

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

DSS TECHNOLOGY MANAGEMENT,
INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

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Case No. Case 6:13-cv-00919-JDL

APPLE INC.’S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION AND BACKGROUND

DSS' infringement read tries to wedge a square peg into a round hole. Because of this, DSS has to take strained readings of fundamental terms in the patent. For example, DSS takes the term "code sequence" (the purported point of novelty) and uses its construction to literally read out the words "code" and "sequence" such that the term has no meaning. DSS cannot do this. In conjunction with other terms, DSS wants to hide from the facts and tells the Court to ignore the accepted meaning in the art that is reiterated in the specification (*e.g.*, the term "a local oscillator"). DSS cannot do this either. These sorts of errors, and others, pervade DSS' constructions, and the Court should reject DSS' constructions as detailed below.

A. The '290 Patent

At the outset, it is important to understand the problem the '290 patent sought to solve and how its claims solve the problem.¹ The goal of the '290 patent was to substantially reduce power consumption and interfering signals between a server microcomputer and a plurality of peripherals. '290 patent, Abstract, 1:57-61. This goal was purportedly achieved by generating "code sequences" which control the operation of transmitters in a low duty cycle pulsed mode of operation. *See, e.g., id.* at 1:57-61, 2:35-39. While the specification is clear on this point, the lone inventor also has averred that the "code sequences" that control the operations of the transmitters was the key novel concept disclosed in the patent. Ex. A, Declaration of Inventor

¹ The '290 patent was filed as a continuation in part of U.S. Patent Application No. 08/611,695, which was filed on March 6, 1996, and issued as U.S. Patent No. 5,699,357. The specifications of the '290 and '357 patents are similar, except that the '290 patent provides the additional disclosure that the peripheral units can operate "within short range of the server unit, *e.g.*, 20 meters." '290 patent at Abstract.

Philip P. Carvey Regarding U.S. Patent No. 6,128,290 (“Carvey Decl.”), ¶¶5-6. This is important because DSS ignores the purported invention in proffering its constructions.

The only “server microcomputer” disclosed in the ’290 patent is “characterized as a personal digital assistant (PDA).” ’290 patent, 2:66-3:1. Like conventional PDAs, the server microcomputer “is powered by a battery 12 and may be carried on the person of a user, *e.g.*, in his hand or on a belt hook.” *Id.* at 3:3-3:5. The peripheral units, referred to as “personal electronic accessories or PEAs,” include body-mounted accessories such as displays “mounted on a headband or eyeglasses” and “physiological sensors.” *Id.* at 1:67-2:18.

The server microcomputer and peripherals are linked in close physical proximity, *e.g.*, within twenty meters, to establish a common time base or synchronization. ’290 patent, 1:50-55. The claimed inventions all require “low duty” cycle operation. *Id.* at claims 1, 5, 6 and 9. This low duty cycle operation ensures that the units’ transmitters are only active for relatively short durations of time, which “substantially reduces power consumption and facilitates the rejection of interfering signals.” *Id.* at 1:59-61. Critical to low duty cycle operation is the use of “code sequences” or “sparse codes,” which “control the operation of the several transmitters in a low duty cycle pulsed mode of operation.” *Id.* at 1:57-59. The ’290 patent teaches that a code sequence is a series of values, where each value in the series represents a time slot within a frame interval when a unit’s transmitter is energized or a time slot when a unit’s transmitter is depowered. In the Preferred Embodiment (the only disclosed embodiment), “the codes are mostly zeros with three scattered ones representing the locations of the slots in which RF bursts are to be transmitted or received.” *Id.* at 7:27-29.

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