United States District Court,
S.D. California.

COGNITRONICS IMAGING SYSTEMS, INC., and David H. Shepard,
Plaintiffs.
v.
RECOGNITION RESEARCH INCORPORATED, and Captiva Software Corporation,
Defendants.

No. 00-CV-0377-K (JFS)

March 9, 2001.

ORDER PURSUANT TO *MARKMAN* HEARING

JUDITH N. KEEP**, District Judge.**

Plaintiffs filed their proposed claims interpretations and *Markman* Brief on January 17, 2001. Defendants filed their joint proposed claims interpretation and *Markman* Brief on February 6, 2001. The court held a *Markman* hearing on March 8, 2001.

I. Background

A. Procedural History

This case arises out of a patent dispute between the parties. On August 18, 1999, Plaintiff Cognitronics filed a complaint in the Eastern District of Virginia alleging infringement of Patent No. 5, 526, 447 ("'447 patent"). On June 11, 1996, Cognitronics was issued the '447 patent for "Batched Character Image Processing", a product invented by David H. Shepard, CEO of Cognitronics. Mr. Shepard, who assigned the '447 patent to Cognitronics, was added as a Plaintiff in this action on October 2, 2000.

Cognitronics is a California corporation with its principle place of business in San Diego. Plaintiff David H. Shepard is a resident and domiciliary of Coronado, California, a suburb of San Diego. Defendant Captiva is also a California corporation with its corporate headquarters and principle place of business in San Diego, California. Defendant Recognition Research Incorporated (RRI) is a Virginia corporation with its principle place of business in Blacksburg, VA. This case was originally filed in the Eastern District of Virginia. It was transferred to the Southern District of California, pursuant to 28 U.S.C. s. 1404(a), on February 2, 2000.

Plaintiffs' complaint alleges a cause of action for willful infringement, inducing infringement, and contributory infringement of the '447 patent, in violation of 35 U.S.C. s. 271. The complaint also asserted state law claims against both RRI and Captiva for combining and conspiring to injure the business of Cognitronics by willfully infringing the '447 patent, in violation of Va.Code s. 18.2-499. Defendant Captiva filed an answer and counterclaim for declaratory judgment on October 18, 1999, Cognitronics filed a reply and counterclaim to Captiva's answer on November 5, 1999. On that same day, RRI filed its answer. Cognitronics filed its reply and counterclaim to RRI on the same day.

On November 1, 2000, this court granted RRI's uncontested request to file an amended answer and counterclaim. On the same day, this court dismissed Plaintiffs' state law claims from the complaint. Hence,

the remaining claims in Cognitronics complaint are for violations of 35 U.S.C. s. 271.

B. Underlying Patent: U.S. Patent 5,526,447 ('447 Patent)

The actual invention, invented by David Shepard and assigned to Cognitronics, involves a type of computer processing system. It was patented on June 11, 1996. The patent abstract defines the invention as:

Character recognition processing wherein each of a batch of documents is scanned to produce corresponding scan data signals forming a rectilinear data array of binary bits at the intersections of a rectangular coordinate grid. These signals are stored and processed by a recognition algorithm to produce identity signals for recognized characters. Groups of non-recognized characters are presented simultaneously to permit rapid identification by inspection. The identification of recognized characters is verified at high speed by simultaneously presenting the character images as respective groups sorted to have the same recognized identities. '447 Patent Abstract.

In plain language, this invention is a computer process that speeds up the recognition of questionable letters or numbers on scanned documents. The prior art section of the '447 patent explains the field of technology that this invention has expanded upon. This section describes established computer systems whereby "[c]haracters on documents such as forms to be filled in with hand-printed characters are now commonly read automatically by character recognition apparatus, of which there is a considerable variety." '447 Patent, Description of Prior Art. These "character recognition apparatus" have the ability to read alphanumeric characters that are hand-written or typed onto a document. The characters are translated into "scan data signals" that are "stored and analyzed in accordance with a recognition algorithm." Id. "Recognition algorithms have become highly refined, so that a large proportion of the scanned characters will be correctly recognized. Nonetheless, there will be characters which the algorithm cannot recognize, or may identify incorrectly, and for most applications it becomes necessary to carry out supplementary procedures to complete processing." Id.

