

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

REALTIME DATA, LLC D/B/A IXO,

Plaintiff,

v.

PACKETEER, INC., et al.,

Defendants.

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CIVIL ACTION No. 6:08cv144

MEMORANDUM OPINION AND ORDER

This claim construction opinion construes the disputed terms in the nine patents asserted by Plaintiff Realtime Data, LLC d/b/a IXO (“Realtime”): 1) U.S. Patent No. 6,601,104 (“the ‘104 patent”); 2) U.S. Patent No. 6,604, 158 (“the ‘158 patent”); 3) U.S. Patent No. 7,321,937 (“the ‘937 patent”); 4) U.S. Patent No. 6,624,761 (“the ‘761 patent”); 5) U.S. Patent No. 7,161,506 (“the ‘506 patent”); 6) U.S. Patent No. 7,378,992 (“the ‘992 patent”); 7) U.S. Patent No. 7,352,300 (“the ‘300 patent”); 8) U.S. Patent No. 6,748,457 (“the ‘457 patent”); and 9) U.S. Patent No. 7,376,772 (“the ‘772 patent”).

On April 18, 2008, Plaintiff filed the instant action against Defendants Packeteer, Inc. (“Packeteer”); Citrix Systems, Inc. (“Citrix”); Expand Networks, Inc. (“Expand”); F5 Networks, Inc. (“F5”); 7-Eleven, Inc. (“7-Eleven”); ABM Industries, Inc. (“ABM”); ABM Janitorial Services–South Central, Inc. (“ABMJ”); Averitt Express, Inc. (“Averitt”); Build-A-Bear Workshop, Inc. (“BAB”); DHL Express(USA), Inc. (“DHL”); Interstate Battery System of America, Inc. (“IBSA”); and O’Reilly Automotive, Inc. (“O’Reilly”), alleging infringement of the nine asserted patents.¹ (Doc. No. 1).

¹Defendant Blue Coat Systems, Inc. (“Blue Coat”) was added as a Defendant when Plaintiff filed its First Amended Complaint. (Doc. No. 58).

The parties have submitted a number of claim terms for construction. Plaintiff has filed an Opening Claim Construction Brief (“Opening”) (Doc. No. 238) and a Reply Claim Construction Brief (“Reply”) (Doc. No. 267). Defendants separately filed responsive briefs. Defendants Blue Coat, Packeteer, 7-Eleven, ABM, ABMJ, and BAB (collectively, “Blue Coat Defendants”) filed a Responsive Brief in Support of Claim Construction Pursuant to P.R. 4-5 (“Blue Coat Resp.”) (Doc. No. 252), as well as a Sur-Reply to Plaintiff’s Claim Construction Brief (“Blue Coat Surreply”) (Doc. No. 276). Defendants Citrix, Expand, DHL, IBSA, and O’Reilly (collectively, “Citrix Defendants”) filed a Responsive Claim Construction Brief Pursuant to P.R. 4-5 (“Citrix Resp.”) (Doc. No. 257), as well as a Surreply Claim Construction Brief (“Citrix Surreply”) (Doc. No. 277). Defendants F5 and Averitt (collectively, “F5 Defendants”) also filed a Claim Construction Brief Regarding U.S. Patent Nos. 6,748,457 and 7,376,772 (“F5 Resp.”) (Doc. No. 256), as well as a Surreply Claim Construction Brief Regarding U.S. Patent Nos. 6,748,457 and 7,376,772 (“F5 Surreply”) (Doc. No. 275).² The Court held a *Markman* hearing on April 9, 2009. (Doc. No. 283). For the reasons stated herein, the Court adopts the constructions set forth below.

BACKGROUND

The asserted patents can be viewed as three patent families: 1) the data acceleration patent family; 2) the data compression patent family; and 3) the hardware patent family. The data acceleration patent family is comprised of the ‘104 patent, the ‘158 patent, and the ‘937 patent. This patent family teaches systems and methods for providing accelerated data storage and transmission. The data compression patent family is comprised of the ‘761 patent, the ‘506 patent, the ‘992 patent, and the

²The F5 Defendants address the proposed constructions of only the ‘457 and ‘772 patents because these patents are asserted only against the F5 Defendants. F5 SURREPLY at 1. With respect to the remaining disputed terms, the F5 Defendants expressly adopt the proposed constructions and briefing providing by the Blue Coat and Citrix Defendants. *Id.*

'300 patent. This patent family teaches methods for performing data compression. The hardware patent family is comprised of the '457 patent and the '772 patent. This patent family teaches apparatus designs associated with data compression and accelerated data storage and retrieval.

Plaintiff asserts over ninety claims of the nine asserted patents. *See* NOTICE OF FILING OF JOINT CLAIM CONSTRUCTION CHART, EXH. A ("Claim Chart") (Doc. No. 274). Representative claims from each of the three patent families are provided below with the disputed claim terms set forth in bold.

