United States District Court,
S.D. Ohio, Western Division.

SWAPALEASE, INC,
Plaintiff.
v.
SUBLEASE EXCHANGE.COM, INC,
Defendant.

No. 1:07-CV-45

Oct. 3, 2008.

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ORDER ON CLAIM CONSTRUCTION

SANDRA S. BECKWITH**, Chief Judge.**

This is a patent infringement action in which Plaintiff Swapalease, Inc. alleges that Defendant Sublease Exchange.com, Inc. ("Leasetrader") has infringed U.S. Patent No. 6,965,874 ("the '874 Patent"). The '874 Patent claims a business method for facilitating transfers of vehicle leases between private parties. This matter is now before the Court for claim construction as required by Markman v. Westview Investments, 52 F.3d 967 (1995), *aff'd,* 517 U.S. 370 (1996). The parties filed a Joint Claim Construction and Prehearing Statement on May 28, 2008 (Doc. No. 64). The Court held a *Markman* hearing on June 27, 2008 and July 10, 2008 during which counsel for the parties presented arguments in support of their respective construction of the claims at issue. The Court also heard opinion testimony from Swapalease's expert, Ivan Zatkovich, who proffered testimony on internet website technology and design.

I. ***The Patent at Issue***

The '874 Patent, entitled, "METHOD, APPARATUS AND PROGRAM PRODUCT FOR FACILITATING TRANSFER OF VEHICLE LEASES," has a filing date of February 1, 2001 and was issued on November 15, 2005. The abstract describes the invention as follows:

A method for facilitating transfer of vehicle leases between parties involves providing a database of vehicle lease records concerning vehicle leases available for transfer. A search engine is provided for searching the vehicle lease database according to entered criteria, the search engine operable to identify available lease records which meet the entered criteria. Access to the search engine is provided via a computer network. Upon execution of a given search including criteria entered by a searching user, the searching user is provided, via a computer network, with vehicle lease information concerning at least one matching vehicle lease record which meets the entered criteria of the given search, if such a matching vehicle lease record exists.

'874 Patent, Abstract (Doc. No. 1, at 6).

Swapalease alleges that Leasetrader has infringed Claims 1-16, 19-20, 22-24, 26-39, and 41-43 of the '874 Patent. *See* Doc. No. 28-2 (Swapalease's preliminary infringement contentions).

II. *The Claims at Issue*

The parties have submitted nine terms for construction by the Court. The Court recites the pertinent claim language below with the terms that require construction indicated in bold face type:

1. A method for facilitating the transfer of vehicle leases between parties, the method comprising the steps of:

providing a website which displays at least one **control** giving a visitor an option of (A) creating a **record** including details of the visitor and of a leased vehicle whose lease the first visitor intends to assign, and (B) viewing a list of records, each record including a description of a leased vehicle and an owner thereof;

in response to a first, listing user visiting and selecting option (A):

directing the listing user to a **first webpage** at the website;

receiving from the listing user at first webpage information pertaining to a leased vehicle and information to enable another visitor to the website to contact the listing user, wherein the information input by the listing user includes an incentive amount offered by the listing user to encourage another visitor to assume the lease; and

storing the record created by the listing user in a database;

in response to a second, searching user visiting the website and selecting option (B):

directing the searching user to a **second webpage** at the website;

...

receiving **financial information** from the searching user for use in connection with initiating a lease transfer of a selected vehicle, said selected vehicle associated with a selected vehicle lease record, such that the searching user can thereafter assume the selected vehicle's lease associated with the selected vehicle lease record.

2. The method of claim 1 comprising the further steps of:

providing a lease action engine for modifying the vehicle lease database; providing **controlled access** to the lease action engine; and

upon addition of a vehicle lease record to the vehicle lease database by the listing user via the lease action engine, associating the entered vehicle lease record of the vehicle lease database with the existing user.

...

15. The method of claim 14, wherein receiving credit application information is performed via searching user input to a **credit application webpage.**

...

20. The method of claim 1, comprising the further step of:

enabling at least one of the searching and listing users to **electronically initiate a lease transfer** of a vehicle lease associated with a given vehicle lease record.

