

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

STRAIGHT PATH IP GROUP, INC.,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:13-cv-932 (AJT/IDD)
	)	
BANDWIDTH.COM, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER CONSTRUING CLAIMS**

On January 16, 2014, the Court held a claim construction hearing with respect to certain claim language of U.S. Patent Numbers 6,513,066 (“the ’066 patent”) and 6,701,365 (“the ’365 patent”). Upon consideration of the parties’ briefs setting forth their proposed constructions and their presentations at the claim construction hearing, the Court rules as follows with respect to the disputed terms of the ’006 and ’365 patents.

**I. INTRODUCTION**

On January 28, 2003, the Patent and Trademark Office (“PTO”) issued the ’066 patent, entitled “Establishing a Point-to-Point Internet Communication.” On March 2, 2004, the PTO issued the ’365 patent, entitled “Point-to-Point Internet Protocol.” The patented invention purports to provide a solution to a problem associated with internet communication between devices, specifically, that such communication generally requires knowledge of the devices’ respective “addresses,” typically internet protocol (“IP”) addresses, but those addresses may not be fixed. *See* ’066 patent at 1:32-2:3; ’365 patent at 1:28-63. During prosecution of the ’365 patent, the patentee compared this problem to that of “trying to call someone whose telephone number changes after each call.” Straight Path IP Group’s *Markman* Brief, Ex. 7 at 4.

The invention comprises two alternative protocols for establishing point-to-point

IP address of a second processing unit, while the second exchanges the IP addresses via email, without the use of a connection server. *See* '066 patent at 2:7-37; '365 patent at 1:66-2:28. This case exclusively involves the first protocol that utilizes a “connection server,” one of the primary terms to be construed.

As disclosed in claim 1 of the '066 patent, the first protocol consists of: 1) “storing in a database a respective Internet Protocol (IP) address of a set of processing units that have an on-line status with respect to the Internet”; 2) transmitting a query from the first processing unit to a connection server to determine the on-line status of a second processing unit”; and 3) “retrieving the IP address of the second unit from the database using the connection server, in response to the determination of a positive on-line status of the second processing unit, for establishing a point-to-point communication link between the first and second processing units through the Internet.” The '365 patent has an identical specification but its claims cover a “computer program product,” “computer data signal” and “computer system” for performing steps similar to those set out in the '066 patent.<sup>1</sup>

At this stage in the proceedings, the construction of four terms remains in dispute:<sup>2</sup>

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<sup>1</sup> The '365 patent also uses somewhat different terminology than the '066 patent. Relevant for this case is that the '365 patent uses the term “process” instead of “processing unit” and the term “network protocol address” instead of “IP address.” Defendants represented at the *Markman* hearing that an IP address is a type of network protocol address.

<sup>2</sup> The parties initially disputed the meaning of ten terms found in claims 1 through 3 and 6 through 8 of the '066 patent and claims 1 and 3 of the '365 patent. However, only Defendant Bandwidth.com, Inc., which has been dismissed from the case, disputed the meaning of two of the terms, “using the connection server” and “database.” Thus, those terms no longer need to be construed. At the *Markman* hearing, the remaining defendants conceded that four other terms, “Internet,” “point-to-point Internet communication,” “point-to-point communications over the Internet,” and “point-to-point communication link between the first and second processing units through the Internet,” do not need to be construed.

- (a) “processing unit,”
- (b) “process,”
- (c) “point-to-point”/“point-to-point communication,”<sup>3</sup> and
- (c) “connection server.”

## II. STANDARD

The construction or interpretation of a claim is a question of law. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995), *aff'd*, 517 U.S. 370 (1996). The words of the claim “are generally given their ordinary and customary meaning,” that is, the meaning they would have “to a person of ordinary skill in the art in question at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (citation omitted). “Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Id.* at 1313. Thus, in interpreting claim terms, “the court should look first to the intrinsic evidence of record, *i.e.*, the patent itself, including the claims, the specification, and, if in evidence, the prosecution history.” *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). However, the court may also consider extrinsic evidence, including, for example, treatises, dictionaries, and expert testimony. *Phillips*, 415 F.3d at 1317-18.

“If the claim language is clear on its face, then [the Court’s] consideration of the rest of the intrinsic evidence is restricted to determining if a deviation from the clear language of the

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<sup>3</sup> The term “point-to-point,” as used in the ’066 and ’365 patents, was construed in an earlier case filed in the Norfolk Division of this District. See *Innovative Commc’ns Tech., Inc. (“ICTI”) v. Vivox, Inc.*, Nos. 2:12-cv-7 & 2:12-cv-9, 2012 WL 5331573 (E.D. Va. Oct. 26, 2012). That case settled before a final adjudication on the merits.

claims is specified.” *Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001). “If, however, the claim language is not clear on its face, then [the Court’s] consideration of the rest of the intrinsic evidence is directed to resolving, if possible, the lack of clarity.” *Id.* “In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.” *Phillips*, 415 F.3d at 1314.

A claim term should be interpreted more narrowly than its ordinary and customary meaning under only two circumstances: “1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). “To act as its own lexicographer, a patentee must clearly set forth a definition of the disputed claim term other than its plain and ordinary meaning. It is not enough for a patentee to simply disclose a single embodiment or use a word in the same manner in all embodiments, the patentee must clearly express an intent to redefine the term.” *Id.* (internal citation and quotation marks omitted). “The standard for disavowal of claim scope is similarly exacting.” *Id.* at 1366. “The patentee may demonstrate intent to deviate from the ordinary and accustomed meaning of a claim term by including in the specification expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.” *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002).

Title 35 U.S.C. § 112, ¶ 2 requires that every patent’s specification “conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor . . . regards as the invention.” A claim that fails to satisfy this particularity requirement

is invalid for indefiniteness. “The primary purpose of the definiteness requirement is to ensure that the claims are written in such a way that they give notice to the public of the extent of the legal protection afforded by the patent, so that interested members of the public, *e.g.*, competitors of the patent owner, can determine whether or not they infringe.” *All Dental Prodx, LLC v. Advantage Dental Prods., Inc.*, 309 F.3d 774, 779-80 (Fed. Cir. 2002).

“In the face of an allegation of indefiniteness, general principles of claim construction apply.” *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1348 (Fed. Cir. 2005). “Only claims not amenable to construction or insolubly ambiguous are indefinite.” *Source Search Tech., LLC v. LendingTree, LLC*, 588 F.3d 1063, 1076 (Fed. Cir. 2009) (internal quotation marks omitted). Patents are presumed valid, and an alleged infringer asserting that a claim term is indefinite must prove “by clear and convincing evidence that a skilled artisan could not discern the boundaries of the claim based on the claim language, the specification, and the prosecution history, as well as her knowledge of the relevant art area.” *Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1249-50 (Fed. Cir. 2008).

### III. CLAIMS

#### A. “processing unit”

The term “processing unit” is found in claims 1 through 3 and 6 through 8 of the ’066 patent. Straight Path contends that no construction is necessary as the term has a plain and ordinary meaning. The defendants contend that the term should be construed to mean “a user device.”

The defendants do not seem to dispute that the term “processing unit” has an ordinary and customary meaning that is readily apparent even to a layperson. *See Phillips*, 415 F.3d at 1314. They nonetheless contend that the term must be construed, although it is unclear to the

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