Claim 1 of the '104 patent provides:

1. A program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform method steps for providing accelerated data storage and retrieval, said method steps comprising:

receiving a **data stream** at an input data transmission rate which is greater than a **data storage rate** of a **target storage device**;

compressing the **data stream** at a **compression rate** that **increases the effective data storage rate** of the **data storage device**; and

storing the compressed **data stream** in the **target storage device**.

'104 patent at 18:41 (claim 1). Claim 1 of the '761 patent provides:

1. A method for compressing data, comprising the steps of:

analyzing a data block of an **input data stream** to identify a **data type** of the data block, the **input data stream** comprising a plurality of disparate data types;

performing **content dependent data compression** on the data block, if the **data type** of the data block is identified;

performing **content independent data compression** on the data block, if the **data type** of the data block is not identified.

'761 patent at 26:50 (claim 1). Claim 18 of the '457 patent provides:

18. A data storage controller for controlling storage and retrieval of data to and from a data storage device, the data storage controller comprising;

a digital signal processor (DSP) or processor comprising a **data compression engine (DCE)** for compressing data stored to the **data storage device** and for decompressing data retrieved from the **data storage device**;

a **programmable logic device**, wherein the **programmable logic device** is programmed by the DSP or processor to (I) **instantiate** a first interface for **operatively interfacing** the data storage controller to the **data storage device** and to (ii) **instantiate** a **second interface** for **operatively interfacing** the data storage controller to a host system;

and a non-volatile memory device, for storing logic code associated with the DSP or processor, the first interface and the **second interface**;

a cache memory device for temporarily storing data that is processed by or transmitted through the data storage controller; wherein the DSP or processor comprises a **bandwidth allocation controller** for **controlling access** to the cache memory device by the DCE, the first interface and the **second interface**, based on one of an anticipated and actual compression rate of the **DCE**.

‘457 patent at 29:29–39, 30:1–13 (claim 18). The parties submitted a total of twenty-eight terms for construction.³ Each disputed term will be addressed herein.

LEGAL STANDARD

The claims of a patent define the patented invention. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 389-90 (1996). Under *Markman v. Westview Instruments, Inc.*, district courts construe the scope and meaning of disputed patent claims as a matter of law. 517 U.S. at 373. Claims are construed from the standpoint of a person having ordinary skill in the art, *Brookhill-Wilk 1, LLC v.*

³The parties originally identified over one-hundred and thirty disputed claim terms. OPENING at 1. By March 5, 2009, when Plaintiff filed its Opening Brief, this number had decreased to sixty-four. *Id.* The parties later agreed to limit argument to the twenty-eight claim terms addressed herein, with twenty-two to be argued at the *Markman* hearing and six to be submitted on the parties’ briefs. PARTIES’ JOINT SUBMISSION OF TERMS TO BE HEARD AT MARKMAN HEARING (“Notice of Terms”) at 2–3; *Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08-cv-144, slip op. at 1–2 (E.D. Tex. Mar. 25, 2009) (Doc. No. 265).

Intuitive Surgical, Inc., 334 F.3d 1294, 1298 (Fed. Cir. 2003), and according to the Federal Circuit, the court must “indulge a heavy presumption that a claim term carries its ordinary and customary meaning.” *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002) (internal quotations omitted); *see also Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (“the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention”).

The first step of the claim construction analysis requires the court to look to the intrinsic evidence, beginning with the words of the claims themselves, followed by the specification and—if in evidence—the prosecution history. *Teleflex, Inc. v. Ficosa N. Am.*, 299 F.3d 1313, 1324 (Fed. Cir. 2002); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582-84 (Fed. Cir. 1996); *see also Phillips*, 415 F.3d at 1315 (“the claims themselves provide substantial guidance as to the meaning of particular claim terms”). A term’s context in the asserted claim can be very instructive, and other claims may aid in determining the term’s meaning because claim terms are typically used consistently throughout the patent. *Phillips*, 415 F.3d at 1314.

The claims of a patent “must [also] be read in view of the specification, of which they are a part” because the specification may help resolve ambiguity where the words in the claims lack clarity. *Id.* at 1315; *see also Teleflex*, 299 F.3d at 1325. Yet, the written description should not trump the clear meaning of the claim terms. *Tate Access Floors, Inc. v. Maxcess Techs., Inc.*, 222 F.3d 958, 966 (Fed. Cir. 2000) (“[a]lthough claims must be read in light of the specification of which they are part . . . it is improper to read limitations from the written description into a claim”); *Arbitron, Inc. v. Int’l Demographics Inc.*, No. 2:07-cv-434, 2009 WL 68875, *3 (E.D. Tex. Jan. 8, 2009) (“although the specification may indicate that certain embodiments are preferred,

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