United States District Court,
W.D. Texas, Austin Division.

The WESTERN UNION COMPANY,
Plaintiff.
v.
MONEYGRAM INTERNATIONAL, INC,
Defendant.

No. A-07-CA-372-SS

Nov. 6, 2008.

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Glenna L. Gilbert, Robins, Kaplan, Miller & Ciresi L.L.P., Minneapolis, MN, for Defendant.

ORDER

SAM SPARKS**, District Judge.**

BE IT REMEMBERED on the *6th* day of November 2008 the Court reviewed the file in the above-styled cause, specifically the Report and Recommendation of Special Master Karl Bayer [# 124], the Defendant's objections thereto [# 126], and the Plaintiff's response thereto [# 128]. Having reviewed these documents, the transcript and exhibits from the *Markman* hearings, the parties' pre- and post- *Markman* briefing, the applicable law, and the case file as a whole, the Court ACCEPTS the First Amended Report and Recommendation of the Special Master in full for the reasons that follow.

Background

This patent dispute involves four patents owned by Plaintiff, the Western Union Company (Western Union), and a single patent owned by Defendant MoneyGram International, Inc. (MoneyGram). Western Union's patents No. 6,488,203 (the '203 patent), No. 6,502,747 (the '747 patent), No. 6,761,309 (the ' 309 patent), and No. 7,070,094 (the '094 patent) collectively disclose a system for performing a money transfer transaction. Western Union alleges MoneyGram's "FormFree" money transfer system violates certain claims of the four related patents. MoneyGram, in turn, asserts WesternUnion's products infringe its patent No. 5,119,293 (the '293 patent), which discloses a system for dispensing negotiable instruments (e.g., money orders).

Western Union's suit initially concerned only the '203 patent. See Complaint [1] filed May 11, 2007. MoneyGram's initial counterclaims did not include allegations that Western Union has infringed the '293

patent. *See* Answer [17] filed November 14, 2007. MoneyGram filed its Amended Answer asserting infringement of the '293 patent on January 24, 2008. *See* Amended Answer [47]. On May 2, 2008, the Court granted Western Union's motion to amend its complaint to assert infringement of the additional patents. *See* Motion to File Second Amended Complaint [82], Order of May 2, 2008[84]. On June 20, 2008, Western Union filed a "Supplemental Statement of Claims" expanding its infringement allegations to additional claims within the four patents. MoneyGram objects to the June 20, 2008 supplemental claims as untimely and points out the *Markman* hearing was held on June 25, 2008, days later.

Though this delay is far from ideal, MoneyGram has not stated any actual prejudice arising from the identification of additional claims immediately before the *Markman* hearing in this case. The related patents share many common terms, and the disputed terms in the supplemental claims designated on June 20, 2008 had already been identified by the parties as terms requiring construction at the *Markman* hearing in connection with previously designated claims. Moreover, at the *Markman* hearing, Special Master Karl Bayer invited MoneyGram to submit post- *Markman* briefing identifying any terms in the late-designated claims that might require additional construction, either through post- *Markman* briefing or an additional *Markman* hearing. In its post- *Markman* briefing, MoneyGram has not identified any additional terms requiring construction. Accordingly, MoneyGram's objection to the late-filed supplemental claims is OVERRULED.

Special Master Karl Bayer presided over the *Markman* hearing on June 25, 2008. The hearing was preceded by a tutorial, at which both parties presented expert testimony designed to give the Court relevant background information about the money-transfer industry, the accused products, and innovations claimed by the patents. The parties agreed this expert testimony was for tutorial purposes only, and the Court does not consider any testimony or exhibit produced in the tutorial as evidence of claim scope in this case.

