United States District Court,
C.D. California.

DEALERTRACK, INC,
Plaintiff.
v.
David L. HUBER, Finance Express LLC, and John Doe Dealers,
Defendants.
Dealertrack, Inc,
Plaintiff.
v.
Routeone LLC, David L. Huber, and Finance Express LLC,
Defendants.

No. CV 06-2335 AG (FMOx)

Sept. 27, 2008.

ORDER RULING ON CLAIM CONSTRUCTION ARGUMENTS

ANDREW J. GUILFORD**, District Judge.**

Before the Court are the claim construction arguments of the parties. Extensive arguments were presented in the papers and at oral argument. After reviewing all arguments, the Court has determined in this Order the proper claim constructions of each disputed term, and responds in this Order to key arguments.

BACKGROUND

Plaintiff Dealertrack ("Plaintiff") alleges that Defendants David L. Huber, Finance Express LLC, and RouteOne LLC (collectively, "Defendants") have infringed three of its patents, U.S. Patent No. 5,878,403 ("'403 Patent"), U.S. Patent No. 6,587,841 ("'841 Patent"), and U.S. Patent No. 7,181,427 (" '427 Patent"). The patents relate to technology for sending credit application data electronically from car dealerships to banks, to enable efficient processing of credit applications.

LEGAL STANDARD

Claim construction is an issue of law "exclusively within the province of the court." Markman v. Westview Instruments, Inc. 517 U.S. 370, 372 (1996). Such construction begins with an analysis of the claim language itself, Interactive Gift Express, Inc. v. Compuserve, Inc., 256 F.3d 1323, 1331 (Fed.Cir.2001), since the claims define the scope of the claimed invention. Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed.Cir.2005). In construing claim language, the Court begins with the principle that "the words of a claim are generally given their ordinary and customary meaning." Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed.Cir.2005) (internal quotation marks omitted).

The ordinary and customary meaning "is the meaning that the [claim] term would have to a person of ordinary skill in the art in question at the time of the invention." Id. at 1313. "[T]he person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id*. Thus, in determining the ordinary meaning of a claim term, courts must read the claim term in the context of the entire patent. Where the patent itself does not make clear the meaning of a claim term, courts may look to "those sources available to the public that show what a person of skill in the art would have understood the disputed claim language to mean," including the prosecution history and "extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Id*. at 1314.

"In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. In such circumstances general purpose dictionaries may be helpful." *Id*. at 1314. In other cases, claim terms will not be given their ordinary meaning because the specification defines the term to mean something else. Novartis Pharms. Corp. v. Abbott Labs., 375 F.3d 1328, 1334 (Fed.Cir.2004); Kumar v. Ovonic Battery Co., Inc., 351 F.3d 1364, 1368 (Fed.Cir.2003). For a specification to define a term to mean something other than its ordinary meaning, it must set out its definition in a manner sufficient to provide notice of the meaning to a person of ordinary skill in the art. In re Paulsen, 30 F.3d 1475, 1480 (Fed.Cir.1994).

ANALYSIS

Many of the terms in the three asserted patents are repeated throughout the patents. The Court construes them each once, but those constructions apply to all appearances of the term, unless stated otherwise.

1. '403 PATENT

1.1 Claim 25

1.1.1 Preamble: "A Credit Application and Routing System Including a Central Processor Having and Executing a Program and Further Comprising:"

The parties disagree as to whether the preamble is a limitation of Claim 25. (Joint Proposed Claim Constructions ("Joint Constructions") 1.) Whether to treat a preamble as a limitation is a determination "resolved only on review of the entirety of the patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim." Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., 868 F.2d 1251, 1257 (Fed.Cir.1989). "No litmus test defines when a preamble limits claim scope." Catalina Mktg. Int'l, Inc.v Coolsavings.com, Inc., 289 F.3d 801, 808 (Fed.Cir.2002).

On the one hand, a preamble is a claim limitation if it recites essential structure or steps, or if it is "necessary to give life, meaning, and vitality" to the claim. Pitney Bowes v. Hewlett-Packard Co., 182 F.3d 1298, 1305 (Fed.Cir.1999). On the other hand, a preamble is not limiting "where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention." Rowe v. Dror, 112 F.3d 473, 478 (Fed.Cir.1997).

The preamble to Claim 25 provides: "A credit application and routing system including a central processor

having and executing a program and further comprising ...." The reference to a central processor is important, because Plaintiff's "innovative use of a central processor" was "an important distinguishing feature" of its patents. (Plaintiff's Opening Claim Construction Brief 3:19-20.) The body of Claim 25 does not explicitly mention a central processor, but instead refers obliquely to the many things the processor will do. Thus, the preamble's use of the term "central processor" gives life and meaning to the claim language. The preamble, then, including the term "routing," is a limitation of the claim.

1.1.2 "Routing"

Plaintiff proposes that "routing" is an "easily understood term that does not require construction by the Court." (Plaintiff's Opening Claim Construction Brief 32:21-22.) Defendants, on the other hand, propose that "routing" means "sequencing (order) and timing." (Joint Constructions 1.)

Courts customarily give terms in a patent their ordinary meaning. Texas Digital Systems, Inc. v. Telegenix, Inc., 308 F.3d 1193, 1202 (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."). Still, "the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs." Phillips, 415 F.3d at 1316. A court may find that a specification gives a term a meaning contrary to its ordinary meaning if the specification "communicates a deliberate and clear preference for this alternative definition." Kumar v. Ovonic Battery Co., Inc., 351 F.3d 1364, 1368 (Fed.Cir.2003.)

The ordinary meaning of "routing" is "sending or forwarding by a particular route." *American Heritage Dictionary,* Fourth Ed., 2006. Defendant contends that the '403 patent has given "routing" a definition more specific than its ordinary meaning. The Court disagrees.

