increase their chances of winning. ('151 Patent, Col. 1, lines 13-21.) The more cards a player tries to play at once, however, the more difficult it becomes for the player to scan the numbers on each of the cards in play at a given time to determine whether there is a match with the number announced by the bingo caller before he or she calls out the next one. An electronic bingo device facilitates play of a greater number of cards at once; the bingo player enters the number called by the bingo caller into the device, and the device then scans all of the cards in play to determine whether there is a match. The device is able to detect matches on any of several cards, much more quickly than a player could do so "manually"-that is, using his or her eyes and memory. Number configurations corresponding to the number configurations of bingo cards are stored in the device's memory. ('151 Patent, Col. 2, lines 39-41.) Thus, utilizing the pattern of fixed displacements between the identifications numbers on sheets of bingo cards and pads of sheets, the device is able, at the conclusion of one game, to pull up a new set of bingo cards from its stored memory that correspond to the bingo cards in the player's pad of cards.

Both Plaintiff's Bingo Brain devices and Defendants' alleged infringing devices operate similarly, but the parties dispute whether the method practiced by Defendant's product is covered by Plaintiff's Patent. This decision is intended to resolve certain questions of claim interpretation surrounding that dispute.

THE CLAIMS

The Patent claims at issue are Claims 13 and 18. Independent Claim 13 claims:

A method for managing at least two bingo cards which comprises:

(a) permanently storing number configurations some of which correspond to the number configurations contained on at least some bingo cards;

(b) selecting certain number configurations by use of an identification number that appears on the cards that are to be played;

(c) transferring said selected number configurations from storage to a calculating unit;

(d) selecting a pattern of number positions which determines a winning configuration;

(e) imputing [sic] selected numbers and determining whether each of said numbers matches one of the numbers in said number configurations;

(f) following said matching, determining whether the matched numbers in any of the number configurations corresponds to the elected winning number positions; and

(g) isplaying the information contained in said calculating unit.

('151 Patent, Col. 6, lines 9-29.)

Dependent Claim 18 claims: "The method of claim 13 wherein the number configurations for the next game having identification numbers which are displaced in a predetermined relationship from the identification numbers of the previous game are automatically transferred from storage to the calculating unit without entering the identification numbers of the selected number configurations." ('151 Patent, Col.6, lines 40-46.)

The parties have identified three areas of disagreement concerning the meaning of these claims. With respect to Claim 13, the parties dispute (a) the construction of the phrase in the preamble "[m]ethod of managing at least two bingo cards ..." and (b) the construction of the language in Claim 13(b). In Claim 18, the parties disagree over (c) the construction of the phrase "are automatically transferred from storage to the calculating unit without entering the identification numbers of the selected number configurations." The court will address these disputes in turn.

DISCUSSION

I. General Rules of Claim Construction

Claim construction is "the process of giving proper meaning to the claim language," the fundamental process that "defines the scope of the protected invention." Abtox, Inc. v. Exitron Corp., 122 F.3d 1019, 1023 (Fed.Cir.1997), *quoting* Bell Research Communications, Inc. v. Vitalink Communications Corp., 55 F.3d 615, 619-20 (Fed.Cir.1995). The court will consider three sources "[t]o ascertain the meaning of claims ...: [t]he claims, the specification, and the prosecution history." Markman, 52 F.3d at 979. These three sources constitute "intrinsicevidence." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). While claim language defines the scope of the patented invention, the specifications and the prosecution history "provide a context to illuminate the meaning of claim terms." Abtox, 122 F.3d at 1023. Even where other intrinsic and extrinsic evidence is available, the claim language is the primary source of meaning throughout the interpretation process. *Id*. In utilizing this primary source, "claim terms are given their ordinary meaning unless examination of the specification, prosecution history, and other claims indicates that the inventor intended otherwise." Transmatic, Inc. v. Gulton Industries, Inc., 53 F.3d 1270, 1277 (Fed.Cir.1995). If there is some ambiguity that can not be resolved upon consideration of the intrinsic evidence, "extrinsic evidence may also be considered, if needed to assist in determining the meaning or scope of technical terms in the claims." Kopykake Enterprises, Inc. v. Lucks Co., 264 F.3d 1377, 1381 (Fed.Cir.2001), *quoting* Pall Corp. v. Micron Separations, Inc., 66 F.3d 1211, 1216 (Fed.Cir.1995).

