United States District Court,
N.D. California.

SPEEDTRACK, INC,
Plaintiff.
v.
WAL-MART STORES, INC,
Defendant.

No. C 06-7336 PJH

June 19, 2008.

Alan P. Block, Bless Young, Kevin I. Shenkman, Roderick G. Dorman, Hennigan Bennett & Dorman LLP, Los Angeles, CA, for Plaintiff.

ORDER CONSTRUING CLAIMS

PHYLLIS J. HAMILTON**, District Judge.**

On March 19, 2008, the parties' claim construction hearing to construe the disputed terms of U.S. Patent No. 5,544,360 (the "'360 patent") pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), came on before this court. Plaintiff Speedtrack, Inc. ("plaintiff") appeared through their counsel Alan P. Block, Roderick G. Dorman, and Marc Morris. Defendant Wal-Mart Stores, Inc. and intervenor Endeca Technologies, Inc. (collectively "defendants") appeared through their counsel, Steven M. Bauer. FN1 Having read the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby rules as follows.

FN1. For purposes of claim construction, Wal-Mart and Endeca have jointly filed their papers, and are referred to herein collectively as "defendant."

BACKGROUND

Plaintiff is the assignee and owner of U.S. Patent No. 5,544,360 (the "'360 patent"), which is directed at systems and methods for accessing computer files and data information in data storage systems. *See* Revised Joint Claim Construction and Prehearing Statement ("Joint Statement"), Ex. A. Defendant Wal-Mart Stores, Inc. is a retail corporation with an online retail website that permits visitors to search for and buy a variety of products. *See generally* Corrected First Amended Complaint for Patent Infringement, Permanent Injunction, and Damages ("Speedtrack I Complaint"), para.para. 4, 10-11. Plaintiff alleges that defendant Wal-Mart's use and maintenance of its website directly and indirectly infringes the '360 patent by permitting visitors to search for products available for sale "by selecting pre-defined categories descriptive of the products." *See* id.

In April 2007, Endeca Technologies, Inc. filed a complaint in intervention against plaintiff. Endeca's complaint arose out of plaintiff's allegations against defendant Wal-Mart. Wal-Mart is one of Endeca's customers, and utilizes Endeca's Information Access Platform on its Wal-Mart website in order to allow users to search for products online. *See* Endeca's Complaint in Intervention ("Endeca Complaint"), para.para. 7-9. In its complaint in intervention, Endeca alleges that an actual controversy exists over whether its Information Access Platform infringes the '360 patent and whether the '360 patent is invalid. *See* id. at para.para. 8-9. To that end, Endeca alleges two claims against plaintiff: (1) for a declaratory judgment that Endeca's Information Access Platform does not infringe the '360 patent; and (2) for a declaratory judgment that the ' 360 patent is invalid. *See* id. at para.para. 10-18.

A. Background Technology

File-searching systems have been employed for years in order to enable users to conduct a variety of searches through large volumes of information (e.g., a standard library card catalog search system). With the advent of advanced technology, however, file searching systems have been adapted for use in computers, through the use of electronic file searching systems. To that end, the file-searching system covered by the '360 patent describes a system and method for searching and retrieving data stored in a data storage system of a computer.

The inventors of the '360 patent came up with their patented search method in an effort to cure perceived problems associated with the prior art electronic file searching systems. One of the most significant perceived problems, for example, was the inability of the prior art systems to electronically search for documents that logically fit into more than one file folder.

B. The '360 Patent

The '360 patent issued on August 6, 1996. The patent contains 21 claims, some of which are method claims, and many of which are dependent claims. *See* Joint Statement, Ex A. For purposes of the instant litigation, plaintiff asserts independent method claims 1 and 20 against defendants, and dependent method claims 2-7, 11-14, and 21.

The parties now seek construction of ten disputed terms and/or phrases.

DISCUSSION

A. Legal Standard

In construing claims, the court must begin with an examination of the claim language itself. The terms used in the claims are generally given their "ordinary and customary meaning." *See* Phillips v. AWH Corp., 415 F.3d 1303, 1312-13 (Fed.Cir.2005); *see also* Renishaw PLC v. Marposs Societa' per Azioni, 158 F.3d 1243, 1248 (Fed.Cir.1998) ("The claims define the scope of the right to exclude; the claim construction inquiry, therefore, begins and ends in all cases with the actual words of the claim."). This ordinary and customary meaning "is the meaning that the terms would have to a person of ordinary skill in the art in question at the time of the invention ...". *Phillips,* 415 F.3d at 131. A patentee is presumed to have intended the ordinary meaning of a claim term in the absence of an express intent to the contrary. York Products, Inc. v. Central Tractor Farm & Family Ctr., 99 F.3d 1568, 1572 (Fed.Cir.1996).

Generally speaking, the words in a claim are to be interpreted "in light of the intrinsic evidence of record, including the written description, the drawings, and the prosecution history, if in evidence." Teleflex, Inc. v. Ficosa North Am. Corp., 299 F.3d 1313, 1324-25 (Fed.Cir.2002) (citations omitted); *see also* Medrad, Inc. v. MRI Devices Corp., 401 F.3d 1313, 1319 (Fed.Cir.2005) (court looks at "the ordinary meaning in the context of the written description and the prosecution history"). "Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996).