Defendants cites parts of the specification that purportedly define "routing" as "sequencing (order) and timing." For instance, the specification states that "the present invention provides flexibility in the funding source selection, and routing, i .e., sequencing and timing." ('403 Patent 22 :39-41.) The specification also states that "[i]f multiple sources are to receive the credit application, then the timing and order of sending is also selected, that is, the routing of the credit application." (*Id*. at 22:46-48.) While these two quotes seem to indicate that "routing" refers only to sequencing and timing, they conflict with the rest of the patent. For instance, the patent refers to "the inventive system routing the application to all requested funding sources," and "routing means for selectively forwarding the credit application data to remote funding sources." (*Id*. at 8:54-56, 15:39-43.) These quotes indicate that the destination of the application data is also a part of "routing." To define "routing" as "sequencing (order) and timing" would render these quotes, and others, senseless.

More generally, the entire invention is frequently referred to, in shorthand, as a "credit application and routing system." (*See, e.g., id*. at 37:50.) The stated goal of the patent is to enable dealers to forward credit application data to selected funding sources in selected sequences. But defining "routing" as Defendants request would eliminate the "selection of funding sources" aspect from the short description of the invention.

Defendants argue that the Federal Circuit has held that the use of "i.e." is definitional. (Defendants David L. Huber and Finance Express LLC's Opening Claim Construction Brief 7:9-10 (quoting Abbott Labs v.

Novopharm Ltd., 323 F.3d 1324, 1327, 1330 (Fed.Cir.2003).) But the Federal Circuit in Pfizer, Inc. v. Teva Pharmaceuticals, 429 F.3d 1364, 1373 (Fed.Cir.2005), limited that holding, cautioning that the "i.e." should be read in light of the patent as a whole. "I.e.," as used in this patent, is not definitional. Instead, it appears to supply examples. For instance, the patent refers to "selecting the funding sources for a type of credit application, i.e., finance versus lease, 'A' quality versus 'B & C' quality." ('403 Patent 10:41-44.) Also, the patent refers to the ability to check "account status, i.e., current charges, transactions processed, etc." ('403 Patent 5:59-60.)

Considering the patent as a whole, it does not show a "deliberate and clear preference" for Defendants' proposed definition. Kumar, 351 F.3d at 1368. Accordingly, the claim term is construed to mean: "sending or forwarding by a particular route."

1. 1.3 "Data Input Means for Selectively Receiving Credit Application Data from Respective Applicants at Remote Locations"

Claim 25 claims "a credit application and routing system including a central processor having and executing a program and further comprising: data input means for selectively receiving credit application data from respective applicants at remote locations ...." ('403 Patent 34:32-37.) The parties agree that this is a means-plus-function limitation that must be construed according to 35 U.S.C. s. 112, para. 6.

Means-plus-function limitations are a statutory exception to the rule that claim language carries its ordinary and customary meaning. Specifically, under 35 U.S.C. s. 112, para. 6, claim limitations using the word "means," followed by a functional recitation, "shall be construed to cover the corresponding structure ... described in the specification and equivalents thereof." When construing a means-plus-function limitation, a court must identify, first, the claimed function, and second, the corresponding structure disclosed in the written description that performs that function. Medical Instrumentation and Diagnostics Corp. v. Elekta AP, 344 F.3d 1205, 1210 (Fed.Cir.2003); Applied Med. Res. Corp. v. U.S. Surgical Corp., 448 F.3d 1324, 1332 (Fed.Cir.2006). When interpreting the language used to describe the function, courts apply ordinary principals of claim construction. Cardiac Pacemakers, Inc. v. St. Jude Med., Inc., 296 F.3d 1106, 1113 (Fed.Cir.2002). When determining the corresponding structure disclosed by the patent as performing the identified function, a court must include "all structure that actually performs the recited function." Default Proof Credit Card Sys., Inc. v. Home Depot U.S.A., Inc., 412 F.3d 1291, 1298 (2005). "In order to qualify as corresponding, the structure must not only perform the claimed function, but the specification must clearly associate the structure with performance of the function." JVW Enterprises, Inc. v. Interact Accessories, Inc., 424 F.3d 1324, 1332 (Fed.Cir.2005) (quoting Cardiac Pacemakers, Inc., 296 F.3d at 1113).

The function disclosed by this claim is "selectively receiving credit application data from respective applicants at remote locations." But the parties dispute exactly what that phrase means. Defendants contend that the phrase "selectively receiving credit application data" means "receiving credit application data either online or offline." (Joint Constructions 1.) Plaintiff contends that the phrase means "receiving credit application data from 'selected' (e.g., password approved) remote sources." (*Id.*) The Court finds that neither construction is correct.

Defendants' attempt to limit the phrase "selectively receiving" to "receiving either online or offline" is not supported by the specification. While Defendants argue that "receiving either online or offline" is the only possible "selectiveness" disclosed by the '403 Patent, the language of the claims makes their interpretation

impossible. The Court finds, based on the language of Claim 25, that the central processing unit is part of the means for "selectively receiving" the credit application data under Claim 25. And, obviously, the central processing unit can only receive data when the remote application entry devices are online. This means that the "selection" is not whether the system is online or offline, but something else. Accordingly, there is no basis for giving a stricter definition to the term "selectively" than its ordinary meaning. The function disclosed by this portion of Claim 25 is: "selectively receiving credit application data from applicants at remote locations," no more.

