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

TIVO, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	CIVIL ACTION NO. 2:09-CV-259 (DF)
AT&T Inc., et al.	§	
	§	
Defendants,	§	
	§	
and	§	
	§	
MICROSOFT CORPORATION,	§	
	§	
Intervenor.	§	

CLAIM CONSTRUCTION ORDER

Before the Court is Tivo, Inc.'s ("Tivo's") Opening Claim Construction Brief. Dkt. No.

148. Also before the Court are Defendants' Responsive Claim Construction Brief, Plaintiff's

Reply Claim Construction Brief, and Defendants' Sur-Reply Claim Construction Brief. Dkt.

Nos. 151, 157, and 162, respectively. The Court held a claim construction hearing on June 1,

2011.[1] *See* Dkt. No. 185. Having considered the briefing, oral arguments of counsel, and all

relevant papers and pleadings, the Court construes the disputed claim terms as set forth herein.

Also before the Court is Defendants' Motion for Leave to File Sur-reply. Dkt. No. 161.

Also before the Court are Plaintiff's Response, Defendant's Reply, and Plaintiff's Sur-reply.

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[1] The Claim Construction Hearing on June 1, 2011, was a joint hearing that included the parties from Civ. Act. No. 2:09-cv-257 (hereinafter, the "Verizon Case"). In response to a Joint Motion to Stay Deadlines, the Verizon Case was stayed on September 2, 2011. Verizon Case, Dkt. No. 219. Accordingly, this Order only construes the claims that are disputed in the above-captioned case and does not construe any claim terms of the Tivo patents that are only disputed by the parties in the Verizon Case or any of the claims of the counterclaim patents asserted by the Defendants in the Verizon Case.

Dkt. Nos. 164, 165, and 167. Having considered the briefing and all relevant papers and pleadings, the Court finds that Defendants' motion should be GRANTED.

I. Background

Plaintiff alleges infringement of United States Patent Nos. 6,233,389 ("the '389 Patent"); 7,493,015 ("the '015 Patent"); and 7,529,465 ("the '465 Patent") (collectively, the "patents-in-suit"). The '465 Patent is a continuation of a continuation of the '389 Patent and both share a common specification. The '389 Patent is titled "Multimedia Time Warping System." The '465 Patent is titled "System for Time Shifting Multimedia Content Streams." The '015 Patent is titled "System for Time Shifting Multimedia Content Streams."

II. Legal Principles

A determination of patent infringement involves two steps. First, the patent claims are construed, and, second, the claims are compared to the allegedly infringing device. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1455 (Fed. Cir. 1998) (en banc). The legal principles of claim construction were reexamined by the Federal Circuit in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). The Federal Circuit in *Phillips* expressly reaffirmed the principles of claim construction as set forth in *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996), *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576 (Fed. Cir. 1996), and *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111 (Fed. Cir. 2004). Claim construction is a legal question for the courts. *Markman*, 52 F.3d at 979.

The Court, in accordance with the doctrines of claim construction that it has outlined in the past, will construe the claims of the '632 Patent below. *See Pioneer Corp. v. Samsung SKI*

Co., LTD., No. 2:07-CV-170, 2008 WL 4831319 (E.D. Tex. Mar. 10, 2008) (claim-construction

order). These constructions resolve the parties' disputes over the literal scope of the claims.

III.   U.S. Patent No. 6,233,389

The Abstract of the '389 Patent states:

> A multimedia time warping system. The invention allows the user to store selected television broadcast programs while the user is simultaneously watching or reviewing another program. A preferred embodiment of the invention accepts television (TV) input streams in a multitude of forms, for example, National Television Standards Committee (NTSC) or PAL broadcast, and digital forms such as Digital Satellite System (DSS), Digital Broadcast Services (DBS), or Advanced Television Standards Committee (ATSC). The TV streams are converted to an Moving Pictures Experts Group (MPEG) formatted stream for internal transfer and manipulation and are parsed and separated it [sic] into video and audio components. The components are stored in temporary buffers. Events are recorded that indicate the type of component that has been found, where it is located, and when it occurred. The program logic is notified that an event has occurred and the data is extracted from the buffers. The parser and event buffer decouple the CPU from having to parse the MPEG stream and from the real time nature of the data streams which allows for slower CPU and bus speeds and translate to lower system costs. The video and audio components are stored on a storage device and when the program is requested for display, the video and audio components are extracted from the storage device and reassembled into an MPEG stream which is sent to a decoder. The decoder converts the MPEG stream into TV output signals and delivers the TV output signals to a TV receiver. User control commands are accepted and sent through the system. These commands affect the flow of said MPEG stream and allow the user to view stored programs with at least the following functions: reverse, fast forward, play, pause, index, fast/slow reverse play, and fast/slow play.

