

United States District Court,
C.D. California.

PROPAT INTERNATIONAL CORP,

v.

RPOST, INC.

No. SACV 03-1011-JVS(Mcx)

Jan. 14, 2005.

Duncan Malcolm McNeill, Duncan M. McNeill Law Offices, Daly City, CA, Eric Alan Hanscom, Eric A. Hanscom Law Offices, Los Angeles, CA, Timothy W. Johnson, Timothy W. Johnson Law Offices, Houston, TX, for Plaintiff.

Henry Ben-Zvi, Ben-Zvi and Associates, Santa Monica, CA, Steven J. Elkins, Ben-Zvi & Beck, Los Angeles, CA, for Defendants.

PROCEEDINGS (In Chambers): Order Re Markman (Claim Construction) Hearing

JAMES V. SELNA, District Judge.

Karla J. Tunis, Courtroom Deputy.

Plaintiff Propat International Corp. ("Propat") and Defendants RPost, International Ltd., RPost, Inc., RPost US, Inc., Kenneth Barton, Zafar Khan, and Terrence Tomkow (collectively "RPost") have submitted to the Court proposed claim constructions regarding certain language in United States Patent No. 6,182,219 ("Patent"). The relevant claim language is construed by the Court below.

Standard

Claim construction "begins and ends" with the claim language itself. *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed.Cir.2001). In construing the language of a patent claim for purposes of claim construction, the patent and its prosecution history are of paramount importance. *Burke, Inc. v. Bruno Ind. Living Aids, Inc.*, 183 F.3d 1334, 1340 (Fed.Cir.1999). Evidence extrinsic to this public record may only be consulted "if needed to assist in determining the meaning or scope of technical terms in the claims." *Pall Corp. v. Micron Separations, Inc.*, 66 F.3d 1211, 1216 (Fed.Cir.1995); *accord Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed.Cir.1996). The Court's starting point in determining the meaning of the terms at issue in this Motion is therefore the intrinsic evidence: the claim language, specification, and prosecution history of the patent.

Where the intrinsic evidence of a patent reveals that a patentee has acted as his own lexicographer with respect to a particular claim term-by creating a new word or assigning a new or different meaning to an

existing word, for example-"the definition selected by the patent applicant controls" and the term's special meaning is given full force. *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249 (Fed.Cir.1998). The lexicography, however, must "appear with reasonable clarity, deliberateness, and precision before it can affect the claim." *Id.* (internal citations omitted). The test for whether a special meaning is reasonably clear is whether the patent or its prosecution history "put a reasonable competitor or one reasonably skilled in the art on notice" that the patentee intended to redefine the claim language at issue in the manner asserted. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357 (Fed.Cir.1999), *cert. denied*, 529 U.S. 1037, 120 S.Ct. 1531, 146 L.Ed.2d 346 (2000).

Where, on the other hand, the patent applicant is not deemed a lexicographer, there is a "heavy presumption" that the words in the claims have their full ordinary or accustomed meaning. *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989 (Fed.Cir.1999). As the Federal Circuit has noted, "dictionaries, encyclopedias and treatises are particularly useful resources to assist the court in determining the ordinary and customary meanings of claim terms." *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (Fed.Cir.2002). If a particular claim term has both an ordinary meaning and a customary meaning known to one ordinarily skilled in the art, and these meanings conflict, the latter meaning prevails. *Karlin Tech v. Surgical Dynamics*, 177 F.3d 968, 971 (Fed.Cir.1999).

With these principles in mind, the Court now turns to the construction of the claim language at issue.

Discussion

The Patent, entitled "Apparatus and Method for Authenticating the Dispatch and Contents of Documents," discloses an apparatus and method for authenticating that a sender has sent certain information to a recipient. (Patent, Abstract.) The transmission, called the dispatch, is sent from the sender to the recipient via a dispatcher. After the dispatch is sent, the apparatus and method rely upon an "authenticator" to authenticate the dispatch. The Patent claims to be able to authenticate "all types of information being dispatched, such as that found on paper documents or within electronic documents and other electronic data." (Patent, col.4, ll.1-4.)

The Parties have presented to the Court eight terms and phrases to be construed. Each of these terms and phrases is found in many of the Patent's claims.

1. "Authentication-information"

Each party's proposed construction of "authentication-information" is as follows:

	Propat's Proposed Claim Construction	RPost's Proposed Claim Construction
"Authentication-information"	"Authentication-information is information that is associated with the contents of the dispatch by generating a representation of at least the elements a1, a2, and a3, the representation comprises one or more elements, each comprising a representation of one or more elements of the set A."	"Information that is used to authenticate the content, time, and destination of a dispatch"

Propat's proposed construction of the term "authentication-information" derives from the language of Claims 1 and 30. These claims state:

associating said dispatch-related information with said element a1 by generating authentication-information comprising a representation of at least said elements a1, a2 and a3, said representation comprising a set of one or more elements, each comprising a representation of one or more elements of said set A.

