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

CARDSOFT (ASSIGNMENT FOR THE BENEFIT OF CREDITORS), LLC	§	
	§	
v.	§	Case No. 2:13-CV-290-JRG-RSP
	§	
FIRST DATA CORP., et al.	§	
	§	

CLAIM CONSTRUCTION
MEMORANDUM AND ORDER

On June 10, 2014, the Court held a hearing to determine the proper construction of the disputed claim terms in United States Patents No. 6,934,945 and 7,302,683. After considering the arguments made by the parties at the hearing and in the parties' claim construction briefing (Dkt. Nos. 65, 70, and 74),[1] the Court issues this Claim Construction Memorandum and Order.

[1] Citations to documents (such as the parties' briefs and exhibits) in this Claim Construction Memorandum and Order refer to the page numbers of the original documents rather than the page numbers assigned by the Court's electronic docket.

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BACKGROUND

Plaintiff brings suit alleging infringement of United States Patents No. 6,934,945 ("the '945 Patent") and 7,302,683 ("the '683 Patent") (collectively, the "patents-in-suit"). The patents-in-suit are both titled "Method and Apparatus for Controlling Communications," and both bear a priority date in March 1997. The '945 Patent issued on August 23, 2005. The '683 Patent issued on November 27, 2007. The Abstract of the '945 Patent states:

> The present invention relates to preparing and processing information to be communicated via a network or to or from other data carriers. For implementation of a novel "virtual machine" of the present invention, a minimal amount of hardware is required. Prior art virtual machines tend to slow down operation of the device as they interface between an application program and device drivers. The novel virtual machine incorporates a virtual message processing means that is arranged to construct, deconstruct and compare messages and [that is] applied in the native code of the processor. The message instruction means directs and controls the message processor. Similarly, a protocol processor means governs and organs [*sic*, organizes] communications, under the direction of a protocol instruction means in the application. These elements of the novel virtual machine increase the speed and efficiency and allow implementation of a practical device for use in communications, able to be implemented on different hardware having different BIOS/OS.

The Abstract of the '683 Patent states:

> Disclosed is a device arranged to process messages for communications, comprising a virtual machine means including a message processor means which is arranged to process messages communicated to and/or to be communicated from the device, and message processor instruction means, arranged to provide directions for operation of the message processor means. Also disclosed is a method for operating a device arranged to process messages for communications and a method of programming a device arranged to process messages for communications.

The '683 Patent is a continuation of the '945 Patent. Because the patents-in-suit therefore share a common written description and figures, for convenience this Claim Construction Memorandum and Order cites the specification of only the '945 Patent.

The Court has construed claims of the patents-in-suit in twice before. The Court first construed the claims in *CardSoft (Assignment for the Benefit of Creditors) LLC, et al. v. VeriFone Systems, Inc., et al.*, No. 2:08-CV-98, Dkt. No. 251 (E.D. Tex. Sept. 23, 2011) (Everingham, J.) ("*VeriFone*"). The *VeriFone* case proceeded to a trial on the merits and a jury verdict. *See* No. 2:08-CV-98, Dkt. No. 389, 6/8/2012 Verdict Form. The Court entered a Judgment on October 30, 2013. No. 2:08-CV-98, Dkt. No. 483.

The Court next construed claims of the patents-in-suit in *CardSoft (Assignment for the Benefit of Creditors), LLC v. The Gores Group, LLC, et al.*, No. 2:12-CV-325 (E.D. Tex. Nov. 27, 2013) (Payne, J.) ("*Gores*"). The *Gores* case ended in a settlement in February 2014. *See* No. 2:12-CV-325, Dkt. No. 140, 2/11/2014 Order of Dismissal with Prejudice.

LEGAL PRINCIPLES

"It is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). To determine the meaning of the claims, courts start by considering the intrinsic evidence. *See id.* at 1313; *see also C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). The intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *See Phillips*, 415 F.3d at 1314; *C.R. Bard*, 388 F.3d at 861. Courts give claim terms their ordinary and accustomed meaning as understood by one of ordinary skill in the art at the time of the invention in the context of the entire patent. *Phillips*, 415 F.3d at 1312-13; *accord Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

The claims themselves provide substantial guidance in determining the meaning of particular claim terms. *Phillips*, 415 F.3d at 1314. First, a term's context in the asserted claim can be very instructive. *Id.* Other asserted or unasserted claims can aid in determining the claim's meaning because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term's meaning. *Id.* For example, when a dependent claim adds a limitation to an independent claim, it is presumed that the independent claim does not include the limitation. *Id.* at 1314-15.

"[C]laims 'must be read in view of the specification, of which they are a part.'" *Id.* at 1315 (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc)). "[T]he specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Phillips*, 415 F.3d at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *accord Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). This is true because a patentee may define his own terms, give a claim term a different meaning than the term would otherwise possess, or disclaim or disavow claim scope. *Phillips*, 415 F.3d at 1316. In these situations, the inventor's lexicography governs. *Id.* The specification may also resolve the meaning of ambiguous claim terms "where the ordinary and accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone." *Teleflex*, 299 F.3d at 1325. But, "[a]lthough the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims." *Comark Commc'ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998)

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