'874 Patent, col. 11, ll. 40-64, col. 12, ll. 15-21, col. 12, ll. 22-29, col. 13, ll. 42-44, col. 13, ll. 64-67. Accordingly, the Court must construe the terms "control," "record," "directing," "first webpage," "second webpage," "financial information," "controlled access," "credit application webpage," and "electronically initiate a lease transfer."

III. *Claim Construction Principles*

In Phillips v. AWH Corp., 415 F.3d 1303 (Fed.Cir.2005), the Federal Circuit Court of Appeals reiterated for the district courts the proper procedure and standards that guide patent claim construction. The main points of *Phillips* may be summarized as follows:

1. the words of a claim are generally given their ordinary and customary meaning, as understood by a person of ordinary skill in the art as of the filing date of the patent application. *Id*. at 1312-13.

2. the claims themselves provide substantial guidance as to the meaning of particular claim terms. *Id*. at 1314.

3. the claims must be read in view of the specification; however, the court must not import limitations from the specification into the claims. *Id*. at 1315, 1320, 1323.

4. if part of the record, the court may consider the patent's prosecution history to ascertain how the inventor understood the invention and whether he narrowed the scope of the invention during prosecution. *Id*. at 1317.

5. the court may consider extrinsic evidence, such as treatises and dictionaries, but extrinsic evidence is less significant than the intrinsic record in determining the meaning of the claim language. *Id*.

IV. *The Court's Construction of the Claims*

A. *Claim 1-"Control"*

Initially, the method of Claim 1 provides for display of a "control" which gives a visitor to the website an "A" option and a "B" option. Swapalease proposes that "control" means "an object on the screen that can be manipulated to perform an action." Leasetrader proposes that "control" means "user input." Both the intrinsic and extrinsic evidence support Swapalease's proposed definition.

The first and most obvious problem with Leasetrader's definition is that the plain language of Claim 1 requires that the "control" be displayed on the website. *See* '874 Patent, col. 11, l. 42. "User input" is not something that can be displayed on a website. At least there is no such evidence on this record. Claim 1 obviously contemplates that the "control" provides some form of functionality to the website visitor because the "control" allows the visitor to either "create a record" or "view a list of records." *See* id. at ll. 43-46.

As Mr. Zatkovich testified at the hearing, in the field of website development, "control" is a specific, common and well-understood term. Doc. No. 79, at 57. FN1 Mr. Zatkovich testified that common types of controls are buttons, grids, scroll bars and tabs. Id. "The intention [of controls]," Mr. Zatkovich stated, "is to

provide an object on the screen that is intelligent and allows the user to perform not just navigation activities, but other activities as well on the screen." Id. Mr. Zatkovich's testimony is consistent with technical reference books. *Microsoft's Computer Dictionary* defines "control," in the context of a graphical user interface, as "an object on the screen that can be manipulated by the user to perform an action." Swapalease Hearing Ex. D; Dow Chem. Co. v. Sumitomo Chem. Co., Ltd. 257 F.3d 1364, 1372 (Fed.Cir.2001)(dictionaries and technical treatises may be considered along with intrinsic evidence in construing claims). FN2

FN1. On cross-examination of Mr. Zatkovich by Leasetrader, it was sufficiently clarified that his testimony concerning website development was consistent with the state of knowledge in the field at the time of the application for the patent-in-suit.

FN2. Additionally, in Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576 (Fed.Cir.1996), the Federal Circuit stated:
Although technical treatises and dictionaries fall within the category of extrinsic evidence, as they do not form a part of an integrated patent document, they are worthy of special note. *Judges are free to consult such resources at any time in order to better understand the underlying technology* and may also rely on dictionary definitions when construing claim terms, so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents.