II. The Proper Construction of the Claim Terms of the Patent

The court will consider each of the three disputed claim terms in turn. In each case, the court will first look to the claim language, giving the words and phrases of the claim "their ordinary and accustomed meanings as understood by one of ordinary skill in the art." Bell Atlantic Network Services, Inc. v. Covad Communications Group, Inc., 262 F.3d 1258, 1267 (Fed.Cir.2001).

A. " *Method of managing at least two bingo cards ...*"

Independent Claim 13 of the Patent begins with the preamble: "Method of managing at least two bingo cards which comprises: ...." ('151 Patent, Col. 6, line 9.) Plaintiff asserts that this preamble means nothing more than it says, that "the invention is a method for managing at least two bingo cards." (Plf. *Markman* Br. at 7, 9.) Defendants, on the other hand, focus on the term "bingo cards" and insist that "bingo cards" really means "actual physical bingo cards to be played." (Def. Brief at 13.) Plaintiff counters that there is no reason to limit the term "bingo cards," and that it includes bingo cards in whichever form they happen to come, whether physical or electronic/virtual card form. (Plaintiff's Response to Defendants' Bench Memorandum, (hereinafter, "Plf. Resp. Def. Bench Mem."), at 2-3.)

The term "bingo cards" is not plainly "so amorphous that one of skill in the art can only reconcile the claim language with the inventor's disclosure by recourse to the specification." Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1187 (Fed.Cir.1998). The term is subject to more than one understanding, however, and because both parties enlist support from the specifications, the court will follow their lead. First, the court notes that the specifications expressly define a "bingo card" as "a square that is divided into a 5 x 5 matrix." ('151 Patent, Col. 1, lines 24-25.) The preamble of Claim 13 arguably narrows that definition; it claims a "method of managing ... bingo cards ...." Therefore, whether the term "bingo cards" might include any item on which the basic 5 x 5 bingo matrix is printed or any mode in which the matrix is stored, is irrelevant here because only those bingo cards that the '151 Patent "method" contemplates "managing" are significant in the Claim 13 preamble.

To determine which bingo cards the '151 Patent contemplates managing, reference to the specifications is necessary. Plaintiff points to two portions of the specifications to support its argument that the reference to "bingo cards" in the Claim 13 preamble includes electronic or virtual cards. Plaintiff notes the specification language, "the processor automatically enters the next set of cards," and Figure 2, which indicates that the device will "DISPLAY CARDS." ('151 Patent, Col. 4, lines 54-55; '151 Patent, Figure 2.) These references, however, do not require the conclusion that electronic or virtual cards are included because they do not identify the types of bingo cards the patented device is intended to manage at all. Instead, these provisions merely refer to the multiple number configurations that the device monitors after they are called up from the device's memory and displayed on the screen.

In numerous respects, the language of the specifications supports Defendants' contention that the '151 Patent contemplates managing physical bingo cards as opposed to virtual ones. The abstract states that the "stored standard card configurations ... correspond to physical cards ... selected by a player." ('151 Patent, Abstract.) It continues, "[t]he processor compares 'called' numbers with card configurations which correspond to the physical cards being played by the user." (Id.) The BACKGROUND OF THE INVENTION section begins by explaining that the "device ... is capable of monitoring standard bingo cards." ('151 Patent, Col. 1, lines 7-8.) It also describes the two "predominant types of bingo cards" as "hard cards," made of cardboard or plastic, and "padded paper cards." ('151 Patent, Col. 1, lines 32-35, 46-47.) In the section that explains the "method of the invention," the first step is for the "user [to] determine whether hard or padded, paper cards

are being used." ('151 Patent, Col. 3, lines 49-51.) No where is it mentioned that virtual bingo cards might be managed by the device.

