

United States District Court,
E.D. Michigan, Southern Division.

CHRIMAR SYSTEMS, INC., ETC,
Plaintiff.

v.

CISCO SYSTEMS, INC,
Defendant.

May 1, 2008.

Glenn E. Forbis, R. Terrance Rader, Rader, Fishman, Bloomfield Hills, MI, for Plaintiff.

Cynthia G. Thomas, Herschel P. Fink, Honigman, Miller, Detroit, MI, George H. Guy, III, Rachel D. Albright, Thomas E. Malone, Orrick, Herrington, Menlo Park, CA, William L. Anthony, Jr., Brobeck, Phleger, Palo Alto, CA, for Defendant.

MEMORANDUM AND ORDER ON CLAIM CONSTRUCTIONFN*

FN* This is an enlargement and revision of the Court's bench decision of May 16, 2002.
AVERN COHN, District Judge.

I.

A.

This is a patent case. Plaintiff Chrimar Systems, Inc. (Chrimar), owner of U.S. Patent Number 5,406,260 (the '260 patent), claims that Defendant Cisco Systems, Inc. (Cisco) infringes the '260 patent in the sale of its Inline Power devices. The '260 patent, a Network Security System for Detecting Removal of Electronic Equipment, is described in the Abstract as follows:

A system and method are provided for monitoring the connection of electronic equipment, such as remote computer workstations, to a network via a communication link and detecting the disconnection of such equipment from the network. The system includes current loops internally coupled to protected pieces of equipment so that each piece of associated equipment has an associated current loop. A low current power signal is provided to each of the current loops. A sensor monitors the current flow through each current loop to detect removal of the equipment from the network. Removal of a piece of hardware breaks the current flow through the associated current loop which in turn may activate an alarm. This invention is particularly adapted to be used with an existing 10BaseT communication link or equivalent thereof, employing existing wiring to form the current loops.

Inline Power devices, in Cisco's words, include various network switching and electronic terminal devices (such as IP phones and wireless network bay stations). These "network switches supply low DC current to

multiple electronic devices over network data cables. The low DC current is used to both power the electronic devices ... and detect disconnection of the electronic devices from the network."

The complaint claims infringement of claims 1 to 6, 8 to 12, and 14 to 19 of the '260 patent. Claim 1 is representative of the asserted claims. As is customary, the Court, by separate order, bifurcated claims 2 to 6, 8 to 12, and 14 to 19 and stayed proceedings on these claims until it adjudicates the claim of infringement of claim 1 through summary judgment. If Chrimar is of the view that the bifurcated claims involve infringement issues significantly different than those involved in claim 1, it will have the right to move to vacate the bifurcation order for cause shown. *See* Amended Order of Bifurcation, filed July 25, 2002.

B.

On January 18, 2002, the Court held a chambers tutorial at which Chrimar, in response to a question from the Court anticipating a *Markman* proceeding, FN1 stated that it was of the view that the meaning of claim 1 was clear and that none of its words or phrases were ambiguous. Cisco disagreed. Accordingly, on January 18, 2002, the Court entered an order stating in part as follows:

FN1. *See* *Markman v. Westview Instruments*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996) (noting that claim construction is for the court).

Defendant has indicated that there are claims in the patent in-suit that require construction. Defendant shall file its papers regarding claim construction within 30 days of the date of this Order. Plaintiff shall have 30 days from receipt of defendant's papers to file a response.

Although the Court might have required Cisco initially to identify the words and phrases it believed ambiguous and then required Chrimar to offer its interpretation, to be followed by a response from Cisco, there is no particular order required, or indeed conventional, for resolving asserted ambiguities in the words or phrases of a claim. The timing and procedure of a *Markman* proceeding is left to the Court's discretion.

II.

Claim 1 reads (with the words and phrases to be interpreted underlined):

1. A *security system* for detecting disconnection of electronic equipment from a network, said security system comprising:

current loop means including separate current loops associated with different pieces of monitored equipment, each said current loops employing a pair of data communication lines which connect one of the associated pieces of equipment to the network and which are coupled to *existing internal circuitry* within the associated piece of monitored equipment, and wherein respective pairs of data communication lines are associated with different ones of the associated pieces of equipment;

source means for supplying a *low DC current signal* to each of said current loops; and

detector means for monitoring the current signal through each of said current loops and detecting a change in said current signal through one of said current loops which represents disconnection of said associated piece of equipment from the network.

III.

Several preliminary observations are in order.

