United States District Court,
N.D. California.

PIXION, INC,
Plaintiff.
v.
PLACEWARE, INC,
Defendant.

No. C 03-02909 SI

July 28, 2004.

Counsel for plaintiff Pixion, Inc. is Spencer Hosie of Hosie Frost McArthur & Large, LLP in San Francisco, California,

Counsel for defendant PlaceWare, Inc., a subsidiary of Microsoft Corporation, is Michael J. Bettinger of Preston Gates & Ellis LLP in San Francisco, California.

CLAIM CONSTRUCTION ORDER, RE: '313 PATENT

ILLSTON**, J.**

On June 24, 2004, the Court held a hearing regarding the construction of certain disputed claims in U.S. Patent No. 6,343,313 ("the '313 patent"). At oral argument the parties agreed to meet and confer in an attempt to reach comprise constructions for two of the disputed claim terms. Having failed to reach a compromise construction, both parties submitted supplemental briefing on these terms. Considering the arguments of counsel and all papers submitted, the Court hereby construes the terms as follows.

INTRODUCTION

Plaintiff Pixion, Inc. has sued defendant PlaceWare, Inc. for misappropriation of Pixion's trade secrets, infringement ofPixion's patent rights in the '313 patent, and infringement ofPixion's trademark. Defendant has counterclaimed for declaratory judgment that the '313 patent is not valid, not enforceable and/or not infringed by PlaceWare. Defendant also counterclaims that Pixion is infringing PlaceWare's U.S. Patent No. 5,951,694 ("the '694 patent"). Currently before the Court are the parties' proposed claim constructions for the '313 patent. FN1

FN1. The Court will construe the terms in dispute in the '694 patent in a separate order.

BACKGROUND

The '313 patent teaches technology that allows real-time web conferencing with multi-speed capabilities.

Using this system, "when a web-conference 'presenter' wants to share a stream of visual images with an audience of 'attendees,' the entire audience can see the images in real-time-even if different attendee computers run at different speeds and have network connections of differing bandwidths." Compl. at para. 2. The '313 patent teaches a system that is able to compensate for and adapt to differing network and computing speeds and loads, as appropriate. Pl.'s Claim Construction Br. at 1:19-20. In other words, "if there are both fast and slow computers present, the invention takes this factor into consideration and dynamically compensates to ensure that all computers display as close to the latest information as possible, in as close to real-time as possible, for the given computer attendee." Id. at 2:2-5.

LEGAL STANDARD

Construction of patent claims is to be made by the trial court as a matter of law. *See* Markman v. Westview Instruments, Inc., 52 F.3d 967, 977 (Fed.Cir.1995) (en banc), *aff'd,* 517 U.S. 370 (1996). In determining the proper construction of a claim, the court begins with the intrinsic evidence of record, consisting of the claim language, the patent specification, and, if in evidence, the prosecution history. Id. at 978 (citing Unique Concepts, Inc. v. Brown, 939 F.2d 1558, 1561 (Fed.Cir.1991)). "The appropriate starting point ... is always with the language of the asserted claim itself." Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1185 (Fed.Cir.1998). Accordingly, although claims speak to those skilled in the art, in construing a claim, claim terms are given their ordinary and accustomed meaning unless examination of the specification, prosecution history, and other claims indicates that the inventor intended otherwise. *See* Electro Medical Systems, S.A. v. Cooper Life Sciences, Inc., 34 F.3d 1048, 1053 (Fed.Cir.1994). Although words in a claim are generally given their ordinary and customary meanings, a patentee is free to act as his own lexicographer provided that the patentee's special definition is clearly stated in the patent specification or prosecution history. *See* Hormone Research Found., Inc. v. Genentech, Inc., 904 F.2d 1558, 1563 (Fed.Cir.1990).