With regard to the intrinsic evidence, the court's examination begins, first, with the claim language. *See id.* Specifically, "the context in which a claim is used in the asserted claim can be highly instructive." Phillips, 415 F.3d at 1314. As part of that context, the court may also consider the other patent claims, both asserted and unasserted. *Id.* For example, as claim terms are normally used consistently throughout a patent, the usage of a term in one claim may illuminate the meaning of the same term in other claims. *Id.* The court may also consider differences between claims to guide in understanding the meaning of particular claim terms.

Second, the claims "must [also] be read in view of the specification, of which they are a part." *Id.* at 1315. When the specification reveals a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess, the inventor's lexicography governs. *Id.* at 1316. Indeed, the specification is to be viewed as the "best source" for understanding a technical term, informed as needed by the prosecution history. *Id.* at 1315. As the Federal Circuit stated in *Phillips,* the specification is "the single best guide to the meaning of a disputed term," and "acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication." 415 F.3d at 1321.

Limitations from the specification, such as from the preferred embodiment, cannot be read into the claims absent an express intention to do so. Teleflex, 299 F.3d at 1326 ("The claims must be read in view of the specification, but limitations from the specification are not to be read into the claims.") (citations omitted); *CCS Fitness,* 288 F.3d at 1366 ("a patentee need not describe in the specification every conceivable and possible future embodiment of his invention."); Altiris v. Symantec Corp., 318 F.3d 1363, 1372 (Fed.Cir.2003) ("resort to the rest of the specification to define a claim term is only appropriate in limited circumstances"). To protect against this, the court should not consult the intrinsic evidence until after reviewing the claims in light of the ordinary meaning of the words themselves. *Texas Digital,* 308 F.3d at 1204-05 (to act otherwise "invites a violation of our precedent counseling against importing limitations into the claims") (citations omitted).

Finally, as part of the intrinsic evidence analysis, the court "should also consider the patent's prosecution history, if it is in evidence." Phillips, 415 F.3d at 1317. The court should take into account, however, that the prosecution history "often lacks the clarity of the specification" and thus is of limited use for claim construction purposes. *Id.*

In most cases, claims can be resolved based on intrinsic evidence. *See* Vitronics, 90 F.3d at 1583. Only if an analysis of the intrinsic evidence fails to resolve any ambiguity in the claim language may the court then rely on extrinsic evidence, such as expert and inventor testimony, dictionaries, and learned treatises. *See* Vitronics, 90 F.3d at 1583 ("In those cases where the public record unambiguously describes the scope of the patented invention, reliance on any extrinsic evidence is improper"). However, the court generally views extrinsic evidence as less reliable than the patent and its prosecution history in determining how to read claim terms, and its consideration is within the court's sound discretion. *See* Phillips, 415 F.3d at 1318-19.

B. Construction of Disputed Terms and Phrases

The parties dispute construction of ten different terms and phrases contained within the claims of the '360 patent, each of which is described in turn below.

1. "category description"

The phrase "category description" is found in claims 1-3, 4-5, 7, 11, and 20 of the '360 patent. *See* Joint Statement, Ex A. Plaintiff contends that the phrase should be construed to mean "information that includes a name that is descriptive of something about a stored file." Defendants contend that "category description" should be construed to mean "information that includes a name defined by the user that is descriptive of something about a stored file."

The claim language provides the starting point for analysis of the disputed phrase at issue. The phrase appears in independent claims 1 and 20, and in several claims that are dependent on these two claims. Claim 1 describes a method for accessing files in a data storage system of a computer system, the method comprising the initial step of "creating in the computer system a category description table containing a plurality of category descriptions, each category description comprising a descriptive name ...". *See* Joint Statement, Ex. A at 16:55-65. Claim 20 describes a similar method for accessing files in a data storage system of a computer system, wherein each file located on the data storage system has a file name, the method comprising the initial step of "defining in the computer system at least one list having a plurality of category descriptions, each category description comprising a descriptive name ...". *See* id. at 20:1-11. Thus, the independent claims both refer to a "category description" as something that is comprised of "a descriptive name"-i.e., a name that is descriptive of something. Any proposed construction must contain this limitation, as it is expressly provided for by the claim language itself. On this point, the parties both agree, as both their proposed constructions construe "category description" to mean "information that includes a name ... that is descriptive of something about a stored file."

They disagree, however, on whether the "information" that comprises a category description is also limited to include a name that is specifically defined by the user. Plaintiff asserts that no "user-defined" limitation is permissible, as doing so would contradict the express teachings of the claim language, while defendants contend that such a limitation is clearly implicated by the claim language, as evidenced by the specification and prosecution history.

Ultimately, plaintiff's proposed construction is truer to the claim language. As noted above, the language of independent claims 1 and 20 clearly defines "category description" with reference to a "descriptive name." *See* Joint Statement, Ex. A at 16:55-65. It contains no direct support, however, for a definition of "category description" that includes a 'user-defined' descriptive name. *See* id. Moreover, subsequent dependent claims add *additional* requirements to the "category description" defined in independent claim 1, which requirements *do* reference a user-defined limitation. Claim 2, for example, states that it covers the method described in claim 1, "wherein each category description *comprises a user defined category name and a unique category description identifier created by the computer system*." *See* Joint Statement, Ex. A at 17:12-15 (emphasis added); *see also* id. at 18:11-17 (Claim 7) (similar). As plaintiff correctly points out, the fact that the dependent claims further define "category description," as it was defined in claim 1, with reference to a user-defined category limitation, supports the argument that the phrase-standing alone and as first referenced in claim 1-should be construed *without* that limitation. *See, e.g .,* Phillips, 415 F.3d 1303, 1315 (Fed.Cir.2005) ("the presence of a dependent claim that adds a particular limitation gives rise to a

presumption that the limitation in question is not present in the independent claim.").

