

United States District Court,
C.D. California.

REMOTEMDX, INC,

v.

SATELLITE TRACKING OF PEOPLE, LLC.

No. No. CV 08-2899 ODW(FMOx)

Feb. 6, 2009.

C. Dennis Loomis, Baker and Hostetler, Los Angeles, CA, Thomas J. Vetter, Wendy R. Stein, Gibbons PC, New York, NY, for Defendant.

Proceedings (In Chambers): Claim Construction Order

OTIS D. WRIGHT II, District Judge.

I. INTRODUCTION

Pending before the Court is Defendant Satellite Tracking of People, LLC's ("Defendant" or "STOP") Motion for Summary Judgment of Non-Infringement, filed October 2, 2008. Defendant's motion centers around the construction of Claim 11 of the patent-in-suit (U.S. Patent No. 7,330,122 ("the '122 Patent") (filed Aug. 10, 2005) (issued Feb. 12, 2008)). Before the Court can decide Defendant's motion, however, it must resolve any disputes surrounding Claim 11's construction. Therefore, after the Court construes Claim 11, it will determine in a separate order whether Defendant is entitled to judgment as a matter of law.

II. FACTUAL BACKGROUND

Plaintiff RemoteMDx, Inc. ("Plaintiff") filed its original Complaint on May 2, 2008. The Complaint alleged that Defendant STOP was engaging in "unauthorized conduct and activities" that constituted infringement of the '122 Patent. On July 16, 2008, the Court granted STOP's Motion to Dismiss with leave to amend. The Court instructed Plaintiff to amend the Complaint to provide more detailed allegations regarding both Defendant's allegedly infringing conduct and the product at issue.

On August 5, 2008, Plaintiff filed a First Amended Complaint ("FAC") for Patent Infringement. Remote's FAC alleges that Defendant's Global Positioning System ("GPS") tracking and communication devices and systems including Blutag(R) and VeriTracks(R) infringe the method claims of the '122 Patent. On August 26, 2008, Defendant answered the FAC and asserted counterclaims seeking declaratory judgments of non-infringement and invalidity.

The '122 Patent is directed to a remote tracking and communication device. One use of the device is an ankle bracelet used to monitor the location of individuals subject to house arrest or other confinement conditions.

More specifically, the '122 Patent is directed to a remote tracking and communication device comprising of a processor, a memory, a position locator, a first transmitter, and a second transmitter. (*See* '122 Patent, abstract.) The device, intended for wear by an individual, captures GPS data for tracking purposes, and supports two-way voice communications between the wearer and call center. (*Id.*)

In layman's terms, the '122 Patent claims are directed to a small housing unit containing certain technology. The technology contained within the housing unit includes a processor, memory chip, a GPS receiver, transmitters capable of sending and receiving wireless voice and data signals in a digital format, removable battery, speaker, microphone, and a button to activate voice communications. The device also comes with an ankle strap. The strap contains optical fiber and a conductor extending from one end of the strap to the other. Aside from the "hardware" contained within the device, there is a method for processing data. This "method" is explained in Claim 11, which is at the heart of Defendant's Motion for Summary Judgment and this Claim Construction Order.

Claim 11 of the '122 Patent is directed to a "method of processing data" consisting of five steps. Claim 11 reads as follows:

11. A method of processing data generated by a remote tracking device, the method comprising:

- processing location and status data generated by the remote tracking device at the remote tracking device;
- initiating an alert at the remote tracking device when the data indicates that the remote tracking device is violating one or more pre-programmed rules;
- transmitting the location and status data from the remote tracking device to a call center when the alert requires notification of the call center;
- directly providing notification of the alert to an administrator of the remote tracking device; and
- *providing a report to the administrator which includes the location and status data generated over a predetermined time period during which the alert occurred.*

(122 Patent, 12: 4-18.) STOP's Motion for Summary Judgment rests on the fifth and last step, italicized above. This fifth step is also the focus of the Court's claim construction.

III. LEGAL STANDARD

In an action for patent infringement, the infringement analysis entails two steps: "The first step is determining the meaning and scope of the patent claims asserted to be infringed" and "[t]he second step is comparing the properly construed claims to the device accused of infringement." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed.Cir.1995), *aff'd.*, 517 U.S. 370, 372 (1996). When applying the first step, the meaning of a disputed patent claim term remains a question of law for the Court to decide. *Markman*, 517 U.S. at 372.