In arguing the meaning of this claim, Plaintiff has made many arguments based on similar, but different, language in the '841 Patent and elsewhere in the '403 Patent. For example, Plaintiff argues that the phrase "data input means for selectively receiving credit application data from respective applicants at remote locations" in Claim 25 of the '403 Patent should mean the same as "selectively receiving the credit application data from a remote application entry and display device" from the '841 Patent. But the language of these two phrases is distinctly different. If Plaintiff had wanted the two phases to mean the exact same thing, it could have used the same language in both instances. It did not. Accordingly, the Court construes the phrases separately.

The parties also dispute the structure of this means-plus-function limitation. The structure is clearly a "data input means," but the parties dispute the meaning of that phrase. Plaintiff contends that the "data input means" is only "[s]oftware code executing on the central processor with an associated database, or the equivalent, that is configured to selectively receive credit application data." (Joint Constructions 1.) The Court disagrees, because the specification shows that the "data input means" includes remote terminals.

Claim 27 of the '403 Patent sheds light on the meaning of "data input means." *See* Phillips, 415 F.3d at 1314 ("Other claims of the patent in question, both asserted and unasserted, can also be valuable sources of enlightenment as to the meaning of a claim term."). That Claim describes "[t]he credit application and routing system according to claim 26, wherein the data input means comprises a terminal device having a display for displaying an electronic credit application and a keyboard for facilitating filling out the electronic credit application." Thus, it appears that the "data input means" includes the "personal computer or dumb terminal, located at a logical or physical terminus of the system," into which application data is entered. ('403 Patent 9:34-367.) No other structure disclosed in the patent has both a display "for displaying an electronic credit application and a keyboard for facilitating filling out the electronic credit application." Thus, the structure recited in Claim 25 includes the remote terminals.

But the data input means must also include software code executing on the central processor. Claim 25 recites receiving the credit application data and then forwarding it to funding sources. There is no separate step for forwarding the credit application data from the remote terminals to the central processor. So the act of "selectively receiving" must contemplate the credit application data traveling to the central processor. Thus, the central processor, and programs run on it, are parts of the structure that "selectively receives."

The parties next dispute the level of specificity required in construing the software associated with this claim. Plaintiff submits that the programming associated with this claim can be construed simply as "software code executing on the central processor ... that is configured to selectively receive credit application data." Defendant RouteOne argues that Plaintiff's proposal is too general and proposes instead: "software executing on the central processor implementing the algorithm shown in Fig. 2 (items 205 to 208) and Fig. 2D (items 269, 266)." The Court agrees with Plaintiff. There is "no need for a disclosure of the specific program code if software [is] linked to the ... function and one skilled in the art would know the

kind of program to use." Medical Instrumentation and Diagnostics Co. v. Elekta AB, 344 F .3d 1205, 1214 (Fed.Cir.2003); *see also* McKesson Information Solutions LLC v. The Trizetto Group, Inc., 2006 WL 891048, at (D.Del.006) (construing the structure of "[m]eans for receiving at least one claim" as "hardware and software capable of receiving the at least one claim," and explaining that a person of skill in the art would understand the database software required). Plaintiff claims, and Defendants do not dispute, that a person skilled in the art would know what kind of software to use in light of the disclosures in the '403 Patent.

The Court finds that the corresponding structure is "(1) multiple terminal devices at multiple locations having displays for displaying an electronic credit application and keyboards for facilitating filling out the electronic credit application, and (2) software with an associated database executing on the central processor that is configured to selectively receive credit application data from applicants at remote locations."

1.1.4 "Routing Means for Selectively Forwarding the Credit Application Data to Remote Funding Sources and Selectively Forwarding Funding Decision Data from the Funding Sources to the Respective Applicants"

The parties agree that this limitation to Claim 25 is also a means-plus-function limitation that must be construed under 35 U.S.C. s. 112, para. 6. The function disclosed by this claim limitation is "selectively forwarding the credit application data to remote funding sources and selectively forwarding funding decision data from the funding sources to the respective applicants." ('403 Patent 34 :38-41.)

The parties do not dispute the meaning of the phrase "selectively forwarding funding decision data from the funding sources to the respective applicants." The parties do dispute, however, the meaning of "selectively forwarding the credit application data to remote funding sources." Defendants argue that "selectively forwarding" in this context means forwarding the credit application data "using a selected sequencing (order) and timing." Plaintiff argues that "selectively forwarding" simply means forwarding to "particular (i.e., "selected") destination(s) ." The Court agrees with Plaintiff.

Defendants' argument that the disputed phrase means forwarding "using a selected sequencing (order) and timing" is based upon Defendants' construction of the word "routing." As discussed in Section 1.1.2, the Court does not accept Defendants' construction of "routing." Thus, the Court finds that "selectively forwarding" in this context means "forwarding to particular (i.e., "selected") destinations(s)."

The Court next turns to the structure-the "routing means"-that performs the two recited "forwarding" functions here. Plaintiff again states that the appropriate structure is simply "software code executing on the central processor ... that selectively forwards credit application data to remote funding sources and selectively forwards funding decision data from the funding sources to the respective applicants." As to "selectively forwarding credit application data," Defendants argue that the software code should be expressly limited to specific algorithms shown in Figs. 2C-1 and 2C-2. As to "selectively forwarding funding decision data," Defendants argue that there is no disclosed structure, and that the claim is therefore invalid. The Court disagrees with Defendants on the first point, but agrees with them on the second. As in Section 1.1.3, the Court finds that Plaintiff's proposed structure of "software code executing on the central processor" is adequate. The Court finds, however, that Plaintiff has not disclosed a structure corresponding to the function of "selectively forwarding funding decision data." Plaintiff has failed its "duty ... to clearly link or associate structure with the claimed function," which is "the quid pro quo for allowing the patentee to express the claim in terms of function." Medical Instrumentation, 344 F.3d at 1211. Plaintiff's argument that

one skilled in the art "would be well aware of how to perform the recited function based on this disclosure alone" is to no avail. *See* Medical Instrumentation, 344 F.3d at 1212 ("The correct inquiry is to look at the *disclosure* of the patent and determine if one of skill in the art would have understood that *disclosure* to encompass software.") Just because someone would be able to write software code to perform the function does not mean that software code was *disclosed* as the structure performing the function. Here, it was not.

