

824 F.Supp.2d 602
United States District Court,
E.D. Pennsylvania.

FRONTLINE PLACEMENT
TECHNOLOGIES, INC., Plaintiff,

v.

CRS, INC., Defendant.

Civil Action No. 07-2457. | Feb. 8, 2011.

Synopsis


Background: In patent infringement action, parties sought construction of claim terms of patents describing a labor database wherein customers access a website to post worker absences for which substitutes are needed.

[Holding:] The District Court, [Eduardo C. Robreno, J.](#), held that no constructions were necessary for terms of patent claims which used common language that was clear and unambiguous, and thus, those terms would be used for their ordinary meanings.

Claims construed.

West Headnotes (3)

[1] Patents

 [Construction of language of claims in general](#)

No constructions were necessary for terms of patent claims which used common language that was clear and unambiguous, and thus, those terms would be used for their ordinary meanings.

[1 Cases that cite this headnote](#)

[2] Patents

 [Rejection and Amendment of Claims](#)

Under the doctrine of prosecution disclaimer, a patentee may limit the meaning of a claim term by making a clear and unmistakable disavowal of scope during prosecution; limitation of the meaning may occur when the patentee explicitly characterizes an aspect of his invention in a specific manner to overcome prior art.

3 Patents

 [Original utility](#)

[6,675,151](#), [7,430,519](#). Construed.

Attorneys and Law Firms

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Opinion

MEMORANDUM

[EDUARDO C. ROBRENO](#), District Judge.

I. INTRODUCTION

Plaintiff Frontline Placement Technologies, Inc. (“Frontline” or “Plaintiff”) filed this patent infringement and breach of contract suit against Defendant CRS, Inc. (“CRS” or “Defendant”), involving a service/technology that facilitates the replacing of absent workers with substitute workers.¹

Before the Court are both parties' briefing on claim construction with proffered definitions for the disputed claim terms. For the reasons set forth below, the Court defines the claim terms as set out in the conclusion.

II. BACKGROUND

On June 18, 2006, Plaintiff Frontline Placement Technologies, Inc. filed this patent infringement and breach of contract suit against Defendant CRS, Inc., involving a service/technology that facilitates the replacing of absent workers with substitute workers. Therein, Plaintiff alleged patent infringement of the product called “Aesop” (the #[151 Patent](#)), which is described as a labor database wherein customers access a website to post worker absences for which substitutes are needed. Substitute workers then access Aesop to *[603](#) search for posted worker absences and to commit

to filling vacancies. Users access Aesop via the internet using a web interface or via a telephone interactive voice response (IVR) system. (See Am. Compl. ¶ 9.)

Frontline's predecessor, Frontline Data, patented this technology in January 2004. In February 2004, Frontline Data filed a patent infringement suit against CRS and a settlement agreement was reached in November 2004 whereby Frontline Data would license its technology to CRS in return for royalties.

On August 8, 2007, the Patent Trade Office (“PTO”) granted an ex parte reexamination of claims 3 through 13 of Frontline's #151 Patent. Thus, the Court placed the action in suspense on November 19, 2007. During the PTO reexamination claims 14 through 55 were added to the #151 Patent and claims 3, 6, 9, and 14–55 claims were listed in the reexam certificate as patentable. (See Am. Compl. ¶ 32, Ex. C.)

On September 30, 2008, during the #151 reexamination period, U.S. Patent No. 7,430,519 (the #519 Patent), titled “Substitute Fulfillment System” and a continuation-in-part of the #151 Patent, was legally issued by the PTO in the names of Roland R. Thompson, Michael S. Blackstone, and Ralph Julius. (*Id.* at ¶ 33–34.) Frontline is assignee and owner of the #519 Patent.

On January 14, 2010, Frontline filed its Amended Complaint, alleging that CRS has infringed or continued to infringe the reexamined #151 Patent associated with CRS's SubFinder. CRS's SubFinder is a program that facilitates the replacement of absent teachers with substitute teachers. Frontline also alleges that CRS has infringed or continues to infringe the #519 Patent with CRS's SubFinder. Therein, Frontline alleges both (1) patent infringement and (2) breach of contract claims and is seeking damages.

On February 3, 2010, CRS filed its Amended Answer and raised various affirmative defenses and counterclaims, stating that Frontline has breached the limited license agreement for the #151 Patent and denying all claims for the #519 Patent infringement.² CRS requests declaratory judgment on the grounds that: (1) there was no breach of contract on the part of CRS; (2) there was no patent infringement for either the #151 or #519 Patents on the part of CRS; and (3) Frontline maintained an invalid patent.

On February 23, 2010, Frontline filed an amended reply denying CRS's counterclaims and asserting various affirmative defenses including, but not limited to failure

to state a claim, unclean hands, patent invalidity, estoppel, laches, and “most favored nation treatment” failure of a condition precedent.