Id. at 1584 n. 6 (emphasis added).
The specification of the '874 Patent shows that "control," as used in Claim 1, is a button or other object on the screen that permits the visitor to perform an action. For instance, in explaining the first preferred embodiment, the specification states, "[a]t this homepage 10, the individual is introduced to the Website and is presented with computer generated buttons which activate links which are selectively activated by the individual (e.g. by mouse click) depending on whether he or she intends to assume a vehicle lease ... or sell a vehicle lease[.]" '874 Patent, col. 3, ll. 37-43. Similarly, the specification states elsewhere, "if an individual accessing homepage 10 intends to assume (or 'buy') a lease, the appropriate virtual button ("LEASE") is activated[.]" Id. col. 4, ll. 40-43.

Thus, both the intrinsic and extrinsic evidence support the conclusion that "control," as used in Claim 1, means "an object on the screen that can be manipulated to perform an action."

B. *Claim 1-"record"*

Having reached the website of the invention and being presented with options A and B (presented to the visitor by controls), Claim 1 gives the visitor the choice of either creating a "record" or viewing a list of "records." Swapalease proposes that "record" means "a collection of data." Leasetrader proposes that "record" means "information received from the listing user through the first World Wide Web document." The Court concludes that "record" means "a collection of data treated as unit."

Initially, the Court notes that this definition is supported by technical resources. The *IBM Dictionary of Computing* defines "record" as "a set of data treated as a unit." Swapalease Hearing Exhibit D. The computerdictionary.com provides the same definition. *See* id. Leasetrader proposes in part that "record" means "information," but the specification makes clear that information is what the visitor inputs into the website to create a "record" or collection of data. FN3

FN3. In fact, "data" and "information" are synonymous. Webster's in pertinent part defines "information" as "facts or figures ready for communication or use as distinguished from those incorporated into a formally organized branch of knowledge: DATA." WEBSTER'S THIRD INTERNATIONAL DICTIONARY (1971),

at 1160. Synonym.com defines "data" in pertinent part as "an item of factual information derived from measurement or research." *See* http://www.synonym.com/definition/data/ (visited September 26, 2008). *Compare also* http://the computerdictionary.com/definition/data.aspx (defining "data" as a "[r]epresentation of facts, concepts, or instructions in a formalized manner suitable for communication, interpretation, or processing by humans or by automatic means."), *with,* http://thecomputerdictionary.com/definition/information.aspx (defining "information" as "[t]he meaning that a human assigns to data by means of the known conventions used in their representation.")(both visited September 29, 2008).

For instance, the Summary of the Invention states that the claimed method includes providing a database of vehicle lease records, "each record containing at least vehicle identifying information and listing user identifying information." '874 Patent, col. 2, ll. 21-22. The language of Claim 1 indicates that "information" is included in a "record" because the visitor may create a record "including details of the visitor and of a leased vehicle whose lease the first visitor intends to assign." Id. col. 11, ll. 43-45. In other words, the vehicle identifying information and listing user information comprise, at least in part, the "record."

The Detailed Description is even more specific that information input by the visitor is what creates the "record":

If the lease owner intends to add a lease, he or she is directed to a screen or page 22 at which the lease owner is prompted to enter *information* pertinent to the leased vehicle and lease to be assigned. Such *information* may include the lessors [sic] city, state and e-mail; the make, model, year, color, # of doors, and mileage of the vehicle as well as any additional lease owner information including miles allowed on lease, and down payment required to acquire the lease, if any. *Once the information has been entered, the newly created record is displayed as indicated at page block 24. At this point, as indicated at page block 26, the lease record is entered into the search database for access by interested users.*

'874 Patent, col. 3, ll. 65-67, col. 4, ll. 1-11 (emphasis added); *see also* id. col. 7, ll. 38-67, col. 8, ll. 1-37 (describing essentially the same process). Similarly, the description indicates that "records" are modified by modifying the data contained within the record: "At that point, the lease owner modifies the data in the field or fields of the record as desired and indicates approval of the modified record by clicking on an appropriate action button." Id. col. 4, ll. 20-24.

