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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FINJAN, INC.,
Plaintiff,
v.
SOPHOS, INC.,
Defendant.

Case No. [14-cv-01197-WHO](#)

CLAIM CONSTRUCTION ORDER

Re: Dkt. No. 58

INTRODUCTION

Plaintiff Finjan, Inc. alleges that defendant Sophos, Inc. has infringed eight of its patents relating to antivirus software. The parties have requested that I construe five claim terms or elements in four of the patents at issue: the 8,677,494 patent, the 7,613,926 patent, the 7,613,918 patent, and the 6,154,844 patent. Based on the parties’ briefs and oral argument of counsel, I construe the disputed terms as set forth below.

LEGAL STANDARD

Claim construction is required only when there is a disagreement as to the meaning or scope of technical terms and words of art, which the court must resolve in order to determine the issues before it. *Eli Lilly & Co. v. Aradigm Corp.*, 376 F.3d 1352, 1360 (Fed. Cir. 2004). When the parties raise a dispute regarding the proper scope of patent claims, the court and not the jury must resolve that dispute. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc), *aff’d* 517 U.S. 370 (1996) (holding that claim construction is a matter of law).

Terms of a claim are generally given their ordinary and customary meaning. *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008). “In some cases, the ordinary meaning of claim language . . . 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

1 of commonly understood words.” *Id.* at 1360. Words that are not technical terms of art may not
2 need construction at all. *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001). “In such
3 circumstances, general purpose dictionaries may be helpful.” *Phillips v. AWH Corp.*, 415 F.3d
4 1303, 1314 (Fed. Cir. 2005).

5 The “ordinary and customary meaning” is “the meaning a term would have to a person of
6 ordinary skill in the art after reviewing the intrinsic record at the time of the invention.” *O2*
7 *Micro*, 521 F.3d at 1360. This includes “not only in the context of the particular claim in which
8 the disputed term appears, but in the context of the entire patent, including the specification.”
9 *Phillips*, 415 F.3d at 1313. Intrinsic evidence “is the most significant source of the legally
10 operative meaning of disputed claim language.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d
11 1576, 1582 (Fed. Cir. 1996).

12 “However, in many cases, the meaning of a claim term as understood by persons of skill
13 in the art is not readily apparent.” *O2 Micro*, 521 F.3d at 1360. Courts look to “sources available
14 to the public that show what a person of skill in the art would have understood disputed claim
15 language to mean.” *Phillips*, 415 F.3d at 1314 (internal citations and quotations omitted). In
16 addition to the particular claim and the rest of the patent, these sources include “the prosecution
17 history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical
18 terms, and the state of the art.” *Id.* However, extrinsic evidence should be considered only after
19 consideration of intrinsic evidence, as it is less reliable and persuasive than intrinsic evidence.
20 *Vitronics*, 90 F.3d at 1582-84. In addition, “[c]ases about patent validity are authoritative on the
21 issue of claim construction.” *Markman*, 52 F.3d at 996 n.7.

22 Courts depart from the “ordinary and customary meaning” of a term in two circumstances.
23 *Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). First, the
24 court will disregard the ordinary and customary meaning of a term where “a patentee sets out a
25 definition and acts as his own lexicographer.” *Id.* Second, the court will alter its interpretation of
26 a term “when the patentee disavows the full scope of a claim term either in the specification or
27 during prosecution.” *Id.* Embodiments from the specification generally should not be imported
28 into the claims in order to limit the claims. *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1369

1 (Fed. Cir. 2012).

2 **DISCUSSION**

3 In addition to the claims discussed, the parties also initially disputed the construction of the
 4 terms “security context” in the ’918 patent, “certificate creator” in the ’580 patent, and “protocol
 5 appender” in the ’580 patent. The parties now agree that “certificate creator” and “protocol
 6 appender” do not require construction, *see* Dkt. No. 60 at 17, and that “security context” should be
 7 construed as “an environment in which a software application is run, which may limit resources
 8 that the application is permitted to access or operations that the application is permitted to
 9 perform.” *See id.* at 14; Dkt. No. 62 at 14. I discuss the remaining terms at issue in turn.

10 **I. CONSTRUCTION OF TERMS IN THE ’926 AND ’494 PATENTS**

11 The ’494 and the ’926 patents are largely identical, as ’494 is a continuation of ’926. *See*
 12 ’494 patent at 1:7-15 (Dkt. No. 58-9). The ’494 patent provides for “malicious mobile code
 13 runtime monitoring system and methods” and the ’926 patent protects a “method and system for
 14 protecting a computer and a network from hostile Downloadables.” *Id.* at 1; ’926 patent 1 (Dkt.
 15 No. 58-5). Both patents provide “[p]rotection systems and methods [] for protecting one or more
 16 personal computers (“PCs”) and/or other intermittently or persistently network accessible devices
 17 or processes from undesirable or otherwise malicious operations . . .” ’494 patent at 1; ’926 patent
 18 1.

19 **A. “Database” (’926 patent, claim 22; ’494 patent, claims 1, 10)**

20

Finjan’s proposed construction	Sophos’s proposed construction	Court’s construction
A collection of interrelated data organized according to a database schema to serve one or more applications	No construction necessary	A collection of interrelated data organized according to a database schema to serve one or more applications

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25 Finjan contends that its proposed construction is in line with the plain and ordinary
 26 meaning of the term “database.” It takes its language from the IBM Dictionary of Computing,
 27 which defines “database” in identical terms as “[a] collection of interrelated data organized
 28 according to a database schema to serve one or more applications.” *See* Dkt. No. 58 at 10.

