

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

PERSONALWEB TECHNOLOGIES, LLC. §
AND LEVEL 3 COMMUNICATIONS, LLC, §

Plaintiffs, §

v. §

NEC CORPORATION OF AMERICA, INC., §

Defendant. §

Civil Action No. 6:11-cv-00655 (LED)

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC. §
AND LEVEL 3 COMMUNICATIONS, LLC, §

Plaintiffs, §

v. §

GOOGLE INC. AND YOUTUBE, LLC. §

Defendants. §

Civil Action No. 6:11-cv-00656 (LED)

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC. §
AND LEVEL 3 COMMUNICATIONS, LLC, §

Plaintiffs, §

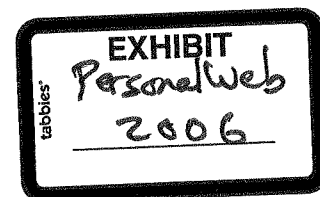
v. §

NETAPP, INC. §

Defendant. §

Civil Action No. 6:11-cv-00657 (LED)

JURY TRIAL DEMANDED



PERSONALWEB TECHNOLOGIES, LLC
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

vs.

YAHOO! INC.

Defendant.

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Civil Action No. 6:12-CV-00658-LED

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

vs.

APPLE INC.

Defendant.

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Civil Action No. 6:12-CV-00660-LED

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

vs.

FACEBOOK INC.

Defendant.

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Civil Action No. 6:12-CV-00662-LED

JURY TRIAL DEMANDED

PERSONALWEB TECHNOLOGIES, LLC
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

vs.

MICROSOFT CORPORATION

Defendant.

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Civil Action No. 6:12-CV-00663-LED

JURY TRIAL DEMANDED

PersonalWeb Technologies, LLC's Reply Claim Construction Brief

I. Terms Containing the Word “Identifier”

Substantially Unique Identifier: Defendants offer no compelling reason to depart from the definition of “substantially unique identifier” provided in the patents’ common specification and adopted by the District Court of Massachusetts. *See* Op. Br. at 5-6.¹

Defendants argue “‘access’ is a *necessary characteristic*, upon which other functionalities could build.” Resp. Br. at 8 (emphasis added). But adding an “access” requirement would improperly import a limitation that is not in the claim language. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005). In fact, not even all Defendants agree the added “access” limitation is required.² Defendants nevertheless argue that while it is “undisputed that the patent describes using the substantially unique identifier for a variety of file management functions . . . those functions necessarily involve, at some point, *accessing* the data item.” Resp. Br. at 7. Yet, once generated, nothing in the specification limits the identifier’s use. For this reason, other claims and the specification describe various uses of the substantially unique identifier, including uses that do not involve “access” or “accessing.” *See, e.g.*, ’791 claim 35 (requiring only “comparing” and not accessing); *id.* at 23:52-24:28 (the “Locate True File” mechanism, which describes locating and not accessing); *id.* at 39:1-6 (contemplating various uses for the “substantially unique identifier”).³ Identifying, and not accessing, the corresponding data item is the only inherent function of the term.

¹ Defendants do not deny that the term is amenable to construction under 35 U.S.C. §112.

² *See* Resp. Br. at 6, n. 8 (“EMC and VMware take no position on this issue.”).

³ *See also, e.g.*, ’791 claim 33 (using the substantially unique identifier to determine whether the data item is already present at a destination location); claim 40 (using the substantially unique identifier to determine the presence of a data item in each of a plurality of locations); claim 46 (using the substantially unique identifier to determine whether a predetermined number of copies of data item are present in the system).

In addition, Defendants’ proposed language confusingly would define the term at issue by the very words in the term. Again, not all Defendants support this circular language.⁴ Moreover, Defendants’ point that “the ‘algorithm’ cannot be simply any algorithm,” Resp. Br. at 8, does not support the added language because the requirement that the algorithm generate the requisite level of uniqueness is already specified in the claim—namely that “two identical data items will have the same identifier” *See, e.g.*, ’791 claim 30. As the patentee already chose to limit the uniqueness requirements in this way, it would be redundant to tell the jury that a “substantially unique identifier” must be “substantially unique.”

Digital Identifier and Data Item Identifier: Rather than address the claim language’s explicit requirements for these terms, Defendants instead persist in equating the terms “digital identifier” and “data item identifier” with the term “substantially unique identifier.” The Court should reject this Defendants’ lumping of the same meaning for distinct terms.