The instant invention essentially involves a system whereby rejected or incorrectly identified characters are "displayed batched in reorganized format for simultaneous inspection by the operator." '447 Patent, Summary of the Invention. This display system greatly enhances the speed at which these rejected or unrecognized characters can be viewed and identified by an "operator." Id.

Prior to the *Markman* hearing, both parties fully briefed the court regarding the terms that were disputed. The claims that are disputed are claims 1-3, 8,12, and 32. Plaintiffs filed their proposed claims interpretations and *Markman* Brief on January 17, 2001. Defendants filed their joint proposed claims interpretation and *Markman* Brief on February 6, 2001.

II. *LEGAL STANDARD*

Claim construction is a matter of law to be determined by the court. *See* Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed.Cir.1995) (en banc), *aff'd,* 517 U.S. 370 (1996). The court ordinarily construes the claims using only "intrinsic" evidence. *Id*. Intrinsic evidence includes the patent claims, the specification, and the prosecution history, which together form the public record of the patent. *See* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1583 (Fed.Cir.1996).

First, the court looks to the claims themselves. *See* Markman, 52 F.3d at 979. "The actual words of the claim are the controlling focus." *Digital Biometrics,* 47 U.S.P.Q.2d at 1424 (citing Thermalloy, Inc. v. Aavid Engineering, Inc., 121 F.3d 691, 693 (Fed.Cir.1997) ("Nonetheless, throughout the interpretation process, the focus remains on the meaning of claim language.") "The written description is considered, in particular to determine if the patentee acted as his own lexicographer, as our law permits, and ascribed a certain meaning to those claim terms. If not, the ordinary meaning, to one skilled in the art, of the claim language

controls." *Id*. (citing York Prods., Inc. v. Central Tractor Farm & Family Ctr., 99 F.3d 1568, 1572 (Fed.Cir.1996) ("Without an express intent to impart a novel meaning to claim terms, an inventor's claim terms take on their ordinary meaning.")

The court construes the claim terms "as they would be understood and interpreted by a person in [the particular] field of technology." Multiform Dessicants, Inc. v. Medzam, Ltd., 133 F.3d 1473, 1477 (Fed.Cir.1998). The words of the patent claims should be given their ordinary meaning unless the specification or prosecution history clearly give the words some special meaning. *See* Vitronics Corp., 90 F.3d at 1583.

Second, the court reads the claims "in view of the specification, of which they are a part." Markman, 52 F.3d at 979. The *specification* is the "single best guide to the meaning of a disputed term." Vitronics, 90 F.3d at 1582. There is, however, "a fine line between reading a claim in light of the specification, and reading a limitation into the claim from the specification." Comark Communications, Inc. v. Harris Corp., 156 F.3d 1182, 1186 (Fed.Cir.1998). While "[c]laims are to be interpreted in light of the specification, and with a view to ascertaining the invention, it does not follow that limitations from the specification may be read into the claims." *Id*. (quoting Sjolund v. Musland, 847 F.2d 1573, 1581 (Fed.Cir.1988)); *see also* E.I. Du Pont De Nemours & Co. v. Phillips Petro, 849 F.2d 1430, 1433 (Fed.Cir.1988).

