

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.<sup>9</sup> 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

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<sup>9</sup> *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

Charles Ainsworth  
State Bar No. 00783521  
Robert Christopher Bunt  
State Bar No. 00787165  
PARKER, BUNT & AINSWORTH, P.C.  
100 E. Ferguson, Suite 1114  
Tyler, TX 75702  
903/531-3535  
903/533-9687  
E-mail: [charley@pbatyler.com](mailto:charley@pbatyler.com)  
E-mail: [rbunt@pbatyler.com](mailto:rbunt@pbatyler.com)

William E. Davis, III  
Texas State Bar No. 24047416  
THE DAVIS FIRM, PC  
111 West Tyler Street  
Longview, Texas 75601  
Phone: (903) 230-9090  
Fax: (903) 230-9090  
Email: [bdavis@bdavisfirm.com](mailto:bdavis@bdavisfirm.com)

Eric W. Benisek  
Cal. State Bar No. 209520  
Robert S. McArthur  
Cal. State Bar No. 204604  
VASQUEZ BENISEK & LINDGREN LLP  
3685 Mt. Diablo Boulevard, Suite 300  
Lafayette, CA 94549  
925-627-4250  
925-403-0900-Fax  
Email: [ebenisek@vblaw.com](mailto:ebenisek@vblaw.com)  
Email: [mcarthur@vblaw.com](mailto:mcarthur@vblaw.com)

*Counsel for Plaintiffs Alfonso Cioffi, Melanie Rozman, Morgan Rozman and Megan Rozman*