

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Mangosoft, Inc. and  
Mangosoft Corporation,  
Plaintiffs

v.

Civil No. 02-545-SM  
Opinion No. 2004 DNH 141

Oracle Corporation,  
Defendant

**O R D E R**

This is a suit for patent infringement. Plaintiffs, Mangosoft, Inc. and Mangosoft Corporation (collectively, "Mangosoft"), say defendant, Oracle Corporation, is making, selling, and/or offering for sale computer software that infringes two of Mangosoft's patents: United States Patent No. 6,148,377 ("the '377 patent") and United States Patent No. 5,918,229 ("the '229 patent"). The court held a Markman hearing, at which the parties presented evidence and argument in support of their respective constructions of various terms used in the patents' claims. See generally Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). Subsequently, the parties filed post-hearing memoranda.

### **Legal Standard Governing Claim Construction**

Patent infringement analysis involves two steps: first, properly construing the asserted claim; and second, determining whether the accused method or device infringes the asserted claim as properly construed. See Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1581-82 (Fed. Cir. 1996) (citing Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed. Cir. 1995), aff'd, 517 U.S. 370 (1996)). Step one of that process - claim construction - presents a question of law to be resolved by the court. See Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1304 (Fed. Cir. 1999). The second step - determining whether the accused process or device infringes the patent - presents a question of fact. Id. At this stage of the litigation, the court is focused exclusively on the first step: properly construing the meaning and scope of various claim terms used in the '377 and '229 patents.

Construing patent claim terms generally means ascertaining the meaning of those terms in light of the intrinsic evidence of record, which includes: the claims, the specification, and the prosecution history. See Vitronics, 90 F.3d at 1582. But, the

court may consider extrinsic evidence as well. See Apex Inc. v. Raritan Computer, Inc., 325 F.3d 1364, 1371 (Fed. Cir. 2003) (“Courts may also review extrinsic evidence to assist them in comprehending the technology in accordance with the understanding of skilled artisans and as necessary for actual claim construction.”). Extrinsic evidence is external to the patent, “such as expert testimony, inventor testimony, dictionaries, and technical treatises and articles.” Pitney-Bowes, 182 F.3d at 1308 (citing Vitronics, 90 F.3d at 1584). See generally Ferguson Beauregard/Logic Controls v. Mega Systems LLC, 350 F.3d 1327, 1338 (Fed. Cir. 2003) (“The ordinary and customary meaning of a claim term may be determined by reviewing a variety of sources. Some of these sources include the claims themselves, dictionaries and treatises, and the written description, the drawings, and the prosecution history.”) (citations omitted).

The court observed in Vitronics that, “In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence.” Id., at 1583.

Nevertheless, even when patent language is unambiguous, a court may still consider extrinsic evidence for limited purposes.

Vitronics does not prohibit courts from examining extrinsic evidence, even when the patent document is itself clear. Moreover, Vitronics does not set forth any rules regarding the admissibility of expert testimony into evidence. Certainly, there are no prohibitions in Vitronics on courts hearing evidence from experts. Rather, Vitronics merely warned courts not to rely on extrinsic evidence in claim construction to contradict the meaning of claims discernible from thoughtful examination of the claims, the written description, and the prosecution history - the intrinsic evidence.

Pitney Bowes, 182 F.3d at 1308 (citations omitted) (emphasis supplied). Consequently, the court concluded:

Thus, under Vitronics, it is entirely appropriate, perhaps even preferable, for a court to consult trustworthy extrinsic evidence to ensure that the claim construction it is tending to from the patent file is not inconsistent with clearly expressed, plainly apposite, and widely held understandings in the pertinent technical field. This is especially the case with respect to technical terms, . . . . Indeed, a patent is both a technical and a legal document. While a judge is well-equipped to interpret the legal aspects of the document, he or she must also interpret the technical aspects of the document, and indeed its overall meaning, from the vantage point of one skilled in the art. Although the patent file may often be sufficient to permit the judge to interpret the technical aspects of the patent properly, consultation of extrinsic evidence is particularly appropriate to ensure that his or her understanding of the technical

aspects of the patent is not entirely at variance with the understanding of one skilled in the art.

Id. at 1309 (citation omitted) (emphasis supplied). See also Key Pharms. v. Hercon Lab. Corp., 161 F.3d 709, 716 (Fed. Cir. 1998).

Giving proper effect to disputed technical terms in a patent requires a court to construe them as they would be construed by those skilled in the relevant art. See Hoechst Celanese Corp. v. BP Chems. Ltd., 78 F.3d 1575, 1578 (Fed. Cir. 1996) ("A technical term used in a patent document is interpreted as having the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning."). See also Ferguson, 350 F.3d at 1338 ("In the absence of an express intent to impart a novel meaning to the claim terms, the words take on the full breadth of the ordinary and customary meanings attributed to them by those of ordinary skill in the art."). Here, nothing suggests that the terms in dispute are used in the patents in any way other than as they would be commonly understood by those skilled in the relevant art. With respect to the patents at issue here, a person skilled

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