United States District Court,
D. Delaware.

IMX, INC,
Plaintiff.
v.
LENDINGTREE, LLC,
Defendant.

Civ. No. 03-1067-SLR

Dec. 16, 2005.

David Ellis Moore, Richard L. Horwitz, Potter, Anderson & Corroon, LLP, Wilmington, DE, Margaret E. Day, Pro Hac Vice, for for Plaintiff.

Julia Heaney, Morris, Nichols, Arsht & Tunnell, Wilmington, DE, A. Shane Nichols, Pro Hac Vice, for Defendant.

MEMORANDUM ORDER

SUE L. ROBINSON**, District Judge.**

At Wilmington this 14th day of December, 2005, having heard oral argument and having reviewed the papers submitted in connection with the parties' proposed claim construction;

IT IS ORDERED that the disputed claim language in United States Patent No. 5,995,947 ("the "7 patent"), as identified by the above referenced parties, shall be construed consistent with the tenets of claim construction set forth by the United States Court of Appeals for the Federal Circuit in Phillips v. AWH Corp., 415 F.3d 1303 (Fed.Cir.2005), as follows:

1. "Loan application"

Consistent with the claim language, FN1 the specification FN2 and the prosecution history,FN3 the court construes this phrase to mean "a request for an extension of credit in a format that contains sufficiently detailed information to enable a lender to grant or deny the request."

FN1. An independent claim on which several other claims depend, claim 1 of the "7 patent states, "A method for processing **loan applications,** said method including steps of maintaining a database of pending **loan applications** and their statuses at a database server, wherein each party to a loan can search and modify that database consistent with their role in the transaction by requests to said server from a client device identified with their role." "7 patent, col. 14, l. 66-col. 15, l. 5 (filed Sep. 12, 1997).

Claim 7 of the "7 patent claims: "A method as in claim 1, wherein said roles include a lender ... and said lender can search the database for particular desired types of loans, and can **bid on loan applications.**" '947 patent, col. 15, ll. 23-28.

Claim 15 of the "7 patent offers: "A method as in claim 1, including the step of allowing lenders to **bid on pending loan applications** without revealing their rates or pricing strategies." "7 patent, col. 15, ll. 48-50.
FN2. The specification notes that a "loan application includes a loan profile, which comprises information about the prospective loan, a set of bids, each of which comprises an offer to make the loan from a particular lender, and a set of status information, which relates to the processing of the loan application using the system." "7 patent, col. 3, ll. 47-52.

The specification describes the extent of information included in a loan profile (and, therefore, in a loan application), stating:
In a preferred embodiment, at least the following information is included for each loan profile:

information about the loan, including-loan category ...; loan amount; loan type, such as adjustable or fixed interest rate; loan duration

information about the underlying property, including-property type ...; property location ...; seller's asking price; appraised value information about the borrower, including-income and assets, credit history, and any negative information about the borrower (such as bankruptcy filings or debt discharge dates, reports of late mortgage payments).

"7 patent, col. 3, ll. 53-67.
FN3. The prosecution history of the "7 patent includes a December 16, 1998 Office Action, where the Patent Examiner made reference to certain prior art, namely U.S. Patent No. 5,611,052 ("the '052 patent"), in arguing that the '052 patent disclosed certain limitations which are included in the "7 patent. (D.I. 160, ex. B at IMX 035643) The use of the term "loan application" in the '052 patent provides a context for the meaning of that term as understood by one having ordinary skill in the art.
The '052 patent states:

When a potential borrower desires to obtain a loan for financing a home, vehicle, boat, jewelry or other substantial purchase, the potential borrower is commonly required to complete one or more various forms constituting a **loan application.** The information entered on the forms can be voluminous, and can include financial information such as account records, account balances, loan balances or the like, which is of a confidential nature.

'052 patent, col. 1, ll. 12-20 (filed Nov. 1, 1993) (emphasis added). The '052 patent also states that "[i]n

operation, ... **loan application information** is entered into the remote terminal, credit bureau information is accessed by the apparatus, credit scoring is performed, and a **loan application is approved or declined.**" '052 patent, at [57] (emphasis added).

The above evidence shows that, as characterized in the '052 patent, a "loan application" can include several types of "financial information" which may be "voluminous" and will be sufficient for the application to be "approved or denied". This characterization is consistent with the court's construction of "loan application". In its response to the Office Action, IMX noted that the '052 patent was "an example of ... automatic generation of **loan application documents** that is mentioned in the application ...." (D.I. 169, ex. J at 3) (emphasis added) If IMX believed that the inventors of the "7 patent had intended any different meaning for the term "loan application" than that used in the '052 patent, no such assertion was made in its response to the Office Action.

2. "Bid"

Consistent with the claim language,FN4 the specification FN5 and the prosecution history,FN6 the court construes this phrase to mean "an offer to make a loan."

FN4. Claim 3 of the "7 patent states, "A method as in claim 1, wherein said database can be modified by entering **bids on a loan application** from one of a plurality of potential lenders." "7 patent, col. 15, ll. 8-10 (emphasis added). Despite an assertion by IMX to the contrary, there is no language in this claim to suggest that "bids" must be submitted on an application only after loan profile information has been submitted by a loan applicant.

Claim 8 of the "7 patent claims, "a method as in claim 1, wherein said lender is notified when its **bid is accepted.**" "7 patent, col. 15, ll. 29-30 (emphasis added).

FN5. The specification of the "7 patent notes that each "bid" is "**an offer to make [a] loan** from a particular lender." "7 patent, col. 3, ll. 47-52 (emphasis added).

FN6. The prosecution history evidence cited by IMX is consistent with the court's construction of "bid". IMX notes that during prosecution, the attorney for the patent applicant attempted to distinguish the claimed invention from the '052 patent by asserting, "[C]laim 3 is directed toward modifying the database by **entering bids on an application** from a plurality of potential lenders. Thus, the potential lenders each can select an application and bid on that application by entering the bid into the database." (D.I. 159 at 25 (citing D.I. 161, ex. B at IMX 035982)) (emphasis added). It is important to note that claim 3 is directed to the process of modification of the database and does not specify the content of the database before such modification. Claim 3, while describing the option for a potential lender to wait until the receipt of a particular loan application before entering its offer to make a loan into the database, does not require that every bid take place under such circumstances.

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