

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AMERANTH, INC.,

Plaintiff,

v.

MENUSOFT SYSTEMS CORP., ET AL.,

Defendants.

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Civil Action No. 2:07-CV-271-CE

JURY DEMAND

DEFENDANTS' CLAIM CONSTRUCTION BRIEF ON
"TRANSMITTING...TO A WEB PAGE"

I. SUMMARY OF ARGUMENT

The ordinary and customary meaning of a “web page” is “[a] document on the World Wide Web.” Ex. A, MICROSOFT® PRESS COMPUTER DICTIONARY 479 (4th ed. 1999). The intrinsic record, including both the prosecution history and the patent specifications, confirms the ordinary use of the term. Because Plaintiff (1) did not set forth a clear definition of a novel meaning of “web page,” and (2) propose a construction contrary to the intrinsic record, the ordinary and customary meaning controls. Thus, Plaintiff’s notion that a “web page” means a “web client,” or “browser” or some combination thereof is incorrect.

II. THE CLAIM TERM “TRANSMITTING...TO A WEB PAGE” MEANS “TRANSMITTING...TO A DOCUMENT ON THE WORLD WIDE WEB.”

Claims are generally given their ordinary and customary meaning. *Phillips v. AWH Corporation*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). The ordinary and customary meaning of a “web page” at the time of the effective filing date of the applications of the Patents-in-Suit was “[a] document on the World Wide Web.” MICROSOFT® PRESS COMPUTER DICTIONARY 479 (4th ed. 1999) (Exhibit A).¹ Likewise, the ordinary and customary meaning of “World Wide Web” indicates documents on the World Wide Web are called “web pages.” *Id.* at 486.

The intrinsic evidence establishes that the Patents-in-Suit have used the term “web page” as “a document on the worldwide web.” For example, in response to an office action, Plaintiff argued that a prior art reference “describes the dynamic creation of menu *web pages* that are customized to a customer’s request.” Ex. B, 2/26/2001 Patent ‘850 Amendment at 6-7 (emphasis added). Under Plaintiff’s proposed construction, one of ordinary skill reading this response would be forced to reach the unreasonable conclusion that there is a “dynamic creation of menu

¹ Defendants seek the same construction of “web page” as requested in their summary judgment reply of Dkt. 165.

[devices that can receive and render a web page visible, e.g. a browser,] that are customized to a customer's request.”

Similarly, in the patent specification, Plaintiff defined the phrase “web” in accord with its ordinary meaning – the “world wide web.” (‘850 Patent at 2:8-19.) Thus, the phrase “world wide web” is an adjective that modifies the word page, which is simply a document. Thus, what must be transmitted to are documents on the “world wide web.” Furthermore, the patentee did not otherwise act as a lexicographer and “clearly set forth a definition” of “web page” in the specification. *See CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002).

Finally, with respect to the claims themselves, the ordinary and customary meaning of “web page” is consistent with the “information entered on at least one web page” recited in claim 14 of the ‘850 Patent. (*Id.* at 16:32-36.) Thus, the ordinary and customary meaning of a “web page” controls. *See Kegel Co., Inc. v. AMF Bowling, Inc.*, 127 F.3d 1420, 1427 (Fed. Cir. 1997) (“Without an express intent to impart a novel meaning to a claim term, the term takes on its ordinary meaning.”).

III. UNLIKE A “WEB CLIENT” OR BROWSER, A “WEB PAGE” IS A DOCUMENT LOCATED AT THE SERVER END IN A TRADITIONAL CLIENT/SERVER ARCHITECTURE.

Further demonstrating the Patents-in-Suit’s intention of an ordinary meaning for a “web page” is a description of the traditional client/server architecture² including “client computers”³ on the client end and “Web server computers” on the server⁴ end. (*Id.* at 12:21-29.) The Patents-in-Suit explain that the “software running on the user’s computer that enables the user to

² *See* Ex. A, MICROSOFT® PRESS COMPUTER DICTIONARY, at 88 (defining “client/server architecture”).

³ The separate use of “client computer” and “web page” in the specification demonstrates the two phrases are not synonymous. (*See* 850 Patent at 12:21-33.)

⁴ *See* Ex. A, MICROSOFT® PRESS COMPUTER DICTIONARY, at 403-04 (defining “server”).

view the HTML documents” is called a “browser.” (*Id.* at 12:29-33.) The Asserted Patents use of “client” and “browser” belies its argument that the Patents-in-Suit somehow defined a “web page” as a client, browser, or combination thereof.⁵ That the Patents-in-Suit fail to enable the transmission of linked levels of information to a document on the world wide web does not suggest that the Court should adopt another meaning that preserves validity.

IV. EVEN THOUGH THE ASSERTED PATENTS USE THE TERM “CLIENT AND “BROWSER,” PLAINTIFF ATTEMPTS TO IMPERMISSIBLY REWRITE THE CLAIM TERM “WEB PAGE” AS A “CLIENT/BROWSER” COMBINATION.

Plaintiff attempts to rewrite the “transmitting...to a Web page” claim language to mean transmitting “to a device that can receive and render a web page visible.” *See* Exhibit C, Shamos Expert Report at ¶97 (“Under the Court’s construction, element 1g requires software having the capability to transmit to both handheld devices and Web pages. I understand this phrasing to mean that the software must be able to send to a wireless handheld device and to a device that can receive and render a Web page visible, e.g. a browser.”). But, Plaintiff’s attempted rewrite is contrary to the Patents-in-Suit’s teaching that the client/browser combination receives “menus” from a web server – not application software. (‘850 Patent at 12:21-33.) This attempt to now rewrite the claims – “transmitting . . . to a web page” – would require application software that transmits to a web server, which then transmits HTML code to a client device that uses a browser to render a menu visible. This is because the *only* teaching of transmitting to a client/web browser combination is through a web server. (‘850 Patent at 12:21-51.) The Patents-in-Suit do not support this interpretation for the claimed “application software.”

⁵ The term “web server” is not synonymous with “web page” as both terms are recited in claim 12 of the ‘850 Patent and claims 11-13 of the ‘325 Patent. (‘850 Patent at 16:1-22.)

V. **CONCLUSION**

For the above reasons, Defendants Menusoft Systems Corporation and Cash Register Sales & Service of Houston, Inc. respectfully request that this Court construe “transmitting...to a Web Page” to mean “transmitting...to a document on the World Wide Web.”

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Respectfully submitted,

/s/ Marc L. Delflache

Marc L. Delflache
Texas Bar No. 05725650
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, TX 75201-2784
Telephone: (214) 855-8000
Facsimile: (214) 855-8200
Email: mdelflache@fulbright.com

OF COUNSEL:

Otis W. Carroll
Texas Bar. No. 03895700
IRELAND, CARROLL & KELLEY, PC
6101 S. Broadway, Suite 500
Tyler, TX 75703
Telephone: (903) 561-1600
Facsimile: (903) 581-1071
Email: otiscarroll@icklawn.com

Richard S. Zembek
Texas Bar No. 00797726
FULBRIGHT & JAWORSKI L.L.P.
Fulbright Tower
1301 McKinney, Suite 5100
Houston, TX 77010
Telephone: (713) 651-5151
Facsimile: (713) 541-5246
Email: rzembek@fulbright.com

**Counsel for Defendants
MENUSOFT SYSTEMS CORP. and
CASH REGISTER SALES & SERVICE OF
HOUSTON, INC.**

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