

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
WORLDS, INC.,	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	
	)	<b>Civil Action No. 12-10576-DJC</b>
ACTIVISION BLIZZARD, INC.,	)	
BLIZZARD ENTERTAINMENT, INC. and	)	
ACTIVISION PUBLISHING, INC.,	)	
	)	
<b>Defendants.</b>	)	
_____	)	

**MEMORANDUM AND ORDER**

**CASPER, J.**

**June 26, 2015**

**I. Introduction**

Plaintiff Worlds, Inc., (“Worlds”) alleges that Activision Blizzard, Inc., Blizzard Entertainment, Inc. and Activision Publishing, Inc. (collectively, the “Defendants”) infringe certain claims of United States Patents Nos. 7,181,690 (“‘690”), 7,493,558 (“‘558”), 7,945,856 (“‘856”), 8,082,501 (“‘501”) and 8,145,998 (“‘998”) (collectively, the “Patents-In-Suit”). The parties now seek construction of eleven disputed claims terms. After extensive briefing and a Markman hearing, the Court’s claim construction follows.

**II. Patents-in-Suit**

This lawsuit involves patents that are directed to a client-server network that enables large numbers of computer users to interact in a “virtual world” displayed on a computer screen. D. 62-2, 62-3, 62-4, 62-5, 62-6. Worlds alleges that Defendants infringe the following patent claims: ‘690 claims 1-20; ‘558 claims 4-9; ‘856 claim 1; ‘501 claims 1-8, 10, 12, 14-16; ‘998 claims 1-3, 7, 8, 11-20. See Worlds, Inc. v. Activision Blizzard, Inc., No. 12-cv-10576-DJC,

2014 WL 972135, at \*1 (D. Mass. Mar. 13, 2014). The Patents-in-Suit are all part of the same patent family and share a common specification. D. 62-2, 62-3, 62-4, 62-5, 62-6.<sup>1</sup> The ‘690 patent was filed on August 3, 2000 and issued on February 20, 2007. Worlds, Inc., 2014 WL 972135, at \*1. The ‘558 patent was filed on November 2, 2006 and issued on February 17, 2009. Id. The ‘856 patent was filed on January 13, 2009 and issued on May 17, 2011. Id. The ‘501 patent was filed on March 19, 2009 and issued on December 20, 2011. Id. at \*2. The ‘998 patent was filed on March 19, 2009 and issued on March 27, 2012. Id.

### III. Procedural History

Worlds instituted this action on March 30, 2012, D. 1, and later filed an amended complaint. D. 32. The Defendants moved for summary judgment on June 18, 2013. D. 83. The Court subsequently allowed the Defendants’ motion for summary judgment, concluding that the Patents-in-Suit were not entitled to claim priority to November 13, 1995, the filing date of Worlds’s Provisional Application. D. 124. Worlds, however, has continued to allege infringement as from the issuance of the certificates of correction by the PTO on September 24, 2013 for the ‘045 and ‘690 patents (of which the ‘558, ‘856, ‘501 and ‘998 are continuations) through the lives of the Patents-in-Suit. D. 127. After claim construction briefing, the Court held a Markman hearing and took the matter under advisement. D. 147.

### IV. Standard of Review

The construction of disputed claim terms is a question of law. Markman v. Westview Instruments, 517 U.S. 370, 372 (1996). For claim construction, a court must construe “the meaning that the term would have to a person of ordinary skill in the art in question at the time of . . . the effective filing date of the patent application.” Phillips v. AWH Corp., 415 F.3d 1303,

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<sup>1</sup> As all of the patents share a common specification, when citing the specification the Court will cite to the ‘690 patent, D. 62-2.

1313 (Fed. Cir. 2005). To do so, the Court must look to “the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” Id. at 1314 (quoting Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc., 381 F.3d 1111, 1116 (Fed. Cir. 2004)).

