United States District Court,
D. Delaware.

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

No. Civ.A. 01-11-JJF

May 23, 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

FARNAN**, J.**

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 supplements the Court's May 22 Order and addresses the disputed terms "upstream manager" and "downstream manager."

CONSTRUCTION OF DISPUTED TERMS

A. "Upstream Manager"

At this juncture, the parties agree that an "upstream manager" is a computer system component that (a) accepts messages from a client bound for services on a server; (b) routes messages from a client to services on a server; and (c) is distinct from the upstream manager is distinct from the second network. The parties' letters dated May 21, 22, and 23, 2002 indicate that there are two remaining disputes with regard to this term: (1) whether the upstream manager must receive all messages; and (2) whether routing is based on logical destination addresses. The Court will address each in turn.

1) Receipt of All Messages

SeaChange contends that all messages from a client bound for services must be routed by the "upstream manager." (D.I. 56 at 21). SeaChange contends that the messages cannot bypass the "upstream manager" because it is the "upstream manager" that knows how to route the messages to the services, and the network cannot do it alone. (D.I. 56 at 21). SeaChange further contends that the patent specification requires that all messages from a client bound for services be routed by the "upstream manager." (D.I. 56 at 21-22, *citing* col. 21, ln. 57-60, col. 22., ln. 27-28, col. 18, ln. 67-col. 19, ln. 3). SeaChange also cites to Figure 6 of the '804 Patent, which, in illustrating the flow of messages through the media server, shows a single arrow from the client devices to the Upstream Manager. (D.I. 66, Ex. 2 at Figure 6).

nCUBE contends that nothing in the claim language or specification requires that the "upstream manager" receive all messages. (D.I. 77 at 20). Specifically, nCUBE contends that the term 'all' never appears in the claims and, although the specification describes the upstream manager as receiving particular types of messages, the specification does not dictate that the "upstream manager" receive all messages from the client. (D.I. 77 at 20). Further, nCUBE contends that any inference drawn from Figure 6 cannot serve to limit the claim terms. (D.I. 77 at 20). nCUBE contends that the specification contemplates that the client can send messages to services other than by the upstream manager, citing to the specification which states "[i]t may be the case that some server processes, under the direction of an external network control node actually establishes contact with the client." (D.I. 66 Ex. 2 at col. 17, ln. 24-26).

In construing this term the Court has considered the claim language, the patent specification, and the prosecution history. (D.I. 66 at Ex. 2 col. 25, ln. 5-8, col. 25, ln. 26-28, col. 2, ln. 16-20, col. 12, 20-27, col. 15, ln. 57-68, col. 16, ln. 11-13, col 17, ln 24-26, Figure 6, Ex. 3 at SCH 43027). In the Court's view, although the patent specification describes embodiments wherein the upstream manager receives all messages from the embodiment, the claims are not restricted to only that embodiment. The patentee specifically provided for other embodiments in stating "[i]t may be the case that some server processes, under the direction of an external network control node actually establishes contact with the client." (D.I. 66 Ex. 2 at col. 17, ln. 24-26). Further, the "downstream manager" is able to receive messages from the client when the embodiment includes the "downstream manager" being coupled to a bidirectional second network. Therefore, the Court concludes that the "upstream manager" need not receive all messages from the client.

2) Routing Based on Logical Destination Addresses

SeaChange contends that the patent specification requires the "upstream manager" to route messages based on logical addresses. (D.I. 56 at 20). As one example, SeaChange cites to the patent specification stating "all routing is accomplished based on logical addresses, not physical addresses. In other words, packets (and therefore messages) only contain logical addresses of the sender and receiver." (D.I. 66 at Ex. 2, col. 23, ln. 36-39). SeaChange further contends that during prosecution of the patent, the applicant distinguished a prior art reference on the basis of the logical addressing aspect of the invention, stating that "logical addressing is significant" to the invention. (D.I. 56 at 21).

nCUBE contends that neither the claims nor the specification require that the "upstream manager" route messages based on logical destination addresses. Specifically, nCUBE contends that the words "logical destination address" does not appear in the claim and does not appear in the patent specification under the "Upstream Manager" heading. (Letter to the Court dated May 23, 2002). nCUBE further contends that the concept of a logical address appears only in the independent claims 4 and 10, and then only in the context of a "downstream manager."

In construing this term the Court has considered the claim language, the patent specification, and the prosecution history. (D.I. 66 at Ex. 2 col. 25, ln. 5-8, col. 25, ln. 26-28, col. 2, ln. 16-20, col. 12, 20-27, col. 15, ln. 57-68, col. 16, ln. 11-13, col 17, ln 24-26, Figure 6, Ex. 3 at SCH 43027). Based on this review, the Court agrees with nCUBE that the claim language and patent specification do not support a finding that routing is based on logical destination addresses. Therefore, the Court concludes that routing need not be based on logical destination addresses.

In sum, the Court concludes that the meaning of the term "upstream manager" is a computer system component that (a) accepts messages from a client bound for services on a server; (b) routes messages from a client to services on a server; and (c) is distinct from the downstream manager.

B. "Downstream Manager"

The parties' letters dated May 21, 22, and 23, 2002 indicate that there are two remaining disputes with regard to this term: 1) whether all multimedia (real-time) and non-real-time data is sent through the downstream manager; and 2) whether the downstream manager must multiplex real-time and non-real-time data.