It is true enough, as defendants note, that the specification contains several references to user-defined category descriptions. *See id.* at 3:66-4:2 ("the invention allows a user to define categories for files stored in a computer system, and to edit such categories as they are used, to designate all applicable categories for each file, and to link categories in user-definable ways"); *id.* at 4:58-62 ("The present invention consists of a computer file control system [that] includes a File Category Table ("FCT") and a File Information Directory ("FID") to store information *about user-defined categories* and information linking such categories to specific files."); *id.* at 5:4-11 ("in the preferred embodiment, the FCT is a table that can be modeled as having a set of columns labeled by category-type, with entries comprising lists of category names or descriptions. *Each category description is a descriptive name defined by the user*") (emphasis added). This supports, as defendants urge, the notion that the present invention covers a search method that is premised on user-defined category descriptions, which in turn form a part of the process that ultimately allows for a search of specific files.

While the specification makes clear that user-defined category descriptions are contemplated by the '360 patent, however, these references are insufficient to demonstrate that the patent is *limited* to coverage of user-defined category descriptions. For the claim language-as noted above-distinguishes between category descriptions that are user-defined, and those that are not. By making this distinction, the claim language itself expressly defines category descriptions in a broader fashion than defendants propose. *See, e.g.,* Phillips, 415 F.3d at 1314 (the usage of a term in one claim may illuminate the meaning of the same term in other claims); *see also* Renishaw PLC, 158 F.3d at 1248 ("The claims define the scope of the right to exclude; the claim construction inquiry, therefore, begins and ends in all cases with the actual words of the claim."). Thus, it would be improper to allow the user-defined limitation from the specification to trump the clear import of the actual claim language.

Moreover, it is worth noting that the specification does not speak exclusively of user-defined category descriptions. An alternative description of a preferred embodiment states: "in the preferred embodiment, the user is *provided with* an FCT containing sample category descriptions. These category descriptions may be changed or deleted, and new categories may be added." *See* Joint Statement, Ex. A at 5:28-31 (emphasis added). The obvious import of this description is that, in at least one preferred embodiment, it is the computer, and not the user, who creates category descriptions. The specification can thus also be read to support what the claim language in fact evidences: that the ' 360 patent covers category descriptions that *may* include more than just a user-defined name. Namely, they may also include computer-defined names. As such, the specification does not actually require a user-defined limitation. *See, e.g.,* Specialty Composites v. Cabot Corp., 845 F.2d 981, 987 (Fed.Cir.1988) ("[w]here a specification does not require a limitation, that limitation should not be read from the specification into the claims").

In sum, the claim language prevents a limitation that restricts the definition of "category description" to user-defined names only, and the specification should be read consistently with this broader definition. The court therefore construes the phrase "category description" as follows: **"information that includes a name that is descriptive of something about a stored file."**

2. "category description table"

This phrase is found in claims 1, and 4-5 of the '360 patent. *See* Joint Statement, Ex. A. Plaintiff contends that "category description table" should be construed to mean "at least one list containing a plurality of

category descriptions." Defendants contend that "category description table" should be construed to mean "a two-dimensional array, linked list, fixed or variable record length table, etc., that stores information about user-defined categories."

Preliminarily, there are two real points of contention between the parties. First, they dispute the meaning of the term "table," and specifically, whether "table" should be construed as a "list," or as a broader series of possible configurations that include two-dimensional arrays, linked lists, and fixed or variable record length tables. Second, the parties revisit their initial dispute over inclusion of a user-defined limitation.

In some respects, plaintiff's proposed construction makes sense. Beginning with the claim language, for example, the phrase "category description table" appears in only one independent claim-claim 1-and two dependent claims, claims 4-5. Claim 1, in discussing the category description table, states that it contains "a plurality of category descriptions, each category description comprising a descriptive name, the category descriptions having no predefined hierarchical relationship with such list or each other ...". *See* '360 Patent at 16:61-65. In other words, the "category description table" is made up of a plurality of category descriptions, which category descriptions have no predefined hierarchical relationship with "[the] list" of category descriptions or with each other. Thus, the claim language itself supports plaintiff's construction of "category description table" as "at least one list containing a plurality of category descriptions." Claims 4 and 5, which are dependent on claim 1, neither add nor detract from this understanding of "category description table," since neither claim references the phrase in connection with any modifier that adds further clarity to its meaning.

The specification also provides some support for plaintiff's construction. While both parties acknowledge that the specification does not expressly define the entirety of the phrase "category description table" in any one place, they do agree that the specification provides insight as to what is meant by the phrase "table." The specification's description of Figure 3, for example, describes "an example of a File Category Table ["FCT"] in accordance with the present invention." *See id*. at 5:32-33. Turning to that drawing, Figure 3 does, in fact, appear to include "lists" of relevant information-again, an observation that would support plaintiff's proposed construction.

