

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

OANDA CORPORATION

Plaintiff,

v.

GAIN CAPITAL HOLDINGS, INC., et al.,

Defendants.

Civil Action No. 20-5784 (ZNQ) (JTQ)

**CLAIM CONSTRUCTION
OPINION & ORDER**

QURAIISHI, District Judge

In this claim construction Opinion and Order, the Court construes disputed claim terms in two patents that are directed to systems and methods for currency trading. The parties submitted the following briefs: Opening Brief (“POB,” ECF No. 105) filed by Plaintiff OANDA Corporation (“OANDA” or “Plaintiff”), Opening Brief (“DOB,” ECF No. 106) filed by Defendants Gain Capital Holdings Inc. (“Holdings”) and Gain Capital Group, LLC (“Capital”) (collectively, “Defendants”); Plaintiff’s Responsive Brief (“PRB,” ECF No. 109) and Defendants’ Responding Brief (“DRB,” ECF No. 110). After reviewing the parties’ submissions and conducting a *Markman* hearing on October 6, 2022, the Court construes the disputed terms as set forth herein.

I. BACKGROUND AND PROCEDURAL HISTORY

A. The Parties

OANDA is the owner, by assignment, of U.S. Patent Nos. 7,146,336 (the ’336 Patent) and 8,392,311 (the ’311 Patent) (together, “the Patents.”)¹ (Amended Complaint (“FAC”) ¶ 3, ECF No. 59.) The Amended Complaint alleges that the Patents teach methods and systems that solve

¹ The ’311 Patent is a continuation of the ’336 Patent. Accordingly, the two patents share a common specification.

the deficiencies of then-existing online currency trading, such as allowing for execution of online currency transactions with only two communications instead of the “three-way handshake,” thereby eliminating the previous problems with timing lags, and providing built-in automated protections against price fluctuations. (*Id.* ¶ 19.)

Capital is a Delaware LLC located in New Jersey. (*Id.* ¶ 5.) Capital owns and operates the website <https://forex.com> that “provides foreign exchange (‘forex’ or ‘FX’) trading and brokerage services, including an online trading platform that infringes the claims of the patents in suit.” (*Id.* ¶ 6.)

Holdings is a Delaware corporation that shares its address in New Jersey with Capital. (*Id.* ¶ 4.) Holdings owns and operates the website <https://www.gaincapital.com>, and uses the services of Capital “including the application programming interfaces (APIs) provided by <https://forex.com>, to operate automated trading platform(s).” (*Id.* ¶ 7.)

B. Procedural History

Plaintiff filed a Complaint against Defendants on May 11, 2020. (ECF No. 1.) Defendants filed a Motion to Dismiss on July 17, 2020. (ECF No. 24.) Defendants also filed a Motion to Stay this action pending resolution of petitions for Covered Business Method (CBM) Review that they had previously filed with the Patent Trial and Appeals Board (“PTAB”). (ECF No. 34.) In a single decision, the Court denied the Motion to Stay, and granted in part and denied in part the Motion to Dismiss. (ECF No. 52.) The PTAB later declined to institute CBM Review of the Patents. (ECF Nos. 48-1, 48-2.)

Plaintiff filed a First Amended Complaint on April 20, 2021 that alleges infringement of the Patents, as well as contributory or induced infringement and willful infringement. (FAC ¶¶ 21–25.) More specifically, Plaintiff alleges that Defendants have infringed one or more claims of the Patents by making, using, selling, offering for sale, or selling products and/or services, and that Capital has made, used, sold, and offered for sale infringing instrumentalities at <https://forex.com>,

and Holdings has used those infringing instrumentalities, including the application programming interfaces (“APIs”), to operate automated infringing trading systems. (*Id.* ¶¶ 66, 72.)

II. JURISDICTION

Based on Plaintiff’s claims for patent infringement, the Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338.

III. LEGAL STANDARD

A patent infringement case involves two steps: construing the claims and determining whether the accused product infringes the claims. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc), *aff’d*, 517 U.S. 370 (1996); *Hormone Research Found., Inc. v. Genentech, Inc.*, 904 F.2d 1558, 1562 (Fed. Cir. 1990), *cert. dismissed*, 499 U.S. 955 (1991).