Accordingly, the structure associated with the function of "selectively forwarding the credit application data to remote funding sources" is "software code executing on the central processor that selectively forwards credit application data to remote funding sources." There is no structure associated with the function of "selectively forwarding funding decision data from the funding sources to the respective applicants."

1. 1.5 "Wherein the Routing Means Comprises at Least One of"

Claim 25 claims a routing means,

wherein the routing means comprises at least one of:

means for sending at least a portion of a credit application to more than one of said remote funding sources substantially at the same time;

means for sending at least a portion of a credit application to more than one of said remote funding sources sequentially until a funding source returns a positive funding decision; and

means for sending at least a portion of a credit application to a first one of said remote funding sources, and then, after a predetermined time delay, sending to at least one other remote funding source, until one of the funding sources returns a positive funding decision or until all funding sources have been exhausted.

('403 Patent, 34:38-56.) Defendants construe "at least one of" in this clause to mean "each and every" of the following three "means." Plaintiff construes "at least one of" to mean "at least one of." The Court agrees with Plaintiff. The ordinary meaning of the term supports Plaintiff's construction, and none of Defendants' arguments convince the Court that the ordinary meaning of the term should not apply.

Defendants rely on SuperGuide Corp. v. DirecTV Enterprises, Inc ., 358 F.3d 870, 885-88 (Fed.Cir.2004), to argue that the ordinary meaning of this disputed term is "each and every one of the means listed below." But the reasoning in that case does not apply here. In that case, the court found that the phrase "at least one of [A], [B], [C], and [D]" meant "at least one of [A], at least one of [B], at least one of [C], and at least one of [D]." The court cited a "common treatise on grammar" for the principle that "in spring, summer, or winter" means "in spring, in summer, or in winter." Id. at 886. That principle is inapplicable here for two reasons. First, the structure of the clause is different in our case. In that case, [A], [B], [C], and [D] were elements of a series, separated by commas. Here, in contrast, "at least one of" is followed by a colon, and then a list separated by semicolons. This grammatical structure implies that the "at least one of" means "at least one of the elements listed below." Second, in *SuperGuide,* the construction "at least one of [A], at least one of [B], at least one of [C], and at least one of [D]" made sense, because [A], [B], [C], and [D] were categories with elements that users of the patented technology could choose "at least one of." Here, in contrast, to construe this claim as "at least one of [A], at least one of [B], and at least one of [C]" would not make sense. Accordingly, the ordinary meaning of this claim term is "wherein the routing means includes at least one of the elements listed below."

Defendants' other arguments do not convince the Court that its construction should stray from the ordinary meaning of the claim term. Accordingly, this claim term is construed as "wherein the routing means includes at least one of the elements listed below."

1. 1.6 "Means for Sending at Least a Portion of a Credit Application to More Than One of Said Remote Funding Sources Substantially at the Same Time;" "Means for Sending at Least a Portion of a Credit Application to More Than One of Said Remote Funding Sources Sequentially Until a Funding Source Returns a Positive Funding Decision;" and "Means for Sending at Least a Portion of a Credit Application to a First One of Said Remote Funding Sources, and Then, After a Predetermined Time Delay, Sending to at Least One Other Remote Funding Source, Until One of the Funding Sources Returns a Positive Funding Decision or Until All Funding Sources Have Been Exhausted"

The parties agree that these three limitations to Claim 25 are means-plus-function limitations that must be construed under 35 U.S.C. s. 112, para. 6. The parties do not dispute the functions described, and the Court finds it unnecessary to construe them. The main dispute between the parties as to these claim terms revolves around the phrase "at least a portion of a credit application." Defendants argue that there is no disclosed structure for the function of a "means for sending at least a portion" of a credit card application to a funding source, because the '403 Patent does not provide for sending only a portion of a credit card application to a funding source. Plaintiff argues that the '403 Patent *does* disclose sending a portion of a credit card application to a funding source. The Court agrees with Defendants.

The '403 Patent makes clear that nothing less than a full application will be sent to a funding source. According to the specification, the invention provides a basic application format. ('403 Patent, 9:58-60.) If a funding source wishes to receive more information with each application, it may add additional fields to the basic application format. (*Id*. at 9:60-61.) Users of the invention fill out the basic application format and then select funding sources. (*Id*. at 10:5-12.) If the user selects a funding source that requires more information, "the inventive system prompts the user to enter any additional application fields required by any particular funding source selected." (*Id*. at 10:13-16.) "When all funding source application field requirements have been satisfied, the application is marked as ready to be sent and transferred to the funding source." (*Id*. at 10:21-23.) Thus, the inventive system makes sure that an application is sent to a funding source only when it includes all the data required by that funding source.

Plaintiff twists this language to argue that if a user has entered information in the additional fields, then the sending of only a basic application must be sending "a portion" of an application. The Court disagrees. A complete application is what is required by a funding source to consider a credit decision. The Patent nowhere discloses sending less than a full application to a funding source. Accordingly, there is no disclosed structure for sending "a portion" of a credit application to a funding source. There is, however, disclosed structure for sending a full credit application to a funding source. That structure is software code executing on the central processor.