It is also clear that the invention treats the "record" as the primary unit or collection of information for the website. The description is replete with references to records being added, modified, displayed and searched: "[T]he lease record is entered into the search database for access by interested users." Id. col. 4, ll. 9-10; "[T]he modified record is displayed and entered into the database, replacing the original record." Id. col. 4, ll. 23-25; "Once the parameters are entered, the search engine conducts a search as indicated at 124 to determine if any vehicle lease records in the vehicle lease record database of the website meet the criteria entered by the searching user. If so, the searching user may be linked to a web page or pages 126 where the matching vehicle lease records can be viewed." Id. col. 6, ll. 4-10; "At 204 the vehicle lease record is added to the website database and the listing is activated at 206." Id. col. 8, ll. 36-37.

In contrast, Leasetrader's proposed definition results in prohibited redundancies or surplusages. Nautilus Group, Inc. v. Icon Health & Fitness, Inc., 308 F.Supp.2d 1198, 1204 (W.D.Wash.2003)("Courts should not construe a patent claim term such that it renders other terms in the claim mere surplusage or reads such other terms out of the claim.")(citing Texas Instruments v. United States Int'l Trade Comm'n, 988 F.2d 1165, 1171 (Fed.Cir.1993)). First, Claim 1 already states both that the record is created by the visitor and that information pertaining to the leased vehicle is received from the listing user. '874 Patent, col. 11 ll. 42-45, col. 11 ll. 52-58. Accordingly, there is no need to include in the definition of "record" that the information in the record is received from the listing user. Second, there is no need to include in the definition that the

information is received "through the first World Wide Web document." Claim 1 already states that the claimed method involves providing a website for visitors to create and search vehicle lease records. A "website" is "one or many 'pages' of information linked together (and typically stored on a single computer or network) on the Web." *See* http:// thecomputerdictionary.com/definition/website.aspx (visited September 26, 2008). "The Web," of course, is the World Wide Web. *See* http://thecomputerdi ctionary.com/definition/worldwideweb(weborwww).aspx (visited September 26, 2008) (defining "WORLD WIDE WEB (Web or WWW)"). Thus, use of the term "website" in Claim 1 clearly indicates that the visitor will be creating a record on the World Wide Web. Therefore, there is no need to include Leasetrader's proposed limitation in the definition of "record."

Accordingly, the Court concludes that "record" means "a collection of data treated as unit."

C. *Claim 1-"directing"*

Selecting option A results in "directing the listing user to a first webpage at the website." '874 Patent, col. 11, ll. 50-51. Swapalease proposes that "directing" means "guiding." Leasetrader proposes that "directing" means "transmitting to the webbrowser of."

Swapalease's definition of "directing" is derived from the definition found in *The American Heritage Dictionary of the English Language,* a non-technical resource. In *Dow Chemical,* the Federal Circuit observed that it had "previously cautioned against the use of non-technical dictionaries, lest dictionary definitions be converted into technical terms of art having legal, not linguistic significance." 257 F.3d at 1372 (quoting Multiform Desiccants, Inc. v. Medzam, Ltd., 133 F.3d 1473, 1478 (Fed.Cir.1998))(internal quotation marks and ellipses omitted). On the other hand, several online technical dictionaries, such as thecomputerdictionary.com, webopedia.com, and techdictionary.com, do not provide a technical dictionary term for "directing." Therefore, it seems likely that the inventor intended to use directing in a common and non-technical sense.

Swapalease has suggested that "directing" means "guiding." "Guiding," however, seems like a passive verb whereas review of the specification indicates that "directing" is an active process. In other words, in the context of Claim 1, the specification indicates that "directing" is a mandatory event that generally, but not always, occurs after the visitor activates a control, resulting in the visitor being automatically taken somewhere rather than being guided there.

For instance, with respect to the description of the first preferred embodiment, the specification states:

At this homepage 10, the individual is introduced the Website and is presented with computer generated buttons which activate links which are selectively activated by the individual (e.g. by mouse click) depending on whether he or she intends to assume a vehicle lease ("LEASE"), sell a vehicle lease ("SELL LEASE") or, if the individual has already visited the site and registered with the site, sign in and view his or her account ("REGISTERED USER SIGN IN"). If the individual is a first-time visitor the individual so indicates *by clicking on the icon on the homepage 10 and is directed to a page 12* which displays the rules or gives the individual a link to the rules and a link to proceed by confirming that the rules have been read. After reading the rules, which optionally can be displayed at linked to page 14, the lease owner is sent to a page or screen 16 at which the lease owner creates an account by entering a user identification code ("user ID") and password.