The claims must be read in view of the specification. Markman, 52 F.3d at 978. Yet while "claims are to be interpreted *in light of* the specification and with a view to ascertaining the invention, it does not follow that limitations from the specification maybe read into the claims." Sjolund v. Musland, 847 F.2d 1573, 1581 (Fed.Cir.1988) Therefore, the specification can supply understanding of unclear terms, but should never trump the clear meaning of the claim terms. *See* E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 1433 (Fed.Cir.1988). Even "[r]eferences to a preferred embodiment, such as those often present in a specification, are not claim limitations." Laitram Corp. v. Cambridge Wire Cloth Co., 863 F.2d 855, 865 (Fed.Cir.1988).

Finally, the court may consider the prosecution history of the patent, if in evidence. The prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution. *See* Southwall Technologies, Inc. v. Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.1995). In most situations, analysis of this intrinsic evidence alone will resolve claim constructiondisputes. *See* Vitronics Corp. v. Conceptronics., Inc., 90 F.3d 1576, 1583 (Fed Cir.1996). Courts should not rely on extrinsic evidence in claim construction to contradict the meaning of claims discernable from examination of the claims, the written description, and the prosecution history. *See* Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1308 (Fed.Cir.1999)(citing Vitronics, 90 F.3d at 1583). However, it is entirely appropriate "for a court to consult trustworthy extrinsic evidence to ensure that the claim construction it is tending to from the patent file is not inconsistent with clearly expressed, plainly apposite, and widely held understandings in the pertinent technical field." *Id*.

DISCUSSION

The parties' current dispute relates only to claim 1 of the '313 patent. The claim reads as follows:

1. A conferencing system comprising:

at least one client;

a conference server;

network connections between the conference server and the at least one client,

wherein the at least one client maintains a version of a shared portion of a display,

wherein the conference server updates said version of said shared portion of said display with data updates, after taking into consideration the network connections speeds and loads and client computing speeds and loads,

wherein the conference server is capable of delivering the data updates in an output data type selected from base uncompressed data, base compressed data, differenced uncompressed data and differenced compressed data, and

wherein the output data type is selected based on the network connections speeds and loads, conference server computing speeds and loads, and client computing speeds and loads, and

wherein the conference server is capable of transmitting said shared portion of said display to two or more clients in parallel.

The Court construes the terms as follows. FN2

FN2. The claim term "conferencing system" was initially included as a disputed claim term. *See* Pl.'s Claim Construction Br., Ex. A, B. However, in its Reply Claim Construction Brief, Pixion notes that PlaceWare has concluded that the term does not limit the claim. Based upon PlaceWare's conclusion, "Pixion agrees to withdraw its proposed construction, provided PlaceWare agrees the term is in no way limiting upon the commonly understood meaning of 'conferencing system' as used in the art, and as supported within the '313 Patent." Reply Br. at 3:7-10. Further, Pixion accepts defendant's "concession" that the term is not limited to the "use" of the system, and "that there is no specific requirement to 'collaborate' among participants." Id. at 3:10-12. The term no longer being at issue, the Court does not consider it here.

I. "the conference server updates said version of said shared portion of said display with data updates, after *taking into consideration the network connections speeds and loads and client computing speeds and loads*"

One fundamental dispute between the parties relates to the meaning of "and" in this phrase. Generally, PlaceWare contends that "and" is conjunctive-meaning each and every; Pixion contends that "and" means a plurality. This dispute first arises in connection with the words "taking into consideration." Pixion proposes the following construction: "The examination or assessment of the data transfer between the client and

server that may be based on the network load, and on the net speed of data processed by the client's CPU, and/or the CPU load." In contrast, PlaceWare construes the entire phrase, "taking into consideration the network connections speeds and loads and client computing speeds and loads," and provides are more concise construction: "Separately monitoring and basing a decision on each of the enumerated parameters." The Court finds that separate construction of the phrase "taking into consideration" is unnecessary and distracts from consideration of what is truly in dispute: (i) the meaning of "and" and (ii) whether or not the decision made is based upon the enumerated parameters (i.e., network connections speeds and loads and client computing speeds and loads).