Defendants, however, have correctly pointed out that the specification *also* states that a "table" can be expressed in any desired manner, and is therefore not limited to a "list," as required by plaintiff's construction. Specifically, the specification further states: "in implementing the invention, the table structure shown can be configured in any desired manner, such as an array, linked list, fixed or variable record length table using sequential or hashed access, etc." *See id*. at 5:36-39 (emphasis added). Accordingly, the specification teaches that, while a category description table can be defined with reference to a "list," it can *also* be defined with reference to an array, record length table, or structured in any other manner.

At first blush, this observation points away from plaintiff's proposed construction and toward defendants, which incorporates the various possibilities for table structure that are clearly contemplated by the specification. However, defendants' proposed construction ultimately fails to persuade. This is because, even though their proposed construction is more consistent with the patent's teachings regarding the meaning of "table," defendants' construction also improperly limits a "category description table" to one that contains information about "user-defined categories." For the reasons already discussed in connection with the term "category description," the court rejects defendants' proposed limitation.

In sum, therefore, the court finds that neither of the parties' proposed constructions is wholly consistent with

the intrinsic evidence, and that each side's proposal includes certain limitations that are partly, if not wholly, appropriate. As such, and further based on the parties' willingness to concede certain points at the hearing on claim construction, the court adopts a modified construction for the phrase "category description table," as follows: **"at least one list or array, configured in any desired manner, or taking any form, containing a plurality of category descriptions."**

3. "file information directory"

This phrase is found in claims 1, 5, 7, and 11 of the '360 patent. *See* Joint Statement, Ex. A. Plaintiff contends that no construction of "file information directory" is necessary. However, should it be construed, the court should construe it to mean "a directory comprising information corresponding to at least one file." Defendants contend that "file information directory" should be construed to mean "a table that stores information linking user-defined categories to specific files."

Starting with the claim language, claim 1 of the patent describes the "file information directory" as "comprising at least one entry corresponding to a file on the data storage system, each entry comprising at least a unique file identifier for the corresponding file, and a set of category descriptions selected from the category description table ...". *See* Joint Statement, Ex. A at 16:66-17:4. Dependent claim 5 covers the process by which the file information directory is created, and this process is comprised in part of "creating a new entry in the file information directory; storing in the new entry the file identifier of the selected file; and storing in the new entry the category description identifier of each of the selected category descriptions." *See* id. at 17:31-45. Thus, read in harmony, the claim language makes clear that a file information directory is made up of at least one entry that corresponds to a file, which entry in turn contains a file identifier for the selected file, and category descriptions. The claim language says nothing about the particular format that the file information directory takes (e.g., a table versus a list), and it says nothing about the purposes for which the information comprising the file information directory will be used (e.g., for purposes of linking user-defined categories to specific files). The claim language therefore favors plaintiff's construction.

Turning to the specification, it first introduces the description of "file information directory" in a statement describing the present invention as a whole. The specification states: "The present invention consists of a computer file control system th[at] includes a File Category Table ("FCT") and a File Information Directory ("FID") to store information about user-defined categories and information linking such categories to specific files ." See Joint Statement, Ex. A at 4:58-62. Then, in discussing the structure of the FID, the specification states that "in the preferred embodiment, the FID is a table that can be modeled as having a set of columns labeled by file name, file location [ ], creation and/or last update time and date for the file," etc. *See* id. at 6:17-22. The specification goes on to describe Figure 4 of the patent, which "shows an example of a File Information Directory in accordance with the present invention." *See* id. at 6:26-27. And turning to Figure 4, there are 5 different columns depicted, all of which contain lists of information about sample files. *See* Joint Statement, Ex. A at Figure 4. The information includes file identifying information such as file names, locations, and creation dates, as well as category descriptions. *See* id.

Thus, while the claim language teaches that a file information directory is made up of at least one entry that corresponds to a file, which entry includes a file identifier and category descriptions, the specification further teaches that in the preferred embodiment, the file information directory is expressed as a "table" that contains particular information about files-including the information about file identifiers and category descriptions.

Defendants urge the court, on this basis, to adopt a construction that would define "file information directory" in part as a "table." However, such a construction is improper. As a matter of law, limitations from the preferred embodiment cannot be read into the claims absent an express intention to do so, and the court can glean no express intention to limit the meaning of file information directory to "table." Teleflex, 299 F.3d at 1326. Indeed, as discussed above in connection with the prior disputed term, the specification elsewhere explains that a "table" structure "can be configured in any desired manner, such as an array, linked list, fixed or variable record length table ...". *See id*. at 5:36-39. To specifically construe the phrase "file information directory" as a "table," therefore, when the term "table" is in turn defined to include any desired format (some of which may not strictly conform to the obvious structure for a 'table'), is not warranted.

In sum, therefore, while the specification supports the notion that a file information directory *can* be a table, it may not properly be limited to such. Accordingly, defendants' proposed construction is inconsistent with the intrinsic evidence. Plaintiff's proposed construction, by contrast, is consistent with both the claim language and the specification, since it allows the "file information directory" to be defined with reference to the information that it must include under the claim language, but does not limit the definition of "directory" to a particular format. The court therefore adopts plaintiff's proposed construction, and construes the term "file information directory" as: **"a directory comprising information corresponding to at least one file."**

4. "having no predefined hierarchical relationship"

This phrase is found in claims 1 and 20 of the '360 patent. *See* Joint Statement, Ex A. Originally, plaintiff contended that "having no predefined hierarchical relationship" should be construed to mean "the category descriptions are not initially organized into a single, pre-defined tree-type directory structure where every node has a unique parent." Defendants contended that the disputed phrase should be construed to mean "not ranked into levels of subordination and superordination."