Defendants’ attempts to dismiss the claim language begin with their unsupported assertion that “[t]he specification is particularly important where, as here, the ‘data item identifier’ and ‘digital identifier’ only first appeared during the prosecution of two of the True Name Patents in 2010.” Defendants, however, fail to explain why this would be legally significant. Moreover, the specification is explicit that preferred embodiments may use the True Name as part of the identifier and that the identifier can include other components that are not derived by applying a function to the data in the data item. *See* ’791 at 13:55-60.

Relatedly, Defendants claim that because these disputed terms do not appear in the specification, their construction “must be informed by the applicants’ use of ‘data item’ and ‘digital’ in the specification.” Resp. Br. at 13. Defendants argue that because “data item” and

⁴ *See* Op. Br., Ex. 2 at 3-4 (proposed constructions by EMC/VMware and NEC).

“digital” both refer to “a sequence of bits,” the terms “data item identifier” and “digital identifier” should be construed to mean the same thing as the term “data identifier.” *See id.* But “data identifier” is not defined by the presence of the word “data.” Rather, the specification provides that the term “data identifier” has the same meaning as “substantially unique identifier.” By contrast, the specification nowhere states that the disputed terms at issue here are so limited.

Defendants next contend that in opposing the request for IPR of claims 1, 2, 81, and 83 of the '096, which include the disputed terms, PersonalWeb correctly pointed out by way of background that there are certain fundamental differences between the '096 patent and prior art. Defendants overlook, however, that PersonalWeb never equated the disputed terms as used in these claims to its definition of “substantially unique identifier,” a term not used in these claims. To the contrary, PersonalWeb consistently distinguished the references in the IPR using the actual language of the claims at issue, and never argued that the disputed terms were limited to using only the data in the data item. *See* Ex. C '096 Prelim. Resp. (March 20, 2013) at 12-31.⁵ Moreover, PersonalWeb applied additional claim requirements from the '096 claims to distinguish the references. *See id.*

Finally, Defendants argue that the “identifier” terms must be equated because both “True Name” and “data identifier” occur in a number of claims that include the “at least in part” language. This argument provides no basis to deviate from the claim language. Nor does it provide a basis to import a limitation from one patent’s claims into claims of a different patent. The “data item identifier” and “digital identifier” terms are not defined in the specification as requiring the very narrow “all and only” requirements. Thus, the “at least in part” language in

⁵ Unless otherwise specified, references herein to “Ex. _” are to Exhibits to the Declaration of Jeffrey Huang.

the claims necessarily informs the meaning of these terms. Defendants' prosecution history arguments fail to limit these broader terms because they only cite to arguments made by the patentee with regard to claim language for "substantially unique identifier."

Identifier: Several Defendants have either not asked the Court to construe this term, or have agreed that the plain and ordinary meaning, or some close alternative, should apply. *See* Dkt. 157-2 at 13-14. This supports PersonalWeb's position. Additionally, Defendants' argument that its construction for the term applies only to the '791 patent underscores that no new construction is necessary. PersonalWeb's '791 claim construction arguments did not change the plain and ordinary meaning of the term or act as a disclaimer of the ordinary scope of the term, nor can Defendants show otherwise. Finally, Defendants' continued attempt to engraft the "computer network" limitation is without support. PersonalWeb made no argument to distinguish Woodhill based on a computer network. Rather, in viewing the whole quote cited by Defendants, it is clear that the difference that PersonalWeb relied on to distinguish Woodhill is that "Woodhill employs the hash algorithm to compare the same file components to determine whether there has been a change thereto." Ex. D '791 Prelim. Resp. (March 20, 2013) at 35. Nor does Defendants' position take into account the fact that a data processing system can comprise a single computer.

II. Means Plus Function Limitations

Access means...: Defendants agree the specification discloses multiple mechanisms for performing the recited function in addition to the "Make True File Local" mechanism but question how those mechanisms "constitute 'step-by-step' algorithms that perform the claimed

functions.” Resp. Br. at 20. However, the *mechanisms themselves* are described as step-by-step algorithms that perform the recited function.⁶

In support of their argument to limit the corresponding structure to a particular configuration comprised of “the processor of Fig. 1(b)” and “the ‘Make True File Local’ primitive mechanism depicted in Figures 17(a) and 17(b),” Defendants only cite to the PTAB’s IPR decision (“PTAB decision”). Resp. Br. at 20. But the PTAB found the corresponding structure to consist of “a processor programmed *according* to steps S292 and S294 illustrated in Figure 17(a).” Resp. Br. at 20 (emphasis added). Thus, the PTAB did not limit the structure to a particular configuration, and declined to limit the structure to “the processor of Fig. 1(b)” and “the ‘Make True File Local’ primitive mechanism depicted in Figures 17(a) and 17(b).”⁷