Claim construction is primarily a question of law. *See Teva Pharm. U.S.A., Inc. v. Sandoz, Inc.*, 574 U.S. 318, 325–26 (2015). It begins with the claim language. *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004); *Markman*, 52 F.3d at 980. Claim language is generally “given [its] ordinary and customary meaning.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (“[W]e look to the words of the claims themselves . . . to define the scope of the patented invention.”); *see also Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001) (“In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to ‘particularly point [] out and distinctly claim[] the subject matter which the patentee regards as his invention.’”) (quoting 35 U.S.C. § 112). Ordinary meaning is determined by “a person of ordinary skill in the art in question at the time of the invention.”² *Phillips v. AHW Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc) (collecting cases); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003).

² The parties disagree on the proper definition of a person of ordinary skill in the art, but conceded at oral argument that the Court need not decide that issue for the purposes of claim construction. *See Markman Tr.* at 31:6–25.

However, if a patentee has used the claim language in some manner other than its ordinary meaning, as indicated by the balance of intrinsic evidence, such as the specification, then that meaning controls. *See, e.g., Phillips*, 415 F.3d at 1226; *Ecolab, Inc. v. Envirochem, Inc.*, 264 F.3d 1358, 1366 (Fed. Cir. 2001); *Allen Engineering Corp. v. Bartell Industries, Inc.*, 299 F.3d 1336, 1344 (Fed. Cir. 2002) (“It is thus necessary to review [intrinsic evidence] to determine whether the patentee has assigned any special meaning to claim terms.”).

Because “there is no magic formula or catechism” for determining ordinary meaning, nor a “rigid algorithm” or “specific sequence,” *Phillips*, 415 F.3d at 1324, a court must read claims in context. *See Medrad Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) (“We cannot look at the ordinary meaning of the term . . . in a vacuum.”); *see also DeMarini Sports, Inc. v. Worth*, 239 F.3d 1314, 1324 (Fed. Cir. 2001). To this end, a court must consider “the written description and prosecution history,” *Medrad*, 401 F.3d at 1319, “the specification,” *Phillips*, 415 F.3d at 1313, which is “always highly relevant to the claim construction analysis,” *Vitronics*, 90 F.3d at 1582, because it “may reveal whether the patentee has used a term in a way different from its plain meaning,” *Brookhill-Wilk*, 334 F.3d at 1298, and “the surrounding words of the claim.” *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed. Cir. 2003).

Even “[o]ther claims of the patent in question, both asserted and unasserted, can [] be valuable sources of enlightenment as to the meaning of a claim term.” *Vitronics*, 90 F.3d at 1582. In short, the “entire patent” matters, *Phillips*, 415 F.3d at 1313; *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998), and “[t]he construction that stays true to the claim language” while “most naturally align[ing] with the patent’s description of the invention will be, in the end, the correct construction.” *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998).

In addition to “the words of the claims themselves, the remainder of the specification, [and] the prosecution history,” a court may also consider “extrinsic evidence concerning relevant

scientific principles, the meaning of technical terms, and the state of the art.” *Innova*, 381 F.3d at 1116; *see also Gemstar-TV Guide Int’l, Inc. v. Int’l Trade Comm’n*, 383 F.3d 1352, 1364 (Fed. Cir. 2004).

IV. DISCUSSION

The parties’ briefing addresses six claim terms, which the Court considers below.

A. Term 1: “in communication with”

The parties’ first term for construction is “in communication with.” The term is used repeatedly in several of the claims of the ‘336 Patent. For example, claim 1 of the ‘336 Patent recites:

1. A system for trading currencies over a computer network, comprising:
 - (a) a server front-end *in communication with* said computer network;
 - (b) a database;
 - (c) a transaction server *in communication with* said server front-end and with said database;
 - (d) a rate server *in communication with* said server front-end; and
 - (e) a pricing engine *in communication with* said rate server; and further comprising an interest rate manager *in communication with* said transaction server and said database, wherein said interest rate manager is operative to calculate, pay out, and collect interest on a tick-by-tick basis.

(‘336 Patent 18:19–35, ECF No. 105-2) (emphases added). In short, the claimed “system” can be viewed as a collection of components that are in communication with each other.

OANDA argues that the Court should apply the plain and ordinary meaning of “in communication with” because the language is plain and would be readily understood by a POSA. (POB at 9–11.) Defendants disagree. They contend that “in communication with” should be construed more narrowly as “in *direct* communication” based on how a POSA would interpret the intrinsic record. (DOB at 14–18.) Defendants highlight the way Figure 3 of the ‘336 Patent depicts

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