

I. Introduction

Plaintiffs Nantworks, LLC and Nant Holdings IP, LLC (collectively, “Plaintiffs” or “Nantworks”) filed suit against Defendants Bank of America Corp. and Bank of America, N.A. on August 27, 2020, alleging, inter alia, infringement of U.S. Patent Nos. 7,881,529 (the “’529 Patent”); 7,899,252 (the “’252 Patent”); 8,326,038 (the “’038 Patent”); 8,463,030 (the “’030 Patent”); 8,478,036 (the “’036 Patent”); 8,520,897 (the “’897 Patent”); 9,031,278 (the “’278 Patent”); 9,324,004 (the “’004 Patent”) (collectively, the “Patents-in-Suit”). Docket No. 1; *see also* Docket No. 40 (First Amended Complaint). Now pending are some of the parties’ claim construction disputes. The parties have submitted a Joint Claim Construction and Prehearing Statement (Docket No. 103) and Joint Claim Construction Chart (Docket No. 120). The parties have also filed various claim construction briefs and supporting documents:

- Plaintiffs’ Opening Claim Construction Brief (Docket No. 108);
- Defendants’ Responsive Claim Construction Brief (Docket No. 111)
- Plaintiffs’ Reply Claim Construction Brief (Docket No. 116)

The Court construes the presented disputed terms as stated herein.

II. Background

For purposes of the parties’ claim construction disputes, the parties request construction of terms in asserted claims of the Patents-in-Suit. The Patents-in-Suit “each claim priority to U.S. Provisional Application No. 60/246,295, filed on November 6, 2000, and each of the Patents-in-Suit shares a similar specification.” Docket No. 108 at 1. The Patents-in-Suit have the same two listed inventors: Wayne C. Boncyk and Ronald H. Cohen. The Patents-in-Suit all generally relate to image recognition systems, methods, devices, apparatuses, and products. For example, the claimed invention of the ’529 Patent “relates an identification method and process for objects from digitally captured images thereof that uses data characteristics to identify an object from a plurality of objects in a database.” ’529 Patent at 1:25–28. The specification of the ’529 Patent discloses that “the data or object can be identified solely by its visual appearance[,]” as opposed to “[t]raditional methods for linking objects to digital information” such as “applying a barcode.” *Id.* at 2:13–19.

III. Legal Standard

Claim construction is an interpretive issue “exclusively within the province of the court.” *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). It is “a question of law in the way that we treat document construction as a question of law,” with subsidiary fact-finding reviewed for clear error to Fed. R. Civ. P. 52(a)(6). *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S.Ct. 831, 837-40 (2015). The claim language itself is the best guide to the meaning of a claim term. *See Vederi, LLC v. Google, Inc.*, 744 F.3d 1376, 1382 (Fed. Cir. 2014). This is because the claims define the scope of the claimed invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). But a “person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent.” *Id.* at 1313. Thus, claims “must be read in view of the specification,” which is “always highly relevant to the claim construction analysis.” *Phillips*, 415 F.3d at 1315 (internal quotations omitted).

Although claims are read in light of the specification, limitations from the specification must not be imported into the claims. *Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282, 1288 (Fed. Cir. 2009). “[T]he line between construing terms and importing limitations can be discerned with reasonable certainty and predictability if the court’s focus remains on understanding how a person of ordinary skill in the art would understand the claim terms.” *Phillips*, 415 F.3d at 1323.

The prosecution history may lack the clarity of the specification, but it is “another established source of intrinsic evidence.” *Vederi*, 744 F.3d at 1382. “Like the specification, the prosecution history provides evidence of how the PTO and the inventor understood the patent.” *Phillips*, 415 F.3d at 1317 (citations omitted). “Furthermore, like the specification, the prosecution history was created by the patentee in attempting to explain and obtain the patent.” *Id.* “Yet because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes.” *Id.*

Claim construction usually involves resolving disputes about the “ordinary and customary meaning” that the words of the claim would have had “to a person of ordinary skill in the art in question at the time of the invention.” *Phillips*, 415 F.3d at 1312-13 (internal quotations and citations omitted). But in some cases, claim terms will not be given their ordinary meaning because the specification defines the term to mean something else. “[A] claim term

may be clearly redefined without an explicit statement of redefinition,” so long as a person of skill in the art can ascertain the definition by a reading of the patent documents. *Id.* at 1320; *see also Trustees of Columbia Univ. in City of New York v. Symantec Corp.*, 811 F.3d 1359, 1364 (Fed. Cir. 2016).