1 Sophos contends that no construction of the term “database” is necessary. Dkt. No. 60 at
2 2. It asserts that the ’926 and ’494 patents did not define the term or give it any special meaning.
3 *Id.* As an alternative construction, Sophos also cites to the definition of “database” in the IEEE
4 Standard Dictionary of Electrical and Electronic Terms as the plain and ordinary meaning of the
5 term: “a collection of logically related data stored together in one or more computerized files.” *Id.*
6 at 3; Tr. 5 (Dkt. No. 72).

7 The parties do not appear to seriously dispute the definition of the term “database.”
8 Although Finjan’s definition of the term is slightly broader than that of Sophos, requiring that the
9 information in a database “serve one or more applications,” both parties agree upon the basic
10 definition. *Compare* Dkt. No. 58 at 10 (Finjan’s definition of “database” as taken from the IBM
11 Dictionary of Computing), *with* Dkt. No. 60 at 3 (Sophos’s contention that “database” connotes a
12 “structured way to store data in a computer” (emphasis added)). During oral argument, counsel
13 for Sophos indicated that it accepted the definition “a collection of interrelated data structures,”
14 which was “almost identical” to Sophos’s proposed alternative construction. Tr. 15. Sophos also
15 proposed an alternative construction, taken from the IEEE Standard Dictionary of Electrical and
16 Electronic Terms, of “a collection of logically related data stored together in one or more
17 computerized files.” Dkt. No. 60 at 3.

18 Ultimately, the parties’ disagreement centers on whether “database” includes “simple files,
19 such as a log file.” Dkt No. 58 at 10. While Sophos contends that a log file is included within the
20 definition of database, Finjan claims that it is not. According to Finjan, a log file is unstructured
21 collection of data on a computer. *Id.* at 11. Sophos argues that a log file, such as the “events log”
22 described in the patent, is a collection of logically related data stored together and thus a database.
23 Dkt. No. 60 at 3.

24 The term “database” should be construed because the parties dispute the categorization of
25 “log file” as a “database,” and because the term is sufficiently technical in the context of this
26 patent that a construction would aid the jury. Moreover, although at least one court has declined
27 to construe the term “database,” *see MOAEC, Inc. v. Pandora Media, Inc.*, No. 07-CV-654-BBC,
28 2008 WL 4500704, at *6 (W.D. Wis. Sept. 30, 2008) (“I conclude that the term “database” . . .

1 does not need construction because its plain and ordinary meaning is easily discernible from the
 2 claim language”), many courts have chosen to construe the term. *See, e.g., Select Retrieval LLC v.*
 3 *Amerimark Direct LLC*, No. 1:11-CV-00812-RGA, 2014 WL 1092387, at *1 (D. Del. Mar. 14,
 4 2014) (rejecting argument that “database” need not be construed); *see also Transcenic, Inc. v.*
 5 *Google Inc.*, 7 F. Supp. 3d 405, 411 (D. Del. 2013); *Clear With Computers, LLC v. Hyundai*
 6 *Motor Am., Inc.*, No. 6:09 CV 479, 2011 WL 43454, at *6 (E.D. Tex. Jan. 5, 2011); *Timeline, Inc.*
 7 *v. Proclarity Corp.*, No. C05-1013JLR, 2006 WL 6143242, at *11 (W.D. Wash. June 29, 2006);
 8 *Soverain Software LLC v. Amazon.com, Inc.*, No. 6:04-CV-14, 2005 WL 6225276, at *10 (E.D.
 9 Tex. Apr. 7, 2005).

10 The specifications of the ’494 and ’926 patents are identical. Neither patent defines the
 11 term “database,” and there is no evidence that Finjan “disavow[ed] the full scope of a claim term
 12 either in the specification or during prosecution.” *Thorner*, 669 F.3d at 1365. Thus, the plain and
 13 ordinary meaning to a person skilled in the art should prevail.

14 The claims at issue refer to a “database” of “Downloadable security profiles indexed
 15 according to Downloadable IDs.” ’926 patent at 22:26-28. A database manager uses the database
 16 to retrieve security profile data for an incoming Downloadable. *Id.* at 22:25-28. This language
 17 supports Finjan’s definition of the term “database.” The database indexes information according
 18 to a database schema (Downloadable IDs) and serves an application (a database manager) in the
 19 antivirus process.

20 The specification mentions a “database” twice. First, it refers to a “protected destination
 21 set, such as a protected destinations list, array, *database*, etc.” where received information is sent.
 22 *Id.* at 9:54-55 (emphasis added).¹ Second, it mentions “[a]ny suitable explicit or referencing list,
 23 *database or other storage structure(s)* or storage structure configuration(s)” that “can [] be utilized
 24

25 _____
 26 ¹ Although Sophos asserts that the ’926 specification compares a database to a “list or array,”
 27 indicating that it should be understood broadly enough to encompass simple files such as a log
 28 file, *see* Dkt. No. 60 at 3, I find this argument unpersuasive. The fact that a database is listed
 along with more simple files does not mean that the database includes or is equated with these
 types of files. In fact, one could argue that this list serves to further differentiate a database from
 simpler files. Because this argument goes either way, the first reference to “database” in the ’926
 patent does not provide significant guidance.

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