1

2

3

4              UNITED STATES DISTRICT COURT

5            NORTHERN DISTRICT OF CALIFORNIA

6

7   EMBLAZE LTD.,
                                          Case No.  12-cv-05422-JST
                    Plaintiff,

8
          v.
                                          **CLAIM CONSTRUCTION ORDER**
9
    MICROSOFT CORPORATION,                Re: ECF No. 52
10
                    Defendant.
11

12          In this patent infringement action involving technology for streaming files over a network

13  in real-time, the parties seek construction of several terms used in U.S. Patent No. 6,389,473 ("the

14  patent-in-suit" or "the '473 patent").

15  **I.       BACKGROUND**

16          **A.      Patent-in-Suit and Remaining Asserted Claims**

17          Emblaze Ltd. alleges that Microsoft infringes the '473 patent by manufacturing, selling,

18  and/or offering to sell products for streaming media in real-time over the internet.  Compl. ¶ 17.

19  The following chart identifies the patent-in-suit and the remaining asserted claims:

20

| Patent | Claims |
| --- | --- |
| U.S. Patent No. 6,389,473 | 1, 2, 8, 9, 10, 11, 12, 13, 14, 25, 23, 25, 26, 27, 29, 37, 40 |

24          **B.      The '473 Patent**

25          The invention claimed in the '473 patent enables the real-time, continuous streaming of

26  data over a network without the use of special servers, software, or network infrastructures.  The

27  invention achieves this by requiring the transmitting computer to divide the data stream into slices

28  of a predetermined size and to include an index with each slice that contains information

1   pertaining to the proper synchronization of the slices.  The transmitting computer uploads the

2   sequence of slices to a server in real-time, and clients download the data stream from the server

3   and use the information in the indices to ensure that the slices are played in the correct order.

4   To ensure that the transmission of data is in real-time, the claims require that the data

5   transfer rate and the playback rate be at least as fast as the rate at which the transmitting computer

6   can generate the data.  For this reason, either the transmitting computer or the server must monitor

7   the data transfer rate to determine the appropriate rate of transfer in light of the available

8   bandwidth.  Some preferred embodiments also contemplate compressing the data in each slice or

9   altering the size of each slice depending on the available bandwidth.

10   Yet other preferred embodiments involve opening a plurality of transfer links between the

11   transmitting computer and the server and uploading different slices in the sequence over the

12   various links so long as the total data rate of the links is sufficient to enable uploading the

13   sequence of slices as the same rate as the data is generated.  The client downloading the data also

14   can access these multiple links to download the data at the data rate.  When a link has a data

15   transfer rate that is lower than the predetermined level, then the transmission over this link can be

16   stopped so that a new link with a better transmission rate can be opened.

17   Another embodiment permits including in a data stream multiple versions of each slice,

18   each with a different quality level.  The client selects or is assigned the quality level that is most

19   appropriate in light of the available bandwidth when downloading the stream.

20   In some preferred embodiments, the client reads an index file, which contains the file name

21   of the last slice that was uploaded to the server.  The user using the client computer can then

22   decide the appropriate point in the stream at which to begin downloading.  This can be

23   accomplished through the use of a slider in the playback program used by the client.

24   Prior methods for broadcasting in real-time known in the art require the compression of the

25   data stream by a dedicated encoder and the broadcasting of data to clients by a broadcast server.

26   The encoders and broadcast servers required by these prior methods are costly and therefore

27   typically cannot be offered by internet service providers to their general customers.  The present

1    without special or high-cost encoders or servers.

2    **II.      LEGAL STANDARD**

3            The construction of patent claim terms is a matter of law for the court.  <u>Markman v.</u>

4    <u>Westview Instruments, Inc.</u>, 517 U.S. 370, 372 (1996).  A "bedrock principle" of patent law is that

5    "the claims of a patent define the invention to which the patentee is entitled the right to exclude."

6    <u>Phillips v. AWH Corp.</u>, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc).  In construing a term, the

7    "objective baseline" is the "ordinary and customary meaning," which is "the meaning that the term

8    would have to a person of ordinary skill in the art in question at the time of the invention[.]"  <u>Id.</u> at

9    1313.  "[T]he person of ordinary skill in the art is deemed to read the claim term not only in the

10   context of the particular claim in which the disputed term appears, but in the context of the entire

11   patent, including the specification" and the prosecution history.  <u>Id.</u>

12           The "primary basis for construing [a] claim" and "the best source for understanding a

13   technical term" is a patent's intrinsic evidence.  <u>Id.</u> at 1314.  Intrinsic evidence includes the patent

14   and its file history, including any reexaminations and reissues, related patents and their

15   prosecution histories, and the prior art that is cited or incorporated by reference in the patent-in-

16   suit and prosecution history.  <u>Id.</u>  Extrinsic evidence refers to all other types of evidence, including

17   inventor testimony, expert testimony, documentary evidence of how the patentee and alleged

18   infringer have used the claim terms, dictionaries, treatises, and other similar sources.  <u>Id.</u> at 1318.