Finally, the court looks to the *prosecution history*. While the prosecution history may well show what claims the patentee had to give up in order to render the invention patentable, *see* Markman, 52 F.3d at 980, the court should not give undue weight to statements made during prosecution of the patent distinguishing the prior art when neither the specification nor the claims so limit the patent. *See* Sofamar Danek Group, Inc. v. DePuy-Mntech, Inc., 74 F.3d 1216, 1220-21 (Fed.Cir.1996). The prosecution history cannot "enlarge, diminish, or vary" the limitations of the claims. Goodyear Dental Vulcanite Co. v. Davis, 102 U.S. 222, 227 (1880). A party may not, however, construe a claim one way during the patent prosecution in order to obtain the patent and then construe that same claim in a different way against an accused infringer. *See* Southwall Technologies, Inc. v Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.1995).

If the intrinsic evidence does not provide sufficient clarity to allow the court to construe the claims, the court considers extrinsic evidence, such as expert testimony, dictionaries, and learned treatises, to the extent such evidence helps to explain scientific principles, technical terms, and terms of art that appear in the patent and its prosecution history. *See* Markman, 52 F.3d at 980. Expert and inventor testimony as to the meaning of the claims is "entitled to no deference" because such testimony "amounts to no more than legal opinion." Id. at 983. Such testimony may be used by the court, in its discretion, **but only when the patent documents are ambiguous and only as an aid to the court's determination of how one skilled in the art would read the language of the patent claims.** *See* Vitronics, 90 F.3d at 1584. If the court can determine the meaning of the language based only on intrinsic evidence from the public record, then reliance on extrinsic evidence is improper. *See* id. at 1583. This is because the public is entitled to rely on the public record; "competitors are entitled to review the public record, apply the established rules of claim construction, ascertain the scope of the patentee's claimed invention and, thus, design around the claimed invention." *Id*.

Finally, a recurrent argument before the court during this *Markman* hearing has been whether all of the disputed claims require construction or if it is permissible to find that the terms have their "ordinary" meaning and therefore do not require construction. Even non-technical terms, however, require the court to construe the meaning of the word in the context of the present patent claims. The Federal Circuit, in the *Markman* decision, noted that all aspects of claim construction are matters of law for the court to decide, rather than leaving construction for the jury. *See* Markman, 52 F.3d at 970-71. This requires the court to determine whether the inventor meant to impart special meaning to a word. *See* Multiform Dessicants, Inc. v. Medzam, Ltd., 133 F.3d 1473, 1477 (Fed.Cir.1998). Where the inventor used a word in accord with its common usage, the court will construe the term accordingly. *See id*.

III. *DISCUSSION*

On February 20, 2001, the parties submitted a joint "Claim Construction Chart" to the court. This chart presents the terms of the claims that are in dispute by the parties. This chart also clarifies which terms of the claims are agreed upon by the parties. The court will address the terms on this claim construction chart that remain in dispute between the parties.

1. *Document*

The parties contest the meaning of the term **"document."** The term **"document"** appears in Claims 1, 8, and 32 of the '447 Patent. The term, when construed, must be given the same meaning each time it is used in the claims. *See* Digital Biometrics Inc. v. Identix, Inc., 149 F.3d 1335, 1344 (Fed Cir.1998). Claim 1 begins by stating that the patent describes a "method" that is used "in a process for recognizing characters on at least one **document** of a plurality of documents" and later states that the process makes a determination about "a plurality of images of said group of characters taken from different lines of the same **document** or from different **documents."** *See* '447 Patent, Claim 1, column 7: 14-15, 29-30 (emphasis added). The term **"document"** is also discussed in the specifications.

Plaintiffs contend that the term "document" should be defined as **"a preprinted business form to which alphanumeric characters can be added by hand or otherwise to specific areas ('fields') of the form."** Joint Claim Construction Chart ("Claim Chart"), at 1. Defendants argue that the term should be defined as **"a writing conveying information."** Id.

As stated above, even common terms require construction when the meaning of the terms are disputed. *See* Markman, 52 F.3d at 970-71. Hence, this court will construe the term "document."

