United States District Court,
E.D. Virginia, Richmond Division.

NTP, INC,
Plaintiff.
v.
RESEARCH IN MOTION, LTD,
Defendant.

Civil Action No. 3:01CV767

Aug. 14, 2002.

Christopher Michael Mills, Wiley Rein LLP, McLean, VA, Andrew Gerald McBride, Bertram Walter Rein, Floyd Brantley Chapman, James Harold Wallace, Jr., John Benedict Wyss, Kevin Paul Anderson, Scott Eric Bain, Wiley Rein & Fielding LLP, Washington, DC, Jack Edward McClard, Maya Miriam Eckstein, Hunton & Williams LLP, Richmond, VA, for Plaintiff.

Robert Michael Tyler, David Evan Finkelson, Mcguirewoods LLP, Richmond, VA, Bobbie Jean Wilson, Christopher Kao, Martin Richard Glick, Howard Rice Nemerovski Canady Falk & Rabkin, Henry C. Bunsow, Howrey Simon Arnold & White, San Francisco, CA, David Wayne Long, Howrey Simon Arnold & White LLP, Herbert Lawrence Fenster, Lawrence Steven Ebner, McKenna Long & Aldridge LLP, Mark L. Whitaker, Shaw, Pittman, Potts & Trowbridge, Washington, DC, Gordon Davies Giffin, McKenna Long & Aldridge LLP, Atlanta, GA, for Defendant.

ORDER

JAMES R. SPENCER**, District Judge.**

THIS MATTER is before the Court for the interpretation of eight patents: United States Patent Numbers 5,436,960 ("the 960 Patent"); 5,479,472 ("the 472 Patent"); 5,438,611 ("the 611 Patent"); 5,625,670 ("the 670 Patent"); 5,631,946 ("the 946 Patent"); 5,819,172 ("the 172 Patent"); 6,067,451 ("the 451 Patent"); and 6,317,592 ("the 592 Patent"). The Court having considered the evidence and argument submitted by the parties, hereby interprets these patents as discussed below.

I.

A finding of patent infringement involves a two-step analysis. Standard Oil Co. v. Cyanamid Co., 774 F.2d 448, 452 (Fed.Cir.1985). First, the court must interpret the asserted patent claim. *See* Markman v. Westview Instruments, Inc., 52 F.3d 967, 976 (Fed.Cir.1995). Second, the trier of fact must compare the properly construed claim to the allegedly infringing product. *Id.* The construction of a patent claim is a legal matter exclusively for the court; "[i]t has long been and continues to be a fundamental principle of American law that the construction of written evidence is exclusively with the court." *Id.* at 978 (quoting Levy v. Gamsby,

7 U.S. 180, 186 (3 Cranch 1805)).

The starting point for determining the proper construction of a claim is a review of intrinsic evidence. *See* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). The court must first look to the language of the claim itself. Teleflex, Inc. v. Ficosa North America Corp., 299 F.3d 1313, 2002 WL 1358720 (Fed.Cir.2002) ("We begin our claim construction analysis, as always, with the words of the claim."); Karlin Tech., Inc. v. Surgical Dynamics, Inc., 177 F.3d 968, 971 (Fed.Cir.1999) ("Claim construction begins with the words of the claim."). The intrinsic evidence, including the written description, the drawings, and the prosecution history, should be used as a guide in interpreting the words used in the claims. Teleflex, 299 F.3d 1313, 2002 WL 1358720, *7.

Absent an express intent to define claim terms in a special manner, an inventor's claim terms assume their ordinary meaning. *Id*. There is a heavy presumption that claim terms carry their ordinary and customary meanings. *Id*. To discern the ordinary meaning of a claim term, a court may review the claims themselves, other intrinsic evidence, and dictionaries and treatises. *Id*. Ultimately, however, the ordinary meaning must be determined from the perspective of a person of ordinary skill in the relevant art.