19   Intrinsic evidence trumps any extrinsic evidence that would contradict it.  <u>Id.</u> at 1314.

20   **III.     DISCUSSION**

21           **A.      "file" / "files" (Term 1)**

22

| Terms | Emblaze's proposed construction | Microsoft's proposed construction |
|---|---|---|
| "file" / "files" (claims 1, 8, 9, 10, 11, 25, 40) | Does not need construction. Alternatively: "a slice of data that has a file descriptor." | "the collection of data stored in a directory and accessed by a file name for editing and saving" |

27           The parties' dispute with respect to this term is over (1) whether "file" should be construed

1    at all; and if it is construed, (2) whether "file" should be treated as being synonymous with "slice,"

2    and (3) whether "file name" should be used in the construction.

3    **The court adopts the following construction: "an item containing a single slice of data**

4    **that has an identifier that is recognizable by a file system."**  This construction reflects the

5    specification's description of a file as the item that contains a single slice of data.  '473 patent col.

6    2 ll. 22-27 ("Preferably, each segment or slice is contained in a separate, respective file.").  It also

7    reflects the specification's description of a slice as containing identifiers, including a level

8    identifier, a presentation time stamp, and a size identifier.  Id. col. 8 ll. 47-51 ("Each slice is

9    preferably identified by a level identifier 57, a presentation time stamp (PTS) index 59 and, as

10   appropriate, a size identifier.").  Emblaze proposed the phrase "that is recognizable by a file

11   system" during oral argument.  The court finds that the use of this phrase is appropriate in light of

12   Microsoft's own definition of a file system as "the overall structure in which files are named,

13   stored, and organized.  A file system consists of files, directories, or folders, and the information

14   needed to locate and access those items . . . .").  See Resp. Br. at 7 (citing the Microsoft Computer

15   Dictionary, Ex. C at 213).

16        The term "descriptor" is not used in the specification, and for that reason, the court finds

17   that its use in construing the term at issue could result in jury confusion.  Additionally, the court is

18   not persuaded that the term "file" is used as a synonym for "slice" in the specification.  As

19   discussed above, the specification describes a file as *containing* a slice, and not as *being* a slice.

20        Microsoft's proposed construction seeks to add limitations to the term that are not required

21   by the claims or the specification, such as "stored in a directory," "accessed by a file name," and

22   "for editing and saving."  Accordingly, this construction is improperly narrow.

23        The parties dispute whether a "file" can contain *all* of the slices of a data stream as

24   opposed to just a single slice based on the following preferred embodiment: "Alternatively, the

25   segments or slices may all be contained in a single indexed file, which is streamed to the client in a

26   series of packets, each covering a range of one or more indices."  '473 patent col. 2 ll. 22-27.

27   Microsoft contends that this embodiment is not covered by the claims.  The court agrees.  The

United States District Court
Northern District of California

"sequence of *slices*" (plural).  These claims therefore do not cover the embodiment in which all of the slices are "contained in a *single* indexed file."

### B.      "data rate" (Term 2)

| Term | Emblaze's proposed construction | Microsoft's proposed construction |
| --- | --- | --- |
| "data rate" (claims 1, 8, 25, 26) | "an amount of data per unit of time" | "an amount of data (i.e. number of bits) per unit of time" |

The parties agree that this term involves an "amount of data" per unit of time, but Microsoft contends that the amount of data should be defined as a "bit."  Microsoft notes that two dictionaries define data rate as being "usually measured in bits per second (bps)."  Resp. Br. at 10. Microsoft also notes that Emblaze itself argued in another case involving the same patent that data rate as contemplated by the '473 patent is measured in bits.  Id., Ex. H at 62:17–63:7, 77:17–25.

**The court adopts Microsoft's proposed construction.**  The '473 patent consistently refers to "data rate" in the context of available bandwidth, and here, no party disputes that bandwidth is measured in bits per second.  See Resp. Br., Ex. C at 144.  Additionally, the claims at issue require comparing the upload data rate with the stream data rate, but this can be accomplished only if the rate is measured in bits as opposed to other units of measurement such as frames.  See, e.g., '473 patent col. 14 ll. 28–29.  This is because bits have a consistent volumetric value, whereas frames do not.

### C.      "a data stream having a given data rate" (Term 3)

| Term | Emblaze's proposed construction | Microsoft's proposed construction |
| --- | --- | --- |
| "a data stream having a given data rate" (claims 1, 25) | "a data stream having a given amount of data per unit of time" | "a data sequence with a uniform data rate" |

The parties' dispute with respect to this term centers on the meaning of the word "given."

# 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.