1.2 Claim 32

Claim 32 recites "the credit application and routing system according to Claim 25, wherein the central processor includes means for maintaining user specific data which data controls access to and operation of the routing means and the data input means." Again, the parties agree that this is a means-plus-function limitation that must be construed under 35 U.S.C. s. 112, para. 6. And the parties do not dispute the

construction of the language describing the function performed. The parties only dispute whether the patent discloses a structure for performing the function. Defendants argue that the '403 Patent does not "clearly associate" any structure with the function of maintaining user specific data. Cardiac Pacemakers, Inc., 296 F.3d at 1113. Plaintiff argues that the associated structure is described in the specification as storage and a database in the central processor. The Court agrees with Defendants.

The specification does not clearly associate any structure with the function of "maintaining user specific data." Although it seems obvious that the database that stores credit application data would also store specific data, ('403 Patent, 18:15-17), the specification nowhere makes this connection. And the Court will not make the connection for the patentee.

The duty of a patentee to clearly link or associate structure with the claimed function is the quid pro quo for allowing that patentee to express the claim in terms of function .... Section 112, paragraph 6 was intended to allow the use of means expressions in patent claims without requiring the patentee to recite in the claims all possible structures that could be used as means in the claimed apparatus. However, '[t]he price that must be paid for use of that convenience is limitation of the claim to the means specified in the written description and equivalents thereof.'

Medical Instrumentation, 344 F.3d at 1211 (citations omitted). The only place in the '403 Patent that indicates any structure for maintaining user specific data is Claim 45, which is a limitation to a means-plus-function limitation to Claim 43. This cannot provide the structure for a means plus function limitation to a different claim.

Accordingly, the '403 Patent does not disclose a structure corresponding to a "means for maintaining user specific data which data controls access to and operation of the routing means and the data input means."

2. '841 PATENT

2.1 Claim 7

2. 1.1 Preamble: "A Computer Based Method of Operating a Credit Application and Routing System ...."

Plaintiff argues that the preamble is not a limitation of this claim. The Court finds that the preamble is a limitation of the claim, because the term "computer based," among others, is "necessary to give life, meaning, and vitality" to the claim. Pitney Bowes, 182 F.3d at 1305.

2.1.2 "Routing"

The Court construes this term in the '841 Patent the same as the term in the '403 Patent. Accordingly, the claim term is construed to mean: "sending or forwarding by a particular route.

2.1.3 "Communications Medium"

Plaintiff proposes that "communications medium" means "a medium over which data communications travel." Defendants propose that "communications medium" means a "network for transferring data," and

does not include the internet.

Plaintiff argues that "communications medium" should include the internet because "the ordinary meaning of the term 'communications medium' encompasses the Internet." (Plaintiff's Opening Claim Construction Brief 9:10-11.) Plaintiff also argues that the patent application discloses the internet by referencing "the Internet protocol TCP/IP" and "Compuserve, a then-existing Internet service provider." (Id. at 10:1.) Defendants respond that "communications medium" should not include the internet because, among other arguments, at the time of the invention, that term did not refer to the internet. The Court agrees with Defendants.

Whether the original patent supports a definition of "communications medium" that includes the internet depends on whether a person of ordinary skill in the art, reading the patent in 1995, would have understood "communications medium" to mean the internet. *See* Phillips v. AWH Corporation, 415 F.3d 1303, 1312 (Fed.Cir.2005) ("[T]he words of a claim are generally given their ordinary and customary meaning," which is "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.") Plaintiff has offered no evidence that "communications medium" was understood to include the internet in 1995. Instead, Plaintiff has introduced dictionary definitions of "medium" from 1995 and 2000. Plaintiff's "ordinary meaning" argument fails because it rests on an understanding of "communications medium" today, not in 1995.

Plaintiff's argument that the patent application discloses the internet by referencing TCP/IP and CompuServe also fails. As Defendant RouteOne explains, the mention of TCP/IP protocol in the '841 Patent was not made in reference to the "communications network." (Defendant RouteOne's Reply Claim Construction Brief 22:19-25.) Further, in 1995, TCP/IP communications protocol was used on many computer networks other than the internet. Further, in 1995 CompuServe "commercially offered only a direct (non-internet) dial-up service." (Id. at 21:24-25.) At that time, CompuServe was still in beta testing with its web browser, and its service was "not internet based." (Id. at 22:5-17.) Thus, in 1995, a reference to either TCP/IP or CompuServe was not automatically a reference to the internet.

The specification supports the claim construction advanced by Defendants. For example, the '841 specification lists as examples of a "communications medium" a wide area network, a local area network, a satellite communications network, a commercial value added network, ordinary telephone lines, and private leased lines. ('841 Patent 18:1-5.) The internet was not on this list. And, while it is improper for a court to limit a patent to its preferred embodiment, Apex Inc. v. Raritan Computer, Inc., 325 F.3d 1364, 1374 (Fed.Cir.2003), it is reasonable to assume that when a patent supplies a long list of examples like here, the list is exhaustive.

The prosecution history supports both Plaintiff's and Defendants' arguments. First, Plaintiff argues that the prosecution history shows that the term "internet" was disclosed in the original specification of '841 Patent. Plaintiff contends that the patent examiner of the '403 Patent determined that the term "internet" was disclosed by the '403 Patent, which "necessarily" implies that the term was disclosed in the '841 Patent, since the '403 Patent and the '841 Patent were originally identical. ((Plaintiff's Opening Claim Construction Brief 11:1-4.) Plaintiff slightly overstates the strength of the argument. The patent examiner of the '403 Patent did not make an express determination that "internet" was disclosed by the '403 Patent. Instead, the examiner allowed, without comment, amendments to the patent that added the term "internet" to two places in the specification. ('403 Patent Prosecution History, June 23, 1998, Notice of Allowability at FXPRS002339-002342.) This action implies that the patent examiner had determined that the addition of "internet" did not

disclose new matter. *See* MPEP 608.04 ("No amendment may introduce new matter into the disclosure of an application.").