A.

The Court has previously stated:

It knows less about the significance of its findings on claim construction than the parties to the case since the Court's decision is limited solely to construction of disputed limitations in the claims-in-suit. The parties obviously have an understanding of the significance of what they are arguing as they look down the road to trial. The Court does not examine into the possible issues at trial and has no interest in the accused device. Here, there is an indication in the papers that the defendant has a very deep appreciation of the potential for a finding of infringement depending on the Court's construction. It is unfortunate that this appreciation has crept into the defendant's papers and, on occasion, seems to dominate them.

This is a tentative decision. Experience in patent cases shows that subsequent proceedings and particularly trial may reveal aspects of claim construction not apparent at this point of the case in the papers. Of course, the Court must make a final determination of claim construction at a point beyond which it would be open to a charge of prejudicing a party.

B.

As described above, requiring the putative infringer to identify and proffer its interpretation of ambiguous words and phrases initially is not "out of the normal order" as Cisco asserts. The fact that Chrimar asserted at the tutorial that the meaning of the claims is clear does not estop it from disagreeing with Cisco's view that certain of the words and phrases in the claims are ambiguous and require interpretation and from responding with interpretation different from those argued by Cisco. Cisco states:

It would be highly unfair and prejudicial to Cisco to allow Chrimar to alter the customary and ordinary meaning of the claim with either intrinsic or extrinsic evidence in response to claim construction.

Cisco's Brief in Support of Its Claim Construction, at p. 2. This statement has no merit. Once Cisco "put in play" the words and phrases of the claims it viewed as ambiguous, Chrimar had the right to respond subject to the same rules of claim interpretation as those applicable to Cisco.

Cisco asserts:

The use of a narrative description as a claim construction for a means-plus-function claim is contrary to Federal Circuit authority. *Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc.*, 145 F.3d 1303, 1308 (Fed.Cir.1998) (stating that the Court must "compare the accused structure *with the disclosed structure*"); *see also*, *Kemco Sales, Inc. v. Control Papers, Co., Inc.*, 208 F.3d 1352,1361 (Fed.Cir.2000) (stating that a court must "construe the function recited in that claim and determine what structures have been disclosed in the specification that correspond to the means for performing that function").

Cisco's Brief in Opposition to the Claim Construction Offered by Plaintiff, at p. 11, n. 9. This statement has no merit. *Chiuminatta*, and *Kemco Sales* state the well-known rules of law of how a means plus function, 35 U.S.C. s. 126 para. 6, limitation must be read. These cases say nothing about how ambiguities in the words

and phrases of a limitation are to be resolved.

Lastly, Cisco's effort to place extrinsic evidence on par with intrinsic evidence when resolving ambiguities in claim language is incorrect. As pointed out in *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed.Cir.1996)

In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence..... Extrinsic evidence may also be considered, if needed to assist in determining the meaning or scope of technical terms in the claims."

(Emphasis in original, internal citations and quotation omitted).

Additional precedential authority relating to a *Markman* proceeding is set forth in *Control Resources, Inc. v. Delta Electronics, Inc.*, 133 F.Supp.2d 121, 126-27 (D.Mass.2001), which the Court views as a paradigm *Markman* decision; it states in part:

As is the practice of this Court, a *Markman* hearing was conducted prior to and entirely independently of the summary judgment hearing. Construing the claims without regard to the alleged infringement issue avoids conflating " 'the legal explication required by *Markman*' with the fact-finding role reserved for the jury."

...

Ultimately, however, the language of the claim itself defines the scope of the right to exclude. But claims must be read in light of the written description, to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning. Absent a special written definition in the written description, either explicit or implicit, the Court must adopt the plain and ordinary meaning given by persons having ordinary skill in the field of the invention.

...

The claims must be translated into plain English so that a jury will understand. Thus, accurate words that convey the essence of the invention are needed. To minimize the risk of imprecision of language leading to misconceptions, it is appropriate to recite for the parties the claim construction as near as possible to the language intended for the jury and to give the parties an opportunity to comment.
(internal citations omitted).

IV.

The six phrases in Claim 1 which, according to Cisco, are ambiguous and therefore require interpretation are:

- a security system
- current loop means
- existing internal circuitry
- source means
- low DC current signal

- detector means

Each party has proffered an interpretation of these phrases which it asserts resolves the ambiguity and makes clear to the finder of fact, in this case the jury, the meaning of the phrase. These competing explanations are displayed in the claim chart attached as Exhibit A and will not be repeated here. It should be noted that a claim chart is not to be used as a vehicle to argue a position, but rather as a way to display the explanatory language and nothing more.

