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.

argument that the HTTP server request only exists at the application layer because once it leaves the application layer, it is broken up into "hundreds if not thousands of pieces" such that, at the transport layer, a header is not being added to a full HTTP server request, but only to a "very small piece of data that has been encoded from a small part of the application layer data." Guest-Tek's argument is interesting, and it was not well-addressed by Nomadix at the hearing, even though it also appeared in Gottesman's supplemental declaration. Of course, Gottesman did not mention fragmentation concepts in his original expert declaration, which instead focused on the concept of encapsulation. Without an understanding of how these concepts of encapsulation and fragmentation fit together, limiting the meaning of the claim language is not warranted. Further, the idea that each individual piece of data transmitted to a receiving computer has no relationship to the other pieces of transmitted data seems specious. Somehow, the receiving computer *must* know that the data fragments are related so that it can process them back through the layers to the proper final layer (perhaps, for instance, by including the same headers in some sense). More information would be required before the Court could rely on Guest-Tek's arguments on this issue.

The Court also notes that Guest-Tek's position would appear to assume that there must be a single header corresponding to all the response data. But Guest-Tek has not shown that the "a" in "a header" must be limited to one, as opposed to one or more. Guest-Tek has not shown how this argument based on extrinsic evidence can be rationalized against the intrinsic record, *i.e.* the claim language itself. There is not enough information for the Court to conclude as a matter of law that the claims should be limited as Guest-Tek proposes.

Ultimately, the Court is not sure that it is even prudent or necessary to interpret this claim term at this stage. Even if the term "HTTP server request" is interpreted as Guest-Tek proposes (such that it is focused at the application layer, which seems consistent with the phrasing of the claims and the extrinsic record), the Court does not see how this dispute remains relevant to the dispositive issues in this case, given its other determinations, including specifically that the term "response data" is not as limited as Guest-Tek asserts. For this reason, the Court declines to construe the term "HTTP server request."

4. "profiles of authorized source devices" ('917 Patent, Claims 1, 11)

Nomadix's Proposed Construction	Guest-Tek's Proposed Construction
The singular of this term should be construed as: "one or more pieces of information pertinent to identify an	"profiles of source devices that are authorized to access a network, wherein each device

authorized source device, such as one or more names, passwords, addresses, VLAN tags, or MAC addresses"	has its own profile" "profile" means: "a collection of attributes associated with a source device"

The parties have two disputes regarding the phrase "profiles of authorized source devices." First, they dispute whether a "profile" may include just one piece of information pertinent to identify an authorized source device, or must include more than one piece of information. Second, they dispute whether each source device must have its own profile.

Claim 1 of the '917 Patent states:

> 1. A method for granting access to a computer network, comprising:
> receiving at an access controller a request to access the network from a source computer, the request including a transmission control protocol (TCP) connection request having a source IP address and a destination IP address;
> determining by the access controller whether the source computer must login to access the network, including:
> comparing the source IP address with ***profiles of authorized source devices***, ***each profile including an IP address***,
> wherein ***if the source IP address is included in a profile of an authorized source device***, the source device is granted access without further authorization, and
> ***if the source IP address is not included in a profile associated with an authorized source device***, then
> determining whether the destination IP address is included in a plurality of destination IP addresses associated with the access controller . . . .

'917 Patent, Claim 1 (emphasis added). Claim 11 of the '917 Patent includes similar limitations for a "profile." *See id.* at Claim 11 ("comparing the source IP address with profiles of authorized source devices, each profile including an IP address, wherein if the source IP address is included in a profile of an authorized source device, the source device is granted access without further authorization, and if the source IP address is not included in a profile associated with an authorized device, then . . .").

The parties' first dispute can be simplified down to one critical question: Can a

"profile" as recited in the claims of the '917 Patent include only an IP address, or must it also include something more? The plain language of the claims themselves support Guest-Tek's position that the claimed profile must be more than just an IP address. Otherwise, the claim's reference to a profile at all would become unnecessary and redundant; under Nomadix's interpretation, the claims could have simply referred to confirming whether the particular IP address of a source device is authorized without mentioning a profile at all.

