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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MIRROR IMAGING, L.L.C.,

Plaintiff,

v.

AFFILIATED COMPUTER SERVICES, INC., et al.,

Defendants.
_____/

Case No. 02-CV-73629-DT

Judge Cleland

CLAIM CONSTRUCTION ORDER

On November 5, 2003, the court conducted a hearing to address the construction of relevant claims in U.S. Patent Number 6,446,072 ("Patent '072"). In this order, the court will construe the claims of Patent '072 pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996).

I. STANDARD

Under *Markman*, a court conducting a patent infringement analysis must undergo a two-step process. First, the court must determine the meaning and scope of the protected patents. This is known as the claim construction phase and is a question of law for the court. *Markman*, 52 F.3d at 976, 979. Once the court has interpreted the claims at issue, the second step requires comparing the properly construed claim and the accused device to determine whether the accused device is infringing. *Id.* at 976. The infringement analysis generally is for the jury.

"The construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims." *Embrex, Inc., v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000) (internal quotations and citation omitted). In construing the claim, the court should keep in mind that "the language of the claim defines the scope of the protected invention." *Bell Communications Research, Inc. v. Vitalink Communications, Corp.*, 55 F.3d 615, 619 (Fed. Cir. 1995). For this reason, "resort must be had in the first instance to the words of the claim, words [which are ascribed] their ordinary meaning unless it appears the inventor used them otherwise." *Id.* at 620 (internal quotations omitted). Further, "it is equally 'fundamental that claims are to be construed in light of the specifications and both are to be read with a view to ascertaining the invention.'" *Id.* (quoting *United States v. Adams*, 383 U.S. 39, 49 (1966)).

In constructing a claim, the court begins with an analysis of the ordinary meaning of the disputed claim terms. The terms used in the claims bear a heavy presumption that they mean what they say, having the ordinary meaning that would be attributed to those words by persons skilled in the relevant art. *Texas Digital Sys.*, 308 F.3d at 1202. The court can then look to other intrinsic evidence, including, the specification, and the prosecution history if in evidence. *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001).

After exhausting the available intrinsic evidence, the court may also consider extrinsic evidence "to aid [it] in coming to a correct conclusion as to the true meaning of the language employed in the patent." *Markman*, 52 F.3d at 980. Extrinsic evidence

consists of all evidence external to the patent and prosecution history, including testimony of inventors or experts, dictionaries, and learned treatises. *Id.* However, extrinsic evidence cannot be used to contradict the established meaning of claim language. *Gart v. Logitech,* 254 F.3d 1334, 1340 (Fed. Cir. 2001).

II. DISCUSSION

According to the parties, only three independent claims contained in Patent '072 are at issue in this case--claims 23, 50, and 62. These claims described a method which can be utilized by financial institutions, such as banks, to retrieve financial documents for customers.[1] The three claims in dispute contain nearly identical language,[2] and "[t]he parties agree that the terms and limitations should be construed the same each time they appear in each asserted claim." (10/09/03 J. Mem. at 1.) Thus, the court will analyze one claim in the discussion below, claim 23, and the construction of the disputed terms[3] in that claim will apply to all three claims in dispute.[4]

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[1] The parties dedicate significant portions of their briefs to background information and accusations of wrongdoing which are irrelevant to claim construction, including allegations of unfair competition and theft. The court will not consider such allegations at this phase of litigation.

[2] The term "outsourcing institution" is the only term that Plaintiff requests construction of which is not present in all three claims. According to the joint memorandum, Plaintiff's proposed construction of this term, "entities providing financial document retrieval services for financial institutions," is acceptable to Defendants. Accordingly, the court will adopt such construction.

[3] The undisputed terms, as set forth in the parties' joint memorandum, are acceptable to the court and will be adopted in its final claim construction.