Analysis

I. Claim Construction Principles

The Court begins its claim construction analysis with a review of the relevant claim construction principles. The claim language in a patent defines the scope of the invention. SRI Int'l v. Matsushita Elec. Corp., 775 F.2d 1107, 1121 (Fed.Cir.1985) (en banc). A claim term means "what one of ordinary skill in the art at the time of the invention would have understood the term to mean." Markman v. Westview Instruments, Inc., 52 F.3d 967, 986 (Fed.Cir.1995), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). When construing claims, courts begin with "an examination of the intrinsic evidence, *i.e.* the claims, the rest of the specification and, if in evidence, the prosecution history." CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 1366 (Fed.Cir.2002); Interactive Gift Express, Inc. v. Compuserve Inc., 256 F.3d 1323, 1327 (Fed.Cir.2001).

The words in the claims themselves are of primary importance in the analysis. Both the plain language of the claims and the context in which the various terms appear "provide substantial guidance as to the meaning of particular claim terms." Phillips v. AWE Corp., 415 F.3d 1303, 1314 (Fed.Cir.2005). The specification also plays a significant role in the analysis. The Federal Circuit has repeatedly reaffirmed the principle that the specification "is always highly relevant .... Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." Id. at 1315 (quoting Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996)). In interpreting the effect the specification has on the claim limitations, however, courts must pay special attention to the admonition that one looks "to the specification to ascertain the meaning of the claim term as it is used by the inventor in the context of the entirety of his invention, and

not merely to limit a claim term." Interactive Gift, 256 F.3d at 1332 (internal quotation marks and citations omitted).

The final form of intrinsic evidence the Court considers is the prosecution history. Although the prosecution history "represents an ongoing negotiation between the PTO and the applicant" and therefore "often lacks the clarity of the specification and thus is less useful for claim construction purposes," it can nonetheless "often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." Phillips, 415 F.3d at 1317.

Besides the intrinsic evidence, the Court may also consult dictionaries, treatises, and expert or inventor testimony-i.e., extrinsic evidence-in the claim construction analysis. *Id*. In this particular case, as noted above, the parties stipulated at the *Markman* hearing that no expert testimony would be offered as evidence for claim construction purposes, and the experts called at the hearing were speaking for tutorial purposes only. Therefore, though the Court is mindful of the background scientific principles explained by the parties' respective experts, the Court does not consider the testimony of any expert at the *Markman* hearing as evidence of the scope of any claims.

II. Disputed Terms in Western Union's Patents

The majority of the terms disputed by the parties in Western Union's related patents occur in Claim 1 of the '203 patent, and the parties agree the terms are used consistently in the additional claims of the '203 patent and the related '747, '309, and '094 patents.

Claim 1 of the '203 patent claims:

A method of performing a money transfer **send transaction,** the method comprising:

providing a sender direct access to an employee of a financial services institution in order to receive **transaction details** from the sender;

storing, on a **data base,** the transaction details provided by the sender, wherein the transaction details include a **desired amount of money to be sent** by the sender to the recipient;

establishing a **code** that corresponds to the transaction details stored on the data base, wherein the code is established for use by the sender during the send transaction;

storing the code on the data base such that the code is useable to identify the send transaction on the data base;

entering the code into an electronic transaction fulfillment device in communication with the data base to retrieve the transaction details from the data base after the step of storing the code on the data base; and

determining a collect amount, to be collected from the sender, based on the transaction details;

wherein the code is not provided by or to the recipient for use by the recipient during the send transaction.

'203 patent col. 8-9, ll.65-67 and 1-19, 2d Am. Comp. Ex. A. (disputed terms in boldface).

Additional disputed terms first appear in Claim 21 of the '203 patent and are used consistently throughout the related patents. Claim 21 claims:

A system for performing a money transfer send transaction, the system comprising:

a transaction staging device for providing a sender direct access to an employee of a financial services institution in order to receive transaction details from the sender;

a data base for storing the transaction details and a code that corresponds to the transaction details; and

an electronic transaction fulfillment device in communication with the data base, the electronic transaction fulfillment device being configured to receive the code and to retrieve the transaction details from the data base based on the code; wherein the data base is configured to **validate the code** received by the electronic transaction fulfillment device, and to provide a collect amount, to be collected from the sender, to the electronic transaction fulfillment device.

