United States District Court,
N.D. California.

Frank MORROW, on behalf of and as Trustee for the General Unsecured Creditors' Liquidating Trust of at Home Corporation, and on behalf of and in the name of the at Home Liquidating Trust of at Home Corporation,
Plaintiff.
v.
MICROSOFT CORPORATION,
Defendant.

No. C 03-4739 CW

Dec. 7, 2004.

CLAIM CONSTRUCTION ORDER

CLAUDIA WILKEN**, District Judge.**

Plaintiff Frank Morrow and Defendant Microsoft Corporation dispute the meaning of several terms in the claims of U.S. Patent No. 6,122,647 (the ' 647 patent). Plaintiff and Defendant each request that the Court adopt its proposed construction of the disputed terms. The matter was heard on October 1, 2004. Having considered the parties' papers, the evidence cited therein and oral argument, the Court construes the disputed terms as set forth herein.

BACKGROUND

The essential facts are undisputed. At Home Corporation (At Home) was an internet service provider that provided high-speed internet connections through cable infrastructure. On September 19, 2000, At Home was issued the '647 patent, entitled "Dynamic Generation of Contextual Links in Hypertext Documents."

In September, 2001, At Home filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. A joint plan of liquidation, entered into by At Home with two committees of unsecured creditors, created three trusts: the Bondholders' Liquidating Trust, the General Unsecured Creditors' Liquidating Trust, and the At Home Liquidating Trust. Mr. Morrow was appointed trustee of the General Unsecured Creditors' Trust, which the bankruptcy court named At Home's successor for purposes relating to the prosecution and settlement of the estate's litigation. On August 10, 2004, this Court granted Plaintiff's cross-motion for summary adjudication that he has standing to sue Microsoft for infringement of the '647 patent.

According to the Summary of the Invention, it is the object of the '647 patent to provide "a system and method that dynamically generates contextual hypertext links in a source document to other topically relevant documents in response to the content of the source document or user-selected portions thereof." '647 Patent at 2:45-48. Plaintiff alleges that Defendant's Microsoft Office XP products and developer tools,

including the Smart Tag features, infringe the '647 patent.

LEGAL STANDARD

The interpretation of patent claims is a question of law to be decided by the Court. Markman v. Westview Instruments, Inc., 517 U.S. 370, 371-73 (1996). "In construing the claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to 'particularly point[ ] out and distinctly claim[ ] the subject matter which the patentee regards as his invention.' " Interactive Gift Express, Inc. v. Compuserve, Inc., 256 F.3d 1323, 1331 (Fed.Cir.2001)(quoting 35 U.S.C. s. 112, para. 2).

Words in the claim are generally given their ordinary meaning. Texas Digital Sys. Inc. v. Telegenix Inc., 308 F.3d 1193, 1201-02 (Fed.Cir.2002) ("The terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art."). "The ordinary meaning of a claim term may be determined by reviewing a variety of sources, including the claims themselves, other intrinsic evidence including the written description and the prosecution history, and dictionaries and treatises." Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1325 (Fed.Cir.2002)(internal citations omitted).

While words in the claim are generally given their ordinary meaning, the specification or prosecution history may indicate otherwise. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). "[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition is clearly stated in the patent specification or file history." *Id.* However, claims are not limited to the preferred embodiment described in the specification. SRI Int'l v. Matsushita Elec. Corp. of Am., 775 F.2d 1107, 1121 (Fed.Cir.1985)(*en banc,* plurality opinion).

DISCUSSION

I. Hypertext Link, Link, Hyperlink

The parties dispute the meaning of the terms "hypertext link," "link" and "hyperlink" (referred to collectively as "hypertext link") as used in claims 1, 2, 6, 8, 10, 11, 12 and 13 of the '647 patent. The parties agree that the terms are synonymous and may be used interchangeably. Plaintiff initially proposed the following construction for the term "hypertext link": "an association between a portion of a source document and a target document that allows a user to navigate from the source document to the target document by activation of the hypertext link and thereby retrieve the target document." Defendant argued that the term should be construed to mean "a computer feature that includes an anchor and an address of the network location of the target document. Hypertext links allow a user to navigate from the source document to the target document by activation of the link and thereby retrieve the target document."

