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.*

\

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

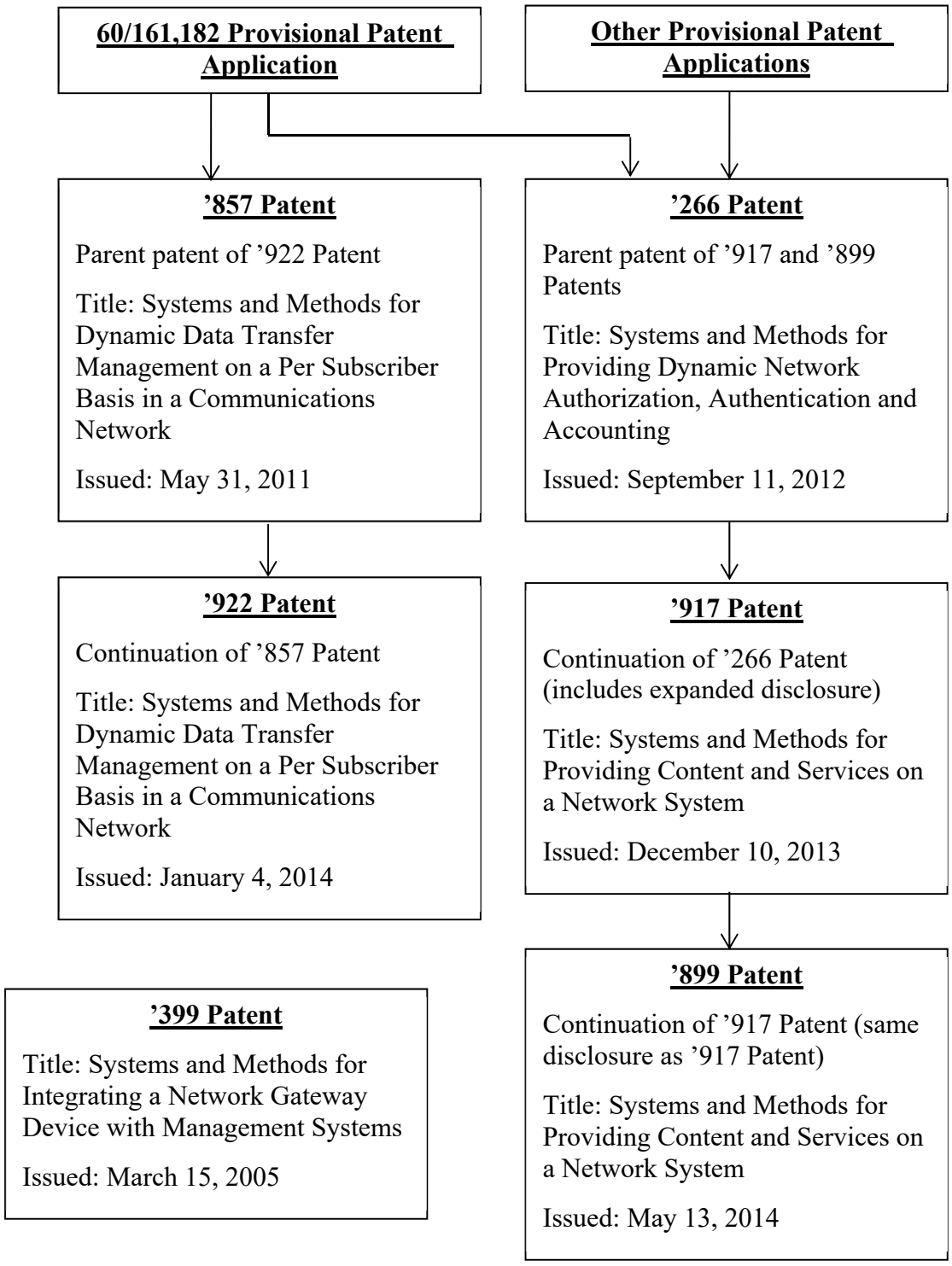
Plaintiff Nomadix, Inc. ("Nomadix") and Defendant Guest-Tek Interactive Entertainment Ltd. ("Guest-Tek") have filed claim construction briefs regarding ten groupings of disputed claim terms found in six asserted patents assigned to Nomadix: (1) U.S. Patent No. 8,266,266 ("the '266 Patent"); (2) U.S. 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.