'203 patent col. 10, ll.47-64 (disputed terms in boldface).

Additional disputed terms first appear in Claim 28 of the '203 patent and are used consistently throughout the related patents. Claim 28 claims:

A method of performing a money transfer send transaction, the method comprising:

a) storing, on a data base, transaction details provided by a sender through a transaction staging device that provides the sender direct access to an employee of a financial services institution, wherein the transaction details include a desired amount of money to be sent by the sender to the recipient;

b) storing, on the data base, a code for use by the sender during the send transaction, wherein the code corresponds to the transaction details stored on the data base;

c) receiving at the data base **an entry** provided by the sender and corresponding to the code;

d) **validating the entry;** and

e) providing, by the data base, a collect amount, to be collected from the sender, to an electronic transaction fulfillment device in communication with the data base if the entry is valid, wherein the collect amount is based on the desired amount of money to be sent;

wherein the code is not provided by or to the recipient for use by the recipient during the send transaction.

'203 patent col. ll.28-48 (disputed terms in boldface).

Additional disputed terms first appear in Claim 20 of the '747 patent and are used consistently throughout the related patents. Claim 20 claims:

A method of performing a money transfer send transaction through a financial services institution, the method comprising:

receiving transaction details on a **first computer** of the financial services institution, wherein the transaction details are provided by a sender and include a desired amount of money to be sent by the sender to a recipient;

storing the transaction details on the first computer;

establishing a code that corresponds to the transaction details, wherein the code is established for use by the sender during the send transaction;

storing the code on the first computer such that the code is useable to identify the send transaction;

receiving the code at the first computer from an electronic transaction fulfillment device in communication with the first computer after the step of storing the code on the first computer;

validating the code received from the transaction fulfillment device by comparing the code received from the transaction fulfillment device with the code stored on the first computer; and

transmitting a collect amount, to be collected from the sender, from the first computer to the transaction fulfillment device if the code received from the transaction fulfillment device is valid;

wherein at least a portion of the method is performed using TCP/IP, and wherein the code is not provided by or to the recipient for use by the recipient during the send transaction.

Patent '747 col. 11, ll 50-60, col. 12 ll. 1-20 (disputed terms in boldface).

Additional disputed terms first appear in Claim 1 of the '094 patent and are used consistently throughout the related patents. Claim 1 claims:

A method of performing a money transfer **receive transaction** involving a recipient that receives money from a sender, the method comprising:

providing a receive code to a recipient via a receive transaction staging device that is used to stage the receive transaction, wherein the receive code is used to identify the receive transaction on a data base;

receiving at the data base an entry, provided by the recipient and corresponding to the receive code, from a receive transaction fulfillment device in communication with the data base;

providing transaction details of the receive transaction to the receive transaction fulfillment device for verification with the recipient;

wherein the receive code is not provided by the sender.

Patent '094 col. 8, ll. 43-56 (disputed terms in boldface).

Western Union and MoneyGram have, since the Markman hearing, agreed on the construction of the term "an entry" as it is used in the Western Union patents. The parties agree an entry is "the code or transaction detail." *See* Report and Recommendation, Claim Chart at 18. Western Union contends no other disputed term in the related patents is in need of construction, because each has an ordinary meaning readily understood in the field. The Special Master agrees, and recommends no construction of the following disputed terms: "send transaction," "transaction details," "data base," "desired amount of money to be sent," "a code," "validate the code," "validating the entry," "first computer," and "receive transaction."

Moneygram asserts the Court is obligated to construe all disputed terms, even those with a common, ordinary meaning. MoneyGram relies on *02* Micro Int'l Ltd. v. Beyond Innovation Tech. Co. Ltd., 521 F.3d 1351, 1361-63 (Fed.Cir.2008), for the proposition that even commonly understood terms must be construed by the court as long as there is a dispute between the parties as to the meaning of the term.