During the construction, "[t]he words of a [patent] claim are generally given their ordinary and customary meaning," which is "the meaning that the term would have to a person of ordinary skill in the art in question

... as of the [patent's] effective filing date." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed.Cir.2005). "Importantly, the 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, including the specification." *Id.* The Court then considers whether the ordinary meaning is consistent with the manner in which the patentee used the term in the claims, the specification, and the prosecution history. *Markman*, 52 F.3d at 986; *Phillips*, 415 F.3d at 1313-14. The patent's specification is "the single best guide to [its] meaning." *Id.* at 1315. Thus, "[t]he construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction." *Phillips*, 415 F.3d at 1316 (quoting *Renishaw PLC v. Marposs Societa' Per Azioni*, 158 F.3d 1243, 1250 (Fed.Cir.1998)).

After reviewing the language of the claims, the Court should then look to the specification, which "is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). The importance of the specification in interpreting a claim term is derived from the statutory requirement, 35 U.S.C. s. 112, that the specification describe the claimed invention in "full, clear, concise, and exact terms." As a result, the specification necessarily "informs the proper construction of the claims." *Phillips*, 415 F.3d at 1316. "[T]he specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents." *Novartis Pharms. Corp. v. Abbott Labs.*, 375 F.3d 1328, 1334-35 (Fed.Cir.2004).

In construing claim terms, a court should also consider any other evidence intrinsic to the patent file, including "the complete record of the proceedings before the PTO [and] the prior art cited during the examination of the patent." *Id.* at 1317. As with the specification, the prosecution history may demonstrate how the PTO and the applicant understood the patent, as well as "whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." *Id.* However, the file evidence should not be given undue weight because the statements in it are part of "an ongoing negotiation" between the patent office and the inventor and thus "often lack[] the clarity" of the final product. *Id.*

Finally, the Court may also consider relevant extrinsic evidence, which is "all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Id.* The Court uses this type of evidence with caution as the Federal Circuit has explained that extrinsic evidence is generally "less significant than the intrinsic record in determining the legally operative meaning of claim language." *Id.* (citations omitted). When used, extrinsic evidence cannot "vary or contradict" claim language, *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1584 (Fed.Cir.2003), but it can be useful "for a variety of purposes, such as to provide background [and] to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person with skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." *Phillips*, 415 F.3d at 1318.

IV. DISCUSSION

The task before the Court is to provide the patent's terms "the meaning that [they] would have to a person of ordinary skill in the art in question" in the context of the entire patent. *Phillips*, 415 F.3d at 1313. Claim construction must begin with-and remain centered on-the claim language itself, for that is the language the patentee has chosen to particularly point out and distinctly claim the subject matter which the patentee regards as his invention. *Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1116

(Fed.Cir.2004) (citations omitted) (reaffirmed in Phillips, 415 F.3d at 1312).

The first term in Claim 11 the parties attempt to define is "providing a report." Looking to the '122 Patent specification, there is no definition set forth regarding "providing a report."

First, Defendant argues that the term "report" should be defined as it is used in the specification. Specifically, Defendant points to two places in the specification where "report" is used to refer to "periodic reports." The first reference states, "the data is stored in the database 234 and reported to the administrative user in periodic reports which at least list all alarm conditions received since provision of the last report. All recorded data may optionally be included in the report." ('122 Patent, 9: 19-23.) The next mention of "report" states, "[t]he device will still transmit all alarms identified during suspension to the central server, which will in turn include all identified alarms in the periodic reports (e.g., weekly) to the administrative user." ('122 Patent, 9: 39-42.) Thus, Defendant contends that "report," as used in Claim 11, means "periodic reports."

To determine how to define "report" as it is used in the fifth step of Claim 11, it is important to read all of the steps of Claim 11 in context. Claim 11 is directed to a "method of processing data generated by the remote tracking device." The first step processes location and status data at the device. This is simply an internal process that takes place at the device. The second step initiates an alert at the device when a pre-programmed rule is violated. This step also takes place at the device. The third step is when the device begins to send out data. The third step transmits location and status data from the device to a call center when an alert requires such notification. The fourth step directly provides immediate notification of the alert to an administrator. It seems that the third and fourth steps are similar, but the methods of notification, as well as the persons or entities being notified, differ. The fifth step provides a report to the administrator. This report includes location and status data over a predetermined time period during which the alert occurred. Thus, by the time the fifth step occurs, the critical information regarding the alert has already been sent to two entities, including the administrator. And, when put into context of the purpose of the device, the alerts are what are important. The fifth step of providing a report is simply a summary of activities: one, to tell the administrator that the device is still functioning, and, two, to show alert-related data since the report was previously provided.

