United States District Court,
S.D. Florida.

NISSIM CORP,
Plaintiff.
v.
CLEARPLAY, INC., Matthew Jarman, Lee Jarman, and William Aho,
Defendants.

No. 04-21140-CIV-HUCK/SIMONTON

April 14, 2005.

Bruce S. Sperling, Bruce S. Sperling, Joseph M. Vanek, Daar & Vanek, Thomas A. Vickers, Daar & Vanek, Chicago, IL, John C. Carey, Carey Rodriguez Greenberg & Paul LLP, Miami, FL, Richard James Mockler , III, Greenberg Traurig, P.A., Tampa, FL, Steven B. Pokotilow, Stroock Stroock & Lavan, New York, NY, Christa C. Werder, David Storrs Wood, Baker & Hostetler, Orlando, FL, for Plaintiff.

David Storrs Wood, Christa C. Werder, Baker & Hostetler, Orlando, FL, Evan Michael Rothstein, Gregory S. Tamkin, John T. Kennedy, Stephen D. Bell, Dorsey & Whitney, Denver, CO, Thomas Meeks Carlton Fields, P.A. John C. Carey, Carey Rodriguez Greenberg & Paul LLP, Miami, FL, David J. Jordan, David L. Mortensen, Stoel Rives, Salt Lake City, UT, for Defendants.

ORDER ON CLAIM CONSTRUCTION

PAUL C. HUCK**, District Judge.**

THIS MATTER is before the Court on the issue of construction of the claim language of U.S. Patent No. 5,434,678 issued July 18, 1995 (the "'678 Patent"), U.S. Patent No. 5,589,945 issued December 31, 1996 (the ""5 Patent"), U.S. Patent No. 5,724,472 issued March 3, 1998 (the "'472 Patent"), U.S. Patent No. 5,913,013 issued June 15, 1999 (the "'013 Patent"), and U.S. Patent No. 6,067,401 issued May 23, 2000 (the "'401 Patent"), pursuant to Markman v. Westview Instruments, Inc., 52 F.3d 967 (Fed.Cir.1995) (en banc), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996).

By Order dated March 4, 2005, the Court construed the claim terms and functions of means-plus-function limitations in dispute. Subsequently, the Court requested-and the parties have submitted-initial and response briefs on the construction of the structures of the means-plus-function limitations in dispute, and the Court conducted a hearing thereon on April 7, 2005. Having reviewed the parties' submissions and the record and being otherwise duly advised in the premises, and for the reasons stated in open court, the Court makes the following claim constructions of the structures of means-plus-function limitations. FN1

I. ***Means-Plus-Function Limitation Structures in the '678, '945, '401, and*** ' 013 Patents

Buffering means

The Court identifies the structure of this means-plus-function limitation to be a video buffer.

Communications means

The Court identifies the structure of this means-plus-function limitation to be a communications interface for interfacing with a coaxial or fiber optic cable, a telephone line or a satellite communications system, a laser readable disc, a removable memory subsystem, or a compact portable memory subsystem.

Coordinating means

Defendants contend that any claim containing this means-plus-function limitation should be dismissed as indefinite. As stated by the Federal Circuit, "a challenge to a claim containing a means-plus-function limitation as lacking structural support requires a finding, by clear and convincing evidence, that the specification lacks disclosure of structure sufficient to be understood by one skilled in the art as being adequate to perform the recited function." Budde v. Harley-Davidson, Inc., 250 F.3d 1369, 1376-77 (Fed.Cir.2001). Here, the specification refers to "RAViT's control programs that manage RAViT's resources, and the retrieval and processing of data and video information," and "processing capabilities [that] provide for the retrieval and transmission of selected sequential and non-sequential video segments stored in the disc." '678 Patent col. 13:51-53; 14:67-15:2. This disclosure in the specification refers (albeit genetically) to structure linked to the function of "managing," which the Court construes to include coordinating, two of RAViT's primary resources: retrieving means and buffering means. *See* Medical Instrumentation and Diagnostics Corp. v. Elekta AB, 344 F.3d 1205, 1217 (Fed.Cir.2003) (structure may be found "if the specification contained a statement suggesting that [the function] can be performed by software programs known to those of skill in the art"); Intel Corp. v. VIA Techs., Inc., 319 F.3d 1357, 1366 (Fed.Cir.2003) ("A generic description of the core logic [structure], as adapted to [perform the function] pursuant to the specification, is not inadequate solely because no circuitry is disclosed on how to modify the core logic").