MoneyGram's reading of *02 Micro* is overbroad. "A determination that a claim term 'needs no construction' or has the 'plain and ordinary meaning' ***may*** be inadequate when a term has more than one "ordinary" meaning or when reliance on a term's 'ordinary' meaning does not resolve the parties' dispute." Id. at 1361 (emphasis added). But *02 Micro* actually recognizes the Court is not (and should not be) obliged to construe every limitation present in a patent's asserted claims. Id. at 1362. The Court is, however, required to construe words that ordinarily have a plain meaning if the parties "present a fundamental dispute regarding the scope of a claim term." Id. at 1363. The Eastern District of Texas recently articulated the *02 Micro* holding this way:

[A] court may not decline to construe a claim term or rely on the term's ordinary meaning where such a construction does not resolve the parties' claim-scope dispute, allowing the parties to present claim scope arguments to the jury. *02* Micro, 521 F.3d at 1361-62. However, a court may decline to construe a claim term or rely on that term's ordinary meaning if the court resolves the parties' claim-scope dispute and precludes the parties from presenting jury arguments inconsistent with the court's adjudication of claim scope. *See* id. at 1362 at 1362.

ReedHycalog UK, Ltd. v. Baker Hughes Oilfield Operations, Inc., 2008 U.S. Dist. LEXIS 40877, 4-6 (E.D.Tex. May 21, 2008).

More specifically, no construction is required if the requested construction would be "an exercise in redundancy," *02* Micro, 521 F.3d at 1362(quoting U.S. Surgical Corp. v. Ethicon, Inc., 103 F.3d 1554, 1568 (Fed.Cir.1997)), or "the disputed issue is the proper application of a claim term to an accused process rather the scope of the term." *Id.* (citing Biotec Biologische Naturverpackungen GmbH & Co. KG v. Biocorp, Inc., 249 F.3d 1341, 1349 (Fed.Cir.2001)). A Court may refuse to construe a commonly understood term if the proposed construction would create ambiguity or confuse the jury. *Saffran v. Boston Sci. Corp.,* 2008 U.S. Dist. LEXIS 52557 (E.D.Tex. July 9, 2008). Additionally, a Court may refuse to adopt a specific definition of a common term if the proposed construction imports claim limitations not supported by the record. *Id.*

The bottom line is that the Court's *Markman* obligation, as interpreted by *02 Micro,* is fulfilled when the Court has resolved the parties' dispute as to the scope of the claims. *See Alcatel United States Res., Inc. v. Microsoft Corp.,* 2008 U.S. Dist. LEXIS 49615 (E.D. Tex. June 27, 2008) (citing *02* Micro, 521 F.3d at 1362). No further definition is necessary. *Id.* With this standard in mind, the Court considers the disputed terms.

A. "send transaction" and "receive transaction"

The terms "send transaction" and "receive transaction" are first found in Claim 1 of the '203 patent and Claim 1 the '094 patent, respectively. MoneyGram and Western Union initially engage over whether the preamble of the ' 203 patent limits the claims of the patent to "send transactions" and the preamble of the '094 patent limits that patent's claims to "receive transactions." *See* In re Paulsen, 30 F.3d 1475, 1479 (Fed.Cir.1994) ("The preamble of a claim does not limit the scope of the claim when it merely states a purpose or intended use of the invention. Nevertheless, terms appearing in a preamble may be deemed limitations of a claim when they 'give meaning to the claim and properly define the invention.' " (internal citations omitted)).

The Court finds the argument of little value, however, as the actual claims of each patent are couched in terms of a "send transaction" and a "receive transaction," respectively. "[R]eview of a patent in its entirety should be made to determine whether the inventors intended [preamble] language to represent an additional structural limitation," *id*., and the use of the phrases "send transaction" and "receive transaction" throughout the claims of the Western Union patents indicates each patent is structurally limited to the type of transaction claimed.