PaceWare reads the conjunction "and" to mean inclusion of each and every of the "enumerated performance factors (the speeds and loads of the client, the conference server and the network) and each of the four output data types [i.e., base uncompressed data, base compressed data, differenced uncompressed data, differenced compressed data]." Def.'s Claim Construction Br. at 4:13-17. Pixion's reading of "and" is far less restrictive.

Pixion insists that the '313 patent teaches a method of assigning attendee clients to one of three classes: Class 1 clients are fast clients on a fast network; Class 2 are slow clients on a fast network; and Class 3 are clients on slow networks and/or slow clients which cannot process and/or receive the data required of Class 2 clients. '313 patent at col. 20:38-43. FN3 The preferred embodiment teaches that "[e]ach attendee client is assigned to a class, on the basis of '... measured characteristics of the client and its network connection." ' Plaintiff construes the above to mean that "a plurality of the characteristics together determine whether a client is Class 1, Class 2, or Class 3, and accordingly, determine the rate and type of data updates." Pl.' s Claim Construction Br. at 8:19-22. However, Pixion's interpretation misses the point as it reads out "and" entirely. While the decision might be *determined* by a plurality of the characteristics, all of the characteristics are *considered*. Each of the patent citations Pixion provides supports this conclusion. *See* col. 10:31-38, 4:22-27, 13:61-14:6 ("Periodically the presenter client will check to see if an update to the capture rectangle needs to be sent out. In considering that need, the presenter client conferencing software considers the CPU loading on the presenter client computer, taking into account any limit the presenter might have placed on what percentage of his or her machine's computing resources can be occupied with block updates, the transmission rate of the presenter's network connection (no sense preparing a block update if the network can't handle it), commands concerning flow control from the server ... *and* other relevant parameters.") (emphasis added), Id. at 13:61-14:6.

FN3. Throughout this Order, the column and line numbers refer to the '313 patent.

Claim 1 teaches that the invention takes into consideration all of the enumerated parameters; however, there is no requirement that the decision ultimately made is based on each of the enumerated parameters. Pixion's use of the term "plurality" is helpful here. The decision on when to send a particular data type "may not be correct until a plurality of the enumerated characteristics are considered together." Pl.'s Claim Construction Br. at 9:14-15. This reading is supported by the language of the '313 patent: "Each attendee client is assigned to a class, on the basis of announced or measured characteristics of the client and its network connection. Reassignment can occur dynamically as the connection or client loading change, or when requested by the client." '313 patent at 20:43-48.

In sum, while the Court agrees that each parameter is considered when making a decision, the Court finds that the inclusion of a requirement that the decision be based on each of the enumerated parameters is too

limiting. Instead, claim 1 teaches a technology that considers each of the enumerated parameters but does not necessarily base its decision upon each parameter. While all are considered, the ultimate decision made may be determined by all, some or one of the parameters.

The Court agrees with Pixion and finds that the invention does not require or specify any limitation to "separately monitor" the network connection speeds and loads and client computing speeds and loads. The PlaceWare construction improperly reads limitations into the claim that are unsupported by the claim language.

Accordingly, the Court construes the claim phrase "taking into consideration the network connections speeds and loads and client computing speeds and loads" as follows:

"monitoring each of the enumerated parameters, and basing a decision thereon."

II. "the conference server is *capable of delivering* the data updates in an output data type selected from base uncompressed data, base compressed data, differenced uncompressed data *and* differenced compressed data"

Pixion offers a broad construction of this disputed phrase: "Ability to cause the transfer of data." PlaceWare, on the other hand provides a more narrow construction of the claim phrase: "Able to generate and transmit each of the enumerated output data types." The Court finds the proper construction somewhere in the middle.

PlaceWare does not use the plain meaning of "capable" or "delivery" and instead requires that the invention both generate and transmit the output data type. Pixion accepts PlaceWare's definition of "deliver" as "transmit." The ability to generate an output data type is an additional limitation, however, not supported by the claim language.

