United States District Court,
S.D. Florida.

EXIGENT TECHNOLOGY, INC,
Plaintiff.
v.
RADIANT TELECOM, INC., et al,
Defendants.

No. 04-22140-CIV

March 16, 2006.

CLAIMS CONSTRUCTION ORDER

PATRICIA A. SEITZ**, District Judge.**

In this patent infringement action, Plaintiff maintains that Defendants' product infringes 13 of the claims of U.S. Patent No. 6,651,885. The specific claims at issue are: Claims 1 through 6, 26, 30, 32 through 34, 47 and 50. The parties initially disputed 35 terms in these claims, namely 23 terms in Claim 1, two terms in Claims 2, 3 and 4, respectively, and one term in Claims 5, 6, 26, 30, 32 and 47, respectively. As to the remaining claims at issue, namely, Claims 33, 34 and 50, there is no dispute as to the construction of their terms.

The parties were able to reach agreement as to the construction of 16 of the disputed terms. Specifically, they were able to agree to: nine terms in Claim 1; FN1 one term in Claims 2, 3, and 4; and all the disputed terms in Claims 26, 30, 32 and 47. In an effort to have a single document listing the construction of all 35 initially disputed claim terms, these undisputed terms are set out below, in the order in which they were raised, *without* boldface type.

FN1. Defendant stipulated to Claim 1 disputed term number 8, "payment authority." However, after the Court asked the parties for their comments on a draft construction order containing the stipulated terms, Defendants informed the Court they wanted to add several words to the stipulation as they feared that the agreed upon definition could be misused. The Court has addressed this issue in a footnote to term 8.

The Court has considered all of the parties' arguments and submissions. In construing the 19 remaining disputed terms, the Court has considered the patent itself, the disputed terms not only within the context of the claims in which they appear but also in the context of the entire patent including the specifications, in light of Phillips v. AHW Corp., 415 F.3d 1303 (Fed.Cir.2005). The Court's construction of the 19 remaining disputed terms are listed below in **bold** in the order in which they were initially raised:

CLAIM 1

1. "**A multi-function transaction processing system**" shall mean a system that performs multiple functions in the processing of commercial transactions.

2. "**Transaction terminal**" shall mean a device located at a commercial or retail establishment capable of

communicating with a control processor and printer assembly to perform a commercial transaction.

3. "**Data entry facility**" shall mean that component of the transaction terminal used for the entry of data or information.

4. "Transaction processor" shall mean a processor that facilitates the operations performed by the transaction terminal. (By agreement of the parties)

5. "Communicatively associated" shall mean capable of communication with. (By agreement of the parties)

6. "**Control processor**" shall mean a processor that enables the operation of the system by processing data and communicating with the transaction processor of the transaction terminal and/or auxiliary devices to define a user account and issue an authorization code in part in response to the payment authority received for a user account.

7. "Payment authority input" shall mean a device or structure through which a payment authority is entered. (By agreement of the parties)

8. "Payment authority" shall mean information or data that represent the/a monetary value **paid** that is input into the/a data entry facility and communicated to the/a control processor. (By agreement of the parties with the Court's addition of the word "paid" after the words "monetary value.") FN2

FN2. After the parties stipulated to this definition, there were additional briefings and hearings on the remaining disputed terms. In some of its arguments. Plaintiff relied on the stipulation for "payment authority." At a March 13, 2006 hearing, the Defendant stated the stipulation could be misused if it was not clear that the construction of the term "payment authority" reflected the amount paid rather than merely the act of inputting figures into the data entry facility. At this juncture. Defendants' misuse concern is not sufficiently well-founded to relieve them of the stipulation which is a proper construction given the entire patent including the specifications as well as the context of the particular claim. However, the Court notes that Plaintiff's original proposed construction of this term used the term "paid," which if added would clarify the stipulated construction without prejudicing Plaintiff at this late date.

9. "Structured to accept a payment authority" shall mean designed, programmed or configured to receive the payment authority. (By agreement of the parties)

10. "**User account**" shall mean the account of the customer or purchaser for which the control processor supplies an authorization code enabling a transaction in accordance with the account's defined value.

11. "**Define a user account**" shall mean to create a new or utilize an existing user account.

12. "**Authorization code**" shall mean a code used to enable a transaction in accordance with the defined value.

13. "**Control processor structured to issue an authorization code associated with said user account at least in response to said payment authority**" shall mean the control processor is programmed to supply an authorization code associated with the user account following receipt of the payment authority.

14. "**Printer assembly**" shall mean a device that prints or encodes information or data on the card assembly.

15. "Printer assembly communicatively associated with said transaction terminal" does not require

construction by agreement of the parties.

16. "**Card assembly**" shall mean the unitary material output of the printer assembly comprised of at least two portions, with one portion containing at least the printed or encoded authorization code.

17. "Printer assembly ... structured to generate a card assembly" shall mean the printer assembly is programmed or capable of printing or encoding information on a card assembly. (By agreement of the parties)

18. "**Said card assembly**" shall mean the same as claim term construction Number 16 above.

19. "**Said second portion including promotional materials**" shall mean the portion of the card assembly, distinct from the portion with the authorization code, which may include advertisements, coupons, discounts or other incentives to the consumer to purchase the card assembly over another product.

20. "Said user account including a defined value at least partially defined by said payment authority" does not need construction because all of its terms have been defined elsewhere in this order.

21. "**Defined value**" shall mean a determined or specified amount.

22. "At least partially defined" shall mean that the defined value is determined or specified, in part, by the payment authority. (By agreement of the parties)

23. "**Said authorization code structured to facilitate a transaction in accordance with said defined value**" shall mean the authorization code enables an initial or subsequent transaction in accordance with the defined value of the user account.

CLAIM 2

24. "**Said transaction that is facilitated by said authorization code includes a telephony communication**" shall mean the transaction enabled by the authorization code includes a communication using a telephone or telephony device.

25. "An extent of said telephony communication being limited by said defined value of said user account associated with said authorization code" does not require construction. (By agreement of the parties)

CLAIM 3

26. "**Said first portion of said card assembly further includes a telephony access number structured to be utilized to initiate said telephony communication with a telephony server**" shall mean the portion of the card assembly bearing the authorization code also includes a telephone number that can be used to initiate a telephony communication.

27. "Telephony server" does not require construction. (By agreement of the parties)

CLAIM 4

28. "Generally elongate" does not require construction. (By agreement of the parties)

29. "**Detachable from said second portion**" shall mean the card assembly is perforated or scored to allow the first portion of the card assembly to be separated from the second portion.

CLAIM 5

30. "**Structured to be substantially compact**" shall mean about the size of a conventional credit card or smaller.

CLAIM 6

31. "**Keypad**" shall mean a mechanical or touch screen input device having keys arranged for data entry.

CLAIM 26

32. "Said transaction terminal further comprises a display screen" shall mean the transaction terminal includes a screen for displaying information. (By agreement of the parties)

CLAIM 30

33. "Structured to maintain records at least of communications between said transaction processor and said control processor" shall mean the control processor is programmed to maintain records of the communications between the transaction processor and the control processor. (By agreement of the parties)

CLAIM 32

34. "Structured to facilitate a telephony communication" shall mean the authorization code enables a telephony communication. (By agreement of the parties)

CLAIM 47

35. "Said authorization code structured to be provided to a merchant in connection with a purchase" shall mean the authorization code can be provided to a merchant in order to authorize a purchase. (By agreement of the parties)

DONE and ORDERED in Miami, Florida, this *15th* day of March, 2006.

S.D.Fla.,2006.
Exigent Technology, Inc. v. Radiant Telecom, Inc.

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