This is not to say the terms "send transaction" and "receive transaction" require the elaborate constructions proposed by MoneyGram. MoneyGram's definition of "send transaction" includes not only an completely redundant definition of the term: "a money transfer transaction performed by a sender as opposed to a recipient," but also a requirement that "each specific step of the staging process must occur in the order in which it is recited in the claims of the send patents. The same is true for the fulfillment process." *See* Report and Recommendation Claim Chart at 2-3. This is not a structural limitation supported by the claims or the specification of the patent. *See, e.g*. Interactive Gift Express, Inc. v. Compuserve Inc., 256 F.3d 1323, 1342 (Fed.Cir.2001) ("Unless the steps of a method actually recite an order, the steps are not ordinarily construed to require one.") MoneyGram's definition of "receive transaction" is not so convoluted, but is utterly superfluous: "a money transfer transaction performed by a recipient as opposed to a sender."

The Court finds the ordinary meaning of the term "send transaction" and the ordinary meaning of the term "receive transaction" apply to limit the scope of the claims in this case. No further construction of either term is necessary.

B. "transaction details"

MoneyGram contends the term "transaction details" is vague and indefinite. In the alternative, MoneyGram argues the patents require two definitions of the term: one for transaction details *before* storage of the code, and one for transaction details *after* storage of the code. *See* Report and Recommendation Claim Chart at 4. Western Union asserts these distinctions are not supported in the patent claims or specification and argues the ordinary meaning of the term applies. *Id*. The Special Master agrees that the term is not indefinite and no construction is necessary. *Id*.

The term "transaction details" is used several times in the related claims, but always with the same function or purpose. "Transaction details" are identifying information that distinguish one transaction from another and enable a single transaction to be accurately processed through the patented system. *See, e.g*. '203 patent, col. 10, ll. 47-64; '094 patent, col. 8, ll 42-55; '747 patent, col. 11, ll. 54-56; '309 patent, col. 9, ll. 1-2. As this meaning is consistent throughout the patents and is, moreover, within the ordinary meaning of the phrase "transaction details," no construction is necessary. See, e.g, THE AMERICAN HERITAGE

COLLEGE DICTIONARY, 4th ed., Houghton Mifflin 2002 (defining "detail" as "particulars considered indiviudally and in relation to the whole.").

C. "data base"

The parties have submitted, in addition to their general post- *Markman* briefing, a raft of secondary filings arguing over the precise meaning of a "data base" as the term is used in the Western Union patents. At the Markman hearing, Western Union contended the term should be given its ordinary meaning. In its post-Markman briefing, however, Western Union proposed an alternative defintion: "a database or host computer of the financial services institution." Western Union provides no support for its proposition that a "database" can be construed as a host computer.

MoneyGram's proposed definition is more realistic, but it adds nothing to the ordinary meaning of the term: "a structured and organized collection of data stored on non-transient storage which preserves data when power is removed from the storage device." See Report and Recommendation Claim Chart at 4.

Faced with a choice between MoneyGram's "exercise in redundancy," *02* Micro, 521 F.3d at 1362, or Western Union's exercise in creative writing, the Court declines to issue either construction and finds the ordinary meaning of the term "data base" applies to the Western Union patents.

D. "desired amount of money to be sent"

Counsel for MoneyGram actually charged its clients for the following legal definition of the phrase "a desired amount of money to be sent": "the specific amount of money to be sent." Report and Recommendation Claim Chart at 7. MoneyGram goes on to specify "[t]his is the same as the principle amount." The Court finds the ordinary meaning of this phrase applies and no construction is necessary.

E. "a code"

Moneygram seeks to limit the term "code" to a "send control number derived from the transaction details." Report and Recommendation Claim Construction Chart at 8. Western Union again argues for the ordinary meaning of the term.

MoneyGram's construction must be rejected because it "imports claim limitations not supported by the record." *Saffran,* 2008 U.S. Dist. LEXIS 52557. Though the language of the patents indicates the code "corresponds to the transaction details," *see, e.g.,* '203 patent, claims 1, 21, 40; '747 patent, claim 20, there is nothing in the language of the patent itself that limits what can be used for the code. It need not be a number, nor does it need to be "derived from" the transaction so long as it "corresponds to the transaction details." For example, a code might consist of the sender's favorite color, maiden name, home town, or other common security questions that are neither numeric nor derived from the transaction details, but which may be linked to "correspond[ ] to the transaction details stored on the database." Patent '203, cl. 1.