[4] Defendants argue that the court should not construe claims 62-88 because they were added by a certificate of correction dated February 18, 2003, after Plaintiff

A. Sequence

First, a significant point of contention between the parties is whether the steps in the independent claims must be carried out sequentially or whether they can be accomplished in any particular order. Plaintiff claims that no particular order is necessary, while Defendant argues that the claims require a logical ordering. Claim 23 provides:

> 23. A method for a financial institution to obtain a stored financial document from an off-site storage system remotely-located from an on-site storage system wherein the financial document includes at least one specific document parameter with the specific document parameter being a specific document age, said method comprising the steps of:
>
> [a.] maintaining the financial document in the off-site storage system when the specific document age of the financial document is greater than a predetermined age;
>
> [b.] maintaining the financial document in the on-site storage system when the specific document age of the financial document is less than or equal to the predetermined age;
>
> [c.] receiving a request for the financial document at the financial institution;
>
> [d.] comparing the specific document age of the requested financial document to the predetermined age to determine if the specific document age is greater than, less than, or equal to the predetermined age;
>
> [e.] utilizing a computer terminal associated with the financial institution and connected to the off-site and on-site storage system;
>
> [f.] automatically accessing the off-site storage system through the computer terminal when the specific document age is greater than the predetermined age and automatically accessing the on-site storage

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filed its original complaint. Plaintiff argues that claims 62-88 where added to the patent application by means of amendment on March 12, 2003, before this suit was filed, and that the certificate of correction was necessary because the patent office inadvertently omitted these claims from the printed patent. Regardless of which party's characterization of the additional claims is correct, the court's construction of the terms contained in claim 23 equally apply to claim 62.

> system through computer terminal when the specific document age is less than or equal to the predetermined age;
>
> [g.] inputting identification data of the requested financial document into the computer terminal while the storage systems are accessed; and
>
> [h.] automatically retrieving the requested financial document from the accessed storage system as defined by the inputted identification data.

(Patent '072 at Col. 13:30-64.)[5]

The Federal Circuit has set forth a general standard for determining if the steps of a method claim that do not otherwise recite a sequential order, must nonetheless be performed in the order in which they were written.

> Unless the steps of a method actually recite an order, the steps are not ordinarily construed to require one. *See Loral Fairchild Corp. v. Sony Corp.*, 181 F.3d 1313, 1322, 50 USPQ2d 1865, 1870 (Fed. Cir.1999) (stating that "not every process claim is limited to the performance of its steps in the order written"). However, such a result can ensue when the method steps implicitly require that they be performed in the order written. *See Loral*, 181 F.3d at 1322, 50 USPQ2d at 1870 (stating that "the language of the claim, the specification and the prosecution history support a limiting construction [, in which the steps must be performed in the order written,] in this case"); *Mantech*, 152 F.3d at 1376, 47 USPQ2d at 1739 (holding that "the sequential nature of the claim steps is apparent from the plain meaning of the claim language and nothing in the written description suggests otherwise").

Interactive Gift Exp., Inc. v. Compuserve Inc., 256 F.3d 1323, 1342-1343 (Fed. Cir. 2001). A two-step analysis of the method claim is employed. First, the court "look[s] to the claim language to determine if, as a matter of logic or grammar, they must be performed in the order written." *Altris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369

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[5] Each step has been assigned a letter to assist the court in its discussion of the sequence of the steps.

(Fed. Cir. 2003). "If not, [the court] next look[s] to the rest of the specification to determine whether *it* 'directly or implicitly requires such a narrow construction.'" *Id.* at 1370 (emphasis in original) (citing *Interactive Gift Exp., Inc.*, 256 F.3d at 1343). "If not, the sequence in which such steps are written is not a requirement." *Id.*

The court finds that the method described in claim 23, and throughout Patent '072, logically implies, if not requires, a sequential order. Steps (a) and (b), maintaining a financial document in either an off-site or on-site storage system, must occur first because the ensuing steps involve the request for and retrieval of stored documents. Documents cannot be retrieved from storage until they are stored, and a request for a document that is not maintained in storage, either on-site or off-site, could not be fulfilled unless the document is first maintained somewhere. The specification supports this view in that it states, "Once the financial document is maintained in the appropriate storage system, the bank is capable of receiving a request for the financial document from the client." (Patent '072 at Col. 4:24-26.) The court recognizes that steps (a) and (b) can be done in reverse order or even simultaneously, but these two steps must occur before the rest of the method can be successfully carried out. *See Loral Fairchild Corp.*, 181 F.3d at 1321 (finding that the language in the specification can support a sequential limitation).