Similarly, Defendants offer no support for including structure not tied to the recited function, the True File Registry. *See Wegner Mfg. Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1233 (Fed. Cir. 2001). Defendants only argue that “the PTAB decision makes clear that a processor storing these data structures (including the True File Registry) is *required* ‘to implement the claimed function[]’.” Resp. Br. at 20 (emphasis added). But the PTAB decision has no such requirement. Instead the PTAB decision states: “the Specification of the ’791 patent *uses* the data structures stored in memory of a data process to implement the claimed functions.” *See* Ex. A ’791 IPR Dec. (May 17, 2013) at 25. Thus, the PTAB decision merely recites the

⁶ *See* ’791 at 24:45-58; 17:10-45 (Request True File); 16:10-34 (Realize True File from Location); 21:52-66 (Open File); 25:25-38 (Acquire True File); and 35:38-41, 51-61 (Locate Remote File).

⁷ *See* Ex. A IPR Dec. (May 17, 2013) at 25-26 (declining to adopt EMC’s proposed construction which contains all of the improper limitations in Defendants’ current proposed construction).

“data structures” as *inputs* to the mechanisms that perform the claimed functions, not that the True File Registry *performs* the claimed functions.

Data associating means...: While Defendants rely on the PTAB to support their identification of corresponding structure for the “data associating means,” the PTAB construed this term to be “a data processor programmed *according* to the steps S230, S232, and S237-S239 illustrated in Figure 11.”⁸ Resp. Br. at 21. Accordingly, the PTAB did not limit the corresponding structure to a particular configuration, such as the one Defendant proposes. Further, the “True File Registry” that Defendants point to as the corresponding structure is only an *input* to the recited function but does not *perform* the function. Finally, Defendants do not deny that the specification discloses multiple mechanisms for performing the recited function in addition to the “Assimilate Data Item” mechanism.

Existence means...: HP and Autonomy contend that this term is indefinite, and Defendants argue that “the remaining defendants who have proposed a construction agree that it is indefinite.” Resp. Br. at 22. Defendants nonetheless propose a construction, effectively conceding that the term is not “insolubly ambiguous” and is capable of being given meaning.

Defendants incorrectly identify corresponding structure by limiting it to a particular configuration comprised of “the processor of Fig. 1(b)” and “the ‘Locate Remote File’ primitive mechanism depicted in Figures 16(a) and 16(b).” Defendants argue the mechanism is the “only thing in the specification that determines whether the data item is anywhere in the system (*i.e.* beyond just a specific device in the system),” Resp. Br. at 23, presuming “the system” is a network of computers. But the specification expressly contemplates a data processing *system*

⁸ Furthermore, the PTAB decision leaves out the whole left branch of step S232 of Figure 11, which is described in the specification at col. 14 lines 61-67.

embodiment that includes “*one or more* processors (or computers).” ’791 at 4:58-61 (emphasis added). Thus, Defendants’ limitation would improperly exclude the specification embodiment disclosing multiple processors within the *same* computer.⁹ See *Adams Respiratory Therapeutics, Inc. v. Perrigo Co.*, 616 F.3d 1283, 1290 (Fed. Cir. 2010).

Defendants offer no support for restricting the corresponding structure to the “True File Registry.” Because the “True File Registry” does not perform the recited function, it cannot be the corresponding structure. *Wenger*, 239 F.3d at 1233. Indeed, Defendants do not argue that the True File Registry *performs* any part of the recited function. Accordingly, Defendants’ argument only confirms that the True File Registry is an *input* to the mechanisms, and not what performs the recited function.

Local existence means...: As with the “existence means,” the True File Registry does not perform the recited function; it only acts as an input. Defendants’ argument that PersonalWeb’s identification of corresponding structure would make claims 2 and 3 redundant of claim 1 is unavailing. Claim 1 recites an “existence means,” and in the embodiment disclosing a system with multiple locations, claim 1 only requires that the existence means determines whether a particular data item is somewhere in the system. In contrast, claims 2 and 3 further require a local existence means that can determine whether a particular data item is *at a particular location* in the system. Thus, claims 2 and 3 place further limits on claim 1, and the functions required by the further limits are performed within the same structures.

Identity means...: Defendants incorrectly argue that their proposed structure, which is wrongly limited to a particular configuration, should be further limited to the MD4, MD5, and

⁹ Similarly, NetApp’s proposed construction, which excludes the embodiment of a single processor in the system, is wrong in requiring a local and remote search.

SHA algorithms because they are “[t]he only disclosed algorithms.” Resp. Br. at 28. Contrary to Defendants argument, the specification discloses a *family* of algorithms with a certain set of properties, which *include*, but is not limited to, the above algorithms. See ’791 at 12:60-13:14. Defendants further argue their configuration should include additional structure to determine whether a data item is simple or compound. But the specification is clear that this additional structure does not perform the recited function, and is instead an optional, “desirable feature[] in the preferred embodiment.” See ’791 at 14:36-39.