An important source of intrinsic evidence to which the court may look to construe a claim is the specification. *Id*. *See also* Vitronics Corp., 90 F.3d at 1582. "The specification contains a written description of the invention that must enable one of ordinary skill in the art to make and use the invention." Markman, 52 F.3d at 979. It is the dictionary of the patent claim, explaining the invention and defining the terms of the claim. *Id*. The patentee "is free to be his own lexicographer," and therefore any specialized meaning of terms must be fully disclosed in the specification. *Id*. "The patentee may demonstrate an intent to deviate from the ordinary and accustomed meaning of a claim term by including in the specification expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." Teleflex, 299 F.3d 1313, 2002 WL 1358720, *8. However, "[i]t is the claims that measure the invention"; "[t]hat claims are interpreted in light of the specification does not mean that everything expressed in the specification must be read into all the claims." *Id*.

A final source of intrinsic evidence which the court may consider is the patent's prosecution history. Vitronics Corp., 90 F.3d at 1582-83. The prosecution history of a patent is "the complete record of all proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims." Id. at 1582. The prosecution history may not be used to "enlarge, diminish, or vary the limitations in the claims." Markman, 52 F.3d at 980. However, the history is effective in guiding the court's construction of claim, since "[c]laims may not be construed one way to obtain their allowance and in a different way against accused infringers." Southwall Tech. v. Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.1995). Therefore, the prosecution history prevents a patentee from advocating a particular interpretation of claim terms during litigation, when that interpretation was disclaimed during prosecution.

II.

The Court has construed the disputed terms according to their plain and ordinary meaning, as supported by the specification and prosecution history. Accordingly, the Court hereby construes the claim terms as follows:

A. Terms in Contention, As Presented During Oral Argument

1. *Additional Processor Outside Any E-Mail System:* A processor or information source which originates electronic information without executing electronic mail programming.
2. *Information Source:* A place or thing which originates electronic information concerning particular subjects without executing electronic mail programming.

3. *Electronic Mail System:* A type of communication system which includes a plurality of processors running electronic mail programming wherein the processors and the electronic mail programming are configured to permit communication by way of electronic mail messages among recognized users of the electronic mail system. The various constituent processors in the electronic mail system typically function as both "originating processors" and "destination processors.

4. *Electronic Mail Message:* A formatted text message that is transmitted over a communication system. As originally inputted to an electronic mail system by the sender, the electronic mail message includes the following characteristics: (a) a destination address identifying the person(s), place(s) or object(s) to which the message is directed; (b) an indication of the sender (which may be added automatically by the electronic mail programming); (c) a subject field (which may be blank); and (d) the inputted message text. The term "electronic mail message" encompasses all forms of the message as it moves through the communication system (information may be added or deleted to facilitate further transmission as it proceeds through the system).

5. *Electronic Mail Programming:* An application program specially designed to create, send, access and manage electronic mail messages. Electronic mail programming may operate on a variety of different types of processors (e.g., desktop computer, email server, handheld device, mainframe computer).

6. *Originating Processor:* Any one of the constituent processors in an electronic mail system that prepares data for transmission through the system.

7. *Destination Processor:* Any one of the constituent processors in an electronic mail system to which information is transmitted by the system. Said processor is identified by an address, in order to initiate the transmission of the originated information from the originating processor.

8. *RF Information Transmission Network/RF Information Network/RF Information Transmission System/RF Transmission System:* A combination of circuits and devices for transmitting data, which combination includes a plurality of RF transmitters for transmitting RF signals carrying data and one or more RF receivers for receiving data. Each RF transmitter has a substantial geographic RF coverage area and is interconnected with other RF transmitters. [The combination may include pluralities of local, lata and hub switches].

9. *Interface/Interface Switch:* A device or system, which includes a processor, that transmits electronic mail messages to a wireless system for delivery to a mobile processor.

10. *RF Receiver:* A device for receiving radio frequency electromagnetic signals, for demodulating the radio frequency electromagnetic signals, and for recovering data that is carried by the radio frequency electromagnetic signals. The RF receiver can be carried by a person outside a home or office and can receive data while being carried.

11. a. *Program:* A sequence of coded instructions that can be loaded into a mechanism such as a computer.

b. *Application Program:* A software program that performs substantial useful functions for a user (e.g., electronic mail programming, word processors, spreadsheets, personal calendar programs, games) as opposed to software that primarily controls the allocation and use of computer resources (e.g., memory, display, storage devices, modem).