On the other hand, Defendants argue that the prosecution history shows that the original patent did not support the internet as a communications medium of the invention. (Id. at 28:1-2.) Defendants point out that the '841 patent examiner refused to allow Plaintiff to add "Internet" to its meaning in a Preliminary Amendment to the '841 Patent. (Defendant RouteOne LLC's Opening Claim Construction Brief 27:20-25.) Indeed, the '841 patent examiner rejected the very "internet" amendments that the '403 patent examiner allowed. Before granting the '841 Patent, the examiner required that the two references to the "internet" be removed from the specification. ('841 Patent Prosecution History, Feb. 5, 2003, Notice of Allowability at FXPRS003175.) While the '841 examiner, like the '403 examiner, did not give reasons for his action, the action alone implies that the examiner had determined that the addition of "internet" disclosed new matter. *See* MPEP 608.04. Thus, the patent examiners made conflicting determinations.

Determinations by patent examiners are entitled to an "especially weighty presumption of correctness." Brooktree Corp. v. Advanced Micro Devices, Inc., 977 F.2d 1555, 1574-75 (Fed.Cir.1992). But this Court is faced with two opposite decisions by patent examiners in the same situation. In this circumstance, the Court relies on its own reasoning. Thus, the Court construes "communications medium" to mean a "network for transferring data," not including the internet.

2.1.4 "Coupled to a Communications Medium

Plaintiff construes "coupled to a communications medium" to mean "connected so as to permit the communication of data to or from a communications medium." Defendants argue that it means "physically connected directly to a communications medium." The Court agrees with Plaintiff, finding Plaintiff's interpretation consistent with the ordinary meaning of the term, and that the specification does not support the limitation proposed by Defendants. Accordingly, this term is construed as "connected so as to permit the communication of data to or from a communications medium.

2.1.5 "Terminal Device" Limitations

The '841 Patent defines a "terminal device" as a "any device, e.g., personal computer or dumb terminal, located at a logical or physical terminus of the system." ('841 Patent 9:37-40.) The Court construes the term as such. The phrases encompassing the term "terminal device" need not be further construed because their meaning is clear.

2.1.6 "Selectively Receiving Credit Application Data From a Remote Application Entry and Display Device"

Defendants construe this term to mean "receiving credit application data from a remote application entry and display device, either on-line or off-line. This step is performed by the central processor." Plaintiff construes this term to mean, "Using the central processor to selectively receive credit application data from a remote application entry and display device. Credit application data is received from 'selected' (e.g., password approved) remote application entry and display devices." The Court has already addressed this argument about the word "selectively" in Section 1.1.3. The Court construes this phrase as "using the central processor to selectively receive credit application data from a remote application entry and display device."

2.1.7 "Selectively Obtaining Credit Report Data From at Least One Remote Credit Bureau Terminal

Device

Defendants construe this term to mean "selectively obtaining credit report data from at least one remote credit bureau terminal device. This step is performed by the central processor." Defendants then further construe "selectively obtaining credit report data" to mean "selecting whether to obtain credit report data, and from what credit bureau." Plaintiff construes this term to mean "using the central processor to selectively obtain credit report data from at least one remote credit bureau terminal device. The central processor 'selects' the remote credit bureau from which the credit report data is obtained." Having considered the arguments of the parties, the Court construes the term to mean "using the central processor to selectively obtain credit report data from at least one remote credit bureau terminal device. The 'selection' described includes selecting whether to obtain credit report data, and from what credit bureau." The Court finds that no construction of "credit report data" is necessary.

2.1.8 "Selectively Forwarding the Credit Application Data, and Credit Report Data if Appropriate, to at Least One Remote Funding Source Terminal Device"

Defendants construe this term to mean "forwarding both the credit application data, along with the credit report data if the user elects, to at least one funding source terminal device, with a selected sequencing (order) and timing. This step is performed by the central processor." Plaintiff construes this term to mean "using the central processor to selectively forward the credit application data, and credit report data if appropriate, to at least one remote funding source terminal device. The central processor forwards the credit application data, and credit report data if appropriate, to particular (i.e., 'selected') remote funding source terminal device(s)." The Court has addressed the parties' "selectively forwarding" argument in Section 1.1.4. And the Court finds that the term "if appropriate" need not be construed. Accordingly, the Court construes this term to mean, "using the central processor to selectively forward the credit application data, and credit report data if appropriate, to at least one remote funding source terminal device. The 'selection' described involves choosing the remote funding source terminal devices."

2.1.9 "Forwarding Funding Decision Data From the at Least One Remote Funding Source Terminal Device to the Respective Remote Application Entry and Display Device"

The Court construes this term as "using the central processor to forward funding decision data from the at least one remote funding source terminal device to the remote application entry and display device from which the credit application was received."

2.1.10 "Wherein the Step of Selectively Forwarding the Credit Application Data and Credit Report Data to at Least One Remote Funding Source Terminal Device Comprises: Sending at Least a Portion of the Credit Application Data, and the Credit Report Data if Appropriate, to More Than One of Said at Least One Remote Funding Source Terminal Devices Substantially at the Same Time"

Plaintiff argues that this term should be construed as "selectively forwarding the credit application data and credit report data to at least one remote funding source terminal device includes sending at least a portion of the credit application data, and the credit report data if appropriate, to more than one of the at least one remote funding source terminal devices substantially at the same time." Defendants construe the term as "sending both at least a portion of the credit application data, along with the credit report data if the user elects, to more than one of the remote funding source terminal devices substantially at the same time and automatically without user interaction. This step is performed by the central processor."