The lease owner then reenters his or her own ID and password and logs on, as shown in webpage block 18 in FIG. 1. Once having logged in, the lease owner *is then directed to a Main Menu page 20* which provides link options which include adding a new vehicle lease ("ADD LEASE"), modifying an existing vehicle lease ("MODIFY LEASE"), deleting an existing vehicle lease ("DELETE LEASE"), listing all of the leases entered by that lease owner ("LIST ALL LEASES"), or searching for a particular vehicle lease in a search

data ("NEW SEARCH").

If the lease owner intends to add a lease, *he or she is directed to a screen or page 22,* at which the lease owner is prompted to enter information pertinent to the leased vehicle[.]

'874 Patent, col. 3, ll. 38-67 (emphasis added). FN4 With respect to buying a lease, the specification states:

FN4. One preliminary observation is in order here. The capitalized terms in quotation marks within parentheses are the designations for the controls or buttons that are displayed on the website. This is confirmed by examined Figure 1, in which these and other terms are listed within the webpage blocks. The specification indicates that these entries represent links to other webpages. '874 Patent, col. 3, ll. 29-32. Additionally, the specification indicates that "LEASE" is a "virtual button." '874 Patent, col. 4, l. 43.

Referring back to FIG. 1, if an individual accessing the homepage 10 intends to assume (or "buy") a lease, *the appropriate virtual button ("LEASE") is activated and the lease buyer is directed to a "Search Database screen or page 40.*
Id. col. 4, ll. 42-45 (emphasis added). These excerpts of the specification all indicate that "directing" generally occurs after the visitor clicks on a "control," thus performing the action of taking the visitor to a new webpage. FN5 This understanding of "directing" essentially comports with the definition proffered by Swapalease at oral argument: "It's a generic reference to sending someone to a different place." Doc. No. 79, at 45. Finally, further support for the conclusion that "directing" means "taking" is found in the written description of the second embodiment. There, the specification indicates that upon selecting the link to search for a vehicle, a searching user "may be *taken* to a webpage or pages 122 where the user can utilize a search engine to enter certain search parameters for the types of vehicles of interest to the searching user." '874 Patent, col. 5, ll. 60-63 (emphasis added). Thus, everything in the specification indicates that the visitor is automatically taken or sent to a different place by the website upon activation of the control rather than being guided there.
FN5. This is not quite as obvious with respect to the last paragraph quoted from column 3 of the patent. However, when one considers that in order to add a lease, the visitor must activate the "ADD LEASE" button, it is implicit that activating a control precedes being directed to a screen or page 22.

Leasetrader's proposed definition of "directing"-"transmitting to the webbrowser of"-is redundant of "control" because activating the control obviously transmits the commands to website which result in being taken to a different webpage. Moreover, substituting Leasetrader's definition for "directing" in Claim 1, a process suggested by Swapalease with respect to other terms, *e.g.,* Doc. No. 79, at 44-45, results in an unintelligible claim: "transmitting to the webbrowser of the listing user to a first webpage at the website." In contrast, substituting the word "taking" for "directing" still results in a comprehensible claim: "taking the listing user to a first webpage at the website."

Accordingly, the Court concludes that "directing" means "taking."

D. *Claim 1-"first webpage" and "second webpage"*

After selecting option A or option B, the website visitor is directed to either a "first webpage" or a "second webpage" at the website. Option A is for listing users (sellers of leases) and Option B is for searching users (buyers of leases). Swapalease proposes that "first webpage" means "a screen or series of screens on an internet website." Swapalease then proposes that "second webpage" means "a screen or series of screens on an internet website different than the first webpage." Leasetrader proposes that "first webpage" means "a first World Wide Web document that is identified by a unique URL (uniform resource locator)." Leasetrader then proposes that "second webpage" means "a second World Wide Web document that is identified by its

own unique URL." The primary difference between the parties' definitions is Leasetrader's inclusion of a limitation that the first webpage and second webpage have unique uniform resource locators or URL's. A URL is an internet address which tells the browser where to find an internet resource. http://www.computeruser.com/resources/dictionary/ (visited September 30, 2008); *see also* Doc. No. 79, at 63 (testimony of Mr. Zatkovich indicating that a URL is a location on the internet).