Next, step (c), receiving a request for the document, must occur before steps (d), (f), (g), and (h) because these steps require comparison, retrieval, and identification of the requested document, which can only occur after a request has been made.

Step (d), which "compare[s] the specific document age of the requested financial document to the predetermined age to determine if the specific document age is greater than, less than, or equal to the predetermined age," logically would be performed after receiving the request, but before step (f), which automatically accesses either the off-site or on-site storage system depending on the age of the document. A comparison must occur prior to accessing a specific system. Otherwise, the correct storage system, which is dependent on the age of the requested document, could not be determined so that automatic access could be accomplished.

The claim language used for step (e), "utilizing a computer terminal associated with the financial institution and connected to the off-site and on-site storage system," does not logically require or imply that some steps have to occur before or after it. For instance, before a request is received, and even before documents are maintained in the storage systems, a computed terminal can be utilized and connected between the two storage systems. Step (e), however, must occur prior to or simultaneously with steps (f) and (g), which make reference to the computer terminal. Accordingly, step (e) can be performed at any time during the process in Patent '072, so long as it occurs before or at the same time as steps (f) and (g).

Defendants urge this court to hold that step (e) must occur after step (d), comparing the requested document's age with a predetermined age, because the prosecution history of the patent discloses such a limitation. The court disagrees. Defendants seize upon a statement Plaintiff made to distinguish prior art: "[in the prior art] there is no disclosure or suggestion of using a computer terminal *in response to a*

comparison of a specific document age to a predetermined age." (J.A. Ex. 4 at ACS 120.) This statement may distinguish potential prior art, but it does not suggest that the computer terminal is only used in response to the age comparison. It merely states that the prior art does not use a computer terminal in response to one of the steps. Nothing in his statement suggests that the computer terminal is only used after the comparison step in Patent '072, and thus Defendants' proposed limitation is rejected.

As discussed above, step (f), automatically accessing a storage system, must occur *after* step (d). It must also occur *before* steps (g) and (h), which contain phrases such as "while the storage systems are accessed" and "from the accessed storage system," respectively. This language references the "accessed storage system," which clearly implies that step (f), the accessing of the storage system, has already taken place. *See Mantech Envtl. Corp.*, 152 F.3d at 1375-76 (holding that the steps of a method claim had to be performed in their written order because each subsequent step referenced something logically indicating the prior step had been performed).

Step (g), "inputting identification data of the requested financial document into the computer terminal while the storage systems are accessed," must occur *after* the systems have been accessed (step (f)), or at least simultaneously, but *before* the requested financial document is retrieved "as defined by the inputted identification data" (step (h)). As a matter of linguistics, the patent does not provide for the inputting of data unless and until the storage systems are accessed, which occurs during step (f). Thus far, the literal construction of the patent is supported by Patent '072's abstract, which states,

> In processing the request, the bank utilizes a computer terminal connected to the off-site and on-site storage systems to access one of the storage systems *in response* to the comparison of the record date to the pre-selected date. *After* accessing the appropriate storage system, the bank inputs data into the computer terminal to identify the requested financial document and then retrieves the requested financial document.

(Patent '072 at 1.) The abstract suggests that the accessing of the storage systems occurs after the comparison is made and that data is not input into the computer terminal until after the systems have been accessed. Based upon the language of the claim, the court finds that such a sequential limitation applies to step (g).[6]

The final step, retrieval of the requested document, must occur after data is inputted into the computer terminal so that the requested document can be distinguished from other retrievable documents. The court, therefore, holds that a sequential order of steps in claims 23, 50, and 62, is apparent from the plain meaning of the claim language. *See Mantech Envtl. Corp.*, 152 F.3d at 1375-76; *see also Loral Fairchild Corp.*, 181 F.3d at 1322 ("Although not every process claim is limited to the performance of its steps in the order written, the language of the claim, the specification and the prosecution history supports a limiting construction in this case.").