Where the patent itself does not make clear the meaning of a claim term, courts may look to “those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean,” including the prosecution history and “extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” *Phillips*, 415 F.3d at 1314 (internal quotations omitted). Sometimes, the use of “technical words or phrases not commonly understood” may give rise to a factual dispute, the determination of which will precede the ultimate legal question of the significance of the facts to the construction “in the context of the specific patent claim under review.” *Teva*, 135 S. Ct. at 841, 849. “In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.” *Phillips*, 415 F.3d at 1314. “In such circumstances, general purpose dictionaries may be helpful.” *Id.*

IV. Discussion

A. Agreed Claim Terms

The parties have agreed to constructions for the following claim terms (*see* Docket No. 120 at 9–11):

Term	Asserted Claim(s)	Parties’ Agreed Claim Construction
“distal server”	’252 Patent, Claims 18, 31, 32, 33	“one or more servers coupled together that have no hardwired link to the mobile device”
“the acquired data comprises a user identity”	’030 Patent, Claim 25	“the acquired data comprises the identity of the user using the mobile device”
“alphanumeric data”	’030 Patent, Claim 30	“data in the form of letters or numbers”
“printed media”	’036 Patent, Claim 10	“any written or pictorial form of information”

B. Disputed Claim Terms

1. “identify features from the image information relating to the displayed image” (’038 Patent, Claim 1) & “identification of features from the displayed image” (’897 Patent, Claim 25)

Plaintiffs’ Proposed Construction	Defendants’ Proposed Construction
Plain and ordinary meaning	“from the image information” is from the image information referenced earlier in the claim – i.e., “the image information from a displayed image on a portable display screen.” [The features from the image information cannot be identified unless the optical sensor captures the image information from the displayed image on the portable device display screen.] “from the displayed image” is from the displayed image referenced earlier in the claim – i.e., “a displayed image on the display of the device.” [The features from the displayed image cannot be identified unless the optical sensor captures an image of the displayed image on the display of the device.]

Claim 1 of the ’038 Patent recites:

1. An interactive system comprising:
 - an optical sensor capable of capturing image information from a displayed image on a portable device display screen; and
 - an image processing platform coupled with the optical sensor and configured to:
 - identify features from the image information relating to the displayed image;*
 - recognize a target based on the features;
 - associate the target with target information pertinent to the target; and
 - enable a transaction with an account based on the target information.

’038 Patent, Claim 1 (emphasis added).

Claim 25 of the ’897 Patent recites:

25. A method of conducting a transaction with an interactive system, the method comprising
 - providing access to a device having a display;
 - displaying a displayed image on the display of the device;
 - presenting the displayed image proximate to an optical sensor; and
 - enabling, via the interactive system, *identification of features from the displayed image*, recognition of a target based on the features, association of the target with target information pertinent to the

target, and performance of a transaction based on the target information.

'897 Patent, Claim 25 (emphasis added).

The parties dispute whether the claimed “interactive system” and “optical sensor” must capture and identify features from the “displayed image” directly from a display screen.

Plaintiffs argue that as an initial matter, Defendants’ construction is not a construction but instead improperly seeks a finding of “what embodiments may or may not meet the claim language.” Docket No. 108 at 19–20. Plaintiffs next argue that the claim language is clear on its face. *Id.* at 20. For Claim 25 of the '897 Patent, Plaintiffs argue that the “display screen” is “proximate to” the “optical sensor” when “the screen is on one side of the device and the camera is proximate to the screen on the opposite side of the device.” *Id.* at 20. As Plaintiffs emphasize, “There is nothing in the claim that requires the optical sensor to be involved in the identification of features from the displayed image.” *Id.* Similarly, for Claim 1 of the '038 Patent, Plaintiffs stress that “the optical sensor must only be ‘*capable*’ of capturing image information from a displayed image on a portable device display screen,” not that it has to capture the image. *Id.* at 21 (emphasis in original). For both Claims, Plaintiffs assert that Defendants seek to import limitations disclosed in the specifications into the claims, which is contrary to well-established principles of claim construction. *Id.* at 21–22.

In response, Defendants explain, “Unlike the six other asserted patents, which use an optical sensor on a mobile phone camera, for example, to take a picture of a physical object, the '897 and '038 patents use an optical sensor to take a picture of an image displayed on a screen, like a TV screen.” Docket No. 111 at 3. Defendants argue that for both claims, the term “a display image” on the display screen is the antecedent basis for the term “the display image.” *Id.* at 4. Because the terms refer to the same thing, Defendants argue that those terms “require that the ‘features’ are ‘identified’ from an image displayed on a device screen.” *Id.* Defendants assert that Plaintiffs’ infringement contentions contradict this construction because Plaintiffs allege that Defendants’ “mobile check deposit satisfies these claims by identifying features from ‘the captured image’ of a physical check, rather than directly from the display screen of a phone.” *Id.* at 5.

Specifically for Claim 25 of the '897 Patent, Defendants argue that the claim language requires “*presenting the displayed image proximate to an optical sensor,*” which contradicts Plaintiffs’ assertion that “the claim does not even require that the optical sensor be used in any

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