In further support of its proffered definition, MoneyGram claims the examiner's statement in the Notice of Allowability (part of the prosecution history of the patent) that "the details of the transaction are used to establish a code for the sender to use" should be construed as an explicit narrowing of the scope of the patent. Def.'s Objs. at 3. But the Federal Circuit has rejected the contention that "an examiner's unilateral statements in a Notice of Allowance constitute a clear and unambiguous disavowal of claim scope." Salazar v. Proctor & Gamble Co., 414 F.3d 1342, 1347 (Fed.Cir.2005). The *Salazar* court found the applicant had

disavowed "nothing," and refused to create a rule or presumption that the applicant had disavowed claim scope by silence. *Id*. Similarly, this Court declines to adopt a limiting construction of "code" based on ambiguous file history, and finds the ordinary meaning applies.

F. "validate the code" and "validating the entry"

Western Union argues the ordinary meaning of the term "validating" applies to both "validating the code" and "validating the entry." MoneyGram seeks to define both as "comparing the [code/entry] with the stored [code/entry] ... and making a decision whether to proceed based on that comparison." MoneyGram argues the acts of comparing and deciding are essential to the patent claims. The acts of comparing and deciding are also inherent in the ordinary meaning of the term "validating." *See, e.g*. THE AMERICAN HERITAGE COLLEGE DICTIONARY, 4th ed., Houghton Mifflin 2002: "validate: ... to establish the soundness of; corroborate." Because the proposed construction adds nothing to the ordinary meaning of the term, the Court finds no construction is necessary and the ordinary meaning of the word "validate" applies to the Western Union patents.

G. "first computer"

MoneyGram contends the phrase "first computer" is vague and indefinite. Report and Recommendation Claim Chart at 23. Alternatively, MoneyGram seeks to limit this phrase to "the host computer of the financial services institution." *Id*. Western Union argues the ordinary meaning of the term applies or, in the alternative, a first computer is "the database, first computer, or host computer of the financial services institution." *Id*.

As a threshold matter, the use of the term "first" does not render the phrase "first computer" indefinite. MoneyGram complains the patents never disclose a "second computer." Western Union, however, points out multiple other computers disclosed in the Western Union patents that are involved in the methods and systems claimed therein. *See, e.g*. '747 patent, col. 9, ll. 45-19; col. 5, ll. 27-29; col. 4, ll 29-30; '203 patent, col. 3, ll. 60-61; '309 patent, col. 3, ll. 63-64. As MoneyGram itself points out, "The use of the terms 'first' and 'second' is a common patent-law convention to distinguish between repeated instances of an element or limitation." 3M Innovative Props. Co. v. Avery Dennison Corp., 350 F.3d 1365, 1371 (Fed.Cir.2003). Accordingly, the ordinary meaning of the term "first" in the field is sufficient to establish the scope of this claim term and no construction is necessary.

MoneyGram's proposed definition of "computer" attempts to pin the computer down to a "host computer of the financial services institution," while Western Union attempts to expand the term to include "the database, first computer, or host computer of the financial services institution." The Court finds neither construction supported by the language of the patent itself. The patent and its specification use the term "first computer" to inform the reader that one single computer is performing several functions at different points in the claimed money transfer system. Thus, the ordinary meaning of "first" in the patent context and the ordinary meaning of "computer" are sufficient to describe the scope of the disputed claims, and no further construction is necessary.

