

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

ALFONSO CIOFFI, an individual,
MELANIE ROZMAN, an individual,
MEGAN ROZMAN, an individual, and
MORGAN ROZMAN, an individual,

Plaintiffs,

vs.

GOOGLE, INC.

Defendant.

Case No. 2:13-cv-103-JRG-RSP

JURY TRIAL DEMANDED

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF
OPENING CLAIM CONSTRUCTION BRIEF

actually be understood to mean “parallel.” *Id.* The Federal Circuit refused to rewrite the claim even if the contradiction was obvious and could have been corrected. *Id.*

Judge Davis’ decision in *Juxtacomm-Texas Software, LLC v. Axway, Inc.*, is similarly not helpful for Defendant. *See* 2012 WL 7637197 at *4-6 (E.D. Tex. July 5, 2012). In *Juxtacomm*, the defendant argued that the specification failed to disclose any embodiment where “data transformation occur[red] ‘within the systems interface.’” *Id.* Judge Davis noted his “suspicion” that the claims were likely improperly drafted, but nonetheless found the challenged claims indefinite because the specification failed to “disclose data transformation within the import and export interfaces or any systems interfaces.” *Id.* In contrast to *Juxtacomm* where no embodiment supporting the claims were present, Plaintiffs’ claims were intentionally directed towards Figure 1, and the embodiment disclosed in column 17 that teaches using the first process in some instances to communicate with the Internet, such as when performing encrypted Internet banking.

The common theme in Defendant’s cited cases is that indefiniteness may be found in instances where significant claim drafting errors has occurred rendering the claims irreconcilable with the specification.⁹ Unlike Defendant’s cited cases, the claims are drafted as the inventors intended, and they are drafted consistent with one or more disclosed embodiments in the patents’ specification. In summary, Defendant fails to establish by clear and convincing evidence that all the reissue claims are indefinite for failing to claim what the inventors regarded as their invention.

B. The Reissue Claims Requiring A Single Processor Are Not Indefinite

Defendant further argues that the single processor claims are indefinite because they fail to claim what the inventors’ regarded as their invention. As discussed in the previous section, if the claims can be logically consistent with the specification then Defendant’s argument fails. *See Juxtacomm-Texas Software*, 2012 WL 7637197 at *4-5 (stating that “there must be a showing of a

⁹ *See also Rambus Inc. v. Hynix Semiconductor Inc.*, 569 F. Supp. 2d 946, 1001 (N.D. Cal. 2008) (noting “[t]here is scant case law applying section 112, paragraph 2. Where it has invalidated a claim, the claim contradicted the specification and the patentee ‘admit[ted] as much.’”).

Dated: August 4, 2014

Respectfully submitted,

By: /s/ Charles Ainsworth

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