The claims at issue for claim construction include Claims 31 and 61 of the '389 Patent.

Claim 31 of the '389 Patent recites:

> 31. A process for the simultaneous storage and play back of multimedia data, comprising the steps of:
> providing a physical data source, wherein said physical data source accepts broadcast data from an input device, parses video and audio data from said broadcast data, and temporarily stores said video and audio data;

providing a source object, wherein said source object extracts video and audio data from said physical data source;

providing a transform object, wherein said transform object stores and retrieves data streams onto a storage device;

wherein said source object obtains a buffer from said transform object, said source object converts video data into data streams and fills said buffer with said streams;

wherein said source object is automatically flow controlled by said transform object;

providing a sink object, wherein said sink object obtains data stream buffers from said transform object and outputs said streams to a video and audio decoder;

wherein said decoder converts said streams into display signals and sends said signals to a display;

wherein said sink object is automatically flow controlled by said transform object;

providing a control object, wherein said control object receives commands from a user, said commands control the flow of the broadcast data through the system; and

wherein said control object sends flow command events to said source, transform, and sink objects.

Claim 61 of the '389 Patent recites:

61. An apparatus for the simultaneous storage and play back of multimedia data, comprising:

a physical data source, wherein said physical data source accepts broadcast data from an input device, parses video and audio data from said broadcast data, and temporarily stores said video and audio data;

a source object, wherein said source object extracts video and audio data from said physical data source;

a transform object, wherein said transform object stores and retrieves data streams onto a storage device;

wherein said source object obtains a buffer from said transform object, said source object converts video data into data streams and fills said buffer with said streams;

wherein said source object is automatically flow controlled by said transform object;

a sink object, wherein said sink object obtains data stream buffers from said transform object and outputs said streams to a video and audio decoder;

wherein said decoder converts said streams into display signals and sends said signals to a display;

wherein said sink object is automatically flow controlled by said transform object;

a control object, wherein said control object receives commands from a user, said

commands control the flow of the broadcast data through the system; and
wherein said control object sends flow command events to said source, transform, and sink objects.

The parties have submitted the following disputed terms for the '389 Patent : (1) "physical data source accepts broadcast data"; (2) "parses"; (3) "objects" and "source object"; (4) "transform object"; (5) "buffer," "obtains a buffer," and "obtains data stream buffers"; (6) "automatically flow controlled"; (7) "sink object"; and (8) "control object." *See* Dkt. No. 183 at Exh. A. Certain claim terms in the '389 Patent were previously construed by this Court in *Tivo Inc. v. Echostar Communications Corp.*, Civ. Act. No. 2:04-cv-1, Dkt. No. 185 (hereinafter "*Echostar* CC Order").

1.   *"Physical Data Source accepts broadcast data"*

a. Parties' Proposed Constructions

Plaintiff believes that no construction is necessary for this term. Dkt. No. 148 at 16. Alternatively, Plaintiff proposes that "physical data source" be construed to mean "hardware and software that accepts broadcast data, parses video and audio data from aid broadcast data, and temporarily stores video and audio data." Plaintiff argues that functionality within the physical data source can be implemented in software and not solely in hardware. *Id*. According to Plaintiff, limiting the physical data source to hardware acting without software would improperly exclude the preferred embodiment. *Id*. at 17.

Defendants disagree with Plaintiff and argues that "the claims state what the physical data source must do, but not what the physical data source is." Dkt. No. 151 at 15 (emphasis removed). Defendants argue that the patent specification discloses the "physical data source" as hardware separate from the CPU and that it is this separation that "lies at the heart of the stated

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