Each of the six phrases will be discussed separately. The Court's interpretation is displayed on Exhibit A.

A. A Security System

1.

Security system is part of the preamble and requires no interpretation, Schwartz *Patent Law & Practice*, 3d Edition, Federal Judicial Center (2001) explains:

The preamble is an introductory statement that precedes the body of a claim. A preamble can serve a variety of purposes, including summarizing the type of invention or identifying the function of the invention. The preamble has the import that the claim as a whole suggests for it.

Although the preamble is always part of the claim, it might not be relevant to the scope of the claim. Generally, the preamble is relevant to the scope of the claim (and, thus, relevant to claim construction) if (1) the preamble is a limitation on the claimed invention or (2) the preamble is necessary to give life, meaning, and vitality to the body of the claim. In determining whether the preamble is relevant to claim construction, courts review the body of the claim, but they may also review the entirety of the patent and the prosecution history to gain an understanding of what the inventors actually invented and intended to encompass by the claim.

Regarding the preamble as limitation, the preamble may, or may not, be a limitation on the claimed invention. For example, if the applicant uses both the preamble *and* the body of the claim to define the subject matter of the claimed invention, then the Court will recognize the preamble as a limitation on the claimed invention. The preamble is not a limitation when it is used only to state a purpose or intended use for the invention and the structurally complete invention is defined in the body of the claim.

Regarding whether the preamble is necessary to give life, meaning, and vitality to the body of the claim, the preamble may, or may not, fulfill that role. For example, the preamble may be relevant because it explains a limitation in the body of the claim. In the ceiling fan example, because the elements (a) through (c) could be read to describe a standing fan (or possibly even a boat's motor), a court might recognize the preamble ('A ceiling fan') as necessary to give life, meaning, and vitality to the body of the claim.

See also Catalina Marketing International, Inc. v. Cooisavinas.Com., Inc., 289 F.3d 801 (Fed.Cir.2002).

There is nothing in the preamble which limits the claimed invention or is necessary to give life, meaning, and vitality to the body of the claim 1. The applicant invented and intended to encompass by claim 1, i.e., the language following the word *comprising*, a system which detects the disconnection of electronic equipment from a network, and claim 1 fully describes such a system. That the system may achieve by

detecting electronic equipment which has been disconnected the possibility of theft or unauthorized removal does not limit claim 1 in any way. As stated above, "the structurally complete invention is defined in the body of the claim." Cisco's view that

A break or disruption in the current signal is theft or unauthorized removal of the computer equipment has not merit and exemplifies the tendentious approach to this *Markman* proceeding displayed in its papers. The break in the signal at most tells that a piece of computer equipment has been removed from the network. How or why it was removed still must be determined. There is no support in the specification or the file history to support Cisco's statement "When a computer ... is stolen, the electric system breaks down" or "unauthorized disconnection or theft is signaled ..." The most the alarm message tells is that an identifiable piece of equipment has been removed from the circuit.

The presence of the word "theft" in the specification is of no moment. It appears several times in column 1, which is part of the Background of the Invention. It also appears in column, line 66 as part of the Detailed Description of the Preferred Embodiment where it is part of the phrase "for achieving theft protection of electronic equipment." This is a possible use of the invention, indeed perhaps the preferred use, but certainly not a limitation on use.

2.

The effort of Cisco to find the preamble a limitation by reference to the file history also fails. Chrimar distinguished the invention of the '260 patent from the examiner's cited references, U.S. Patent Number 4,736,195 (*McMurtry*), a Warning and Apparatus for Warning of Disconnection of an Appliance From a Power Source, and U.S. Patent Number 5,243,228 (*Lee*), an Electronic Equipment Antitheft Monitoring System, as prior art by pointing out that the claimed invention includes a limitation that an electronic current is injected into an existing communication line and not the power line of the monitored equipment. Security and antitheft characteristics were not a consideration when the examiner stated that a power cord is a communication line. Chrimar pointed out that the '260 patent was limited to a data communication line. This was the distinguishing limitation that led to allowance.

Thus, Cisco's argument that by looking to extrinsic evidence, the preamble is a limitations, has no merit. There is no need to look to extrinsic evidence. The lack of limitation implicated in the preamble is clear from the language of claim 1, the specification, and the file history.