One of the disputes contained in these competing constructions is whether the sending function must occur "automatically without user interaction." The Court finds that the "automatically without user interaction" limitation is not supported by the areas of the '403 specification that Defendants cite. The other disputes contained in these competing constructions have been dealt where in other Sections of this Order. Accordingly, the Court construes this term as "selectively forwarding the credit application data and credit report data to at least one remote funding source terminal device includes sending at least a portion of the credit application data, and the credit report data if appropriate, to more than one of the at lease one remote funding source terminal devices substantially at the same time."

2.2 Claim 12

2.2.1 "Central Processing Means, Operably Coupled to Said Communications Medium, for Executing a Computer Program which Implements and Controls Credit Application Processing and Routing"

The parties agree that this limitation to Claim 12 is a means-plus-function limitation that must be construed according to 35 U.S.C. s. 112, para. 6. The function disclosed by this claim limitation is "executing a computer program which implements and controls credit application processing and routing." The parties do not dispute the function.

Instead, the parties dispute the structure of this claim limitation. In other words, they dispute the meaning of the phrase "central processing means." Plaintiff argues that the structure is "a central processor and database, or the equivalents." Defendants argue that the structure is "a main-frame, super-mini, or minicomputer system, with an operating system and a computer program on a computer readable storage medium executing the specific algorithm disclosed in FIGs. 2, 2B, 2C-1, 2C-2, and 2D." The Court agrees with neither structure.

Defendants' proposed structure is incorrect because Defendants have included into the structure the program executed by the central processor. The claim term describes a "central processing means ... for executing a computer program which ...." This implies that the central processing means for executing the program is not the program. This conclusion is supported by language in the specification, which consistently refers to the central processor independently from the program it executes. For example, the description of the preferred embodiment of the invention describes the processor as "any modern main-frame, super-mini or minicomputer system ... having the capability of handling a real-time, multitasking, remote-access database application." ('841 Patent 18:10-14.) Also, the figure depicting the central processor and its related computer program labels the depiction "Central Processor and Program." ('841 Patent, Fig. 1.)

Defendants are also incorrect in arguing that the "central processing means" do not include a database. Again, the processor is defined as "any modern main-frame, super-mini or minicomputer system ... having the capability of handling a real-time, multitasking, remote-access database application." ('841 Patent 18:10-14.) This is because a database is a necessary part of the central processing function.

The Court defines the "central processing means" as closely as possible to the definition supplied in the Patent. Accordingly, the Court finds that the disclosed structure is "a mainframe, super-mini or minicomputer system and a database."

2.2.2 "Wherein There Are a Plurality of Funding Source Terminal Devices Connected to Said Communications Medium, and Wherein a Credit Application is Sent to More Than One of Said Plurality of Funding Source Terminal Devices Over Said Communications Medium Through Said

Central Processing Means"

Plaintiff construes this term as "There are at least two funding source terminal devices connected to the communications medium, and the credit application is sent to more than one of the funding source terminal devices over the communications medium through the central processor." Defendants construe it as "At least two funding source terminal devices connected to the communications medium, and the credit application is sent to more than one of the funding source terminal devices over the communications medium through the central processing means." Neither of these proposed constructions add content or clarity to the term as it is. Therefore, the Court will not construe this term.

2.3 Claim 14

2.3.1 "Wherein Said Central Processing Means Computer Program Which Implements and Controls Credit Application Processing and Routing, Further Provides for Tracking Pending Credit Applications"

Defendants argue that this is a means-plus-function limitation and that, since Plaintiff has not disclosed a structure that corresponds to the claimed function of "tracking pending credit applications," the claim is invalid. The Court disagrees. This claim adds a limitation to the functions performed by the computer program, which is not a part of the central processing means. Accordingly, this limitation should not be construed as a means-plus-function limitation, and does not need to be construed.

2.4 Claims 15, 16, 17, 18, 22, and 23

2.4.1 "The Credit Application and Routing System According to Claim 14, Wherein Said Tracking Pending Credit Applications Further Provides for Querying the Status of Dealer Accounts Including at Least One of Current Charges and Transactions Processed;" "Wherein Said Central Processing Means Computer Program Which Implements and Controls Credit Application Processing and Routing, Further Provides for Tracking Pending Credit Applications;" "The Credit Application and Routing System According to Claim 16, Wherein Said Central Processing Means Computer Program Which Implements and Controls Credit Application Processing and Routing, Further Provides Outcome Results Including Approval, Decline, Conditional Approval or a Message;" "The Credit Application and Routing System According to Claim 16, Wherein Said Tracking Pending Credit Applications Further Provides for Querying the Status of Dealer Accounts Including at Least One of Current Charges and Transactions Processed;" "Wherein Said Central Processing Means Computer Program Which Implements and Controls Credit Application Processing and Routing, Further Provides for Querying the Status of Dealer Accounts Including at Least One of Current Charges and Transactions Processed; "At Least One Credit Bureau Terminal Device, Operably Coupled to Said Communications Medium, for Receiving at Least a Portion of a Credit Application From Said at Least One Credit Application Input Terminal Device Through Said Central Processing Means Over Said Communications Medium, and for Sending Credit Information to Said at Least One Credit Application Input Terminal Device Over Said Communications Medium Said Central Processing Means."

As with Section 2.3.1, Defendants argue that these are means-plus-function limitations invalid for lack of a disclosed structure. As with Section 2.3.1, the Court disagrees. The claims need not be further construed.

3. '427 PATENT

3.1 Claim 1

3.1.1 Preamble: "A Computer Aided Method of Managing a Credit Application, the Method Comprising the Steps of:

Plaintiff argues that the preamble is not a limitation of this claim. The Court finds that the preamble is a limitation of the claim, because the term "computer aided" is "necessary to give life, meaning, and vitality" to the claim. Pitney Bowes, 182 F .3d at 1305. The term "computer aided method" does not need to be further construed.

