UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: CV 16-08033-AB (FFMx)	Date: September 23, 2019

Title:	*Nomadix, Inc. v. Guest-Tek Interactive Entertainment Ltd.*

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Present: The Honorable   **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian	N/A
Deputy Clerk	Court Reporter

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Appearing	None Appearing

Proceedings: **[IN CHAMBERS] CLAIM CONSTRUCTION ORDER**

Plaintiff Nomadix, Inc. ("Nomadix") and Defendant Guest-Tek Interactive Entertainment Ltd. ("Guest-Tek") have filed claim construction briefs regarding ten groupings of disputed claim terms found in six asserted patents assigned to Nomadix: (1) U.S. Patent No. 8,266,266 ("the '266 Patent"); (2) U.S. Patent No. 8,725,899 ("the '899 Patent"); (3) U.S. Patent No. 8,606,917 ("the '917 Patent"); (4) U.S. Patent No. 7,953,857 ("the '857 Patent"); (5) U.S. Patent No. 8,626,922 ("the '922 Patent"); and (6) U.S. Patent No. 6,868,399 ("the '399 Patent").

After presenting some disputes relating to their claim construction disclosures, the parties filed an amended Joint Claim Construction and Prehearing Statement.   ("Joint Statement," Dkt. 350.)   The parties filed their Opening Claim Construction briefs on July 12, 2019.   ("Nomadix's Opening Brief," Dkt. 363; "Guest-Tek's Opening Brief," Dkt. 365.)   The parties filed Responsive Claim Construction Briefs on July 26, 2019. ("Nomadix's Response Brief," Dkt. 374; "Guest-Tek's Response Brief," Dkt. 377.)   A hearing was held on August 22, 2019 and the matter was taken under submission.

The disputed terms are construed as set forth in this Order.

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claimed "then" limitation.   If an intervening and unrecited condition is instead ***solely*** responsible for triggering the "then" limitation to occur, the claimed "if" limitation loses its meaning.

Regarding the parties' "temporal limitation" dispute, Guest-Tek does not re-urge its position on this issue in its responsive claim construction brief.   As Nomadix notes, as a matter of semantics, adding a "sometime afterward" limitation does not make sense in the claims for certain of the "if" conditions.   (Dkt. No. 363 at 21 ("the phrase 'if the source IP address is not included in a profile associated with an authorized source device' merely tests an assertion.   It does not mark the occurrence of an event and therefore cannot mark the beginning of a time period.").   The Court agrees.

The Court finds that no construction is necessary for the "if . . . then . . ." clauses, with the understanding that the plain meaning of the terms "if" and "then" do require a causal relationship between the relevant claim limitations.

> 6.   "calculate a delay period associated with a received packet" ('857 Patent, Claim 1; '922 Patent, Claim 1) / "calculating a delay period associated with the packet" ('857 Patent, Claim 9; '922 Patent, Claim 9)

Nomadix's Proposed Construction	Guest-Tek's Proposed Construction
No construction necessary, but if the Court is inclined to construe the term, then the term should be construed to mean: "calculate a period of time based on which a received packet's transmission will be delayed"	"mathematically determine a length of time to delay transmission of a received packet"

The parties have two disputes regarding the meaning of these terms.   First, Guest-Tek strongly urges that the term "calculate" be construed as "mathematically determine."   Second, Guest-Tek argues that Nomadix's alternative proposal, by using the phrase "period of time based on . . ." would broaden the meaning of "delay period" beyond its plain meaning.

The Court notes that although Nomadix does not necessarily concede that "calculate" means "mathematically determine," it does not strongly dispute it, either. (*See* Dkt. No. 374 at 18 ("Even assuming *mathematically determine* does not change the meaning of *calculate* in this context, *calculate* is much more intuitive to a lay juror and does not require further elaboration.   Guest-Tek fails to identify any aspect of *calculate*

that *mathematically determine* would clarify." (emphasis in original)).)   Ultimately, at least based on the limited information presented by the parties regarding the impact of a particular construction on dispositive issues in this case,[2] the Court agrees with Nomadix's position regarding juror understandability and is not persuaded at this time by Guest-Tek's arguments that the term "calculate" requires construction in the manner it urges.

Regarding the parties' second dispute, a review of the claim language in context is helpful.   Claim 1 of the '922 Patent states:

> 1. A system for allowing a user to dynamically control an amount of bandwidth available to the user in a network, the system comprising:
>
> . . .
>
> a processor configured ***to calculate a delay period associated with* a received packet based on the network communication bandwidth associated with the user, and the processor further configured *to delay transmission of the packet based on* the *delay period* to prevent the user device from achieving a bandwidth greater than the network communication bandwidth associated with the user device**.

'922 Patent, Claim 1.   Claim 9 of the '922 Patent states:

> 9. A method of dynamically managing transmission of packets, the method comprising:
>
> . . .
>
> associating a data transmission parameter with the user device, the data transmission parameter being retrieved from a user profile associated with the user;
>
> receiving a packet and ***calculating a delay period associated with the packet*** based on the data transmission parameter; and
>
> ***delaying transmission of the packet based on the delay period*** to prevent the user device from achieving a data transmission greater than the data transmission parameter associated with the

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[2] Guest-Tek argues with citation that "Nomadix alleges that Guest-Tek's accused products somehow 'calculate' a delay period even though they do not mathematically determine any delay period."   (Dkt. No. 377 at 14.)   Without additional information and clarification regarding the parties' position and dispute, the Court declines to rely on this assertion as a basis to construe the claims.

> user device and retrieved from the user profile associated with the user.

'922 Patent, Claim 9; *see also* '857 Patent, Claim 9.

The claims thus require (1) calculating a delay period and (2) delaying transmission based on the delay period, with the specific requirement in place that delaying transmission, for instance, "prevent[s] the user device from achieving a data transmission greater than the data transmission parameter associated with the user device and retrieved from the user profile associated with the user."

Guest-Tek argues, in essence, that the "delay period" must be the exact length of time "to delay transmission of a received packet."   Nomadix argues that this characterization of the claim language would narrow it.   Nomadix refers on a portion of the specification explaining that delays can be implemented using "ring buffers."   The specification explains that in a preferred embodiment, "the virtual queue is implemented by a ring buffer having 120 time slots (set to equal the number of system ticks), each slot being $1/60^{th}$ of a second.   Thus, the ring buffer can delay delivery of a packet up to two seconds."   '857 Patent at 12:32–35.   Nomadix explains that in this example, because the ring buffers have set time slots ($1/60^{th}$ of a second, in this example) a packet may be assigned to a particular ring buffer based on a "delay period," but the delay "may not correspond to the exact delay period calculated."   (Dkt. No. 374 at 18.)   Nomadix provides this explanation in its responsive claim construction brief, and it is not an aspect of the disclosure that is addressed by Guest-Tek.   The Court agrees, however, that the claim language itself is consistent with this embodiment by requiring that transmission is delayed "***based on*** the delay period," not requiring that the delay be exactly the same period of time as the calculated delay period.   The Court thus rejects Guest-Tek's contrary proposal as conflicting with this understanding of the intrinsic record.

Having rejected Guest-Tek's proposal, the Court opts not to explicitly construe the term according to Nomadix's alternative proposed construction.   The Court agrees with Guest-Tek that it is largely redundant of the claim language itself and would not contribute to a juror's understanding of this term or the patent claims as a whole.   Accordingly, "calculat[e]/[ing] a delay period associated with [a received]/[the] packet" is not construed.