At the hearing on claim construction, however, after hearing the parties' arguments in support of their differing constructions, the court requested that the parties attempt to reach agreement as to a jointly proposed construction. On March 26, the parties duly submitted a stipulated proposed construction to the court. Having reviewed that jointly proposed construction, the court hereby adopts it, and construes the phrase "having no predefined hierarchical relationship" as follows: **"The category descriptions have no predefined hierarchical relationship. A hierarchical relationship is a relationship that pertains to a hierarchy. A hierarchy is a structure in which components are ranked into levels of subordination; each component has zero, one, or more subordinates; and no component has more than one superordinate component."**

5. "search filter"

This phrase is found in claims 1, 7, 11, and 20 of the '360 patent. *See* Joint Statement, Ex. A. Plaintiff contends that "search filter" should be construed to mean "a set of one or more category descriptions (depending upon the context of claim 1 or claim 20) and at least one logical operator if there is more than one category description in the search filter that is used to search ." Defendants contend that "search filter" should be construed to mean, for claim 1, "a program that takes as an input two or more category descriptions chosen by the user to locate files" and for claim 20, "a program that takes as an input at least one category description chosen by the user to locate files."

Beginning with the claim language, claim 1 refers to a "search filter" as "comprising a set of category descriptions ..." and claim 20 refers to a "search filter of at least one category description selected from at least one displayed defined list." *See* Joint Statement, Ex. A at 17:5-11; 20:22-24. Thus, depending on the claim, a "search filter" will include at least one (but can include more) category description(s). *See also* id. at 10:41-43; 10 :54-55. On this point, at least, both parties' proposed constructions are acceptable, as both account for the fact that the claim language requires at least one category description, depending on which claim is at issue.

As to a further definition for what a search filter is, the specification answers this question directly. It states that search filters are "search terms in logically defined combinations ...". *See* id. at 2:58-53 ("the user then may search for files by file word content by defining "search filters, *which are search terms in logically defined combinations*") (emphasis added); *see also* id. at 11:3-10 ("In addition to selecting category descriptions for the search filter, the user preferably may also group the categories, and relate the groups with logical connectors"). Thus, any proposed construction of "search filter" should also incorporate the requirement that search terms are to be "logically defined." FN2 *See* Phillips, 415 F.3d at 1316 (when the specification reveals a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess, the inventor's lexicography governs). Of the two competing constructions before the court, however, only plaintiff's incorporates this requirement, by including the limitation that the search filter include a "logical operator" if more than one category description is utilized. Defendants' proposed construction, by contrast, appears to ignore the specification's express definition entirely.

FN2. Defendants correctly point out that the above definition for "search filter" is contained within the specification's discussion of the prior art and pre-existing data retrieval systems, *see* Joint Statement, Ex. A at 2:58-53. However, while this is true, it does not change the fact that in the midst of such discussion, the patentees included their own definition for what a "search filter" is.

Defendants' proposed construction also suffers from other deficiencies. Most significantly, defendants' construction of "search filter" as a "program" finds no support in either the claim language or the specification. Indeed, defendants have cited no authority in either source. Rather, defendants' insertion of the word "program" is taken from two technical dictionaries that define "filter" alone to mean "program," and "device *or* program," respectively. *See* Cabral Decl., Ex. C at 171 (emphasis added). In the court's view, however, reliance on the technical dictionary definition of "filter" alone to import a "program" limitation into the broader phrase "search filter" is misguided-particularly since at least one of the dictionary terms relied on by defendants is inconclusive as to whether "filter" means a program *or* a device, and since defendants have not cited to any portion of the claim language or specification that supports the "program" limitation.FN3

FN3. At the hearing, defendants' counsel indicated that defendants are amenable to taking the word "program" out and replacing it with either "device" or "software feature." However, this change does nothing to remedy the issue, for it still seeks to import into the phrase "search filter" a limitation that finds no support in the claim language or specification.

Defendants have also, in the court's view, once again improperly inserted a user-definition limitation into their proposed construction. Defendants' construction requires that the category descriptions comprising the search filter must be "chosen by the user." As has already been discussed herein, however, the claim

language and specification do not permit a construction that would limit category descriptions to those that are chosen by the user. In their briefing and at the hearing, defendants attempted to articulate with a bit more precision that their construction is one that emphasizes, not so much that the category descriptions themselves must be user-defined (which is their position with respect to the first disputed term at issue), but that with respect to the actual search filter, it is the user who actually defines the search filter. Defendants rely on the specification as evidence of this. *See* Joint Statement, Ex. A at 4:5-14; 10:40-46; 10:54-55; 13:25-26. However, while defendants are correct that the specification refers to the user's role in defining the search filter, this is a separate and distinct inquiry from what the "search filter" itself *is*. In other words, instead of arguing the plain and ordinary meaning of the phrase itself, defendants seek to add a limitation regarding the term's *function*. This argument, though, is one that is better left to the infringement stage of the litigation, where defendants can more appropriately argue that the Information Access Platform they utilize does not read upon the claim terms, as construed herein.