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[6] This construction is further supported by Plaintiff's prosecution of its patent. In attempting to distinguish prior art, Plaintiff stated the following,

> The Chow reference does not disclose or suggest of *first* accessing one of the storage systems based upon an age of the document and *then* inputting identification data while the storage system is accessed. . . . There is no decision making process of determining which storage site (server) to access and then using the inputted data.

(J.A., Ex. 4 at 122-23 (emphasis added).)

B. Term Construction

1. "Financial Document"

Throughout the claims, the term "financial document" is utilized to describe the documents that Patent '072 maintains, stores, and retrieves for financial institutions. Plaintiff argues that the term "is used in its ordinary sense to include documents of a financial nature." (Pl.'s Br. at 8.) According to Plaintiff, such documents might include "lost or stolen documents, documents for tax purposes or legal disputes, and documents relating to proof of financial transactions." (*Id.* at 8-9.) Curiously, in its reply, Plaintiff states that the suggestion that the term "financial documents" includes documents related to legal dispute is "ridiculous" and "makes no sense."

Defendants seek a more limited construction--"checks, checking/account statements, and documents related to checks and checking account statements." (10/09/03 J. Mem. at 1.) In support, Defendant cites the preferred embodiment of the patent, which states "The financial documents for banks are *usually* paid checks, checking statements, and other related financial documents . . . ." (Patent '072 at Col. 4:17-20 (emphasis added).)

The court finds that "financial document" can include more than the description contained in the preferred embodiment, and that there is nothing in the patent to support Defendants' proposed limitation. As noted above, the description that Defendants cite states that paid check and checking statements are *usually* the financial documents that banks need to retrieve. It does not state that these are the *only* financial documents that require retrieval, and the court can readily imagine

numerous other types of documents maintained by financial institutions that are not included in Defendants' narrow construction. For example, financial documents that a bank customer could request include savings account statements, deposit slips, mortgage and loan paperwork, wire-transfer records, etc. The court finds that "financial document" and "documents of a financial nature" have the same meaning and accurately describe the term as used in Patent '072. Accordingly, the court construes "financial document" to mean documents of a financial nature, including, but not limited to, checks, checking/account statements, and documents related to checks and checking/account statements. *See Bell Communications Research, Inc. v. Vitalink Communications, Corp.*, 55 F.3d 615, 619 (Fed. Cir. 1995) ("[R]esort must be had in the first instance to the words of the claim, words [which are ascribed] their ordinary meaning unless it appears the inventor used them otherwise.").

2. "On-site" and "Off-site"

Next, the court must consider the terms "on-site" and "off-site," which is given similar construction by both parties. Both parties agree that the two terms include locations that are separated geographically. Defendants, however, argue that each term implies a physical location at a single facility, either the on-site facility or a single facility geographically distant from the on-site facility. There is no support for limiting "on-site" or "off-site" to single facility. In fact, "on-site" and "off-site" are used to modify the term "storage system," which encompasses more than a single facility. Storage systems, as with many other systems, may be dispersed across great distances and may be contained in more than one physical location or facility. The patent's plain

meaning and its specification does not support Defendants' proposed limitation. Rather, Plaintiff's construction more closely adheres to the ordinary meaning of "on-site" and "off-site," and will be adopted by the court.

3. "Storage System"

Plaintiff asserts that "storage system," as used in Patent '072, means "the mechanism by which financial institutions keep their financial documents." (Pl.'s Br. at 9.) Defendants argue that it means "related computer hardware and software that electronically stores the financial documents and controls the retrieval of the requested financial documents." (10/09/03 J. Mem. at 2.) Further, Defendants state that "the application software that controls the retrieval of the requested financial documents in the off-site and on-site storage systems is the same." (*Id.*) The court finds Plaintiff's construction too broad and Defendants' construction too narrow.