The inclusion of "each" in PlaceWare's construction is ambiguous. PlaceWare cites to the patent to support its inclusion of "each." The patent states, "Fig. 8A is a block diagram showing the flow of data in the server processes ... used to intelligently filter and route one of the input data streams among those that the system may be transporting." Col.18:63-66. This citation, and others provided, serve to demonstrate that the invention can deliver any one of the data types. The inclusion of "each," in the context provided by PlaceWare, is at best confusing and at worst adds a limitation not present in the claim.

At the same time, Pixion's construction provided in its brief is overly-broad. At the hearing, however, Pixion stated that it would accept the following modification of PlaceWare's proposed construction: "Able to transmit the enumerated output data types." Mindful of Pixion's position at the hearing but also mindful of the need for a more narrow construction consistent with the claim language, the Court construes "capable of delivering the data updates in an output data type selected from" as follows:

"Able to transmit data updates selected from any of the enumerated output data types."

III. "the output data is *selected based on* the network connections speeds *and* loads, conference server computing speeds *and* loads, *and* client computing speeds and loads"

The parties initially submitted differing proposed constructions for this claim phrase. Pixion initially offered the following: "To choose from criteria including the measured net speed of data transfer between the client

and server, based at least in part on the network load, and the measured net speed of data processing by the client's and server's CPU, based at least in part on the CPU load." PlaceWare proffered: "Chosen as a result of separately considering each of the following: the network connections speeds and loads, conference server computing speeds and loads, and client computing speeds and loads." At the hearing, Pixion stated that it would agree to PlaceWare's construction if PlaceWare would agree to strike the words "separately" and "each." PlaceWare did not agree to do so. The Court agrees that "separately" should be stricken while "each" remains important for a proper construction of the claim. Therefore, the Court construes "selected based on the network connections speeds and loads, conference server computing speeds and loads, and client computing speeds and loads" as follows:

"Chosen by taking into consideration each of the following: the network connections speeds and loads, conference server computing speed and loads, and client computing speeds and loads."

IV. Additional Disputed Terms

A. "shared portion of a display"

Pixion contends that the "shared portion of the display" is properly construed as "Snap-shots (or portions thereof) of the application screen image shared between conference participants." PlaceWare, on the other hand, proposes the following construction: "Anything the presenter client can have displayed on its screen or a portion thereof." Pixion argues that PlaceWare improperly reads out of the claim the ability of the attendee to have a shared portion displayed on its computer, while PlaceWare argues that Pixion's inclusion of "snap-shots" is inaccurate and too limiting.

The Court finds neither party's construction satisfactory. Firstly, PlaceWare's inclusion of "presenter client" is unnecessarily limiting. The claim itself, without referencing a specific type of client, states that "the at least one client maintains a version of a shared portion of a display." Col. 35:34-35. The identity of the client is unspecified, as is the number of clients involved. FN4 The '313 patent clearly contemplates more complicated scenarios, in which the number and capability of both presenters and attendees is variable. Col. 8:61-67 ("In more complex embodiments, there can be a presenter arbitration mechanism, or multiple presenters may be allowed. The ability for a presenter or an attendee to be involved in any particular conferencing session and the assignment of privileges in the conference can be controlled by requiring appropriate keys [password character strings] from the presenter and the attendees."). The preferred embodiment allows for the possibility of only one attendee client. *See e.g.*, col. 3:59-62 ("But the system is not limited to real-time; thus, for example, archiving is provided. It is not limited multi-point; thus, for example a single user can record for later playback.") Moreover, a conference attendee can become a presenter, col. 8:55-57 ("[a]n attendee can become a presenter by sending the appropriate attendee-to-presenter command to conference server 14."), which undermines any construction limiting the claim term to what the presenter client can have displayed on its screen.

FN4. At the '313 Tutorial, Pixion's expert, David Klausner, stated that there may be more than one presenter at a time.

Secondly, Pixion's inclusion of "snap-shots" in its construction is an unnecessary limitation. There is no indication in the claim language that the "shared portion of a display" is limited to a snapshot of the application screen image as opposed to describing the application screen image itself.