The potential danger here is the possibility of running afoul of the rule that, although claims are to "be read in light of the specifications ... limitations from the specifications are not to be read into the claims." Bell Atlantic Network Services, Inc., 262 F.3d at 1270. Sometimes only "a fine line" separates "reading [the] claim in light of a specification, and reading a limitation into the claim from the specification." *Id*. The court concludes, contrary to Plaintiff's contentions, that the line is not crossed by Defendants' interpretation. The specifications are entirely consistent in referring solely to physical cards, hard cards, or padded paper cards, whenever discussing the type of bingo cards for which the '151 Patent provides a device to manage. The Federal Circuit has explained that "the written description 'can provide guidance as to the meaning of the claims, thereby dictating the manner in which the claims are to be construed, *even if the guidance is not provided in explicit definitional format*." ' Id. at 1271, *quoting* SciMed Life Systems, Inc. v. Advanced Cardiovascular Systems, Inc., 242 F.3d 1337, 1344 (Fed.Cir.2001). As a result, where a "patentee uses a claim term throughout the entire specification, in a manner consistent with only a single meaning," as Plaintiff did when referring to bingo cards to be managed by the patented device, the patentee "has defined that term 'by implication." ' Bell Atlantic Network Services, Inc., 262 F.3d at 1270, *citing* Vitronic Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). The court finds that even if the term "bingo cards" does encompass cards in formats other than the traditional printed paper, cardboard, etc., the '151 Patent does not contemplate managing them. In light of the consistency with which the specifications refer to the sub-group of bingo cards the device is designed to manage, the court would improperly expand the scope of the claims if it were to read virtual bingo cards into the claims.

B. " *[S]electing certain number configurations by use of an identification number that appears on the cards that are to be played ...*"

The parties disagree over the meaning of claim term 13(b). Plaintiff maintains that it means: "Someone or something must select the bingo card number configurations. The selection of certain number configurations occurs by use of an identification number that appears on the cards to be played." (Pl. *Markman* Br. at 7; Pl. Resp. Def. Bench Mem. at 2.) Defendants, however, argue that 13(b) means: "The 'selected' number configurations correspond to each bingo card being played and requires entry of the 'identification number' of each such card." (Def. Claim Brief at 13 .)

Thus, the dispute is whether the words "an identification number that appears on the cards to be played" really means just one identification number for a whole series of cards, or an identification number for every card played. To understand the significance of this dispute, the court considers the competing products. Both Plaintiff's and Defendants' recent model bingo managing devices practice the "book-drop" method of entering bingo cards into the bingo managing devices. The book-drop method, as described previously, *see* Bingo Brain, Inc. v. California Concepts, Inc., No. 99-C-6139, 2001 WL 1631920 (N.D.Ill.Dec. 19, 2001), allows a player to enter just one identification number from one bingo card in a pad of sheets of bingo cards; when the player does so, the device will pull up, from its memory, every bingo card in that pad of sheets. Previous versions of Plaintiff's Bingo Brain devices required the entry of each and every identification number on the first sheet of bingo cards in a pad before the device could then generate the remaining number configurations in the pad from its memory. The crux of the dispute over Claim 13(b), then, is whether (i) it requires the entry of only one identification number, as Plaintiff maintains, such that it covers the book-drop method, or (ii) it requires the entry of every identification number on the first sheet of bingo cards in a pad, as Defendants maintain, and thus does not cover the book-drop method.

The court recognizes that Defendants' interpretation is not dictated by the claim language alone. The court agrees, however, that the phrasing is ambiguous. Does " *an* identification number that appears on the *cards* to be played" (*emphasis added*) mean that there is but one number that appears on all cards to be played at the same time? As noted earlier, a different identification number appears on each card. Which of the identification numbers on the cards that are to be played is to be used?

Plaintiff, for its part, appears not to recognize the ambiguity in the language of 13(b). Relying exclusively on the words, "an identification number," Plaintiff contends that the '151 Patent can only be read to mean that entry of a single identification number will pull up the remaining bingo cards in a pad of sheets. Plaintiff offers no support from the specifications to bolster its proposed interpretation, and in the court's view, no support for the proposal can be found there. In contrast, the specifications do support Defendants' assertion that Claim 13(b) requires the entry of multiple identification numbers. In Step (4) of the method of the invention, "the user via the key pad instructs the processor to expect the identification number of the number configurations contained on the cards ... for the first game." This language arguably contains the same sort of ambiguity as Claim 13(b), but it is quickly explained by Step (5) in which "the user via the key pad sequentially inputs the identification number of each bingo card." In this court's view, Steps (4) and (5) resolve the ambiguity in Claim 13(b), and together mean that the user must input the identification number of each bingo card to be played in the first game.

Another portion of the specifications provides further support for this interpretation: "A further feature of the invention is that when padded paper cards are used the processor automatically enters the next set of cards after the previous game has ended. Since the identification numbers between the boards on sheet of game cards is related, the processor *once given the displacement between cards* calculates the identification of the new cards and copies them from the memory module." ('151 Patent, Col. 4, lines 53-60) (emphasis added.) The language does not explain how the processor will be "given the displacement between cards" other than via the entry of multiple identification numbers in the first game. No language in the Patent states that the player may enter just one identification number, and subsequently enter the displacement between cards by some other means. The only means established in the Patent for the device to be "given the displacement between cards" is through the player's entry of multiple identification numbers.