III. Disputed Terms in MoneyGram's Patent

The parties agree all the disputed terms in MoneyGram's '293 patent appear in Claim 1, which claims:

A system for dispensing money orders at at least one retail establishment at the request of a purchaser

comprising:

a **money order dispenser** for dispensing money orders at a retail establishment;

a digital processor in the dispenser for controlling the operation of the dispenser in accordance with a stored program;

a memory associated with the digital processor for storing dispenser transaction data relating to money orders dispensed, for storing a **security code** that authorizes printing of the money orders, and for maintaining the program for controlling the dispenser;

a compartment in the dispenser for storing blank money order forms;

a printer in the money order dispenser for printing alphanumeric indicia on the money order forms upon command from the digital processor and thereby issuing money orders;

issuer control means located **remote** from the retail establishment for **selectively changing the security code** stored within the memory of the dispenser;

a cash register located at the retail establishment for recording retail purchases, including money order sales, the cash register being coupled to the money order dispenser, the cash register having a keyboard for transmitting a security code to the digital processor **authorizing in accordance with the control program** the printing of a money order for sending money order dispensing instructions to the dispenser for use by the digital processor in accordance with the control program in dispensing money orders as requested by the purchaser;

the cash register further comprising **means for receiving** transaction data from the money order dispenser and **for presenting** a total of the amount of purchase including the dollar amount of the money order;

memory means in the cash register for storing the transaction data received from the money order dispenser; and

a computer located at the retail establishment and coupled to the cash register for receiving transaction data stored by the cash register memory means.

'293 patent col. 8 ll. 1-68. The parties have agreed on the construction of the terms "money order dispenser," "issuer control means," and "selectively changing the security code," and the Court accepts these agreed constructions.

The parties dispute the proper construction of the terms "security code," "remote," "authorizing in accordance with the control program," "means for receiving," "means for presenting," and "memory means."

A. "security code"

Western Union contends the phrase "security code" is indefinite under 35 U.S.C. s. 112 because the specification provides examples of multiple security codes and multiple functions for the codes. *See* Report and Recommendation Claim Chart at 37. MoneyGram asserts the phrase requires two distinct constructions

to reflect the different ways the term is used in the patent. Id. The Special Master rejected both parties' arguments and adopted Western Union's alternative construction: the phrase "security code" means "a sequence of numbers, letters, or symbols generated by the money order issuer that (a) is stored in the memory of a money order dispenser, (b) can be remotely changed by the money order issuer, and (c) is input via a keyboard in connection with each transaction to control the issuance of each money order." Id.

Reviewing MoneyGram's patent, it is evident that a "security code" is used at multiple points within the money order dispensing system. The specification describes security codes transmitted from the issuer computer to the dispenser so that the dispenser can identify and communicate with the issuer computer and the cash register. '293 patent, col. 5, ll. 63-68; col. 6, ll. 1-2. The specification further describes a money order purchase in which the cash register transmits its security code to the money order dispenser to authorize the issuance of a money order purchased at the register. '293 patent, col. 6, ll. 15-31.

Thus, there is no "possibility of ... distinct codes in the system without any apparent connection," as Western Union argues. *See* Report and Recommendation Claim Chart at 37. Thought the patent specification describes three separate instances where a security code may be used, it is evident the security code serves the same function in all three instances: the security code is created by the issuer and transmitted to the money order dispenser, and it ensures the money order dispenser is communicating with an approved user-either the cash register or the issuer computer. The phrase "security code" is not vague or indefinite. It is properly construed as "a sequence of numbers, letters, or symbols generated by the money order issuer that (a) is stored in the memory of a money order dispenser, (b) can be remotely changed by the money order issuer, and (c) is input via a keyboard in connection with each transaction to control the issuance of each money order." Id.

B. "remote"

MoneyGram asserts the word "remote" is used in its ordinary sense in the ' 293 patent, while Western Union insists that the "remote" device must be "located in a separate facility from the money order dispenser." Report and Recommendation Claim Chart at 40. The Court fails to see how Western Union's proposed definition adds to the clarity of the phrase "remote from the retail establishment" in Claim 1 of the '293 patent. As Western Union's proposed construction is nothing more than a rephrasing of the claim language, not an explanation or definition of it, the Court finds the ordinary meaning of the word "remote" applies in the '293 patent and no construction is necessary.