**A. The Claims**

The analysis must always begin with the language of the claim, which “define[s] the invention to which the patentee is entitled the right to exclude.” Id. at 1312 (citing Innova, 381 F.3d at 1115). “[T]he context in which a term is used in the asserted claim can be highly instructive.” Id. at 1314. Courts may find that the claim itself provides the means for construing the term where, for example, the claim term is used consistently throughout the patent. Id. In that case, “the meaning of a term in one claim is likely the meaning of that same term in another.” Abbott GmbH & Co., KG v. Centocor Ortho Biotech, Inc., No. 09-11340-FDS, 2011 WL 948403, at \*3 (D. Mass. Mar. 15, 2011) (citing Phillips, 415 F.3d at 1314). Furthermore, “the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim.” Phillips, 415 F.3d at 1315.

**B. The Specification**

Nevertheless, the claims “do not stand alone” but “are part of a fully integrated written instrument, consisting principally of a specification,” which “is always highly relevant to the claim construction analysis.” Id. “Usually, [the specification] is dispositive; it is the single best guide to the meaning of a disputed term.” Id. (citing Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)). “[T]he scope and outer boundary of claims is set by the

patentee's description of his invention" and, therefore, "claims cannot be of broader scope than the invention that is set forth in the specification." On Demand Mach. Corp. v. Ingram Indus., Inc., 442 F.3d 1331, 1338-40 (Fed. Cir. 2006); see also Phillips, 415 F.3d at 1315-17, 1323 (noting that "the interpretation to be given a term can only be determined and confirmed with a full understanding of what the inventors actually invented and intended to envelop with the claim," but "expressly reject[ing] the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment"). The Court must "us[e] the specification [only] to interpret the meaning of a claim," and must be careful not to "import[ ] limitations from the specification into the claim." Phillips, 415 F.3d at 1323. This standard may "be a difficult one to apply in practice," id., but "[t]he construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction." Id. at 1316 (citing Renishaw PLC v. Marposs Societa' per Azioni, 158 F.3d 1243, 1250 (Fed. Cir. 1998)).

**C. The Prosecution History**

After the claims themselves and the specification, "a court should also consider the patent's prosecution history, if it is in evidence." Id. at 1317 (quoting Markman, 52 F.3d at 980) (internal quotation mark omitted). "Like the specification, the prosecution history provides evidence of how the [United States Patent and Trademark Office] and the inventor understood the patent" and "can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." Id. (citing Vitronics, 90 F.3d at 1582-83). The prosecution history should be given less weight than the claims and

the specification, however, because “it often lacks [] clarity . . . and thus is less useful for claim construction purposes.” Id.

**D. Extrinsic Evidence**

Courts may also consider extrinsic sources, which “can help educate the court regarding the field of the invention and can help the court determine what a person of ordinary skill in the art would understand claim terms to mean.” Id. at 1319. In particular, “dictionaries and treatises can be useful in claim construction” as they may assist the court in understanding the underlying technology and “can assist the court in determining the meaning of particular terminology to those of skill in the art of the invention.” Id. at 1318. “[W]hile extrinsic evidence can shed useful light on the relevant art,” however, “it is less significant than the intrinsic record in determining the legally operative meaning of claim language.” Id. at 1317 (citations and internal quotation marks omitted). In general, extrinsic evidence is viewed “as less reliable than the patent and its prosecution history in determining how to read claim terms . . . .” Id. at 1318. Therefore, extrinsic evidence is “unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence.” Id. at 1319.

**E. Indefiniteness**

A patent claim is invalid for indefiniteness if its claims, when read in light of the specification and the prosecution history, “fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” Nautilus, Inc. v. Biosig Instruments, Inc., \_\_\_ U.S. \_\_\_, 134 S. Ct. 2120, 2124 (2014). “The definiteness requirement must take into account the inherent limitations of language, but at the same time, the patent must be precise enough to afford clear notice of what is claimed, thereby apprising the public of what is still open to them.” Fairfield Indus., Inc. v. Wireless Seismic, Inc., No. 4:14-CV-2972, 2015 WL 1034275, at \*4

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