The term "document" first appears at the beginning of the Description of Prior Art section of the '447 patent. This sections explains: "Characters on **documents such as forms to be filled in with hand-printed characters** are now commonly read automatically by character recognition apparatus." '447 patent, column 1:11-13 (emphasis added). The term "document" is again used at the beginning of the Description of the Preferred Embodiment section of the patent, describing the figures shown in the specifications: "at the upper left-hand corner is shown a batch of documents [ ] such as business forms which are to be scanned as part of the process for machine recognition of characters on the document ." '447 patent, column 2:28-31.

Plaintiffs rely on this language in the specifications of the patent to argue that "document" means "a preprinted business form to which alphanumeric characters can be added by hand or otherwise to specific areas ('fields') of the form." Claim Chart at 1. However, Defendants correctly argue that nowhere in the language of the claims themselves, or even in the language of the entire patent, is the term "document" **limited** to only mean "a preprinted business form." When the term "document" is used in the specifications or the claims themselves, it is either not explained, or it is followed by the words **"such as."** These words do not limit the meaning of the term. *See* Texas Instruments, Inc. v. United States Int'l Trade Comm'n, 805 F.2d 1558, 1563 (Fed.Cir.1986) ("This court has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification.").

Plaintiffs take the notion of a "preprinted business form" from the specifications' description of the preferred embodiment of the patent. Accordingly, this court holds that injecting the words "preprinted business form to which alphanumeric characters can be added by hand or otherwise to specific areas ('fields') of the form" into the definition of "document" impermissibly reads a limitation into the claim from the specifications. *See* Laitram Corp v. Cambridge Wire Cloth Co., 863 F.2d 855, 865 (Fed.Cir.1988) ("References to a preferred embodiment, such as those often present in a specification, are not claim limitations."); Sjolund v. Musland, 847 F.2d 1573, 1581 (Fed.Cir.1988) ("[w]hile ... claims are to be interpreted in light of the specification and with a view to ascertaining the invention, it does not follow that limitations from the specification may be

read into the claims.") The court therefore rejects the Plaintiffs' limitation of the term to only refer to preprinted business forms.

Defendants argue that the word "document [...] is an ordinary term used in every day life that means '**a writing conveying information.**' " Def. Brief at 10, citing WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 371 (1993). Even non-technical terms require the court to construe the meaning of the word in the context of the present patent claims. The Federal Circuit, in the *Markman* decision, noted that all aspects of claim construction are matters of law for the court to decide, rather than leaving construction for the jury. *See* Markman, 52 F.3d at 970-71. This requires the court to determine whether the inventor meant to impart special meaning to a word. *See* Multiform Dessicants, Inc. v. Medzam, Ltd., 133 F.3d 1473, 1477 (Fed.Cir.1998). Where the inventor used a word in accord with its common usage, the court will construe the term accordingly. *See id*.

The language of the patent provides no evidence of a limitation of the ordinary meaning of the word **"document."** Plaintiffs have also failed to provide any intrinsic or extrinsic evidence that limits the term. Accordingly, the court finds that the term "document" shall be construed in accordance with its ordinary and accustomed meaning: **"a writing conveying information,"**

2. ***Side-by-Side Adjacent***

The parties contest the meaning of the term "side-by-side adjacent." This term appears in Claims 1, 8, and 32 of the '447 Patent. Claim One describes the patented process whereby documents are scanned, information is stored and analyzed, and identity signals are created corresponding to the information taken from the documents. The next step is "presenting simultaneously in **side-by-side adjacent** positions imaged [sic: images] of a group of characters which failed recognition by said algorithm to a specified confidence level...." '447 Patent, column 7:25-28 (emphasis added). Claim Eight describes the patent's improvement upon previous methods of recognizing characters scanned from a document: "that improvement comprising the following steps: (1) presenting **side-by-side adjacent** images of a group of said characters at least some which [sic: of which] are taken from different lines on the same document." Id., columns 7-8:65-1. Claim Thirty-two also uses the term to describe the process for reviewing the characters that failed initial recognition by the computer after they were scanned from the documents. This claim describes "the method comprising the following steps: (1) simultaneously presenting **side-by-side adjacent** images of a plurality of character images developed by scan data signals for characters originating from at least two of said documents an [sic: and] which previously failed to be recognized at a specified level of confidence by said recognition algorithm." Id., columns 10-11:65-4.