First, Plaintiff's construction would include any type of methodology that a financial institution utilizes for storing documents, including simple filing of hard-copy documents in a warehouses or file cabinets, microfilm, microfiche, etc. Many of these storage systems could not be connected to a computer terminal or accessed so that retrieval of documents would be automatic (i.e., without human intervention) upon the input of identifying data. Inasmuch as Plaintiff's construction would render other portions of claim 23 invalid, it is overbroad. Further, the title of Patent '072 is "Method of Obtaining *Electronically-Stored* Financial Document," which supports a construction that requires an electronic storage system. (Patent '072 at 1.)

Defendants' proposed construction, however, is too narrow in that it requires the application software used by the on-site and off-site system to be the same. Although the preferred embodiment states that "[t]he processing, retrieval and reproduction of the requested financial document is *typically* controlled by one interlinked computer software program," this description only speaks about the usual method and does not foreclose the use of an atypical software arrangement where two different types of compatible software are used. (Patent '072 at Col. 6:39-42 (emphasis added).) As more software companies enter the marketplace, and businesses throughout the world utilize different computing packages, compatibility between different types of software is not uncommon. *See* Teague I. Donahey, *Terminal Railroad Revisited: Using the Essential Facilities Doctrine to Ensure Accessibility to Internet Software Standards*, 25 AIPLA Q.J. 277, 294 (1997) ("Software, of course, does not form a literal "network" like a closed system of railroad tracks. Nevertheless, software consumers are linked together in a virtual network of common software standards, producing compatibility and interchangeability.") Accordingly, the software used by the different storage systems does not have to be the same.

Aside from the above-rejected limitation, Defendants' proposed construction of "storage system" is correct. As explained above, the broad definition of storage system is inconsistent with Patent '072, thus the court can refer to the specification to gain understanding as to the meaning of this term. The specification includes Figure 1, which shows "a flow diagram schematically detailing an on-site storage system, and an off-site storage system in accordance with the subject invention." (Patent '072 at Col.

3:41-43.) The storage systems in this figure are represented as computer terminals and mainframes. Further, throughout the specification, the patentee refers to "electronic storage" of documents and computer terminals and software that are used to access the storage systems. For instance, in introducing the invention, the patent states the following:

> The subject invention relates to a method for a financial institution to obtain electronically-stored financial documents from an off-site storage system remotely-located from an on-site storage system.
>
> . . .
>
> These financial documents are typically stored on microfiche, microfilm, digitally, or by some other electronic means. Further, these financial documents are typically electronically-stored in an on-site storage system located at the financial institution or in an off-site storage system. Electronic storage of these financial documents permits financial institutions to eliminate storage of paper or "hard" copies of these documents. The electronic storage of these documents also provides a means of retrieving the information from the on-site and off-site storage systems.

The patent anticipates that the documents will be stored electronically so that they can be retrieved with ease and without human intervention. The specification indicates that such electronic storage is to occur through the use of computer software and hardware, and there is no indication that other means can be used to store the documents for purposes of the method described in the patent. *See United Carbon Co. v. Binney & Smith Co.*, 317 U.S. 228, 232 (1942) ("The inventor must inform the public . . . of the limits of the monopoly asserted, so that it may be known which features may be safely used or manufactured without a license and which may not.") (internal quotes omitted).

Accordingly, "storage system" as used in Patent '072 should be construed as "related computer hardware and software that electronically stores and permits retrieval of the financial documents." (Defs.' Br. at 15.)

4. "Specific Document Age"

The court finds that the plain meaning of "specific document age," as used in claim 23(d) and throughout all independent claims, is the amount of time in which the document has been in existence, "calculated by subtracting the date that the document was captured and posted [or filed] at the financial institution from the present date." (10/09/03 J. Mem. at 2.) In the joint memorandum, Plaintiff's argues that "specific document age" means the "date that the particular financial document was created or posted." (*Id.*) The court rejects this construction because it construes the term as the date in which the document came into existence (i.e., its birth date), rather than the amount of time the document has been in existence (i.e., its age). Age is commonly understood as the time in which something exists, and there is no evidence in the patent that the inventor intended a different meaning. *See Am. Heritage Dictionary* 12 (2nd ed. 1983). Further, the specification implies that the date in which a document is created or recorded is distinct from the age of the document. (*See* Patent '072 at Col. 4:27-31 ("document parameter of the financial document can include, but is not limited to, *a record date or age of the document* . . . .") (emphasis added).)