On March 19, 2010, the parties filed a joint Rule 26(f) report. (Doc. no. 32). Therein, the parties propose a discovery plan, with the idea of bifurcating discovery into 2 phases. Phase One would include patents-in-suit discovery; specifically focusing on: whether CRS's modified system infringes the patents-in-suit. Phase Two, would take place to the extent further *604 discovery on particular issues was necessary.

III. DISCUSSION

Before the Court are both parties' briefing on claim construction with proffered definitions for disputed claim terms. Frontline asserts that CRS infringed the following claims:

— **#151 Patent:** Claims 3, 6, 7, 16, 24, and 33

— **#519 Patent:** Claims 10, 13, 24, 25, and 30

The Claims can also be broken down by types:

— **Method Claims:** For Patent #151 (Claims 3, 16, 24, and 33) and for Patent #519 (Claim 10)

— **Claims to a System:** For Patent #151 (Claims 6 and 7) and for Patent #519 (Claims 24 and 25)

— **Claims to a Computer-Readable Medium:** For Patent #519 (Claims 13 and 30)

The Court will first address the relevant law and then apply the law to each set of related claim terms that are disputed.

A. Legal Principles of Claim Construction

A court's analysis of patent infringement is comprised of a well-established two-step process: (1) the meaning of disputed claims are construed; and (2) the allegedly infringing device is compared to the claims as construed. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed.Cir.1995), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996); *Wavetronix LLC v. EIS Electronic Integrated Sys.*, 573 F.3d 1343, 1354 (Fed.Cir.2009). With respect to the first step, “[t]he purpose of claim construction is to determine the meaning and scope of the patent claims that the plaintiff alleges have been infringed.” *Every Penny Counts, Inc. v. American Express Co.*, 563 F.3d 1378, 1382 (Fed.Cir.2009) (citing *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed.Cir.2008)).

It is axiomatic that the claims define the scope of the patent. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed.Cir.2005) (en banc) (internal citations omitted); see also, *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed.Cir.2004); *Vitronics Corp. v. Conceptor, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). Therefore, the Court must first look to the words of the claims themselves in order to ascertain their meaning. *Vitronics Corp.*, 90 F.3d at 1582; see also *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed.Cir.1998) (“[T]he claims define the scope of the right to exclude; the claim construction inquiry, therefore, begins and ends in all cases with the actual words of the claim”).

1. Plain and Ordinary Meaning

Claim terms must be initially interpreted according to their ordinary and customary meaning. *Genzyme Corp. v. Transkaryotic Therapies, Inc.*, 346 F.3d 1094, 1106 (Fed.Cir.2003). Undefined claims terms are to be given an ordinary and customary meaning “as understood by a person of ordinary skill in the art at the time of the invention.” *Gemtron Corp. v. Saint-Gobain Corp.*, 572 F.3d 1371, 1378 (Fed.Cir.2009). As explained by the Federal Circuit:

Because the meaning of a claim term as understood by persons of skill in the art is often not immediately apparent, and because patentees frequently use terms idiosyncratically, the court looks to ‘those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean,’ including ‘the words of the claims themselves, the remainder of the specification,’ the prosecution history, and extrinsic evidence *605 concerning relevant scientific principles, the meaning of technical terms, and the state of the art.

Phillips, 415 F.3d at 1314 (quoting *Innova*, 381 F.3d at 1116).

2. Intrinsic Evidence

Where a court cannot properly construe a claim based on the plain meaning, it is necessary to examine the intrinsic record of the claims, which includes the specification and the prosecution history. *Masco Corp. v. United States*, 303 F.3d 1316, 1324 (Fed.Cir.2002) (citing *Vitronics Corp.*, 90 F.3d at 1582) (holding such intrinsic evidence to be “the most significant source of the legally operative meaning of disputed claim language”). The specification contains a

written description of the invention which must be clear and complete enough to enable the specification provides necessary context for understanding the claims, and “is always highly relevant to the claim construction analysis.” *Phillips*, 415 F.3d at 1315 (quoting *Vitronics Corp.*, 90 F.3d at 1582). Therefore, a patentee can act as his own lexicographer in the patent specification by defining a term with particularity that already has an ordinary meaning to a person of skill in the art. *Merck & Co., Inc. v. Teva Pharma. USA, Inc.*, 395 F.3d 1364, 1370 (Fed.Cir.2005) (internal citation omitted); *Phillips*, 415 F.3d at 1321 (“[T]he specification ‘acts as a dictionary when it expressly defines terms used in the claims’”) (internal quotation omitted).

On the other hand, “[w]hen consulting the specification to clarify the meaning of claim terms, courts must take care not to import limitations into the claims from the specification.” *Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282, 1288 (Fed.Cir.2009). Limitations contained in the specification should be applied judiciously and courts should refrain from restricting broader claim language to a single embodiment described in the specification, “unless the patentee has demonstrated a clear intention to limit the claim scope using ‘words or expressions of manifest exclusion or restriction.’” *Id.* (quoting *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed.Cir.2004)); see also *Bell At. Network Servs., Inc. v. Covad Commc'ns. Group, Inc.*, 262 F.3d 1258, 1271 (Fed.Cir.2001) (“[W]hen a patentee uses a claim term throughout the entire patent specification, in a manner consistent with only a single meaning, he has defined that term ‘by implication.’”) (internal quotation omitted).