III. Claim Construction Analysis for the So-Called “Additional Terms.”

Data item(s): Absent from Defendants’ brief is any justification for altering the language of the specification in order to limit construction of the term “data item” to a non-exhaustive list of examples. Defendants’ only argument is that they use “nearly the exact language that the applicants used to define the term ‘data item.’” Resp. Br. at 30. Following Defendants’ own logic, PersonalWeb’s construction should be adopted because it uses the exact language used by the applicants. Furthermore, Defendants ignore the PTAB’s construction of “data item:” the PTAB held that “data item” is reasonably construed as a “sequence of bits” and clarified that the list of entities following this definition was intended to be a non-exhaustive list of examples that constitute a “sequence of bits.” Ex. B. ’791 IPR Rehearing Request Dec. (June 5, 2013) at 3.

Data file(s): Defendants fail to provide support for their construction that requires a “data file” to be in a directory. Although Defendants cite to language from the specification recognizing that a directory may include both data files and other files, this language does not mandate that all data files must appear in directories. Rather, the specification is clear that a data

file is a file¹⁰ (a named data item) which may be simple (consisting of a single data segment) or compound (consisting of a sequence of data segments). '791 at 47-51. Accordingly, the term should be construed as “a named data item having one or more data segments.”

File system: Defendants gloss over that their construction creates a distinction between a “directory” and “a collection of named files,” which Defendants contend are the same thing. '791 at 5:44-52 (“A directory is a collection of named files”). If there were indeed no dispute, Defendants would not seek to have this term construed differently than the language in the specification. Although PersonalWeb does not believe a construction is required for this term, if the Court finds construction necessary “file system” should be construed as “A collection of directories. A directory is a collection of named files.” This is the exact language from the specification. '791 at 5:44-49.

Sufficient number of copies: Defendants provide no explanation for why “sufficient number of copies” has any special meaning requiring construction. Defendants offer three reasons that their proposed construction is “consistent with the intrinsic record.” Resp. Br. at 34. First, Defendants assert that the claim language supports their construction because claim 1 of the '662 Patent references “a predetermined degree of redundancy” and, as Defendants reason “copies at a single location are not redundant.” But Defendants misapprehend that a single machine can store redundant copies of data. Further, the phrase “a predetermined degree of redundancy” does not imply a minimum degree of redundancy is required. Second, Defendants argue that their proposed construction is consistent with the specification, yet fail to identify any portion of the specification that mandates at least two locations. Third, Defendants point to the

¹⁰ The majority of Defendants’ argument discusses “the parties’ disagreement over what it means to be a ‘file.’” Resp. Br. at 31-32. The term “file” is not a term in dispute, but to be clear, the True Name patents do not, as Defendants assert, use various “file” terms interchangeably.

prosecution history of the '662 Patent referencing claim 57, not claim 1, and which provided that “multiple copies of a data item may be present.” Resp. Br. at 34. This language is both irrelevant to the claim at issue and, more importantly, does not *require* multiple copies.

Licensed/unlicensed: Defendants’ proposed construction improperly limits the subject matter of a license—namely, to “content stored within a requested file.” But this term requires no construction and should be not so limited, as tacitly admitted by Defendants, who point out that claims of the '442 patent themselves describe what a “licensed” file refers to—such as a requested file in claim 1, or simply a file that is “present” in claim 10. Further, the “passive enforcement,” described at '791 at 32:24-25, does not support Defendants’ proposed construction, but instead shows that a user’s status as “licensed” or “unlicensed” can be established without a user making any requests for a file. '791 at 32:39-48.

Distributing a set of data files across a network of servers: Defendants do not deny that their proposed construction would exclude a disclosed embodiment—a server/server peer-to-peer relationship. Resp. Br. at 38. Moreover, in *Lucent Techs.*, “the claim language *expressly require[df]*” steps to be performed in a certain order, which excluded the embodiment in the specification. *Lucent Techs., Inc. v. Gateway, Inc.*, 525 F.3d 1200, 1215 (Fed. Cir. 2008) (emphasis added). Here, the claim language does not exclude from a “network of servers” a peer-to-peer configuration. Defendants only argue that the exemplary embodiment pointed to by applicants during prosecution was of a different embodiment. But only clear and unambiguous disavowals in the file history can limit claim scope. *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1306 (Fed. Cir. 2007). No such disavowals were made by applicants here.

DATED: July 8, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2013, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, using the electronic filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Samuel F. Baxter

Samuel F. Baxter