First, the Court notes that the specification, and in particular, Figure 1, makes abundantly clear that the "first webpage" is different from the "second webpage." As remarked earlier, each block in Figure 1 represents a different webpage on the website. '874 Patent, col. 3, ll. 26-30. Thus, upon selecting option A, the listing user, after completing the registration process, is ultimately directed to the Main Menu webpage 20. Id. ll. 57-59. On the other hand, upon selecting option B, the searching user is directed to the Search Database 40. Id. col. 4, ll. 41-45. In Figure 1, both the Main Menu and Search Database are represented in separate blocks, and, therefore, represent separate webpages within the website.

On cross-examination at the *Markman* hearing, Mr. Zatkovich made clear that different webpages have different addresses or URL's:

Q. That's what makes it a webpage: That it has that address?

A. At the same address or URL, that's correct.

Q. And if I do something, if I click a link or do something that takes-that changes that address at the top of the browser, then I've gone to a different webpage?

A. That is correct.

Doc. No. 79, at 66-67. Although Swapalease argues that a "webpage" within the meaning of Claim 1 is not required to have a unique URL because the specification never mentions URL's, because the invention relates to an internet website, it is implicit in the nature of the technology that a webpage will have its own URL. *See, e.g.,* '874 Patent, col. 3, ll. 24-32 (indicating that one embodiment of the claimed method features a "computer generated page, such as a webpage, which may be accessible via the Internet.").

Having said that, however, it is also clear that while the "first webpage" and the "second webpage" have different URL's, the information included or to be input within these webpages can be contained within a screen or series of screens without changing the URL of the webpage. First, there is no limitation in Claim 1 that the information of the webpage be displayed on a single screen. Rather, as to the first webpage, the claim simply states that it receives information from the listing user, including an incentive amount. '874 Patent, col. 11, ll. 52-58. The second webpage provides the searching user access to a search database. Id. ll. 65-67. In his testimony, however, Mr. Zatkovich indicated that through use of tabs or other controls, multiple screens can be included on a single webpage. In other words, a visitor can access multiple screens of information without changing the URL, and thus remain on the same webpage. *See* Doc. No. 79, at 65-66.

Therefore, in light of the foregoing discussion, the Court concludes that the proper definitions of "first webpage" and "second webpage" are hybrids of Swapalease's and Leasetrader's proposed definitions in which the "first webpage" and "second webpage" have their own unique URL's but which may include a screen or screens for display or entry of information. Accordingly, the Court holds that "first webpage" means "a webpage, comprised of a screen or series of screens, that is identified by a unique uniform resource locator." The Court holds that "second webpage" means "a webpage, comprised of a screen or series of screens, that is different from the first webpage and that is identified by a unique uniform resource locator."

E. ***Claim 1 "financial information"***

When a searching user selects option B, the second webpage receives "financial information for the searching user in connection with initiating a lease transfer of a selected vehicle." '874 Patent, col. 12, ll. 15-17. Swapalease proposes that "financial information" means "information regarding finances, including occupation, employer, length of employment, income, assets, expenses, or liabilities." Leasetrader proposes that "financial information" means "information regarding income, assets, expenses, or liabilities." Both proposed definitions are very similar with the main difference being that Swapalease has included more subcategories of financial information than Leasetrader.