Moreover, Plaintiff presented expert testimony that that corresponding structure was sufficiently disclosed to be understood by one skilled in the art as being adequate to perform the function. The disagreement of Defendants' expert is not "clear and convincing evidence" of the contrary. *See* id. at 1367 (conflicting expert testimony "does not show ... indefiniteness by clear and convincing evidence").

Accordingly, the Court identifies the structure of this means-plus-function limitation to be a processor and associated control programs or software.

Memory means

The Court identifies the structure of this means-plus-function limitation to be one or more memories including a laser readable disc, hard disk, non-volatile resident memory, fixed memory, removable memory, compact portable memory, and/or electronic memory.

Preferencing means

The Court identifies the structure of this means-plus-function limitation to be a user control interface and associated control devices, and a processor and associated control programs or software.

Processing means

The Court identifies the structure of this means-plus-function limitation to be a processor and associated control programs or software.

Random accessing means

For purposes of Claims 1, 4, and 13 of the '678 Patent, the Court identifies the structure of this means-plus-function limitation to be a laser-based random access reading assembly or magnetic random access assembly or electronic device for reading laser readable discs, fixed memories, removable memories, or compact portable memories. For purposes of Claims 8, 10, 15, and 16 of the '678 Patent, the Court identifies the structure to be a laser-based random access reading assembly or magnetic random access assembly for reading laser readable discs, fixed memories, removable memories, or compact portable memories containing (1) two or more reading units, (2) one or more reading units and a video buffer, or (3) one or more reading units and a frame arrangement configuration, and associated control programs or software.

Random access and buffering means FN2

The Court identifies the structure of this means-plus-function limitation to be a video buffer and a laser-based random access reading assembly or magnetic random access assembly for reading laser readable discs, fixed memories, removable memories, or compact portable memories containing (1) two or more reading units, (2) one or more reading units and a video buffer, or (3) one or more reading units and a frame arrangement configuration, and associated control programs or software.

Retrieving means

The Court identifies the structure of this means-plus-function limitation to be a laser-based random access reading assembly or magnetic random access assembly or electronic device for reading laser readable discs, fixed memories, removable memories, or compact portable memories.

Seamless accessing means

The Court identifies the structure of this means-plus-function limitation to be a laser-based random access reading assembly or magnetic random access assembly for reading laser readable discs, fixed memories, removable memories, or compact portable memories containing (1) two or more reading units, (2) one or more reading units and a video buffer, or (3) one or more reading units and a frame arrangement configuration, and associated control programs or software.

Selecting means

The Court identifies the structure of this means-plus-function limitation to be a processor and associated control programs or software.

Transmitting means

The Court identifies the structure of this means-plus-function limitation to be hardware and programming components which transmit, send, or output video, sound data, and/or information such as those found in consumer electronic products, for example laser disc players, VCRs, and personal computers.

III. ***Means-Plus-Function Limitation Structures in the*** '472 Patent

Defining and linking means

The Court identifies the structure of this means-plus-function limitation to be a data structure containing a descriptor for a plurality of video segments and establishing a sequence of frames for a continuous edited version of a video based on a preestablished content rating.

Descriptor means

The Court identifies the structure of this means-plus-function limitation to be a word, term, code, phrase, or designation to describe or categorize a video or a portion of a video.

DONE AND ORDERED.

FN1. Means-plus-function limitations "shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof" 35 U.S.C. s. 112 para. 6. Therefore, the structures construed herein include "equivalents" as contemplated by s. 112 para. 6.

FN2. For purposes of Claims 1, 7, and 13 of the '013 Patent, the Court identifies the function of this mean-plus-function limitation per the claim language (with individual terms as construed in the March 4, 2005 Order) as "playing the selected segments as a seamless version of, and from within, the video program, and for seamlessly skipping segments, within the video program, containing content not included in the version being played."

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