1) Receipt of All Services

SeaChange contends that all multimedia (real-time) and non-real-time data is sent through the "downstream manager." (D.I. 56 at 25). Specifically, SeaChange contends that all messages pass through the "downstream manager" because only the "downstream manager" can translate logical addresses, used by the services within the media server, into the physical addresses used by the networks to transport data to clients. (D.I. 56 at 27). As further support, SeaChange cites to Figure 6 which illustrates only a single path from the media server to the client device. (D.I. 56 at 27).

nCUBE contends that nothing in the claim language or specification requires that the "downstream manager" receive all messages. (D.I. 77 at 32, 20). Specifically, nCUBE contends that the term 'all' never appears in the claims and, although the specification describes the downstream manager as receiving particular types of messages, the specification does not dictate that the "downstream manager" receive all messages from the server. (D.I. 77 at 20). nCUBE further contends that because the specification teaches that the "upstream manager" can be coupled to a bidirectional first network, it follows that the "upstream manager" can send messages from the server to the client, and therefore the "downstream manager" is not required to send all messages to the client." (D.I. 77 at 32).

In construing this term the Court has considered the claim language, the patent specification, and the prosecution history. (D.I. 66 at Ex. 2 col. 25, ln. 36-38, col. 25, ln. 9-12, col. 26, ln. 24-26, col. 16, ln. 17-21, Ex. 3 at SCH 43-27). In the Court's view, although the patent specification describes embodiments wherein the "downstream manager" sends all messages from the server to the client, the Court's finds that the claims are not restricted to only that embodiment. Because the patent specification teaches that the "upstream manager" is able to send messages to the client when the embodiment includes the "upstream manager" being coupled to a bidirectional first network, it follows that the "downstream manager" need not send all messages to the client. Therefore, the Court concludes that the "downstream manager" need not send all data to the client.

2) Multiplexing

SeaChange contends that the "downstream manager" must multiplex the real-time and non-real-time data.

(D.I. 56 at 26). SeaChange contends that because the patent specification teaches that the "downstream manager" handles the real-time data stream and the non-real-time data stream concurrently, and multiplexing is the only method disclosed in the patent to accomplish this, the downstream manager must multiplex real-time and non-real-time data. (D.I. 56 at 27).

nCUBE contends that the plain language of the claims do not require that the "downstream manager" multiplex real-time and non-real-time data. (D.I. 77 at 29-30). nCUBE further contends that the prosecution history confirms that the claims do not require the "downstream manager" to multiplex real-time and non-real-time data. (D.I. 77 at 30). Specifically, nCUBE contends that the original patent application contained an independent claim covering a "downstream manager" for multiplexing real-time and non-real-time data, however, the Patent Examiner required the patentee to file a separate patent application for the multiplexing aspect of the "downstream manager." (D.I. 77 at 30). Because the patentee demonstrated an ability to disclose a downstream manager that multiplexed real-time and non-real-time data, and no such claim ultimately issued, nCUBE contends that a multiplexing requirement must not now be read into the claim language. (D.I. 77 at 30).

In construing this term the Court has considered the claim language, the patent specification, and the prosecution history. (D.I. 66, Ex. 2 at, Ex. 3 at SCH 042969). Although the claim language and specification cover a "downstream manager" which multiplexes real-time and non-real-time data, in reviewing the claim language and the specification, the Court finds no indication that the patentee intended to limit the "downstream manager" to multiplexing the real-time data with the non-real time data. The patent teaches that in an embodiment in which the first network is bidirectional, the "downstream manager" does not need to multiplex the data because the non-real-time data can be sent from the "upstream manager" to the client over the bidirectional first network. Further, in reviewing the prosecution history, the Court finds the original claim 3, wherein the patentee claims a "means for servicing said plurality of non-real-time requests concurrently with servicing said plurality of real-time requests on any bandwidth of said downstream channel not used by said plurality of real-time requests," persuasive. In the Court's view, the patentee demonstrated the ability to require multiplexing, a requirement that was ultimately not included in the '804 Patent. Accordingly, the Court determines that the "downstream manager" need not multiplex the real-time data with the non-real-time data.

In sum, the Court concludes the meaning of the term "downstream manager" is a computer system component that (a) receives data from a multimedia data storage device; FN1 (b) sends a stream of multimedia data, both video and non-video, from a server to a client; and (c) is distinct from the upstream manager.

NOW THEREFORE IT IS HEREBY ORDERED this *23* day of May 2002 that:

1) The meaning of the term "upstream manager" is a computer system component that (a) accepts messages from a client bound for services on a server; (b) routes messages from a client to services on a server; and (c) is distinct from the downstream manager.

2) The meaning of the term "downstream manager" is a computer system component that (a) receives data from a multimedia data storage device; (b) sends a stream of multimedia data, both video and non-video, from a server to a client; and (c) is distinct from the upstream manager.

FN1. Although the parties language with respect to element (a) is not identical, the Court finds the

differences to be insubstantial. Because the Court agrees with nCUBE's proposed definition for elements (b) and (c), the Court will adopt nCUBE's definition for element (a).

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