The Court observes that although Claim 1 uses the term "financial information," nowhere does the written specification use that term. Instead, where the buyer is at the point of assuming the lease, the specification generally refers to "credit information," "credit application," or "credit application information." For instance, with respect to the first preferred embodiment, the specification states: "At this point [assuming the lease], the lease buyer has the option of downloading a credit application, shown at page block 50, filling out the credit application and sending it to the lessor bank, indicated at page block 52." '874 Patent, col. 5, ll. 1-4. At Figure 5, the specification notes that the searching user can create a new account with personal data including "credit application information." Id. col. 6, ll. 49-55. With respect to the second preferred embodiment, the specification describes a lease transfer process in which a credit application is prepared by the searching user and submitted to the leasing company. Alternatively, the credit application may be generated automatically by information entered by the searching user in establishing his personal account. Id. col. 10, ll. 7-38. In establishing a new account by the searching user, Figure 5 at 136 states that "personal data" "includes information necessary to process credit application."

In the end, Figure 5 is the best evidence of what the inventor meant in using the term "financial information." Although the invention contemplates collecting a fee for facilitating a lease transfer, the financial information and creditworthiness of the searching user is not a concern of the claimed method. Rather, it is the lease holder who has the interest in the searching user's financial information for purposes of deciding whether to approve the lease transfer. *See, e.g.* '874 Patent, claim 18 (indicating that transfer of lease is dependent, at least in part, on credit provider's approval of credit application). Presumably, each lease holder or credit provider will have its own set of criteria or requirements for financial information by which it will determine whether to approve the searching user's credit application. Therefore, it makes sense that Figure 5 would generically suggest that financial information means whatever information is necessary to process the credit application. In contrast, it makes little sense for the invention to claim specifically the individual categories of financial information delineated by both Swapalease and Leasetrader.

Swapalease relies on the doctrine of claim differentiation in arguing that "financial information" in claim 1 must be broader than "credit application information" because dependent Claim 14 states that "the financial information [of claim 1] comprises credit application information from the searching user." '874 Patent, col. 13, ll. 39-41. Claim differentiation presumes that a limitation added in a dependent claim should not be read into an independent claim. Curtiss-Wright Flow Control Corp. v. Velan, Inc., 438 F.3d 1374, 1380 (Fed.Cir.2006). Thus, ordinarily, as Swapalease correctly argues, "financial information" in independent Claim 1 would be broader than "credit application information" in dependent Claim 14. However:

the doctrine only creates a presumption that each claim in a patent has a different scope; it is not a hard and fast rule of construction. The doctrine of claim differentiation can not broaden claims beyond their correct scope, determined in light of the specification and the prosecution history and any relevant extrinsic evidence. Claims that are written in different words may ultimately cover substantially the same subject matter.

Seachange Int'l, Inc. v. C-COR, Inc., 413 F.3d 1361, 1369 (Fed . Cir.2005) (internal citations, quotation marks, brackets and ellipses omitted). Claim differentiation "will be overcome by a contrary construction dictated by the written description or prosecution history." *Id.*

In this case, the written description overcomes the claim differentiation presumption. As indicated above, nothing in the written description, drawings, or discussion of the preferred embodiments refers to "financial information." Instead, the description consistently refers to "credit information," "credit application," or "credit application information." Nothing in the written description suggests that "financial information" is broader in scope than "credit application information." This case, therefore, is similar to Kraft Foods, Inc. v. International Trading Co., 203 F.3d 1362 (Fed.Cir.2000), wherein the Court held that the doctrine of claim differentiation did not preclude a construction of the term "protecting back panel" to be "relatively stiff," even though another claim recited a back panel comprised of "a flat relatively stiff planar sheet," where each embodiment disclosed in the written description employed a relatively stiff back panel. Id. at 1366-68.

Accordingly, the Court concludes that "financial information" means "information necessary to process a credit application."

F. *Claim 2-"controlled access"*

Claim 2 is a dependent claim of Claim 1 and claims in pertinent part a "lease action engine for modifying the vehicle lease database; providing controlled access to the lease action engine[.]" '874 Patent, col. 12, ll. 22-25. Swapalease proposes that "controlled access" means "access to a listing user associated with the particular record." Leasetrader proposes that "controlled access" means "access only to an authorized listing user."