C. "authorizing in accordance with the control program"

MoneyGram contends the phrase "authorizing in accordance with the control program" has its plain and ordinary meaning. Report and Recommendation Claim Chart at 41. Western Union asserts the phrase "authorizing in accordance with the control program" means "a security code is entered via the keyboard on the cash register to authorize the transaction by triggering a comparison between the entered security code and the security code stored on the digital processor of the money order dispenser." Id. at 41-42. This description, while accurate, is incomplete. The "control program" described in the specification does more than compare the entered security code with the security code stored in the money order dispenser; the control code may additionally "require the dispenser to call the issuer computer at predetermined time intervals indicating, among other things, the number of money orders sold, the dollar amount of each money order and perhaps the total dollar amount of all the money orders sold. At that time, the issuer computer could then, if desired, transmit a command or a reauthorization code to the dispenser so that it can continue to issue money orders." '293 patent, col. 5, ll. 53-63.

The ordinary meaning of the words "authorizing in accordance with the control program" fairly encompass these described functions. To authorize is "to give permission for; sanction." THE AMERICAN HERITAGE COLLEGE DICTIONARY, 4th ed., Houghton Mifflin 2002. "In accordance with" means "agreement; conformity: *in accord*ance with your instructions." Id. The "control program" is a "set of coded instructions that enables ... a computer to perform a desired sequence of operations" id., (defining "program") that is designed to "adjust a requirement; regulate," id. (defining "control"), and which has "[a]uthority or ability to manage and direct" the money order dispenser. Id. As the plain and ordinary meaning of the phrase "authorizing in accordance with the control program" is sufficient to delimit the scope of this claim in the '293 patent, and Western Union's proposed construction fails to take into account the full functionality of the "control program" described in the patent, the Court declines to issue the proposed construction and finds the ordinary meaning of the phrase applies.

D. "means for receiving" and "means for presenting"

Although these phrases are in "means plus function format" and are therefore presumptively governed by 35 U.S.C. s. 112, para. 6, the Special Master found there is sufficient structure disclosed in the claim to overcome this presumption. The relevant claim language reads "the cash register further comprising means for receiving transaction data from the money order dispenser and for presenting a total of the amount of purchase including the dollar amount of the money order." The claim language thus discloses sufficient structure (i.e., the cash register) to perform the claimed functions of receiving transaction data and presenting the total amount. Furthermore, the words "receiving" and "presenting" have their ordinary meaning. Accordingly, the Court finds no construction is necessary for these terms.

E. "memory means"

Again, though the term "memory means" appears to be subject to 35 U.S.C. s. 112, para. 6, the Special Master found there is sufficient structure disclosed in the claim to overcome this presumption. The relevant claim language identifies a component in the claimed system: "memory means in the cash register for storing the transaction data received from the money order dispenser." The term "memory" has the plain and ordinary meaning of "a unit of a computer that preserves data for retrieval; capacity for storing information." THE AMERICAN HERITAGE COLLEGE DICTIONARY, 4th ed ., Houghton Mifflin 2002. The claimed function of "storing the transaction data" can be performed by memory in the cash register; accordingly, sufficient structure is disclosed in the claim to take it outside s. 112, para. 6, and the plain and ordinary meaning of the words applies. No construction of this term is necessary.

Conclusion

In accordance with the foregoing:

IT IS ORDERED that the Report and Recommendation of the Special Master regarding claim construction of the patents-in-suit [# 124] is ACCEPTED. For ease of reference, the Court attaches to this order a copy of each of the constructions it adopts herein.

IT IS FURTHER ORDERED that the construction of each of the patent claim terms adopted herein will be incorporated into any jury instructions given in the above-styled cause and will be applied by the Court in ruling on the issues raised in summary judgment motions.

IT IS FINALLY ORDERED that the parties shall file a current list of all agreed-upon claim constructions within ten (10) days of the date of this order, which the Court will incorporate into any jury instructions given in the above-styled cause and will apply in ruling on the issues raised in summary judgment motions.

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