5. "Document Parameter"

"Document parameter" is defined by Plaintiff as a "numerical sequence described by the document data," and by Defendants as "a particular numerical

sequence indicating a specific document age." (10/09/03 J. Mem. at 2.) The court finds that the patent language, including the explanations provided in the specification, does not support Defendants' proposed limitation to a particular numerical sequence. Nothing in the claim itself implies such a limitation, and the specification states that "the specific document parameter of the financial document *can include, but is not limited to*, a record date or age of the document, a series number, or some other document identifying number of the financial document." (Patent '072 at Col. 4:27-31 (emphasis added).) The claim itself states that at least one document parameter must be related to the document's age, (Patent '072 at Col. 13:33-34), but that does not mean that in every instance the document parameter must indicate a specific document age. Accordingly, the court construes "document parameter" to mean a "numerical sequence described by the document data." (10/09/03 J. Mem. at 2.)

6. "Predetermined Age"

The court construes "predetermined age" to mean a cut-off age of a document that is chosen by the financial institution either before or in conjunction with the maintaining of the document in a particular storage system. It is used to determine the storage system in which the document should be stored. Again, the court rejects Plaintiff's construction, which construes age to mean a specific chosen date. As discussed above, "age" is commonly understood as a period of existence, not a starting or beginning point.

7. "Comparing the Specific Document Age of the Requested Financial Document to the Predetermined Age . . ."

Next, the parties ask the court to construe the term "comparing the specific document age of the requested financial document to the predetermined age to determine if the specific document age is greater than, less than, or equal to the predetermined age." (Patent '072 at Col. 13:45-48.) The main point of contention is whether this step requires human intervention. Defendants argue that this step is limited to performance by a human based upon two arguments. First, Defendants argue that since a computer terminal is not used sequentially until step (e), the comparison step (step (d)) must involve a human because a computer is not employed in the method until after the comparison step. The court has already rejected this sequential construction as it relates to step (e), the use of a computer terminal, and finds it unpersuasive in the instant context.

Second, Defendants rely on the language of the preferred embodiment to import the human actor limitation into the comparison step of claim 23. Specifically, the preferred embodiment states, "The employee compares the record date of the financial document to the pre-selected date to determined [sic] if the record date is later than, earlier than, or equal to the pre-selected date." The court, however, is mindful that this is simply the preferred embodiment of the method covered by Patent '072. As such, it generally does not limit the scope of the patent. *See Glaxo Wellcome, Inc. v. Andrx Pharm., Inc.*, 344 F.3d 1226, 1233 (Fed. Cir. 2003) ("It is established that 'as a general rule claims of a patent are not limited to the preferred embodiment . . . or to the

examples listed within the patent specification.'") (citations omitted); *see also Northern Telecom Ltd. v. Samsung Elec. Co., Ltd.*, 215 F.3d 1281, 1293 (Fed. Cir. 2000) ("preferred embodiments, without more, do not limit claim terms"). Further, the specification expressly informs the reader of the patent that it is intended to be illustrative rather than limiting. (Patent '072 at Col. 11:24-33.) Accordingly, the court rejects Defendants' proposed limitation as it finds no support in the patent or prosecution history other than the preferred embodiment. The comparison can be accomplished by a human employee or by some other means.[7]

8. "Connected"

Step (e) refers to a computer terminal "connected" to the off-site and on-site storage system. For purposes of the independent claims, the court accepts Defendants' construction as the ordinary meaning of the term. The patent does not provide otherwise. "Connected" means joined or linked by means of a communications circuit. (*See* Ex. 6; Am. Heritage Dictionary 390 (4th ed. 2000).)