11. *Originated Information:* The message text of an electronic mail message. [Exception: certain claims of the '611 Patent refer to originating "other originated information" at "an additional processor from outside any electronic mail system." As the claim language makes clear, such "other originated information" in the '611 Patent is nonemail data].

12. *Gateway Switch:* A processor in an electronic mail system which connects other processors in that system and has additional functions for supporting other conventional aspects of the electronic mail system such as receiving, storing, routing and/or forwarding electronic mail messages.

13. *Mobile Processor:* A processor which can be carried by a person outside of a home or office and which executes electronic mail programming to function as a destination and/or source of electronic mail.

14. *Wireless Device:* A device that receives and/or transmits electromagnetic signals and can be carried by a person outside of a home or office.

B. Terms Originally in Contention, But Not Presented During Oral Argument

1. *Address:* A series of digits or alphanumeric characters identifying the intended recipient or creator of the transmitted data.
2. *Broadcast:* The act of transmitting data by electromagnetic signals.

3. *Broadcast Location:* A location of an RF transmitter in an RF information transmission network.

4. *Communication System:* A group of devices that work together for transmitting and/or receiving information.

5. *Destination:* A person, place, or object to which something is sent.

6. *Destination Processor* ['592 Patent]: A processor which receives the electronic mail from the originating device, and transmits information contained in the electronic mail and an identification of a wireless device from said destination processor.

7. *Distributed System:* A group of devices or objects that work together to serve a common purpose wherein individual functions and operations are divided among several different constituent parts.

8. *Header:* Information within an electronic mail message other than the message text.

9. *Identification:* A designation or description that uniquely names a specific item or thing.

10. *Identification Number:* A series of digits or alphanumeric characters that uniquely names a specific item or thing.

11. *Inputted Information:* Information that is entered into a communication system.

12. *Inputted Message:* The text of an electronic mail message as introduced into an electronic mail system by the sender.

13. *Match:* A thing that corresponds to another.

14. *Memory:* An electronic component that stores information.

15. *Originated Electronic Mail:* An electronic mail message generated by any one of the constituent processors in an electronic mail system.

16. *Originating Device:* A device that executes electronic mail programming to originate electronic mail.

17. *Output:* (1) A location, terminal or station from or at which information exits a device such as a processor; (2) The information that is produced by a processor.

18. *Packets:* A bundle of data, usually in binary form, organized in a specific way for transmission. A packet consists of the data to be transmitted and certain control information.

19. *Processed Output:* Information that is produced by a processor after performing execution of operations upon data.

20. *Processor:* A device that performs execution of operations upon data and is capable of running an application program.

21. *RF (Radio Frequency):* Pertaining to the electromagnetic signals that propagate through space, which signals have a frequency usually between 500 KHz and 300 GHz.

22. *RF Device:* A device that requires and/or transmits RF signals and can be carried by a person outside of a home or office.

23. *RF Memory:* Memory in which information received by an RF receiver is stored.

24. *RF Network Information:* Information used to direct data transmissions to a particular RF information transmission network or the particular destinations within an RF information transmission network.

25. *Security Check/Check:* A determination as to whether certain information should be transmitted further by a communication system.

26. *System:* A group of devices or objects that work together to serve a common purpose.

27. *Transfer:* The conveyance of something (e.g., information) from one place to another.

28. *Transmission:* The sending of signals carrying information from one point to another.

29. *Wireless Receiver:* A device, which can be carried by a person outside a home or office, for receiving electromagnetic signals, for demodulating the electromagnetic signals, and for recovering information from the electromagnetic signals while being carried.

30. *Wireless System:* A combination of circuits and devices for transmitting data, which combination includes at least one wireless receiver and a plurality of transmitters for transmitting electromagnetic signals carrying data.

31. *Wireline:* Pertaining to the transmission of signals between processors via a physical cable connection.

Let the Clerk send a copy of this Order to all parties of record.

It is SO ORDERED.

E.D.Va.,2002.
NTP, Inc. v. Research in Motion, Ltd.

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