3.1.2 "Remote Application Entry and Display Device

Plaintiff argues that this term is easily understood, and need not be construed. Defendants, on the other hand, argue that this term should be construed as "a computer and/or dumb terminal for entering and displaying credit application data at a location remote from the computer performing the method." Defendants argue that their definition is more accurate because it mirrors the definition in the patent for "terminal device." Plaintiff argues that the Court should not add limitations onto the simple term "device." The Court agrees with Defendants. "Terminal device" and "remote application entry and display device" are synonyms in the patents. Indeed, in its argument that "remote application entry and display device" should not be construed to mean the same thing as "terminal device," Plaintiff pointed to a terminal device *as an example of* a remote application entry and display device. (Plaintiff's Opening Claim Construction Brief 32 n. 131; '403 Patent 19:24-25.) Accordingly, the Court construes this term, similar to its construction of "terminal device," as "any device, e.g., personal computer or dumb terminal, remote from the central processor, for application entry and display."

3.1.3 "Selectively Forwarding the Credit Application Data to Remote Funding Source Terminal Devices"

Plaintiff argues that this phrase should be construed "selectively forwarding the credit application data to particular (i.e., "selected") remote funding source terminal devices." Defendants argue that this phrase should be constructed "forwarding the credit application data received in step [A], using a selected sequence (order) and timing, to two or more funding source terminal devices automatically without user interaction."

There are two disputes contained in these opposing definitions. The first is over the meaning of "selectively forwarding." The Court dealt with this argument in Section 1.1.4, and will construe this term as described in that Section. The second dispute is over the phrase "automatically without user interaction," which Defendants argue should be included in the construction. The Court finds that the "automatically without user interaction" limitation is not supported by the areas of the '403 specification that Defendants cite. Accordingly, the Court construes this term as " "selectively forwarding the credit application data to particular (i.e., "selected") remote funding source terminal devices."

The parties also dispute the construction of the term "terminal device." The Court construes that term consistent with its analysis in Section 2.1.5.

3.1.4 "Forwarding Funding Decision Data From at Least One of the Remote Funding Source Terminal Devices to the Remote Application Entry and Display Device"

The Court construes this claim term, consistent with other Sections in this Order, as "forwarding funding decision data from at least one of the remote funding source terminal devices to the remote application entry and display device from which the credit application was received."

3.1.5 "Sending at Least a Portion of a Credit Application to More Than One of Said Remote Funding Sources Substantially at the Same Time"

The Court finds that this term, as a whole, does not require construction.

3.1.6 "Sending at Least a Portion of a Credit Application to More Than One of Said Remote Funding Sources Sequentially Until a F[u]nding Source Returns a Positive Funding Decision"

The Court finds that this term does not require construction.

3.1.7 "Sending at Least a Portion of a Credit Application to a First One of Said Remote Funding Sources, and Then, After a Predetermined Time, Sending to at Least One Other Remote Funding Source, Until One of the F[u]nding Sources Returns a Positive Funding Decision of Until All Funding Sources Have Been Exhausted"

This claim limitation does not require construction.

3.1.8 "Sending the Credit Application From a First Remote Funding Source to a Second Remote Funding Source if the First Funding Source Declines to Approve the Credit Application"

Plaintiff's proposed construction of this term basically repeats the language of the term. Defendants' proposed construction adds various requirements, including that the credit application traveling from the first funding source to the second funding source must travel "through the computer performing the method." The Court agrees. First, the discussion of the preferred embodiment demonstrates that the patentees envisioned the credit application traveling through the central processor: "[T]he secondary lender receives the application directly from the initial lender through the Credit Connection system." ('427 Patent 10 :62-11 :5.) Second, the very structure of the claim, describing a "computer aided method," indicates that the steps of the claim are aided by the use of a computer. Of course, the computer involved is the central processor, which performs all the other steps of the claim. Accordingly, the Court construes this term as, "sending the credit application from a first remote funding source through the computer performing the method to a second remote funding source if the first funding source declines to approve the credit application."

3.2 Claim 4

3.2.1 "Obtaining Credit Report Data From at Least One Remote Credit Bureau Terminal Device

The Court has already construed the term "terminal device" in Section 2.1.5. The Court finds that this claim term need not be further construed.

3.3 Claim 5

3.3.1 "Selectively Forwarding the Credit Application Data to a First Remote Funding Source Terminal Device

Plaintiff argues that this term need not be construed. Defendant RouteOne argues that it should be construed as "forwarding the credit application data received in step [A] to a first remote funding source terminal device using a selected sequencing (order) and timing for sending the data automatically without user interaction." For reasons stated in other Sections of this Order, the Court finds that this claim need not be construed.

3.3.2 "Facilitating the First Remote F[u]nding Source Terminal Device to Selectively Forward the Credit Application to a Second Remote Funding Source Terminal Device if the Funding Source Associated With the First Remote F [u]nding Source Terminal Declines to Approve the Credit Application"

For reasons stated elsewhere in this Order, the Court construes this term as "facilitating the first remote funding source terminal device to selectively forward the credit application through the computer performing the method to a second remote funding source if the funding source associated with the fist remote funding source terminal declines to approve the credit application."

3.3.3 "Forwarding Funding Decision Data From at Least One of the First and Second Remote Funding Source Terminal Devices to the Remote Application Entry and Display Device"

The Court construes this term as "forwarding funding decision data from at least one of the first and second remote funding source terminal devices to the remote application entry and display device from which the credit application was received.

CONCLUSION

These claim constructions shall govern this case.

IT IS SO ORDERED.

C.D.Cal.,2008.
Dealertrack, Inc. v. Huber

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