

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IOENGINE, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 14-1571-GMS
)	
INTERACTIVE MEDIA CORP. D/B/A)	
KANGURU SOLUTIONS,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	
<hr/>		
IOENGINE, LLC,)	
)	
Plaintiff and Counterclaim-)	
Defendant,)	Civil Action No. 14-1572-GMS
)	
v.)	
)	JURY TRIAL DEMANDED
IMATION CORP.,)	
)	
Defendant and Counterclaim-)	
Plaintiff.)	
)	
<hr/>		
IMATION CORP.,)	
)	
Counterclaim-Plaintiff,)	
)	
v.)	
)	
IOENGINE, LLC, AND SCOTT F.)	
McNULTY.,)	
)	
Counterclaim-Defendants.)	
)	
<hr/>		

PLAINTIFF IOENGINE, LLC's ANSWERING CLAIM CONSTRUCTION BRIEF

SMITH, KATZENSTEIN & JENKINS, LLP

Of Counsel:

Jeffrey Ostrow
jostrow@stblaw.com
SIMPSON THACHER & BARTLETT LLP
2475 Hanover Street
Palo Alto, California 94304
Telephone: (650) 251-5000

Noah M. Leibowitz
nleibowitz@stblaw.com
Gregory T. Chuebon
gchuebon@stblaw.com
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
Tel: (212) 455-2000

Dated: January 8, 2016

Neal C. Belgam (No. 2721)
Eve H. Ormerod (No. 5369)
1000 West Street, Suite 1501
Wilmington, Delaware 19801
Telephone: (302) 504-1688
nbelgam@skjlaw.com
eormerod@skjlaw.com

Attorneys for Plaintiff IOENGINE, LLC

TABLE OF CONTENTS

I. INTRODUCTION 1

II. IOENGINE’S PROPOSED TERMS FOR CONSTRUCTION 2

A. “Executable Program Code Stored Thereon”; “Program Code Stored on the Portable Device Memory”; “Containing Executable Program Code”; and “[First/Second] Program Code Stored on the Portable Device Memory” 2

1. The Program Code of the ’047 Patent “Can be Run” 2

2. The Program Code of the ’047 Patent is Run “From the Portable Device Memory on Which it is Stored” 4

3. The Program Code of the ’047 is “a Sequence of Instructions” 7

III. DEFENDANTS’ PROPOSED TERMS FOR CONSTRUCTION 9

A. “First Program Code”; “Second Program Code”; and “Third [Program/Processing] Code” 9

1. The Details of the First, Second, and Third Program Codes are Clearly Laid Out in the Claims 10

2. There Was No Disavowal in the Prosecution of the ’047 Patent 10

3. Defendants’ Constructions Improperly Preclude Any Involvement by the Terminal’s Processor in Enabling or Sending Communications 12

IV. IMC’s PROPOSED TERMS FOR CONSTRUCTION 15

A. “Portable Device” 15

B. “Processor” 16

C. “Memory” 17

D. IMC’s Reference to 35 U.S.C. § 112, Paragraph 6 is Improper 18

V. CONCLUSION 19

TABLE OF AUTHORITIES

CASES

ACTV, Inc. v. Walt Disney Co.,
346 F.3d 1082 (Fed. Cir. 2003)..... 3

Biotec Biologische Naturverpackungen GmbH & Co. KG v. Biocorp, Inc.,
249 F.3d 1341 (Fed. Cir. 2001)..... 18

Cambrian Sci. Corp. v. Cox Commc’ns, Inc.,
617 Fed. Appx. 989 (Fed. Cir. 2015)..... 10

Cloud Farm Assocs., L.P. v. Volkswagen Grp. of Am., Inc.,
Civ. No. 10-502-LPS, 2015 WL 4730898 (D. Del. Aug. 10, 2015)..... 18

Computer Docking Station Corp. v. Dell, Inc.,
519 F.3d 1366 (Fed. Cir. 2008)..... 13

Digital Biometrics, Inc. v. Identix, Inc.,
149 F.3d 1335 (Fed. Cir. 1998)..... 10

Liebel–Flarsheim Co. v. Medrad, Inc.,
358 F.3d 898 (Fed. Cir. 2004)..... 5

M2M Sols. LLC v. Sierra Wireless Am., Inc.,
Civ. No. 12-30-RGA, 2015 WL 5826816 (D. Del. Oct. 2, 2015) 18

Oatey Co. v. IPS Corp.,
514 F.3d 1271 (Fed. Cir. 2008)..... 15, 16

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005)..... 5, 10, 17

Schindler Elevator Corp. v. Otis Elevator Co.,
593 F.3d 1275 (Fed. Cir. 2010)..... 13

Ventana Med. Sys., Inc. v. Biogenex Labs., Inc.,
473 F.3d 1173 (Fed. Cir. 2006)..... 5

Vitronics Corp. v. Conceptronic, Inc.,
90 F.3d 1576 (Fed. Cir. 1996)..... 10

Williamson v. Citrix Online, LLC,
792 F.3d 1339 (Fed. Cir. 2015)..... 18

STATUTES

35 U.S.C. § 112..... 18

I. INTRODUCTION

Although the parties collectively propose 10 claim terms from U.S. Patent No. 8,539,047 (the “’047 patent”) for construction, there are three main claim construction disputes:

First, Defendants assert that IOENGINE’s constructions of its proposed terms are incorrect because they would exclude “drivers.” Defendants are wrong because “drivers” are not part of the claimed “program code.” The specification and figures make clear that “drivers” are not embodiments of the invention and are separate, unclaimed preliminary software that do not perform the functions of “program code.”

Second, Defendants argue that Mr. McNulty disclaimed all use of the terminal’s processing power. This misreads the prosecution history. IOENGINE does not dispute that the portable device processor must play some role in executing program code, as the claims themselves set out. But that does not mean that the terminal processor plays *no* role.

Third, Defendants misread the claims as requiring the portable device processor to be enabled—without relying on the processing power of the terminal—to “receive” and “control” communications, and, in response to user interaction, to “cause”—again, without relying on the processing power of the terminal—communications to be sent across the network. However, the claims say nothing of “control,” and nothing in the claims or intrinsic record requires the portable device processor to “receive” or “control” communications, much less to do so entirely on its own. And while the claims do require that the portable device processor execute third program code—there is no dispute about this—that program code simply “causes a communication to be transmitted.” It does not require the portable device processor to, alone, manage the terminal’s network interface or the entire end-to-end communications session.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.