Plaintiffs argue that **"side-by-side adjacent"** means **"next to each other in close proximity wherein character image spacing is designed to facilitate maximum keying speed when an operator is focusing solely on that line of character images."** Claim Chart at 6. Defendants argue that the phrase means **"next to each other in close proximity wherein the character images or boxes in which the characters are placed is less than 25% of the width of said character images or boxes."** Id. Both Plaintiffs and Defendants rely on the language of the claims to support their interpretations of the term; they also both rely on the figures presented in the documents to demonstrate why their interpretation is correct. The figures of the patent show rows of alphanumeric characters in boxes placed next to each other. *See* '447 patent, Figs. 2-6.

Both parties' interpretations of **"side-by-side adjacent"** begin with the understanding that this term means **"next to each other in close proximity."** The dispute arises as to whether the remaining construction should read "wherein character image spacing is designed to facilitate maximum keying speed when an operator is focusing solely on that line of character images," as Plaintiffs suggest; or whether the remaining construction should read "wherein the character images or boxes in which the characters are placed is less than 25% of the width of said character images or boxes," as Defendants suggest. The language of the patent

itself does not provide a clarification of the term, and the figures in the patent merely support the reading of the term to mean that the images are placed very closely to each other.

The court first looks to the language of the claims themselves when construing the phrase "side-by-side adjacent." The claim language does not provide a clarification that supports either the Plaintiffs' or the Defendants' additional interpretations of the phrase. The court therefore turns to the specifications and figures. *See* Abtox, Inc. v. Exitron Corp., 122 F.3d 1019, 1024 (Fed.Cir.1997) (examining specifications and figures). Neither of these serve to further clarify the phrase to conform to the parties' constructions. The court notes, however, that the Summary of the Invention section specifically describes the invention as allowing an operator to recognize "initially-rejected or incorrectly-identified characters [...] at considerably greater speeds than heretofore." '447 Patent, column 1:53-55. This section further clarifies that the preferred embodiment of the invention accomplishes this increased speed recognition "by storing images of individual characters taken from a large group of documents being processed. These character images are displayed batched in reorganized format for simultaneous inspection by the operator." Id., column 1:57-61. In other words, the Summary of the Invention section describes one of the purposes of the patent to be the acceleration of the operator's ability to view and identify the questioned characters. Therefore, the Plaintiffs' inclusion of the purpose of the patent into the meaning of the phrase **"side-by-side adjacent"** appears redundant. The parties are not contesting the **purpose** of placing the characters in a "side-by-side adjacent" position, rather they are here construing the **meaning** of the phrase itself. Accordingly, the court will not expand the definition of the phrase to mean "next to each other in close proximity *wherein character image spacing is designed to facilitate maximum keying speed when an operator is focusing solely on that line of character images*."

Defendants argue that the core term definition, agreed upon by both sides, should be clarified in a different, more limiting way. They argue that "next to each other in close proximity" should be followed by "wherein the character images or boxes in which the characters are placed is less than 25% of the width of said character images or boxes." Defendants rely upon the language of the patent and the figures, both of which fail to provide the support for this limiting phrase. They further rely on the deposition of the inventor of the patent and previous patents in this field. The court notes that inventor testimony as to the meaning of the claims is "entitled to no deference" because such testimony "amounts to no more than legal opinion." Markman, 52 F.3d at 983. Such testimony may be used by the court, in its discretion, **but only when the patent documents are ambiguous and only as an aid to the court's determination of how one skilled in the art would read the language of the patent claims.** *See* Vitronics, 90 F.3d at 1584. While the court recognizes that limitations to help clarify the term were discussed in the inventor's deposition, the court can not say that the **"25%"** ratio of spacing is the accurate limiting determination of this term. Defendants can not explain why 25% is any more correct than 24% or 26% in defining this term.