Consistent with the principle that "the written description 'can provide guidance as to the meaning of the claims, thereby dictating the manner in which the claims are to be construed, *even if the guidance is not provided in explicit definitional format,*" ' Bell Atlantic Network Services, Inc., 262 F.3d at 1271, the court finds guidance throughout the Patent's specifications to resolve the meaning of Claim 13(b)'s ambiguous language. The court construes the otherwise ambiguous language of Claim 13(b) as meaning that multiple identification numbers are used to select certain number configurations. This construction does not read a limitation from the specifications into the claim; rather, it is required by simply reading the claim in light of the specifications.

C. "*... [A]re automatically transferred from storage to the calculating unit ....*"

Claim 18 claims: "The method of Claim 13 wherein the number configurations for the next game having identification numbers which are displaced in a predetermined relationship from the identification numbers of the previous game are automatically transferred from storage to the calculating unit without entering the identification numbers of the selected number configurations." Defendants argue that the use of the word "automatically" in Claim 18 precludes any human intervention to initiate the transfer of the number

configurations. Plaintiff disagrees. Plaintiff argues that the mere use of the word "automatically" does not foreclose any human intervention. Rather, according to Plaintiff, the language contemplates that the microprocessor automatically enters the next set of cards at the end of the previous game and/or after a new game has been "started through a key pad command." Thus, both parties agree that the disputed phrase means that the device automatically enters the next set of bingo cards at the end of a game. Plaintiff submits, however, that this automatic function can also be initiated by the player pressing a button to signal that the game is over.

Both parties cite the same definition for the word "automatically": "having a self-acting or self-regulating mechanism." *See* MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (*10th ed*. 2001) (available at http://www.m-w.com/cgi-bin/dictionary). The Patent details a device that is able to determine which sheet of bingo cards follows the sheet just played, and pull that successor sheet from its memory so the player can play this sheet next. No intervention is required for the device to determine which sheet of cards is next. Nor is intervention required for the device to retrieve that sheet from the memory. In other words, the device has a "self-regulating mechanism" that enables it to complete those functions. Only the timing of these processes is initiated by human intervention. Thus, the question becomes whether the fact that this procedure is initiated by an external factor precludes it from being automatic. The court finds that it does not. The device, on its own, ascertains which sheet of bingo cards comes next and makes that sheet available for play-the player merely prompts the machine to perform this automatic function. An "automatic" garage door opener, similarly, does not sense that an automobile is ready to enter or depart a garage, but performs automatically once it is prompted to do so. Much the same, the device does not sense that a player in the bingo hall has shouted "bingo" and call up the next sheet to be played, but prepares for the next game once the player instructs the device that a new game is starting.

Plaintiff, as the patentee, was free to establish its own meaning for the word "automatically:" "Patent law permits the patentee to choose to be his or her own lexicographer by clearly setting forth an explicit definition for a claim term that could differ in scope from that which would be afforded by its ordinary meaning." Rexnord Corp. v. Laitram Corp., Intralox, Inc., 274 F.3d 1336, 1342 (Fed.Cir.2001). Here, rather than providing any alternative definition, Plaintiff used the word consistently with its ordinary meaning. The word "automatically" is used twice in the specifications: "the processor automatically compares the entered number with the numbers contained in each of the stored number configurations," and "the processor automatically enters the next set of cards after the previous game has ended." ('151 Patent, Col. 4, lines 23-25, 54-56.) On both occasions its usage is consistent: the device performs an automatic function once it is signaled that it is time to do so, either by the player entering a number for the device to compare to the numbers on the cards being played, or by the player pressing a button signaling that a new game is beginning. Neither the language of the patent, nor the ordinary meaning of the word, suggests that a function must be performed entirely spontaneously for it to be automatic.

In conclusion, the word "automatically," as used in the '151 Patent, does not preclude human intervention to trigger a process that is, in all other respects, automatic.

CONCLUSION

For the reasons described here, the court concludes that the Patent contemplates a device for managing physical or "hard" cards, but not virtual cards; that the Patent does not cover what the parties refer to as the "book-drop" method; and that the Patent's use of the expression "automatically transferred" does not preclude any human intervention or involvement with the device's operation.

N.D.Ill.,2002.
Bingo Brain, Inc. v. California Concepts, Inc.

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