Along with the specification, the prosecution history is “intrinsic evidence” of the meaning of the claims, because it “provides evidence of how the [United States Patent & Trademark Office (“PTO”)] and the inventor understood the patent.” *Phillips*, 415 F.3d at 1317. The prosecution history is comprised of the original application, communications between the patent applicant and the patent examiner, changes to the patent application, prior art cited during the patent examination, and other pertinent documents. See *Rheox, Inc. v. Entact, Inc.*, 276 F.3d 1319, 1326 (Fed.Cir.2002) (noting that the totality of the prosecution history includes “amendments to claims and arguments made to overcome or distinguish references.”) (citing *Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 979 (Fed.Cir.1999)). Though ambiguities during negotiations between the PTO and inventor may occur, “the prosecution history can 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.” *Abbott Labs.*, 566 F.3d at 1288 (quoting *Phillips*, 415 F.3d at 1317). Statements made during prosecution can serve to disavow the scope of the patent, but only in situations where the disclaimer is unambiguous. See *id.*; *Computer Docking *606 Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1374 (Fed.Cir.2008) (“[A] patentee may limit the meaning of a claim term by making a clear and unmistakable disavowal of scope during prosecution.”) (quoting *Purdue Pharma L.P. v. Endo Pharms., Inc.*, 438 F.3d 1123, 1136 (Fed.Cir.2006)); *Southwall Tech., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576 (Fed.Cir.1995) (“The prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution.”) (citations omitted).

3. Extrinsic evidence

Beyond the claim language itself and the intrinsic record, a court is permitted to rely on extrinsic evidence, consisting of “all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.” *Markman*, 52 F.3d at 980. Extrinsic evidence is to be used to aid in a court’s interpretation of the claim language, but “not for the purpose of varying or contradicting the terms of the claim.” *Id.* (internal citation omitted); see *Phillips*, 415 F.3d at 1317 (extrinsic evidence is “less significant than the intrinsic record”).

B. Disputed Claim Terms

[1] There are sixteen (16) disputed terms for the Frontline Patents. These terms and the parties’ proposed term constructions for these terms are as follows:

Terms & Patent(s)	Plaintiff Frontline's Proposed Construction	Defendant CRS's Proposed Construction
(1) acceptance ’151 Patent (Claims 3, 6, 7, 16, 24, and 33)	No construction necessary.	“an expression by the substitute worker agreeing to fill a position and resulting in an automatic securing of the position when the electronic acceptance is received without further processing for fulfillment of the same position or further selection review”
(2) accepting ’519 Patent (Claims 10 and 13)	No construction necessary.	“the substitute worker expressing agreement to fill a position which results in an automatic securing of the position when the electronic acceptance is received without further processing for fulfillment of the same position or further selection review”
(3) accepting ’519 Patent (Claims 24 and 25)	No construction necessary.	“the second worker expressing agreement to fill a position which results in an automatic securing of the position when the electronic acceptance is received without further processing for the fulfillment of the same position or further selection review”

(4) accepting	No construction necessary.	“the worker expressing agreement to fill a position which results in an automatic securing of the position when the electronic acceptance is received without further processing for the fulfillment of the same position or further selection review”
’519 Patent (Claim 30)		
(5) securing, in response to receiving the acceptance from the worker ... the securing comprising halting, at the one or more computers, further processing to fulfill the posted position with any other substitute worker	No construction necessary.	“automatically electronically halting further processing for the fulfillment of the same position by other substitute workers upon electronic receipt of an acceptance from the substitute worker and filling the posted position with said substitute worker without further selection review”
’519 Patent (Claim 10)		
(6) securing, in response to the receiving a response accepting step	No construction necessary.	“automatically halting further processing for the fulfillment of the same position by other substitute workers upon receipt of an acceptance from the substitute worker and filling the posted position with said substitute worker without further selection review”
’519 Patent (Claim 13)		
(7) securing, in response to the receiving a response accepting step	No construction necessary.	“automatically halting further processing for the fulfillment of the same position by other substitute workers upon receipt of an acceptance from the worker and filling the posted position with said worker without further selection review”
’519 Patent (Claim 30)		
(8) securing, in response to the receiving a response accepting step	No construction necessary.	“automatically halting further processing for the fulfillment of the same position by other workers upon receipt of an acceptance from the second worker and filling the posted position with said second worker without further selection review”
’519 Patent (Claim 24 and 25)		
(9) securing, in response to the receiving a response accepting step	No construction necessary.	“automatically halting further processing for the fulfillment of the same position by other workers upon receipt of an

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