In its presentation at oral argument, Chrimar argued the following regarding the prosecution history:

- security was not used to distinguish the prior art
- security was part of the preamble as filed
- security was not added to the claim during prosecution
- the applicants did not argue that security distinguished the prior art
- security in fact does not distinguish the prior art

- the addition of data communication lines was the basis for allowing the ' 260 patent

Lastly, The Court agrees it should also be noted that the specification concludes with the following explanation, column 6, lines 39-46:

Thus while this invention has been disclosed herein in combination with particular example thereof, no limitation is intended thereby except as defined in the following claims. This is because a skilled practitioner recognizes that other modifications can be made without departing from the spirit of this invention after studying the specification and drawings.

The jury will be instructed that to find infringement they must read claim 1 as described in the language following the word "comprising" on the accused device.

B. Current Loop Means

Chrimar is correct in its assertion that *current loop means* does not implicate a means plus function limitation under 35 U.S.C. s. 112 para. 6. Sufficient structure is described in the language of the limitation for performing the claimed function. *See* York Products, Inc. v. Central Tractor Farm & Family Center, 99 F.3d 1568, 1574 (Fed.Cir.1996). The limitation does not define a function. *Current loop means* references current loops associated with each of the different pieces of monitored equipment, each loop having a pair of data communication lines. These lines, as described, connect the electronic equipment which is being monitored to the network through existing internal circuitry. Chrimar has correctly interpreted *current loop means*.

The jury will be instructed to read *current loop means* as follows: "multiple current loops with each loop associated with a corresponding piece of electrical equipment. Each of the current loops is a pair of data communication lines that connect the corresponding piece of electronic equipment to a network through existing internal circuitry.

C. Existing Internal Circuitry

The parties do not disagree on the meaning of *existing internal circuitry*. Given that Chrimar is the inventor, the jury will be instructed that the phrase means "electronic circuitry is circuitry present in the monitored piece of electronic equipment at the time the end user acquires it.FN2

FN2. In a post hearing filing, Cisco, for the first time, proffered additional language, "which has not been specifically designed or modified to handle a large DC current." Chrimar has not responded. It would appear that a device which was specially designed or modified so that it was compatible with the other devices on the network might not meet this limitation.

D. Source Means

This is a means plus function limitation. The structure described in the specification to which the means relates must be identified. This will be the subject of a separate order. As to the meaning of the phrase, it references a DC power source that is capable of generating low DC current in the multiple current loops. The jury will be instructed that a DC power source is a "source that is capable of generating low DC current in the multiple current loops."

E. Low DC Current Signal

Cisco argues this limitation references less than 1 milliamp of DC current because this is what the specification states. The specification, of course, only describes the preferred embodiment. Chrimar is correct in arguing that the DC current to the signal must be sufficiently low so that it does not interfere or adversely affect the associated electronic equipment or the network. It will be for the jury to decide whether the DC current supplied in the accused device is sufficiently low such that it does not affect the data communication network. Assigning numerical values as a limitation not called for in a claim explicitly is a trap for the unwary. Moreover, claim 13 explicitly states a numerical value. This view of the claim language is supported by *Modine Manufacturing Co. v. U.S. International Trade Comm'n*, 75 F.3d 1545, 1551 (Fed.Cir.1996), (stating that "particular embodiments appearing in the specification will not generally be read into the claims.... What is patented is not restricted to the examples, but is defined by the words in the claims," quoting *Specialty Composites v. Cabot Corp.*, 845 F.2d 981, 987, 6 U.S.P.Q.2d 1601, 1604 (Fed.Cir.1988)).

The jury will be instructed that a low DC current signal is a DC current level that is sufficiently low so that it does not interfere with or adversely affect the operation of the associated electronic equipment or computer network.

F. Detector Means

This is a means plus function limitation. The Court is not persuaded that the Federal Circuit's holding that the word "detector" as used in a patent-in-suit is a sufficient recitation of structure that should be carried over to the claim. *Personalized Media Communications, LLC v. International Trade Commission*, 161 F.3d 696 (Fed.Cir.1998), is not precedent for holding that detector defines a structure standing by itself. Following *detector means* is a recitation of its function:

for monitoring the current signal through each of said current loops and detecting a change in said current signal through one of said current loops which represents disconnection of said associated piece of equipment from the network.

