

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

BMC SOFTWARE, INC.,

Plaintiff,

v.

SERVICENOW, INC.,

Defendant.

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Civil Action No. 2:14-CV-903-JRG

MEMORANDUM OPINION AND ORDER

On July 10, 2015, the Court held a hearing to determine the proper construction of the disputed claim terms in United States Patent Nos. 5,978,594 (“the ’594 Patent”), 6,816,898 (“the ’898 Patent”), 6,895,586 (“the ’586 Patent”), 7,062,683 (“the ’683 Patent”), 7,617,073 (“the ’073 Patent”), 8,646,093 (“the ’093 Patent”), and 8,674,992 (“the ’992 Patent”) (collectively, the “Asserted Patents”). After considering the arguments made by the parties at the hearing and in the parties’ claim construction briefing (Dkt. Nos. 99, 106, and 108), the Court issues this Claim Construction Memorandum and Order.

term to encompass any “condition,” as Plaintiff argues. (Dkt. No. 99 at 24.) As discussed above, the intrinsic evidence indicates that an “exception indication” provides an “indication of a non-compliance condition or an unresolved connection.” Accordingly, the Court does not adopt Defendant’s construction.

c) Court’s Construction

In light of the evidence presented by the parties, the Court construes the term “**an exception indication**” to mean “**indication of a non-compliance condition or an unresolved connection.**”

F. The ’073 Patent

The parties’ dispute focuses on the meaning and scope of three terms/phrases in the ’073 Patent.

1. “wherein the first and second indicator are each separately visible at the same time on a single display window of a display unit”

<u>Disputed Term</u>	<u>Plaintiff’s Proposal</u>	<u>Defendant’s Proposal</u>
“display the health status of the IT component by showing a first indicator for the IT component and a second indicator for the at least one IT subcomponent”	This phrase should be construed according to the meaning of the terms therein (see “IT subcomponent”) and otherwise according to plain meaning	“show a first indicator for the IT component, and a second indicator for the at least one IT subcomponent, to display the health status of the IT component. The indicators are displayed via a single act of rendering, displaying both component and subcomponent health status indicators without requiring the user to perform any affirmative action, so that the first and second indicator are each separately visible at the same time on a single display window of a display unit”

a) The Parties’ Position

The parties dispute whether the phrase “display the health status of the IT component by showing a first indicator for the IT component and a second indicator for the at least one IT

subcomponent” requires construction. Plaintiff contends that Defendant’s construction must be rejected as unintelligible. (Dkt. 99 at 20–21.) Defendant responds that during prosecution of the ’073 Patent, the patentees made clear statements in order to overcome the prior art. (Dkt. No. 106 at 28) (citing Dkt. No. 106-17 at 12). Defendant argues that the patentee must be held to their representations. (Dkt. No. 106 at 29.) Defendant further argues that a skilled artisan would have relied on these statements in ascertaining the claim scope. (*Id.*)

Plaintiff replies that there is no clear and unambiguous statement of narrowing scope. (Dkt. No. 108 at 10.) Plaintiff contends that Defendant misreads the prosecution history. (*Id.*) Plaintiff argues that the applicant explained that a difference with the prior art reference was that “[the prior art] explicitly teaches that the user must navigate through plural windows.” (*Id.*) According to Plaintiff, there is no clear and unambiguous disavowal. (*Id.*)

For the following reasons, the Court finds that the phrase **“wherein the first and second indicator are each separately visible at the same time on a single display window of a display unit”** should be construed to mean **“wherein the first and second indicator are each separately visible at the same time on a single display window of a display unit without requiring the user to perform any affirmative action (i.e., ‘navigate’).”**

b) Analysis

As an initial matter, the parties presented the phrase “display the health status of the IT component by showing a first indicator for the IT component and a second indicator for the at least one IT subcomponent” for construction. The Court finds that the parties’ dispute is properly resolved by construing the phrase “wherein the first and second indicator are each separately visible at the same time on a single display window of a display unit,” which appears in claim 1 of the ’073 Patent. The Court further finds that the claims language is unambiguous

and easily understandable by a jury. Thus, the only issue before the Court is whether the intrinsic evidence indicates that the patentees further limited claim 1. The Court finds that the patentees did further limit claim 1 by amending claim 13 as follows:

13. (Currently Amended) A system for indicating the health status of an IT component and at least one IT subcomponent comprising:
- (a) an IT component processor adapted to compute a component health status of the IT component;
 - (b) an IT subcomponent processor adapted to compute a subcomponent health status for each the at least one IT subcomponent;
 - (c) a renderer adapted to display the health status of the IT component by showing a first indicator for the IT component and a second indicator for the at least one IT subcomponent subcomponents, wherein the first and second indicator are each separately visible at the same time on a single display window of a display unit.

(Dkt. 106-16 at 7 (1/12/09 Office Action Response)) (highlighting added).¹² As indicated, the patentees amended claim 13 to include “wherein the first and second indicator are each separately visible at the same time on a single display window of a display unit.” Regarding this amendment and the prior art, the patentees argued the following:

¹² Pending claim 13 referenced in the passage above ultimately issued as claim 1.

subcomponents.” In Ridalfo, a user must **drill down** to the subcomponent level by selecting and interrogating each component. Ridalfo at [0108]. Ridalfo discloses that one way to do such an interrogation would be to maneuver the mouse to place the cursor on the desired component, and to click the mouse button which would result in the user being navigated from the current display to a second display. Ridalfo at [0108]. Thus, in a system in accordance with Ridalfo, to ascertain the health of the component independent of its subcomponents, **the user must navigate to a second screen,** locate the appropriate data, and then navigate back to the previous screen to begin the same process again for the next component. **Therefore, Ridalfo falls squarely into the prior art as discussed by Assignee in the background section of the instant Specification. See, for example, ¶¶ 4-9.** In contrast, the invention of claims 1, 11 and 13 (as amended) provide the health status of an IT component and a subcomponent via a *single* act of rendering – displaying both component and subcomponent health status indicators without requiring the user to perform any affirmative action (i.e., “navigate”). Ridalfo does not describe, teach or fairly suggest this behavior. In fact, Ridalfo explicitly teaches that the user *must* navigate through plural windows to get such information.

(Dkt. 106-16 at 12 (1/12/09 Office Action Response)) (highlighting added). As indicated, the patentees distinguished the claims from the prior art by arguing that the prior art required a user to “drill down to the subcomponent level” and “navigate to a second screen.” *Id.* The patentees contrasted this with the amended claims that “provide the health status of an IT component and a subcomponent via a *single* act of rendering – displaying both component and subcomponent health status indicators without requiring the user to perform an affirmative action i.e. ‘navigate’.” *Id.* (emphasis in original). Accordingly, a person of ordinary skill in the art would understand that the phrase “wherein the first and second indicator are each separately visible at the same time on a single display window of a display unit” means that the indicators are visible “without requiring the user to perform any affirmative action (i.e., ‘navigate’).”

This is further confirmed by the specification that states that in the prior art “[t]he users can navigate through the representation of the systems by expanding parts of the tree or by selecting the icons representing the component they want to explore further.” ’073 Patent at

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