As further support for its construction of this term, Propat cites to similar language in the Patent specification.

RPost challenges Propat's proposed construction on the grounds that it is vague and uncertain and ignores the Patent language and the prosecution history. RPost asserts that the Court should adopt its construction because it is taken directly from arguments the patentee made during the Patent prosecution.

In interpreting this term, the Court starts with the particular claim language used in the Patent. *Interactive Gift Express, Inc. v. CompuServe Inc.*, 256 F.3d 1323, 1331 (Fed.Cir.2001). The Court, however, cannot ignore arguments made during the Patent's prosecution, which can provide insight into the inventor's intended scope of the patent and the meaning of its claims. Furthermore, a patentee who introduces a limitation during the patent prosecution cannot later disclaim the limitation in a subsequent infringement lawsuit. *Southwall Technologies, Inc. v. Cardinal IG Co.*, 54 F.3d 1570,1576 (Fed.Cir.1995).

The Court accepts Propat's construction of the term "authentication-information" for several reasons. First, the Court, rejects RPost's construction as too narrow. According to the Patent's claims and specification, "authentication-information" includes *at least* the elements a1, a2 and a3, which are defined, respectively, as the content of the transmission, the time of the transmission and the destination for the transmission. (Patent, Col. 3, ll. 1-8; col. 19, ll. 18-27.) Propat's proposed construction clearly accounts for this requirement. RPost's construction, on the other hand, specifically limits "authentication-information" to *only* the content, time and destination of a dispatch. Although the language of RPost's construction of this term does come directly from the prosecution history, the sentence from which RPost lifted the language for its construction also includes the words "at least" directly before the phrase "the contents, time and destination of the dispatch." (Amendment 1, at 10.) RPost's failure to include these words distinctly changes the meaning of this sentence and unacceptably narrows the definition of "authentication-information."

The Court also rejects RPost's argument that Propat's construction is vague and uncertain. RPost argues that the reference to set A in Propat's construction generates confusion because, according to RPost, set A need not contain any of the elements a1, a2 or a3, which, by Propat's definition, must be a part of the "authentication-information." The Court, however, finds RPost to be mistaken in its understanding of set A. According to the patent specification and Propat's construction, "authentication-information" need not contain a1, a2 and a3 in their original form. Rather "authentication-information" need only contain a *representation* of a1, a2 and a3, which makes it unnecessary for set A to always contain the original versions of these elements. Set A's definition as comprising a plurality of information elements a1, ..., an, therefore, does not conflict with Propat's construction of the term "authentication-information."

Accordingly, the Court adopts Propat's proposed construction of "authentication-information."

2. "Authenticator"

Each party's proposed construction of "authenticator" is as follows:

	Propat's Proposed Claim Construction	RPost's Proposed Claim Construction
"Authenticator"	"A sub-system that operates to authenticate a dispatch and functions as a non-interested third party with respect to the sender and the recipient."	"An entity that functions as a non-interested third party with respect to the sender and the recipient and generates and stores dispatch authentication information."

The Court agrees with RPost that the critical distinction between these two constructions is whether the authenticator stores the authentication-information in order to accomplish the authentication function. (RPost's Markman Hearing Brief, p. 10.)

Propat argues that, under principles of claim construction, i.e. claim differentiation, the "storage" limitation should not be read into the term "authenticator." RPost, on the other hand, cites to the prosecution history and contends that "[i]n arguing why the amendments supported the allowance of the patent, the patentee clearly and unequivocally confirmed that the authenticator stores the authentication-information in order to perform the authentication function." (*Id.*)

RPost is correct that limitations introduced during the prosecution in order to overcome prior art rejections may not be ignored when construing claims in the context of infringement actions. See *Elekta Instrument S.A. v. O.U.R. Scientific Int'l, Inc.*, 214 F.3d 1302, 1308 (Fed.Cir.2000) ("Claims that have been narrowed in order to obtain issuance over the prior art cannot later be interpreted to cover that which was previously disclaimed during prosecution.") As RPost points out, the prosecution history does state that "claim amendments were made such that all the independent claims require an authenticator that functions as a non-interested third party with respect to the sender and the recipient and generates *and stores the dispatch authentication information.*" (Amendment 2, at 5 (emphasis supplied).) Taken alone, this statement appears to require the Court to accept RPost's construction of "authenticator." If this declaration is read against all of the intrinsic evidence, however, it becomes clear that, in this phrase, the patent attorney erroneously used the word "stores" in place of the word "secures" and that this Court should, therefore, adopt Propat's construction.