Finally, the Court construes "shared" to refer to the screen image "common" to the client computer[s]. *See* Webster's II New College Dictionary (1995) (defining "share" as "to take part in, use, or have in common"). Accordingly, the Court construes "shared portion of a display" as follows:

"The common screen image or a portion thereof."

B. "data updates"

After supplemental briefing, Pixion's finalproposed construction of "data updates" is "data that is used to change or replace at least one client's version of the shared portion of the display." PlaceWare counters, arguing that Pixion fails to require that the data updates correspond to one or more blocks of the shared portion of the display. Accordingly, PlaceWare offers the following construction: "data that is used to replace one or more blocks of the at least one client's version of the shared portion of the display."

The Court agrees with PlaceWare's explanation that "[a] data type is simply a block with a more recent time stamp than the block to be replaced. There is no requirement that the content of the more recent block be different than the block to be replaced, only that it be more recent in time." Def.'s Br. at 10:23-25; *see* col. 7:57-58, 19:28-33, 20:20-21. While the Court recognizes that the time stamp is an element of the preferred embodiment, it notes that the "later in time" interpretation of "updates" is consistent with the plain language of the claim. Further, the "later in time" construction does not require that there has been a change to all aspects of the data. The term simply describes the more recent version of the data, changed or unchanged. Therefore, the Court construes "data updates" as follows:

"Data sent later in time to replace one or more blocks of at least one client's shared portion of the display."

C. "network connections speeds"

Initially in dispute, the parties now agree to the following construction of "network connection speeds":

"Rates at which the network connections are able to transfer data, as measured or specified."

D. "base uncompressed data"

In the patent specification "base uncompressed data" is described as "raw data." Col. 19:18-19 ("The data can arrive as uncompressed base blocks (raw data)"). However, for the purposes of claim construction, the specification does not offer enough. Pixion construes "base uncompressed data" as "data that has not been compressed." This construction does little more to clarify the relevant content and characteristics of the "data." As suggested in the patent, the data in the claim language is more than just "data." For the purposes of this claim construction, the "raw data" described in the specification is more properly construed as the data that represents the full information of the blocks. PlaceWare offers the following: "An output data type that represents the full information of the blocks of the data update, with no transformation." While giving greater meaning to "base ... data," the "no transformation" portion of the definition is inconsistent with the claim language, which merely says "uncompressed." "Compress" means to reduce the size of a set of data, so that it can be stored in less space or transmitted with less bandwidth. *See Microsoft Computer Dictionary* 102 (4th Ed.1999).

The Court construes "base uncompressed data" as follows:

"An output data type that represents the full information of the blocks that has not been reduced in size"

E. "base compressed data"

Consistent with the above, the Court construes "base compressed data" as follows:

"Base data that has been reduced in size."

F. "differenced uncompressed data"

Consistent with the above, the Court construes "differenced uncompressed data" as follows:

"Changed data that has not been reduced in size."

G. "differenced compressed data"

Consistent with the above, the Court construes "differenced compressed data" as follows:

"Changed data that has been reduced in size."

V. Pixion's Objections to the Declaration of Tony Clark

Pixion objects to numerous paragraphs of the declaration of expert witness Tony Clark. Plaintiff argues that Mr. Clark is offering a legal opinion as to the scope of the '313 patent. The Court SUSTAINS plaintiff's objections to paragraphs 6 (specifically "As such, classes cannot be viewed as a limitation of Claim 1.") and 9 ("That the performance parameters are separately monitored does not mean that the conference server does not consider each parameter. Indeed, the claim language requires that the conference server 'take into consideration' each of the parameters." '). The Court OVERRULES plaintiff's objections to paragraphs 8, 9 ("Similarly, the conference server of Claim 1 separately monitors each performance parameter, and each parameter affects the conference server's selection of an output data type for the data update."), and 10.

CONCLUSION

For the foregoing reasons and for good cause shown, the Court adopts the constructions set out above. [Docket88 and 96].

IT IS SO ORDERED.

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