To the extent plaintiff also objects to defendants' proposed construction because it requires that a search filter "locate files," the court finds that defendants have again improperly sought to limit the phrase at issue in accordance with its function, rather than in accordance with its ordinary meaning as disclosed by the specification. Moreover, even if the court were to find that this limitation *is* generally supported by the claim language and specification, defendants' proposed construction remains deficient for the reasons expressed above.

In sum, the court finds that plaintiff's construction is most consistent with the intrinsic evidence. As such, the court hereby construes the phrase "search filter" to mean: **"a set of one or more category descriptions (depending upon the context of claim 1 or claim 20) and at least one logical operator if there is more than one category description in the search filter that is used to search ."**

6. "file"

This phrase is found in claims 1-7, 11-14, and 20-21 of the '360 patent. In all claims, the phrase is used in a variety of references, including: "a method of accessing *files,*" "selecting one of the displayed *file* names;" "opening the file corresponding to the selected *file* name," etc. *See generally* Joint Statement, Ex. A at 16:54-20:44. Plaintiff contends that "file" should be construed to mean "any collection of data or information stored on a computer system." Defendants contend that "file" should be construed to mean "any collection of data or information stored on a computer system as a unit."

Preliminarily, the parties' proposed constructions are identical, with the exception of defendants' addition of the phrase "as a unit ." Defendants contend that this additional phrase is needed in order to clarify the fact that a "file" does not relate to just a single record or piece of information stored anywhere on a computer, but rather, refers to a set of records, or a collection of information, which must necessarily be treated together as a single unit. For support, defendants invoke several technical dictionaries.

Fortunately, the intrinsic evidence resolves the parties' dispute in a straightforward manner, for this is an instance in which the patentees acted as their own lexicographers, by expressly defining the term "file" in the patent specification. Specifically, the patentees noted, "[t]he term 'file' should be understood to mean any collection of data or information stored on a computer system." *See* '360 Patent at 4:64-66. Under the ordinary rules of claim interpretation, this definition governs, notwithstanding defendants' reliance on technical dictionary definitions to prove that those dictionary definitions (which include the additional "as a unit" limitation, apply). *See, e.g.,* Phillips, 415 F.3d at 1316 (when the specification reveals a special

definition given to a claim term by the patentee that differs from the meaning it would otherwise possess, the inventor's lexicography governs.). Accordingly, plaintiff's proposed construction-which sets forth the same definition provided in the specification-controls here.

Defendants, moreover, fail to identify anything in the claim language or specification that warrants inclusion of the "as a unit" limitation. The only intrinsic evidence they rely on is a statement made by plaintiff's attorney during prosecution of the '360 patent, to the effect that the present invention "is not directed to generating queries or data sets for a database, but is a method for accessing files in a data storage system." *See* Notice of Errata re Defendants' Responsive Claim Construction Brief, Ex. B1 at SPEED 000143. This single reference, however, does not constitute a disavowal of the special definition given to the term "file" within the specification. Moreover, as plaintiff points out in its reply, the statement that defendants rely on was used in connection with the patentees' efforts to distinguish the present invention from the prior art and specifically, to distinguish the present method for "accessing files" from the prior art's "query by example" system in which users build queries for a database. *See* id. While the two methods were distinguished, however, there was nothing in the distinction that indisputably leads to defendants' conclusion that a "file" must be construed as a collection of data or information stored on a computer system "as a unit."

Accordingly, and based on all the above, the court adopts plaintiff's proposed construction, and construes "file" as: **"any collection of data or information stored on a computer system."**

7. "such list"

This phrase is found in claims 1 and 20 of the '360 patent. *See* Joint Statement, Ex. A. The parties' only dispute, however, is whether "such list," as used in claim 1 of the '360 patent, is indefinite. Defendants assert that it is, since there is no antecedent basis for the phrase, while plaintiff argues to the contrary, and contends that the phrase should be construed to refer to a "category description table."

The relevant test for indefiniteness is not simply whether an antecedent basis is lacking with respect to the disputed claim language, but whether a person skilled in the art could reasonably ascertain the meaning of "such list" as used in the claim language. *See, e.g.,* Energizer Holdings, Inc. v. Int'l Trade Com'n, 435 F.3d 1366, 1370 (Fed.Cir.2006) ("[t]he definiteness inquiry 'focuses on whether those skilled in the art would understand the scope of the claim when the claim is read in light of the rest of the specification' "); Bancorp Servs., L.L.C. v. Hartford Life Ins. Co., 359 F.3d 1367, 1371 (Fed.Cir.2004) ("In ruling on a claim of patent indefiniteness, a court must determine whether those skilled in the art would understand what is claimed when the claim is read in light of the specification").

Applying this test here, the court concludes that a person skilled in the art could reasonably ascertain the meaning of "such list," as used in the language of claim 1. Claim 1 covers, in part, a "category description table" which contains "a plurality of category descriptions ... the category descriptions having no predefined hierarchical relationship with such list or each other ...". *See* Joint Statement, Ex. A at 16:60-65. The reasonable inference that a person of ordinary skill in the art would likely make is that "such list" refers to the "category description table," which is comprised of a plurality of category descriptions. Not only does the language of claim 1 itself logically suggest as much, but as plaintiff notes, the language of claim 20 also supports this inference, as it more directly refers to a "list having a plurality of category descriptions." *See id.* at 20:7-9. The specification also supports this inference, since it refers to a category description table as a "list" of category descriptions, among other possible configurations. *See id.* at 5:36-39.