I. TECHNOLOGICAL SUMMARY

The Asserted Patents are generally related to managing user access and communication with a computer network. Most of them belong to the same patent family. The following chart summarizes the relationship between each of them:



The parties' disputes regarding the three disputed groups of claim terms in the '266 and '899 Patents are complex. The Court discusses some relevant technological background related to those two patents now. For the rest, relevant disclosure from each asserted patent will be discussed in greater detail in the context of the parties' specific claim construction disputes.

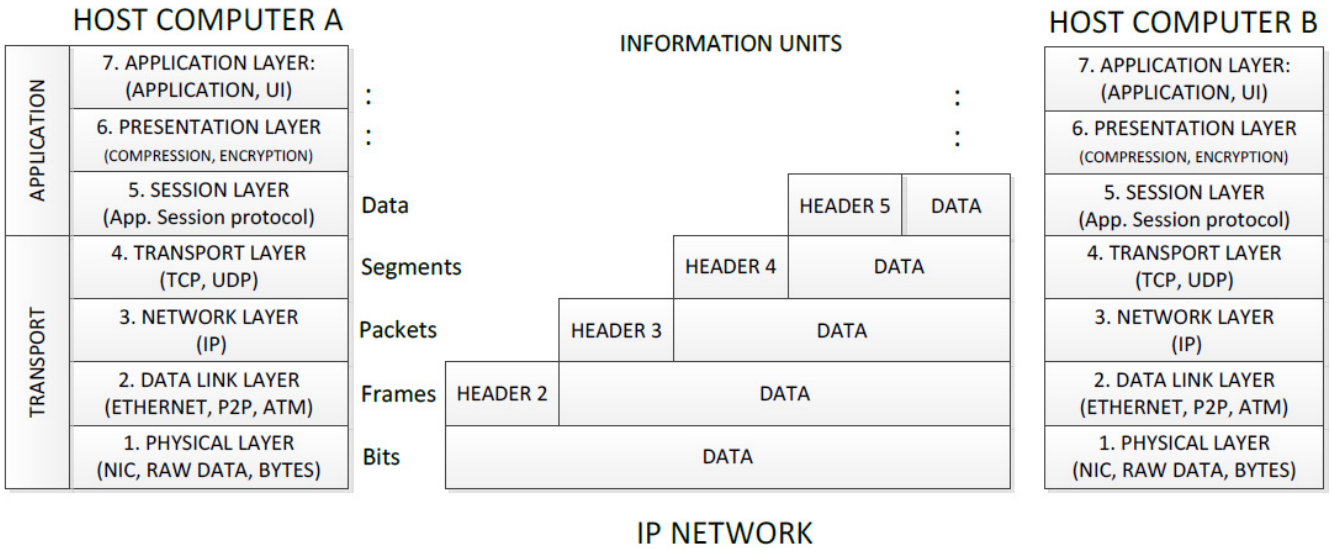
The '266 and '899 Patents describe redirecting an internet user to a portal page. '266 Patent at 7:1–18. This is particularly useful for controlling, for instance, a hotel guest's access to the internet. *See, e.g. id.* at 19:14–26. The '266 and '899 Patents describe receiving an "HTTP request" from a user and redirecting the user to a "protocol stack on a temporary server." *Id.* at 33:51–56, 33:61–66. The protocol stack "can pretend to be the user-entered destination long enough to complete a connection or 'handshake.'" '266 Patent at 34:4–6. After the handshake is completed, the protocol stack "directs the user to [a] portal server" that "pretend[s]" to be the destination internet address. *Id.* at 34:6–7, Claims 1, 24.

Guest-Tek has filed a declaration of Dr. Oded Gottesman in support of its claim construction positions. (Dkt. No. 365-2 ("Gottesman Decl.").) Gottesman provides some background regarding common conceptual frameworks for computers in a network to communicate and transmit information to one another. He states,

> [t]he Open System Interconnection (OSI) reference model describes how information from a software application in one computer moves through a network medium to a software application in another computer. Its goal was to define a unifying standard for the architecture of networking systems.