The specific term "controlled access" only occurs once in the specification. The Summary of the Invention states:

In still a further aspect, a method for facilitating transfer of vehicle leases between parties involves providing a database of vehicle lease records concerning vehicle leases available for transfer. Access to at least certain information concerning vehicle lease records in the vehicle lease database is provided via a computer network. A lease action engine is provided for modifying the vehicle lease database, and controlled access to the lease action engine is provided via the computer network. Upon addition of a vehicle lease record to the vehicle lease database by a listing user via the lease action engine, the entered vehicle lease record of the vehicle lease database is associated with the listing user. The lease action engine enables the listing user to delete or modify an existing vehicle lease record of the vehicle lease database only if the existing vehicle lease record is associated with the listing user.

'874 Patent, col. 2, ll. 1-16. Clearly what is contemplated by "controlled access" is that a listing user will have access to the vehicle lease database for the purpose of modifying or deleting vehicle lease records associated with the listing user. In that regard, Swapalease's proposed definition is backwards. The method is not "access *to* a listing user associated with a particular record" but rather "access *by* a listing user to a particular record." In support of this conclusion, the Court notes that in modifying and deleting records, the specification consistently describes a system wherein the website lists records created by the listing user, i.e., the records are associated with the user, not vice versa. *E.g.,* id. col. 4, ll. 13-17 ("Screen or page 30 lists all of the lease records created by that lease owner and entered into the database, and prompts the lease owner to select a particular lease to be modified."); id. col. 9, ll. 43-47 ("Using option 226 the listing user only has access to edit, delete, or to extend vehicle lease records which are associated with the particular listing user (as by login information and name)."); Claim 2, col. 12, ll. 28-29 ("associating the entered vehicle lease record of the vehicle lease database with the listing user."). Similarly, Leasetrader's definition is backwards because it is describing access to an authorized user rather than access to a record by a listing user.

Accordingly, the Court concludes that "controlled access" means "access to the vehicle lease database by a listing user for the purpose of modifying or deleting vehicle lease records associated with the listing user."

G. *Claim 15-"credit application webpage"*

Claim 15 is a dependent claim of Claim 14 and recites that "receiving credit application information is performed via searching user input to a credit application webpage." '874 Patent, col. 13, ll. 42-44. Swapalease proposes that "credit application webpage" means "a credit application at a screen or series of screens on an internet website." Leasetrader proposes that "credit application webpage" means "a credit application in the form of a World Wide Web document having unique URL." The difference here is a repeat of the dispute over "first webpage" and "second webpage."

Accordingly, the Court resolves the dispute in the same way and concludes that "credit application webpage" means "a credit application in the form of a webpage, comprised of a screen or series of screens, that is identified by a unique uniform resource locator."

H. *Claim 20-"electronically initiate a lease transfer"*

Finally, Claim 20, a dependent claim of Claim 1, provides that the invention enables "at least one of the searching and listing users to electronically initiate a lease transfer of a vehicle lease associated with a given vehicle lease record." '874 Patent, col. 13, ll. 64-67. Swapalease proposes that "electronically initiate a lease transfer" means "utilizing an electronic device to initiate a lease transfer process." Leasetrader proposes that this term means "electronically initiate the preparation of lease transfer documents." The Court concludes that Swapalease's definition is correct.

As pointed out during the *Markman* hearing, the specification specifically contemplates that lease transfer documents may have to be prepared and executed outside the confines of the website:

At step 288, the necessary lease transfer documents are produced using the information which has previously been provided by both the listing user/seller and the searching user/buyer. Such document preparation may be an automated electronic process *or may involve some human intervention*.

'874 Patent, col. 10, ll. 48-50 (emphasis added). In addition, the specification states that "[w]here a bank accepts only applications with original signatures, the transmission of a completed credit application from a lease buyer to a bank may be performed offline, with the actual lease document." Id. col. 5, ll. 4-7. Moreover, the lease transfer process involves more than just preparing lease transfer documents. As Swapalease also pointed out, the lease transfer process may involve marking a vehicle lease record with a "swap pending" notation. Id. col. 10, ll. 7-10.

Accordingly, the Court concludes that "electronically initiate a lease transfer means "utilizing an electronic device to initiate a lease transfer process."

IT IS SO ORDERED

S.D.Ohio,2008.
Swapalease, Inc. v. Sublease Exchange.com, Inc.

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