9. "Inputting Identification Data . . . Into the Computer Terminal"

Finally, the parties disagree as to the construction of step (g) of the independent claims, "inputting identification data of the requested financial document into the computer terminal . . . ." (Patent '072 at Col. 13:58-59.) Again, the dispute centers around whether a human is required to enter the request into the computer terminal. Defendant argues that human intervention is required because "any data that is

[7] However, as stated above, the comparison must be made independently and before the step of automatically accessing either of the storage systems.

inputted into [a computer terminal, as that term is ordinarily understood,] necessarily must be manually entered." (Defs.' Br. at 20.) Defendant relies on the dictionary definition of computer terminal, which is "[a] device, often equipped with a keyboard and a video display, through which data or information can be entered or displayed." (Ex. 6; Am. Heritage Dictionary 1785 (4th ed. 2000).) Plaintiff offers no analysis or proof that another definition of computer terminal was intended or that the inputting of data into a computer terminal can be accomplished without human intervention. Rather, in the joint memorandum, Plaintiff proposes the following construction: "entering data into the computer system." (10/09/03 J. Mem. at 6.) Based upon the ordinary meaning that one skilled in the art would attach to the action of "inputting" data into a computer terminal, the court concludes that human intervention is necessary for this step. If other means of inputting data were contemplated, means that would be unusual or involve an atypical computer terminal or hardware, the patentee did not include these in the patent. Accordingly, Defendants' construction will be accepted by the court.

III. CONCLUSION

For the reasons set forth above, the court adopts the following claim construction for Patent '072:

U.S. Patent Number 5,231,253 are construed as follows:

Claim Term	Court's Construction
Sequential Order of All Independent Claims	Steps (a) & (b) must be performed before all subsequent steps, except step (e), but can be performed sequentially, simultaneously, or in reverse order. Step (c) must occur after steps (a) & (b), but before steps (d), (f), (g) & (h). Step (d) must occur after steps (a), (b), & (c), but before steps (f), (g), & (h). Step (e) may occur at any time, so long as it occurs before or simultaneously with steps (f), (g), & (h). Step (f) must occur after all preceding steps [steps (a), (b), (c), (d), & (e)], but before steps (g) & (h). Step (g) must occur after all preceding steps [[steps (a), (b), (c), (d), (e),], but can occur simultaneously with step (f). Step (g) must occur before step (h). Step (h) occurs after all other steps of the claim have occurred.
"financial document"	a document of a financial nature, including, but not limited to, checks, checking/account statements, and documents related to checks and checking/account statements
"on-site"	located at the financial institution
"off-site"	located remote from the on-site location
"storage system"	related computer hardware and software that electronically stores and permits retrieval of the financial documents

"specific document age"	the amount of time in which the document has been in existence, calculated by subtracting the date that the document was captured and posted or filed at the financial institution from the present date
"document parameter"	numerical sequence described by the document data
"Maintaining the financial document in the off-site storage system when the specific document age of the financial document is greater than a predetermined age;" "Maintaining the financial document in the on-site storage system when the specific document age of the financial document is less than or equal to a predetermined age."	The financial institution maintains the financial document in either the "off-site storage system" or the "on-site storage system."
"predetermined age"	a cut-off age of a document that is chosen by the financial institution either before or in conjunction with the maintaining of the document in a particular storage system
"receiving a request for a financial document at the financial institution"	financial institution is asked by a customer to provide a copy of a financial document held in storage by the financial institution
"comparing the specific document age of the requested financial document to the predetermined age to determine if the specific document age is greater than, less then, or equal to the predetermined age"	a comparison of the age of the requested document to a predetermined age is done to determine if it is greater than, less than, or equal to the predetermined age
"connected"	joined or linked by means of a communications circuit
"automatically"	without human intervention

"inputting identification data . . . into the computer terminal"	an operator manually enters data into the computer terminal
"outsourcing institution"	entities providing financial document retrieval services for financial institutions

IT IS SO ORDERED.

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 26, 2004

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