At the October 1 *Markman* hearing, the Court indicated that Plaintiff's proposed construction was deficient because it did not include language requiring a hypertext link to be implemented by, or to be a feature of, a computer. The Court also indicated that an address of the network location of the target document was not required by the claim language. However, Plaintiff conceded that a hypertext link must include an anchor and information sufficient to get to the target document. Following the October 1 hearing, the parties proposed new constructions for "hypertext link" in an attempt to address the Court's concerns, significantly narrowing their disputes over the claim. FN1

FN1. In submitting supplemental claim construction proposals, the parties do not waive the right to appeal final claim constructions that differ from their original proposals.

Plaintiff now construes "hypertext link" to mean "a computer implemented association between a portion of the source document and a target document that includes an anchor and information sufficient to get to a network location of the target document, and allows a user to navigate from the source document to the target document by activation of the link anchor and thereby retrieve the target document." Defendant's proposed construction of the term is now "a computer feature in a source document that associates a portion of the source document and a target document, and that includes an anchor and information sufficient to get to a network location of the target document, and that allows a user to navigate from the source document to the target document by activation of the link anchor and thereby retrieve the target document."

The parties' argument is thus narrowed to whether a "hypertext link" is a computer feature in the source document, as Defendant argues, or whether it is the association between the source and target documents, as Plaintiff contends. Read in the context of the claims in which it is found, "hypertext link" is properly understood as a "computer implemented association" between a source document and a target document, rather than a feature in the source document itself.

The Court adopts Plaintiff's post- *Markman* hearing construction of the terms "hypertext link," "link" and "hyperlink."

II. User Selected Portion

The parties dispute the meaning of the term "user selected portion" as used in claims 1, 3, 8, 10 and 11 of the '647 patent. Prior to the *Markman* hearing, Plaintiff construed the term to mean "the entirety of, or a part of, a document accessed by, or otherwise specified by, a user." Defendant's initial proposed construction was a "region of preexisting text selected by the user in the document being viewed."

At the October 1 hearing, the Court indicated that the term "region" connotes less than the whole document, despite Defendant's argument in its brief that "region" could mean the document in its entirety. The Court also disapproved of the word "preexisting" in Defendant's proposal. In response to the Court's views, the parties proposed new constructions of the disputed term following the *Markman* hearing. FN2 Defendant now construes the term to mean "the entirety or part, as chosen by a user, of a document that has been accessed by the user." Plaintiff's proposed construction is "the entirety or part, as chosen by the user, of a document accessed by the user, wherein the user can choose the entirety of the document by accessing the document."

FN2. Again, the parties reserve the right to appeal final claim constructions that differ from their initial proposals.

Plaintiff's construction is supported by the '647 patent specification, which states, "Where the links are generated in response to the user's access or command at the time the source document is accessed (rather than when the source document is authored by the publisher or instantiated by a search engine) both the terms that serve as the anchors of the links and the target documents of the links can be dynamically determined." '647 Patent at 2:62-67. The patent thus contemplates that a user can choose to dynamically

create hypertext links from a chosen source document in its entirety by accessing it. The Court therefore adopts Plaintiff's proposed construction of the term "user selected portion."

III. Source Document

The parties dispute the meaning of the term "source document" as used in claims 1, 8, 10, 11 and 12 of the '647 patent. Plaintiff construes the term to mean "a document from which the user navigates to a target document (by activation of a hypertext link)." Defendant's proposed construction is simply "preexisting document."

Defendant's argument for its construction is that, in order for the user to select a portion of a source document (to thereafter generate a hypertext link), that document must be preexisting. That may very well be the case, but standing alone that is not enough. Plainly, not every preexisting document is a source document. A source document serves a particular purpose in the hypertext link "navigational paradigm": "Hypertext links allow a user to navigate from the source document to the target document by activation of the link and thereby retrieve the target document in this fashion." '647 Patent at 1:25-28. Plaintiff derives his construction of "source document" directly from the specification, and the Court therefore adopts it.

IV. Dynamically Generating

The parties dispute the meaning of the term "dynamically generating" as used in claims 1, 8, 10 and 11 of the '647 patent. Defendant construes the term to mean "generating hypertext links after the creation of the source document, as opposed to at the time the source document is created." Plaintiff's proposed construction is "generating in response to user action rather than being fixed or static."