Although the parties' dueling citations to the specification are somewhat more ambiguous and thus less persuasive in resolving the parties' dispute, they still generally support this conclusion. *See, e.g.* '917 Patent at 20:35–37 (stating that source profiles include "one or more names, passwords, addresses, VLAN tags, MAC addresses, ***and*** other information pertinent to identify, and, if so desired, bill, a source."); 21:59–63 ("The source profile information . . . may include a MAC address, name or ID, circuit ID, billing scheme related data, service level data, user profile data, remote-site related data, and like data related to the source."). As Guest-Tek notes, Nomadix's proposed construction changes the "and" in these exemplary lists in the specification to an "or" in its proposed construction, at least somewhat in recognition of the fact that a conjunctive "and" more strongly supports Guest-Tek's position (even though Guest-Tek does not propose a construction of "profile" that would require all of the information enumerated in the specification's lists). Ultimately, the Court is persuaded that the plain language of the claims themselves support Guest-Tek's proposal that a profile must be a "collection of attributes associated with a source device," that is, more than one attribute.

Regarding the parties' second dispute, to support its position that there cannot be the same profile for multiple source devices, Guest-Tek emphasizes a sentence in the specification that states, "[a]ccording to one aspect of the invention, a separate source profile exists for each source accessing the system." '917 Patent at 20:14–15. As Nomadix notes, however, this sentence by its own terms refers to "one aspect," *i.e.* one example, "of the invention." In its responsive claim construction brief, Guest-Tek also refers to the claim language itself. It notes that Claim 1 of the '917 Patent refers to "a profile of an authorized source device." But "an indefinite article 'a' or 'an' in patent parlance carries the meaning of 'one or more' in open-ended claims containing the transitional phrase 'comprising.'" *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed. Cir. 2008) (quoting *KCJ Corp. v. Kinetic Concepts, Inc.,* 223 F.3d 1351, 1356 (Fed. Cir. 2000)). "An exception to the general rule that 'a' or 'an' means more than one only arises where the language of the claims themselves, the specification, or the prosecution history necessitate a departure from the rule." *Id.* at 1342–43 (citing *Abtox Inc. v. Exitron Corp.,* 122 F.3d 1019 (Fed. Cir. 1997); *Insituform Techs., Inc. v. Cat Contracting, Inc.,* 99 F.3d 1098 (Fed. Cir. 1996)). Guest-Tek has not shown that

such is the case here.

For these reasons, the Court construes the term "profile" as "a collection of attributes associated with [a] source device[s]."

5. "if . . . then . . ." phrases ('917 Patent, Claims 1, 11)

Nomadix's Proposed Construction	Guest-Tek's Proposed Construction
No construction necessary	when the condition following the "if" is met, the action following the "then" must be performed sometime afterwards as a result

Claims 1 and 11 of the '917 Patent include certain "if . . . then . . ." statements. Claim 1 of the '917 Patent, for instance, states:

> 1. A method for granting access to a computer network, comprising:
> receiving at an access controller a request to access the network from a source computer, the request including a transmission control protocol (TCP) connection request having a source IP address and a destination IP address;
> determining by the access controller whether the source computer must login to access the network, including:
> comparing the source IP address with profiles of authorized source devices, each profile including an IP address,
> wherein ***if*** the source IP address is included in a profile of an authorized source device, the source device is granted access without further authorization, ***and***
> ***if*** the source IP address is not included in a profile associated with an authorized source device, ***then***
> ***determining whether the destination IP address is included in a plurality of destination IP addresses associated with the access controller***, wherein ***if*** the destination IP address is included in the plurality of destination IP addresses, ***the source device is granted access without further authorization***, and
> ***if*** the destination IP address is not included in the plurality of destination IP addresses, ***then*** the access controller determines the source device must be authorized to access the network and provides the source device with a login page;

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