Defendants argue that the prior art in this field clarifies the term. The court may look to the extrinsic evidence of the European and Japanese patents cited by Defendants, but this is only after the court has relied upon all of the intrinsic evidence to construe the claims. *See* Jonsson v. Stanley Works, 903 F.2d 812, 818-19 (Fed.Cir.1990). The court has reviewed these patents but does not find them to provide additional clarification as to this term, especially as these three related patents are relied upon for their figures, and figures do not help limit the spacing between the boxes to a certain ratio of length to width. *See* Def. Exhs. 7, 8, and 9.

The court finds that the phrase **"side-by-side adjacent"** can only be clarified by the language of the patent itself. While the cosntruction of this term may not provide as much limitation as the Defendants would like, the court cannot read into the term a limitation that cannot be confirmed by the intrinsic or extrinsic evidence surrounding the patent. In other words, Defendants have failed to show why the ratio involved in the spacing of the boxes must be "25%" instead of "24%" or "26%."

At the hearing, Defendants preserved their right to object to the construction of this term. However, when

the court stated that it could not determine the spacing to a particular specificity, the parties agreed that **"next to each other in very close proximity"** is a construction supported by the language of the claim.

The court therefore holds that the term **"side-by-side adjacent"** is construed to mean **"next to each other in very close proximity."**

3. ***Specified Confidence Level***

Before the *Markman* hearing, the parties had contested the meaning of the term **"specified confidence level."** This term appears in Claims 1, 8, and 32. In Claim One, the term appears twice in the description of the patented process: "presenting simultaneously in side-by-side adjacent positions imaged of a group of characters which failed recognition by said algorithm to a **specified confidence level** ... determining by inspection the identity of characters failing recognition to the **specified confidence level** ...." '447 Patent, column 7:25-28, 33-34. The term appears twice in Claim Eight, as well. The language in Claim Eight is very similar to the language in Claim One: "presenting side-by-side adjacent images of a group of said characters at least some which [sic: of which] are taken from different lines on the same document or from different documents, and which group of characters failed recognition by said algorithm to a **specified confidence level** by said algorithm ... determining by inspection the identity of at least some of said characters failing recognition to the **specified confidence level** ...." '447 Patent, columns 7-8:66-4, column 8:6-7. The term appears once more in Claim Thirty-two, again surrounded by similar language: "simultaneously presenting side-by-side adjacent images of a plurality of character images developed by scan data signals for characters originating from at least two of said documents an [sic: and] which previously failed to be recognized at a **specified level of confidence** by said recognition algorithm." Id., columns 10-11:66-4. The term also appears in the patent specifications in the Description of the Preferred Embodiment; however, its exact meaning is not clarified there: "Byte 96 carries the character identity, if recognized, and a reject code if it fails recognition to a **specified confidence level.**" Id., column 3:50-52.

At the hearing, however, both sides came to an agreement as to the construction of this term. The court notes that neither side relies on the language of the patent itself to help construe the meaning of this term. *See* Claim Chart at 7. Indeed, the language of the patent is not helpful in clarifying the meaning of this term. Both sides, however, admit that the term is a term of art, and rely upon the same pages in the deposition of the inventor, Mr. Shepard, to support their interpretations. At the hearing, both sides agreed to the construction of the term **"specified confidence level"** to mean **"an estimate of certainty determined by a conventional character recognition algorithm."**

Accordingly, the court finds that the term **"specified confidence level"** is a term of art in the character recognition field. The court holds that this term means **"an estimate of certainty determined by a conventional character recognition algorithm."**