In each of the relevant claims, "dynamically generating" is used in conjunction with "hypertext links," as in "dynamically generating hypertext links." Defendant supports its proposed construction principally by arguing in the negative. Defendant correctly points out that, in the Background section, the invention is contrasted sharply with the "static" generation of hypertext links, whereby hypertext links are determined when the source document is created or published and do not thereafter change. '647 Patent at Cols. 1-2.

In the patent specification, the adverb "dynamically" is regularly used to describe both *how* and *when* hypertext links are generated. *See, e.g.,* '647 Patent at 2:62-67 ("Where the links are generated in response to the user's access or command at the time the source document is accessed ... the links can be dynamically determined"); 2:45-48 ("by providing a system and method that dynamically generates contextual hypertext links in a source document to other topically relevant documents in response to the content of the source document or user-selected portion thereof"). This is true even for the passages cited by Defendant to support its construction. However, Defendant's proposed construction imports a purely temporal restriction to the term "dynamically generated" that is not supported by the intrinsic evidence. Conversely, Plaintiff's construction is consistent with the specification's usage of the term in that it construes "dynamically" to describe both how and when a link is "generated" (in response to user action). The Court adopts Plaintiff's construction of the term "dynamically generating."

V. Tagging Module

The parties dispute the meaning of the term "tagging module" as used in claims 8 and 9 of the '647 patent. Defendant argues that "tagging module" is a "means-plus-function" element governed by Title 35 U.S.C. section 112(6). Plaintiff disagrees and argues that the term should instead be interpreted under ordinary

rules of claim construction.

The parties do not dispute the applicable case law. A means-plus-function claim element generally requires the use of the term "means." Micro Chem., Inc. v. Great Plains Chem. Co., Inc., 194 F.3d 1250, 1257 (Fed.Cir.1999). If the word "means" does not appear in a claim element, a presumption arises that section 112(6) does not apply. Personalized Media Communications, L.L.C. v. ITC, 161 F.3d 696, 703-04 (Fed.Cir.1998). That presumption may be rebutted if no sufficiently definite structure is recited in the claim. Mas-Hamilton Group v. LaGard, Inc., 156 F .3d 1206, 1214 (Fed.Cir.1998).

Here, neither the term "tagging module" nor the claims in which it is found use the word "means." Therefore Defendant must rebut the presumption against section 112(6) applicability by demonstrating that the term "tagging module" is entirely functional and the claims do not recite sufficient structure. However, the presumption is not easily rebutted. According to a recent Federal Circuit opinion, "while it is true that the term [ ] does not bring to mind a particular structure, that point is not dispositive. What is important is whether the term is one that is understood to describe structure, as opposed to a term that is simply a nonce word or a verbal construct that is not recognized as the name of structure and is simply a substitute for the term 'means for.' " Lighting World, Inc. v. Birchwood Lighting, Inc., 382 F.3d 1354, 1360 (Fed.Cir.2004). The court further ruled that the fact that a mechanism is described using functional terms is not by itself dispositive in section 112(6) analysis. *Id*. In holding that the term "connector assembly" did not trigger section 112(6), the *Lighting World* court determined that it should "look[ ] to the dictionary to determine if a disputed term has achieved recognition as a noun denoting structure, even if the noun is derived from the function performed." *Id*.

Defendant argues that the relevant '647 patent claims do not describe a structure sufficient to perform the tagging module's central functions. However, Defendant must demonstrate that the term is not recognized as the name of a structure. In fact, the Microsoft Press Computer Dictionary defines a module as "a collection of routines and data structures that performs a particular task or implements a particular abstract of data type." Bassett Reply Decl., Ex. 3. Microsoft's dictionary goes on to describe the physical parts of a typical module: an interface (which lists data) and an implementation (which contains the source code). Thus, the term "module" denotes structure. Because a claim term may be derived from the function performed and be described using functional terms without triggering section 112(6) analysis, the term "tagging module" also denotes sufficient structure.

For the foregoing reasons, the Court rules that "tagging module" does not trigger section 112(6) analysis.

