United States District Court,
D. Delaware.

NCUBE CORPORATION,
Plaintiff/ Counterclaim Defendant.
v.
SEACHANGE INTERNATIONAL, INC,
Defendant/ Counterclaim Plaintiff.

Civil Action No. 01-11-JJF

May 22, 2002.

Mary B. Graham, Morris, Nichols, Arsht & Tunnell LLP, Wilmington, DE, for Plaintiff/ Counterclaim Defendant.

Melanie K. Sharp, Mary Frances Dugan, Monte Terrell Squire, Young, Conaway, Stargatt & Taylor, Wilmington, DE, for Defendant/ Counterclaim Plaintiff.

MEMORANDUM ORDER

JOSEPH J. FARNAN, JR.**, District Judge.**

Plaintiff, nCUBE Corporation (hereinafter "nCUBE") filed this action against Defendant, SeaChange International, Incorporated (hereinafter "SeaChange") alleging infringement of United States Patent No. 5,805,804 (the "'804 Patent"). SeaChange counterclaimed for a declaratory judgment of non-infringement and invalidity. (D.I. 4 at 3). The parties have briefed their respective positions on claim construction, and the Court held a *Markman* hearing on May 2, 2002. By Letters dated May 21 and May 22, 2002, the parties substantially narrowed the claim interpretation issues that the Court must decide. This Memorandum Order provides the Court's construction of the disputed terms, "network," "first network," and "second network" in the '804 Patent. The Court will issue its interpretation of the terms "upstream manager" and "downstream manager," after it receives SeaChange's letter memorandum concerning its proposed interpretation of these terms.

DISCUSSION

I. The Legal Principals Of Claim Construction

Claim construction is a question of law. Markman v. Westview Instruments, Inc., 52 F.3d 967, 977-78 (Fed.Cir.1995), *aff'd,* 517 U.S. 370, 388-90 (1996). When construing the claims of a patent, a court considers the literal language of the claim, the patent specification and the prosecution history. Markman, 52 F.3d at 979. A court may consider extrinsic evidence, including expert and inventor testimony, dictionaries, and learned treatises, in order to assist it in construing the true meaning of the language used in the patent. Id. at 979-80 (citations omitted). A court should interpret the language in a claim by applying the ordinary

and accustomed meaning of the words in the claim. Envirotech Corp. v. Al George, Inc., 730 F.2d 753, 759 (Fed.Cir.1984). However, if the patent inventor clearly supplies a different meaning, the claim should be interpreted accordingly. Markman, 52 F.3d at 980 (noting that patentee is free to be his own lexicographer, but emphasizing that any special definitions given to words must be clearly set forth in patent). If possible, claims should be construed to uphold validity. In re Yamamoto, 740 F.2d 1569, 1571 & n.* (Fed.Cir.1984) (citations omitted).

II. Construction of Disputed Terms

1) "Network"

By letters dated May 21 and May 22, 2002, the parties represent to the Court that there is no issue for the Court to resolve regarding the construction of the term "network." Therefore, the Court adopts SeaChange's proposed definition of the term "network." A "network" is a communication path for data delivery between two or more nodes existing on a physical infrastructure.

2) "First Network" and "Second Network"

At this juncture, the parties agree that a "first network" is a communication path that (a) is used for sending information from a client to a media server; and (b) is distinct from the second network. Similarly, the parties agree that a "second network" is a communication path that: (a) is used for sending information from a media server to a client; and (b) is distinct from the first network. The parties' letters dated May 21 and May 22, 2002 indicate that there are two remaining disputes with regard to the network terms: 1) whether the first network and second network are unidirectional; and 2) whether the first and second networks must each exist on physically separate infrastructures. The Court will address each in turn.

a) Unidirectional

SeaChange contends that the "first network" must be unidirectional because it is coupled to the Upstream Manager, and not the Downstream Manager, and therefore, data only flows upstream. (D.I. 56 at 18). Similarly, SeaChange contends that the "second network" must be unidirectional because it is coupled to the Downstream Manager, not the Upstream Manager, and therefore, data only flows downstream. (D.I. 56 at 18). In support of its contention, SeaChange cites to Figure 5 of the '804 Patent where the first network and second network are illustrated with single directional arrows. (D.I. 56 at 18).