4. ***Determining by Inspection***

Prior to the *Markman* hearing the parties had disputed the construction of the phrase **"determining by inspection."** This phrase appears in Claims 1, 8, and 32. In Claim One, the process described includes presenting "said plurality of images of said group of characters being developed by scan data signals; and **determining by inspection** the identity of characters failing recognition to the specified confidence level and represented by said simultaneously-presented images." '447 Patent, column 7:31-35. Claim Eight and Claim Thirty-two include substantially the same language. Claim Eight describes the method of **"determining by inspection** the identity of at least some of said characters failing recognition to the specified confidence level and represented by said simultaneously-presented images." Id., column 8:6-9. Claim Thirty-two is almost identical. The term again appears in the specifications. Again the court notes that the phrase, when construed, will be given the same meaning each time it is used in the claims. *See* Digital Biometrics Inc. v. Identix, Inc., 149 F.3d 1335, 1344 (Fed.Cir.1998).

At the hearing, both sides agreed to the Plaintiffs' construction of the phrase "determining by inspection" means **"an operator of a system views images of characters failing recognition on a computer display to identify characters."** Claim Chart at 9.

The court accordingly construes the term **"determining by inspection"** in accordance with the parties and the language of the patent to mean: **"an operator of a system views images of characters failing recognition on a computer display to identify characters."**

5. *Locations* and *Storage Locations*

Before the *Markman* hearing, the parties had disputed the meaning of the term **"locations"** and the term **"storage locations."** These words appear in Claim 2 and Claim 3 of the patent. They are also used in the specifications. The terms, when construed, must be given the same meaning each time they are used in the claims. *See* Digital Biometrics Inc. v. Identix, Inc., 149 F .3d 1335, 1344 (Fed.Cir.1998).

At the hearing the parties agreed to the same construction. The parties agreed that the term should be construed to mean **"that at least two codes are stored with each character image segmentation box."** Accordingly, the court so holds that the terms "locations" and "storage locations" mean **"that at least two codes are stored with each character image segmentation box."**

6. "*I Don't Know" Code*

Prior to the *Markman* hearing the parties had disputed the meaning of the phrase **" 'I don't know' code"** which appears in Claim Twelve and in the specifications. Claim Twelve discusses: "The method of claim 8, wherein an **'I don't know'** code signal is developed and stored for each of said initially non-recognized characters which cannot be determined by inspection." '447 patent, column 8:22-25. This claim is explained in the patent specifications section discussing the Preferred Embodiment of the Patent: "If the operator cannot identify the character from the image as boxed, the operator keys in a code meaning **'I don't know'** instead of the identity. The identified characters or **'I don't know'** code are displayed immediately below the original character image as each is keyed in ..." Id., column 4:11-16.

At the hearing, the parties agreed to a construction for this term. The parties agreed that the term should be construed to mean **"a signal recognized by the software which the operator inputs to indicate that he/she is unable to identify the associated character image."**

Accordingly, the court finds that the term **" 'I don't know' code"** means **"a signal recognized by the software which the operator inputs to indicate that he/she is unable to identify the associated character image."**

IV. Conclusion

In sum, the court construes the disputed terms to have the following meanings.
The court construes the term "document" to mean: **a writing conveying information.**

The court construes the term "side-by-side adjacent" to mean: **next to each other in very close proximity.**

The court construes the term "specified confidence level" to be a term of art, meaning: **an estimate of certainty determined by a conventional character recognition algorithm.**

The court construes the term "determining by inspection" to mean: **an operator of a system views images of characters failing recognition on a computer display to identify characters.**

The court construes the terms "locations" and "storage locations" to mean: **that at least two codes are stored with each character image segmentation box.**

The court construes the term " 'I don't know' code" to mean: **a signal recognized by the software which the operator inputs to indicate that he/she is unable to identify the associated character image.**

IT IS SO ORDERED.

S.D.Cal.,2001.
Cognitronics Imaging Systems, Inc. v. Recognition Research Inc.