The phrase calls for structure which

- monitors the current in the loops and which
- detects a change in the current

The detected change in current flow represents disconnection of a piece of electronic equipment from the network. This is clear from the language which follows. There is no need to explicitly include in the interpretation of *detector means* to state this. To remove any doubt, however, the jury will be instructed that *detector means* refers to "one or more electronic components capable of providing an indication of a change in current flow which represents disconnection of a piece of electronic equipment from the network" and that "the indication need not be human-perceptible."

V.

A further comment is in order. Unless the Court has missed something, the parties have spent considerably

more effort on this *Markman* proceeding than is warranted by the ambiguities in claim language identified by Cisco. Cisco's effort to cite extrinsic evidence in the form of a declaration without identifying the need for the Court to look to extrinsic evidence is inappropriate. Chrimar, of course, responded with its own declaration. The Court did not consider the declarations in resolving the ambiguities in claim language identified by Cisco.

VI.

The interpretations stated above unless subsequently changed on reconsideration shall govern the future course of the case.

SO ORDERED.

EXHIBIT A

CLAIM CHART- CLAIM 1

Claim Language	Cisco's Interpretation	Chrimar's Interpretation	Court's Interpretation
<p>1. A security system for detecting disconnection of electronic equipment from a network, said security system comprising:</p>	<p>The preamble is limiting. A "security system" is a way of notifying/preventing theft of electronic computer equipment attached to a network.</p>	<p>"Security" is not a limitation and therefore requires no interpretation</p>	<p>Not a limitation</p>
<p>current loop means including separate current loops associated with different pieces of monitored equipment, each of said current loops employing as pair of data</p>	<p>A complete, closed path for the low DC current signal which begins and ends at the supply of low DC current. That path traverses down one wire of a pair of communication wires connecting the security system to a computer on the network, flows from one end of a primary winding of an existing coupling transformer at the computer to the other end of that primary winding and then traverses the other conductor of that pair</p>	<p>If "security is a limitation, it should be construed according to its customary and ordinary meaning: <i>Safety</i></p> <p>(i) multiple current loops, (ii) wherein each loop is associated with a corresponding piece of electronic equipment, and (iii) where each of the current loops has a pair of data communication</p>	<p>Multiple current loops with each loop associated with a corresponding piece of electric equipment. Each of the current loops has a pair of data communication lines that connect the corresponding</p>

communication lines which connect one of the associated pieces of equipment to the network	of communication lines back to the source. The purpose of the current loop is to provide for the return of a signal from the supply of low DC current without significant diminution of that signal.	lines that connect the corresponding piece of electronic equipment to a network via existing internal circuitry.	piece of electronic equipment to a network through existing internal circuitry.
and which are coupled to existing internal circuitry within the associated piece of monitored equipment, and wherein respective pairs of data communication lines are associated with different ones of the associated pieces of equipment;	Circuitry which is present for a purpose other than the claimed monitoring purpose and thus has not been specially designed or modified to be compatible with DC current signal.	Electronic circuitry that exists in the monitored piece of electronic equipment as of the time an end-user acquires the equipment.	Electronic circuitry that is present in the monitored piece of electronic equipment at the time the end user acquires it.
source means for supplying a low DC current signal to each of said current loops; and	A source of the low DC current signal, i.e., a non-varying electrical current of less than one milliamp that flows solely in one direction. The source means is connected across the two wires of the pair of communication lines of the current loop from the other current loops so that the removal of each computer connected to a current loop can be unambiguously detected.	A DC power source, such as an electrical power supply, capable of generating a low DC current in multiple current loops.	A DC power source that is capable of generating low DC current in the multiple current loops.
low DC current signal	Less than 1 milliamp of DC current (i.e., steady state current flowing in one direction only). DC current values high enough to power a system are excluded.	A DC current level that is sufficiently low so that it does not interfere with or adversely affect the operation of the associated electronic equipment or computer network.	A DC current that is sufficiently low so that it does not interfere with or adversely affect the operation of the electronic equipment or computer network.
detector means	A circuit within the security system	One or more	One or more

for monitoring the signal through each of said current loops and detecting a change in said current signal through one of said current loops which represents disconnection of said associated piece of equipment from the network.

which monitors the low DC current signal through each of the current loops and outputs a signal in response to a magnitude of change in the low DC current signal that represents the disconnection of a monitored computer from the network.

electronic components capable of providing an indication of a change in current flow. The indication need not be human-perceptible.

electronic components capable of providing an indication of a change in current flow which represents disconnection of a piece of electronic equipment from the network. The indication need not be human-perceptible.

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