The Court first addresses the issue of whether the attorney erred when he used the word "stores." When an attorney makes a clearly "erroneous remark [that would limit a claim] in the course of prosecution of an application," the actual language of the claims controls. *Intervet Am., Inc. v. Kee-vet Labs., Inc.*, 887 F.2d 1050, 1054 (Fed.Cir.1989). *See also* *Storage Tech. Corp. v. Cisco Sys., Inc.*, 329 F.3d 823, 832 (Fed.Cir.2003) ("The applicant's inaccurate statement cannot override the claim language itself, which controls the bounds of the claim.").

Here, the Court finds that the patent attorney clearly erred when using the word "stores" in the section of the prosecution history upon which RPost relies. As Propat notes, the patent attorney made the statement to which RPost cites as a procedural argument against the patent examiner's making the rejection final, rather than as an argument to overcome the PTO rejection itself. Thus, when making the statement containing the word "stores," the patent attorney was merely summarizing a portion of the Patent prosecution to date. The statement to which RPost refers, therefore, cannot be truly understood without reference to the statements it purported to summarize and the language of the independent claims that it alleged were amended to contain the "storage" limitation.

According to Propat, the phrase RPost cites summarizes a portion of the Amendment after the First Office Action. Interestingly, this section never uses the word "stores" or any derivation thereof to describe the

authenticator and its function. Rather the relevant section frequently uses the term "secures," which, as explained below, the Court finds is not synonymous with "stores." The complete absence of the word "stores" in this section leads the Court to conclude that the attorney erroneously used the word "stores" in place of the word "secures" when drafting his summary.

In addition, the language of the independent claims directly contradicts the attorney's use of "stores" in this section of the prosecution history. In the phrase RPost cites, the patent attorney states that the independent claims have been amended to require the authenticator to store the dispatch authentication-information. The word "stores," however, cannot be found in any of the independent claims. Rather, the independent claims only state that the authenticator has the means to *associate* dispatch-related information and to *secure* this information. Reference to a storage function only exists in several dependent claims.

Finally, the preferred embodiment contained in Figure 7, which depicts an alternative authenticator, does not contain a storage unit. This absence provides further support for the idea that the authenticator need not always store the authentication-information and, therefore, that such a limitation should not be included in the construction of this term.

Based on this information, the Court finds that patent counsel's use of the word "stores" in the section of the prosecution history cited by RPost is a clear and conspicuous error upon which no reasonable competitor would rely.

During the *Markman* hearing, RPost argued against this conclusion. In support of its argument, RPost relied upon two Federal Circuit cases, *Hockerson-Halberstadt, Inc. v. Avia Group Int'l Inc.*, 222 F.3d 951 (Fed.Cir.2000) and *Springs Window Fashions LP v. Novo Indus., L.P.*, 323 F.3d 989 (Fed.Cir.2003). After reviewing these cases, the Court finds them distinguishable from the situation at hand. First, in *Hockerson-Halberstadt*, unlike here, the Court found that no conspicuous error existed and that a reasonable competitor "would have no reason to believe that a mistake was made or that the inventor had meant anything other than what he said" in the patent history. 222 F.3d at 957. As noted above, the Court finds that, here, the patent attorney's use of the word "stores" was a conspicuous error and that, in light of the remainder of the prosecution history and the language of the claims, a competitor could not reasonably rely on the mistake.

Referencing *Hockerson-Halberstadt*, the *Springs* court also found no error in the prosecution history because there existed "no indication that the [purported error] was simply an inadvertent misstatement by the prosecuting attorney for which the applicant should be given a mulligan." 323 F.3d. at 996. Unlike in this case where a clear error was made once, in *Springs* the supposed misstatements were "detailed, consistent, and repeated." *Id.*

The result in *Springs* can be distinguished on another ground, as well. In *Springs*, the purported error involved statements that interpreted, rather than limited, the claim language. The court found that, because the supposed error in that case only interpreted the claim, it could not put a reader on notice of the error because it did not contradict anything in the specification or the claims. As a result, the court held that the purported error must be given force. The court indicated, however, that an error could be disregarded where, as here, the language at issue adds an additional limit to a claim because "a person of reasonable intelligence would not be misled into relying on [the] erroneous statement' ... because the statement [would likely be] contrary to the plain language of the claims and specification as well as other statements in the same document." *Id.*

Based on the foregoing, the Court determines that it must disregard the portion of the Patent history upon which RPost relied to support its construction and instead follow the language of the claims to guide its interpretation of the term "authenticator."