Id. ¶ 33. The OSI model "divides the tasks involved with moving information between networked computers into seven smaller, more manageable task groups." *Id.* These tasks are commonly described as "layers." The "upper" layers "deal with application issues" and the "lower" layers "handle data transport issues." *Id.* ¶ 34. Each layer communicates with the corresponding layer running on another computer using different "protocols." *Id.* ¶ 33. For information in the top "application" layer to be transferred to another computer, it generally employs a protocol (such as an "HTTP protocol") that allows it to first pass in order through (and be processed by) each of the lower OSI layers (running their own protocols) on a computer, then be transmitted to and received by the lowest OSI layer of the other computer such that it can then be processed and passed back up to that computer's application layer. *Id.* ¶ 36. In preparing data for transmission, each lower layer adds on to that information "various forms of control information to communicate with their peer layers in other computer systems," including "special

instructions that are exchanged between peer OSI layers." *Id.* ¶ 42. This control information may be either "headers" or "trailers" appended to the information from the previous layer. *Id.* As Gottesman explains, "the data portion of an information unit at a given OSI layer potentially can contain headers, trailers, and data from all the higher layers. This is known as encapsulation." *Id.* ¶ 43. Once received by the recipient computer, each lower layer removes the control information that was added by its corresponding layer in the transferring computer and passes the remaining information up, so that the information ultimately received by the final corresponding layer of the recipient computer is the same as the information originally sent by the original corresponding layer in the transferring computer. *Id.* ¶ 46. Gottesman includes a diagram depicting this process:



Id. ¶ 43, Figure 4.

In addition to the OSI model, Gottesman also describes the "TCP/IP" model. *Id.* ¶ 47. This model uses four layers instead of seven layers by grouping together some of the application layers described in the OSI model:

TCP/IP	OSI Model	Protocols
Application Layer	Application Layer	DNS, DHCP, FTP, HTTPS, IMAP, LDAP, NTP, POP3, RTP, RTSP, SSH, SIP, SMTP, SNMP, Telnet, TFTP
	Presentation Layer	JPEG, MIDI, MPEG, PICT, TIFF
	Session Layer	NetBIOS, NFS, PAP, SCP, SQL, ZIP
Transport Layer	Transport Layer	TCP, UDP
Internet Layer	Network Layer	ICMP, IGMP, IPsec, IPv4, IPv6, IPX, RIP
Link Layer	Data Link Layer	ARP, ATM, CDP, FDDI, Frame Relay, HDLC, MPLS, PPP, STP, Token Ring
	Physical Layer	Bluetooth, Ethernet, DSL, ISDN, 802.11 Wi-Fi

Id.; *see also* '266 Patent, Figure 9A.

As will be further discussed in reference to one of the disputed claim terms, the transport layer generally controls "host-to-host connection." *Id.* at ¶ 47. This can be done through a protocol called "TCP," or "Transmission Control Protocol." *Id.* ¶ 51. Gottesman states, "TCP is a connection oriented protocol that involves establishing a connection between two devices that allow them to exchange content and communications and connection termination when the devices are finished communicating." *Id.* ¶ 53. TCP requires that two computers first establish a connection through a "handshake process." *Id.* Further discussion of TCP handshakes is provided in the context of the parties' specific claim construction dispute.

II. LEGAL STANDARD

As established in *Markman v. Westview Instruments*, 517 U.S. 370 (1996), claim construction is a matter wholly within the jurisdiction of the court. *Id.* at 372 ("[T]he construction of a patent . . . is exclusively within the province of the court."). The purpose of claim construction is to "determin[e] the meaning and scope" of a patented invention in order to define the patent owner's rights. *Id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). Claim construction is a legal issue that may require subsidiary findings of fact. *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S.Ct. 831, 841 (2015).

Generally, a claim term is given its "ordinary and customary meaning." *Phillips*, 415 F.3d at 1312 (citing *Vitronics Corp v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). In patent cases, "the ordinary and customary meaning . . . is the meaning that the term would have to a person of ordinary skill in the art in question at the time of

DOCKET ALARM

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.