Defendants seize on the specification's description of multiple possible configurations for a category description table, and argue that in view of the possibilities, no one skilled in the art could reasonably ascertain that the reference to category description table in claim 1 could refer to "such list." But this argument is somewhat of a red herring. For the specification's references to possible configurations for a "category description table" do not alter the fact that a person skilled in the art would reasonably conclude that, in the claim language, "such list" refers to "category description table" in the first instance. Rather, defendants' objection really goes to the argument that, assuming "such list" is construed to mean "category description table," a "category description table" should not be limited to just a "list"-a point that goes in turn to the proper construction to be given the phrase "category description table" (not "such list"), and which was raised and resolved elsewhere herein.

In sum, therefore, the court concludes that "such list" is not indefinite for lack of an antecedent basis. The court therefore adopts plaintiff's construction and construes "such list" as: **"a category description table."**

8. "means for reading and writing data from the data storage system, displaying information, and accepting user input"

This phrase is found in claims 1 and 20 of the '360 patent. *See* Joint Statement, Ex. A. Originally, plaintiff contended that no construction is necessary, but that if the court does construe the language, it should be construed as "a computer system, embodied in either a single computer or a distributed environment, such as networked computers, having a hard disk drive (including device drivers) and all equivalent structures, a computer display and all equivalent structures, and a computer mouse (including device drivers) and all equivalent structures." Defendants, by contrast, contended that the disputed phrase should be construed to mean "a computer system, embodied in a single computer having a hard disk drive, a computer display, and a computer mouse."

At the hearing, however, the parties stated that they had narrowed their dispute, and now present somewhat modified proposed constructions. Namely, plaintiff now contends that the phrase at issue should be construed as "a computer system, embodied in either a single computer or a distributed environment, having a hard disk drive, a computer display, and a computer mouse, and equivalents thereto." Defendants largely agree with this modified construction, except that they would omit the construction's reference to "either" and "or a distributed environment." The only issue now before the court is thus whether the disputed term should be construed to cover a single computer system, or in addition to a single computer system, a distributed environment such as networked computers.

Preliminarily, the court is at somewhat of a loss as to how the disputed term relates to the issue that the parties have placed before the court-i.e., whether the patent covers a single computer system or a distributed environment, as well. The parties initially argued that the disputed term is a means-plus-function phrase, which must be construed accordingly. However, the "having means" phrase at issue does not obviously invoke a dispute over the question of single computer system v. network. Moreover, the phrase is not even a proper means-plus-function phrase. The disputed term is located in the preamble to Claims 1 and 20, which both go on to recite a step by step method that gives life to the claimed "method for accessing files in a data storage system of a computer system ...". *See, e.g.,* Joint Statement, Ex. A at 16:54-17:12. In the court's view, the brief portion of the preamble that the parties have chosen to dispute here does not actually constitute or explain any claim limitations that are elsewhere developed and explained in the body of the claims. As such, the disputed phrase cannot properly be used to construe any relevant claim limitations. *See, e.g.,* Altiris, Inc. v. Symantec Corp., 318 F.3d 1363, 1371 (Fed.Cir.2003) (noting that "[i]t is well settled that

if the body of the claim sets out the complete invention, and the preamble is not necessary to give life, meaning and vitality to the claim, then the preamble is of no significance to claim construction because it cannot be said to constitute or explain a claim limitation"). In sum, the court is not convinced that the disputed language is a proper claim limitation in the first place, let alone one that can be construed as a means-plus-function limitation. *See, e.g.,* Biomedino, LLC v. Waters Technologies Corp., 490 F.3d 946, 950 (Fed.Cir.2007).

Indeed, the court finds that, although not expressly stated as such, what the parties are really seeking is a construction of the straightforward phrase "computer system." This phrase can readily be found in the claim language. *See* Joint Statement, Ex. A at 16:60 (language of Claim 1, subsection (a)). Since the parties' arguments make clear-even if their Joint Statement does not-that both parties seek construction of the meaning of "computer phrase," and in the interests of finality, the court proceeds to construe it.

The specification clearly refers to the present invention as one that covers computer networks, in addition to single computer systems. *See, e.g,* '360 Patent at 16:10-15 ("Many other implementations of these ideas are possible ... [f]or example, in a large office *or on a public or private electronic network,* communication between people can be difficult.... *Using the invention,* a category description list could be defined for all possible topics (with constant updating *by the network administrator ...*)) (emphasis added); *see id.* at 16:41-47 ("A number of embodiments of the present invention have been described. Nevertheless, it will be understood that various modifications may be made without departing from the spirit and scope of the invention. For example, although the above description has been made with respect to a single computer system, that term is meant to include distributed data storage environments, *such as networked computers*") (emphasis added). Defendants, by contrast, have submitted no adequate response to these teachings from the specification. Nor has the court found anything else in the intrinsic evidence (or elsewhere) that persuades it that the above language should not be given effect.

In sum, based upon the re-focused disputed term proposed at the hearing, the court construes the phrase "computer system" as: **"a computer system, embodied in either a single computer or a distributed environment, having a hard disk drive, a computer display, and a computer mouse, and equivalents thereto."**

9. "user"

This phrase is found in claims 1-2, 4-7, 11, 13, and 20-21 of the '360 patent. *See* Joint Statement, Ex. A. Plaintiff contends that "user" should be construed as "one that uses-may be a person or another computer," and defendants contend that "user" should be construed as "a person that defines categories, associates files with particular categories, and defines the search filter."