Each party has submitted a proposed construction of "tagging module" in the event the term is not construed pursuant to section 112(6). FN3 Plaintiff proposes the following:

FN3. Prior to the *Markman* hearing, Defendant had not provided the Court with proposed constructions of "tagging module" or "presentation module" in the event the Court did not construe the terms in accordance with section 112(6). It proposed its constructions in a subsequent brief.

A software product stored on computer readable media and executable by a computer that is connected to exchange information with the knowledge base, and that performs the following functions: (1) receiving a user selected portion of the source document, (2) determining selected terms relevant to the user selected portion, (3) determining topics in the knowledge base associated with the selected terms, and

(4) tagging selected terms in the source document indicating topics in the knowledge base associated with selected terms.

Defendant construes the term to mean as follows:
A software routine that is loaded onto a computer and connected to exchange information with the knowledge base, and that performs the following functions: (1) receiving a user selected portion of the source document, (2) determining selected terms relevant to the user selected portion,

(3) determining topics in the knowledge base associated with the selected terms, and (4) tagging selected terms in the source document indicating topics in the knowledge base associated with selected terms.

Plaintiff's proposed construction is consistent with the '647 patent specification language that states, "The various modules may be provided to the system as software products stored on computer readable media such as CD-ROMS or the like." '647 Patent at 5:39-42. Moreover, Defendant's use of the word "routine" imports improperly functional limitations from the specification to the claim. The Court adopts Plaintiff's construction of the term "tagging module."

VI. Presentation Module

The parties dispute the meaning of the term "presentation module" as used in claims 8 and 9 of the '647 patent. Defendant argues that the term, like "tagging module," should be governed by section 112(6) analysis.

Defendant posits essentially the same arguments as to why "presentation module" is a means-plus-function element as it did to argue that "tagging module" should be interpreted using section 112(6) analysis. Neither the term "presentation module" nor the relevant claims contain the word "means." Again, Defendant has not met the substantial burden required to overcome the presumption that section 112(6) does not apply to claim terms for which the means-plus-function analysis is not expressly invoked.

In the event the Court does not construe "presentation module" in accordance with section 112(6), Plaintiff proposes the following construction:

A software product stored on computer readable media and executable by a computer that is connected to exchange information with the knowledge base, and that is operative to receive the user selected portion of the source document and the selected terms determined by the tagging module, and for each selected term, (1) determines the topics associated with the term, and the at least one document associated with each topic, (2) creates hypertext links to the at least one document associated with the topics, (3) associates the hypertext links with the source document, and (4) presents hypertext links to the user interface.

Defendant proposes:

A software routine that is loaded onto a computer and connected to exchange information with the knowledge base, and that also receives the user selected portion of the source document and the selected terms within that portion determined by the tagging module. For each selected term, the software routine performs the following functions: (1) determines the topics associated with the term, and the at least one document associated with each topic, (2) creating hypertext links to the at least one document associated with the topics, (3) associating the hypertext links with the source document, and (4) presenting the

hypertext links to a user interface.

Again, Plaintiff's proposed construction is consistent with the patent specification language while Defendant's imports limitations from the specification to the claim. The Court adopts Plaintiff's proposed construction of the term "presentation module."

VII. Topic

The parties dispute the meaning of the term "topic" as used in claims 2, 8, 10, 12 and 13 of the '647 patent. Defendant's proposed construction is "a term or phrase representative of what the user selected text is about." Plaintiff argues the "topic" does not require construction and should given its plain and ordinary meaning. In the event term requires construction, Plaintiff proposes "a description of a possible subject annotation for target documents."

The term "topic" does not require construction by this Court; it is given its plain and ordinary meaning.

VIII. Associated With

The parties dispute the meaning of the term "associated with" as used in claims 2, 8, 10, 12 and 13 of the '647 patent. Plaintiff construes the term to mean "related in any of various intangible ways." Defendant's proposed construction is "having a predefined relationship with."

The term "associated with" does not require construction by the Court and is given its plain and ordinary meaning.

IX. Semantically Related

The parties no longer dispute the meaning of the term "semantically related" as used in claim 8 of the '647 patent. The parties agree that the term should be construed as meaning "having a relationship based on meaning."

CONCLUSION

The Court construes the disputed terms and phrases as stated above.

IT IS SO ORDERED.

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