Further, when viewing the steps in order, it is clear that step five is simply a summary of alert data recorded and stored over a predetermined time period. This is exactly what the "periodic report" does that is explained in the specification. The specification states, "the data is stored in the database 234 and reported to the administrative user in periodic reports *which at least list all alarm conditions received* since provision of the last report." ('122 Patent, 9: 19-22.) (emphasis added). Because the specification explains the periodic reports in connection with the alarm conditions, it appears to coincide with step five.

Additionally, the Court is mindful of Plaintiff's argument that claims may embrace "different subject matter than is illustrated in the specific embodiments in the specification." *Nazomi Comms., Inc. v. ARM Holdings, PLC*, 403 F.3d 1364, 1369 (Fed.Cir.2005). Still, the specification describes how the invention works and is thus the best source of the legally operative meaning of disputed claim language. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). Therefore, because the Court has used the specification to underscore the purpose of the fifth step of Claim 11, the Court adopts Defendant's contention that the "report" in Claim 11 is a "periodic report."

Second, when looking to the term "providing," the parties agree that "providing" is not a technical term,

thus, it does not require a technical construction. In attempting to define "providing," Defendant argues that the reports are provided to the user/administrator pursuant to a rule of programming at the central server. Stated differently, Defendant uses the terms "push" and "pull," which were terms allegedly understood by persons skilled in the art at the time the application for the '122 Patent was filed. Defendant therefore prefaces its definition of "providing" by stating the report in the fifth step of Claim 11 is "pushed" by the system to users and not "pulled" by users from the system.

Using the above logic, Defendant asserts that "providing" should mean "to supply for use." However, Plaintiff argues Defendant is trying to narrowly define the term "providing" to imply that "providing" is synonymous with "sending" or "pushing ." Plaintiff cites Merriam Webster's Collegiate Dictionary, 10th, which defines "provide" as "to supply or make available." Plaintiff therefore asserts that "providing" should be construed as "supplying or making available." Further, Plaintiff points out that even if the Court were to use Defendant's proposed definition, "to supply for use," the term "supply" is defined as "to make available for use." Therefore, as Plaintiff argues, the Court should include this language.

Plaintiff also argues that if the '122 Patent is directed to a device that "sends" the reports to the administrator, the words "transmit" or "send" would have been used as they are used in other parts of the claims and specification. Plaintiff cites *Forest Labs., Inc. v. Abbott Labs*, 239 F.3d 1305, 1310 (Fed.Cir.2001) for the proposition that "[w]here claims use different terms, those differences are presumed to reflect a difference in the scope of the claims."

The Court agrees with Plaintiff's construction. When looking at other language within Claim 11, it becomes clear when "pushing" is required. For example, the language from the third step of Claim 11 states, "*transmitting* the location and status data *from* the remote tracking device *to* a call center when the alert requires notification of the call center." (emphasis added). This passage asserts that the alert is transmitted *from* the device *to* the call center. This is not so with the fifth step. The fifth step uses "providing" a report to the administrator. If the inventors wanted to limit this step to a "pushing" method, they could have said "transmit," or they could have even stated the report is provided "from" the device "to" the administrator. In fact, when first examining the fifth step of Claim 11, the Court struggled with the word "to" where a report is provided "to" the administrator. This seems to imply a "pushing" step. However, after re-examining the intrinsic evidence, the claim would have stated "from" in combination with "to" if it was exclusively calling for "pushing." The claim language seems to hint at a "pushing" method, but it also leaves room for a different interpretation.

Further, as stated above when describing the steps of Claim 11, the administrator would have already been notified of the alerts before step five occurred. Thus, it makes sense that the administrator might choose to either receive the report directly (the report being pushed) or the report might be stored somewhere for the administrator to retrieve or "pull." This explains why, unlike the verbs used in steps three and four, "providing" could indicate either a "push" or a "pull." It therefore appears that the scope of "providing" should be construed slightly broader than Defendant's proposal. The Court adopts Plaintiff's proposal of "supplying or making available."