In opposition, nCUBE contends that "first network" and "second network" cannot be restricted to unidirectional networks. (D.I. 77 at 9). In support of its position, nCUBE argues that the claim language does not specify whether the networks are unidirectional or bidirectional, nor does the modifier unidirectional appear anywhere in the claims, and therefore, should not be imported into the term's construction. (D.I. 77 at 9-10). nCUBE further contends that the patent specification states that "first network" and "second network" can be bidirectional, citing as one example, the patent specification, with reference to Figure 5, stating "[s]uppose the client requested a second address, but this time the serial link (now bidirectional) as the downstream link." (D.I. 77 at 10 *citing* D.I. 66, Ex. 2 col. 14, ln. 45-47).

To resolve the dispute the Court has considered the language of the claims and the patent specification. (D.I. 66 at Ex. 2 col. 25, ln. 5-8, col. 25, ln. 9-11, col. 14, ln. 45-47, col. 12, ln. 67-col. 13, ln. 1, col. 13, ln. 23-24). Based on these considerations, the Court concludes that the claim language itself does not suggest that the "first network" or "second network" must be limited to being unidirectional, and the patent specification

clearly contemplates the networks being either unidirectional or bidirectional. (*See* D.I. 66 at Ex. 2 col. 14, ln. 45-47, col. 12, ln. 67-col. 13, ln. 1, col. 13, ln. 23-24). Therefore, the Court concludes that the "first network" and "second network" may be either unidirectional or bidirectional.

b) Separate Physical Infrastructures

SeaChange contends that the "first network" and "second network" must be separate infrastructures. (D.I. 56 at 16-18). Specifically, SeaChange contends that the claims call for a first and second network, thereby explicitly requiring two networks. (D.I. 56 at 17). SeaChange further contends that the original claims submitted to the Patent and Trademark Office called for a "first channel" and "second channel," terms broad enough to allow two channels within a single network. (D.I. 56 at 17). However, SeaChanges notes that the claims were narrowed to "first network" and "second network," precluding the existence of more than one network existing on a physical infrastructure. (D.I. 56 at 17-18).

In opposition, nCUBE contends that the "first network" and "second network" may exist on the same physical infrastructure. (D .I. 80 at 5). Specifically, nCUBE contends that generally, a network may be comprised of multiple underlying networks, and specifically, a single coaxial cable network may consist of multiple networks. (D.I. 80 at 5). nCUBE further contends that the addition of the terms "first network" and "second network" broadened the scope of the claims because network is a broader term than channel. (D.I. 77 at 12).

In construing this term the Court has considered the language of the claims and the patent specification. (D.I. 66 at Ex. 2 col. 25, ln. 1-3, col. 25, ln. 22-25, col. 12, ln. 42-46, col. 2, ln. 48-49). The Court concludes that the "first network" and "second network" are distinct from one another, existing on a separate physical infrastructures. The parties agree that a network exists on a physical infrastructure, and the Court finds that the patent explicitly provides for a "first network" and a "second network," which, as the parties agree, are "distinct." The Court concludes that, while possible, the patent does not teach the first and second network existing on the same physical infrastructure. Further, because the patentee explicitly provided for a first network and a second network, and each network must exist on a separate physical infrastructure, the Court finds that the existence of a first and second network on the same physical infrastructure, is precluded.

For the reasons discussed, the Court concludes that "first network" is a communication path that (a) is used for sending information from a client to a media server; (b) is distinct from the, second network existing on a separate physical infrastructure; and (c) which may be either unidirectional or bidirectional. The Court concludes that "second network" is a communication path that (a) is used for sending information from a media server to a client; (b) is distinct from the first network existing on a separate physical infrastructure; and (c) which may be either unidirectional or bidirectional.

NOW THEREFORE IT IS HEREBY ORDERED this *22* day of May 2002 that:

1) The meaning of the term "network" is a communication path for data delivery between two or more nodes existing on a physical infrastructure.

2) The meaning of the term "first network" is a communication path that: (a) is used for sending information from a client to a media server; (b) is distinct from the second network existing on a separate physical infrastructure; and (c) which may be either unidirectional or bidirectional.

3) The meaning of the term "second network" is a communication path that: (a) is used for sending information from a media server to a client; (b) is distinct from the first network existing on a separate physical infrastructure; (c) which may be either unidirectional or bidirectional.

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