Defendants are correct that much of the specification refers to "a user," which most logically refers to a natural person. *See* Joint Statement, Ex. A at 3:66-4:2 ("The invention allows a user to define categories for files stored in a computer system ..."); id. at 4:7-8 ("the user defines a filter which will always find at least one file"); id. at 4:9-15 (repeated references to steps taken by "the user"). Defendants are further correct that, in doing so, the specification clearly contemplates that a "user" defines category descriptions, can associate files with category descriptions, and can further define search filters. However, the specification also states that the claimed invention covers embodiments that *do not* limit the definition of user to a person. For as plaintiff points out, the specification states: "it will be understood that various modifications may be made without departing from the spirit *and scope of the invention* .... although the above description has

contemplated that the 'user' is a person, the invention can be readily adapted to interact *with another computer as the 'user*.' " *See* id. at 16:41-50 (emphasis added). In other words, the specification clearly states that the scope of the claim language should be interpreted to include not just natural persons, but also computers, who may under the appropriate circumstances be considered "users."

Moreover, while defendants have understandably relied on Z4 Techs., Inc. v. Microsoft Corp., 507 F.3d 1340, 1348 (Fed.Cir.2007), in support of their position, this case is not ultimately helpful to them. It is true enough that in Z4, the Federal Circuit expressly found that the term "user" did not include "computers" and had to be limited to "persons" only. *See id*. However, the case is distinguishable from the facts here. The governing claim language in *Z4,* for example, contained a side by side recitation of "user" and "computer" as distinct entities. *See id*. (In the claim recitations at issue, "the 'user' and the 'computer' are 'distinct entities' "). Here, the claim language contains no such mutually exclusive distinction. Indeed, even the claim language that references both "a user defined category name and a unique category description identifier created by the computer system"-e.g., as in claim 2-does not, in the court's view, alter this conclusion. *See, e.g.,* Joint Statement, Ex. A at 17:12-15. This is because, using plaintiff's construction here, claim 2 should be read as referring to the fact that the *category names* can be defined either by a person or computer, while the category description *identifier* (e.g., the file location info) is created solely by the computer.

In sum, for all the above reasons, the court adopts plaintiff's construction and construes the phrase "user" as: **"one that uses-may be a person or another computer."**

10. "creating in the computer system"

This phrase is found in claim 1, and referenced by dependent claims 4, 5, and 7 of the '360 patent. *See* Joint Statement, Ex. A. Plaintiff contends that "creating in the computer system" does not need to be construed, but that if the court does construe it, it should be construed as "bringing into existence in the computer system." Defendants contend that "creating in the computer system" is indefinite. The crux of the parties' dispute is really whether, even assuming that plaintiff's construction is adopted, the claim term (or the proposed construction) is indefinite, due to the language's failure to state who or what actually does the "creating" to which the claim refers.

The court is not persuaded that the phrase at issue is indefinite. Construing the claim language consistently with the proper construction to be given to the phrase "user," the claim language's use of the phrases "initially creating in the computer system," "thereafter creating in the computer system a file information directory ...," and thereafter creating in the computer system a search filter ..."-i.e., the three steps covered in claim 1-refer to steps that are undertaken by either a computer, or a natural user. *See* Joint Statement, Ex. A at 16:60-17:11. Regardless whether undertaken by a computer or natural user, however, the end result is that the various steps are doing something that "brings into existence," or more accurately, produces certain functions within the computer system. As such, the court finds that the disputed claim language is reasonably understandable to a person skilled in the art and is not indefinite.

The court does find, however, that a slight modification of plaintiff's proposed construction would be most consistent with the phrase at issue's ordinary meaning. Accordingly, the court construes the phrase "creating in the computer system" as: **"producing in the computer system."**

C. Conclusion

In accordance with the foregoing, and for the reasons discussed above, the court construes the parties'

disputed terms as follows:

1. "category description" means "information that includes a name that is descriptive of something about a stored file."

2. "category description table" means "at least one list or array, configured in any desired manner, or taking any form, containing a plurality of category descriptions."

3. "file information directory" means "a directory comprising information corresponding to at least one file."

4. "having no predefined hierarchical relationship" means "the category descriptions have no predefined hierarchical relationship. A hierarchical relationship is a relationship that pertains to a hierarchy. A hierarchy is a structure in which components are ranked into levels of subordination; each component has zero, one, or more subordinates; and no component has more than one superordinate component."

5. "search filter" means "a set of one or more category descriptions (depending upon the context of claim 1 or claim 20) and at least one logical operator if there is more than one category description in the search filter that is used to search."

6. "file" means "any collection of data or information stored on a computer system."

7. "such list" means "a category description table."

8. "means for reading and writing data from the data storage system, displaying information, and accepting user input" is not properly before the court for construction, the parties having instead re-focused their arguments and sought construction of the phrase "computer system." "Computer system" means "a computer system, embodied in either a single computer or a distributed environment, having a hard disk drive, a computer display, and a computer mouse, and equivalents thereto."

9. "user" means "one that uses-may be a person or another computer."

10. "creating in the computer system" means "producing in the computer system."

IT IS SO ORDERED.

N.D.Cal.,2008.
Speedtrack, Inc. v. Wal-Mart Stores, Inc.

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