The next phrase the parties dispute is "over a predetermined time period." The primary argument between the parties is that Plaintiff contends the phrase is only a temporal limitation stating *when* the data is generated, not how much data. Defendant, on the other hand, argues that the claim limitation defines "how much data" is included in the report.

The term "predetermined" is not defined in the specification other than the discussion of "periodic reports" (i.e., weekly) discussed above. The term appears to simply suggest to the administrator that it should program into the device a time span to be covered/reported in the periodic report. This time could be one hour, one day, or one week. Regardless of the specific time limitation, it seems the claim is merely leaving the decision-of what should be the "predetermined time"-up to the administrator or programmer of the device. The Court's reasoning is supported by the specification where it states certain characteristics of the device "may be, and preferably are, defined by the administrator." ('122 Patent, 2: 9-10.) The specification also states, "[i]t should be noted that the reaction of the microprocessor is preferable entirely programmable by the administrative user through the web application or through a direct interface connection to the device." ('122 Patent, 8: 29-33.)

Further, the phrase "over a predetermined time period" limits *when* the data is generated. The fact that the report, at a minimum, "includes the location and status data" indicates *how much* data. The specification teaches that the report "at least lists all alarm conditions received since provision of the last report. All recorded data may optionally be included in the report." ('122 Patent, 9: 20-23.) Thus, *when* the data is generated is during the "predetermined time period." *How much* data is "generated" includes, at a minimum, all alert-related location and status data recorded and stored during the predetermined time period. And all recorded data may optionally be included in the report.

It seems that the phrase "during which the alert occurred" in step five of Claim 11 is reiterating the specification's statement that the report will at least list all alarm conditions received since provision of the last report. Contrary to Defendant's argument, it does not fit the purpose of steps two through five to *require all* data recorded during the time period to be reported. Instead, step five requires the report to provide, at a minimum, all alert-related location and status data.

Additionally, at the claim construction hearing, Defendant brought up a new argument stating that the "report" should not be referred to as a "map." The Court agrees. The specification never talks about a map. Plus, it is the Court's understanding that the '122 Patent is strictly directed to the data generated by the device. The device would theoretically only transmit in computer code language. And the code would not be translated into a possible map format until it meets the central server or some type of software program. The programming capabilities of a server or computer, however, are not the focus of the '122 Patent. Therefore, there is no need to discuss whether the "device" can transmit a "map." This is simply a non-issue when looking at the '122 Patent.

V. CONCLUSION

The language from the fifth step of Claim 11 states as follows:

providing a report to the administrator which includes the location and status data generated over a predetermined time period during which the alert occurred.

('122 Patent, 12: 16-18.)

Based on the foregoing analysis, the phrase "providing a report" is defined as follows: "providing" means "supplying or making available," and "report" means "periodic report" as it is used in the specification. The parties do not dispute the language "to the administrator which includes the location and status data generated." Regarding this language, Defendant only notes, and the Court agrees, that the word "includes"

means "that the listed elements (i.e., method steps) are essential but other elements may be added." Lucent Technologies, Inc. v. Gateway, Inc., 525 F.3d 1200, 1214 (Fed.Cir.2008). Thus, the report must include "the location and status data," but can also include other elements. In addition, at the hearing the Court obtained the parties' consent to define the term "generated" as "recorded and stored."

The phrase "predetermined time period" is not defined because it is a time left to the discretion of the administrator/programmer of the device. Finally, the phrase "during which the alert occurred" reiterates that the report must include, at a minimum, all alert-related location and status data generated over the predetermined time.

The Court therefore construes the fifth step of Claim 11 as follows:

Supplying or making available a periodic report to the administrator which includes the alert-related location and status data recorded and stored over a predetermined time. All recorded data may optionally be included in the report.

Following this Order, the parties are instructed to file simultaneous briefs regarding how the Court's construction affects Defendant's Motion for Summary Judgment. The parties need not reiterate all that was previously briefed. The Court is simply asking for guidance as to how to approach Defendant's Motion in light of the instant Claim Construction Order. The parties shall file their briefs not to exceed 15 pages in length by Friday, February 20, 2009.

C.D.Cal.,2009.

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