The language of the claims and the specification indicate that the construction of the term "authenticator" should not include RPost's "storage" limitation because the Patent teaches that storage is not a required element of the "authenticator." In fact, on several occasions, the specification explicitly states that the storage unit is optional. (Patent, col. 4, ll. 37-39; col. 6, ll. 66-67; col. 8, ll. 50-53.) Also, as noted above, contrary to RPost's assertion, not all of the embodiments included in the Patent contain a storage unit as part of the authenticator. FN1 (See, e .g., Patent, Fig. 7.) As the Federal Circuit notes, it requires "highly persuasive evidentiary support" to read a preferred embodiment out of a patent. Rheox, Inc. v. Entact, Inc., 276 F.3d 1319, 1327 (Fed.Cir.2000) (internal quotes deleted). The present record does not support such a result.

Finally, construing the "authenticator" to always include a storage unit would violate the claim construction principle of claim differentiation. This doctrine embodies the idea that ordinarily the language of one claim should not be interpreted to make any other claim identical in scope. 5A Chisum on Patents, s. 18.03[6] (1999). Were this Court to include "storage" in the construction of "authenticator," dependent claims 16, 46, 67, 80 and 87 would become no different from their respective independent claims.

In conclusion, the Court adopts Propat's construction of the term "authenticator."

3. "Dispatcher"

Each party's proposed construction of "dispatcher" is as follows:

	Propat's Proposed Claim Construction	RPost's Proposed Claim Construction
"Dispatcher"	"A sub-system that operates to communicate a dispatch."	"A party that is different from the sender and the recipient and that operates to communicate a dispatch from the sender to the recipient."

Both parties agree that a "dispatcher" operates to communicate a dispatch. The parties disagree as to whether a "dispatcher" must be separate from the sender and the recipient.

According to Propat, its proposed construction of "dispatcher," unlike RPost's construction, does not unnecessarily read limitations into the term that are not found in the claims. Propat also takes issue with RPost's elevation of the "dispatcher" to the level of a "party."

In support of its construction, RPost cites language in the Patent, specifically the phrase, "certain information has been transmitted *from a sender via a dispatcher to a recipient.*" (Patent, col. 19, ll. 13-15 [emphasis added].) RPost argues that Propat's construction is overbroad because it does not require the dispatcher to be distinct from both the sender and the receiver.

The Court finds that a common sense interpretation of the phrase "from a sender via a dispatcher to a recipient" requires the dispatcher to be distinct from the sender and the recipient. Propat's construction does not contain such a limitation, but, rather, appears to permit the sender or the recipient to serve as the

dispatcher. Because such a result conflicts with the teaching of the specification, the Court must reject Propat's construction of "dispatcher."

RPost's construction, on the other hand, does require the "dispatcher" to be distinct from the sender and the recipient. The Court, therefore, is inclined to adopt RPost's construction of this term. The Court, however, finds that RPost's construction of "dispatcher" only as a "party" is too limited, especially in light of claims 8 and 36, which allow a dispatcher to be among other things, a facsimile machine or a modem, neither of which is a "party." For this reason, the Court cannot adopt RPost's construction of "dispatcher" as it currently stands. Instead, the Court adopts RPost's construction of "dispatcher" with one modification: "A party *or device* that is different from the sender and the recipient and that operates to communicate a dispatch from the sender to the recipient."

4. [Authenticator] "functioning as a non-interested third party with respect to the sender and the recipient"

Each party's proposed construction of "[Authenticator] 'functioning as a non-interested third party with respect to the sender and the recipient' " is as follows:

	Propat's Proposed Claim Construction	RPost's Proposed Claim Construction
[Authenticator] "functioning as a noninterested third party with respect to the sender and the recipient"	"The authenticator functions like an unbiased party would function with respect to the sender and the receiver, in carrying out the operations of the authenticator."	"An entity that is not associated with either the sender or the recipient"

Propat proposes its construction of this term on the grounds that it takes into account the hierarchy of sources identified by the Federal Circuit. Propat argues that RPost's construction does not address these sources, but, rather, improperly seeks to engage in phrase substitution in an attempt to avoid infringement. RPost, on the other hand, argues that its construction is proper because it stems from the prosecution history. The Court adopts a construction that reflects both Propat's and RPost's proposed constructions.

Standing alone, the Court finds that RPost's construction cannot logically define the phrase "functioning as a non-interested third party with respect to the sender and the recipient." An entity that is not associated with the sender or the recipient could technically operate in a way that is biased towards either the sender or the receiver. The room for potentially biased operation in RPost's definition renders it incapable of serving alone as the construction of this phrase.

Propat's construction, on the other hand, fits much more closely with the concepts contained within the phrase "functioning as a non-interested third party with respect to the sender and the recipient." Having an interest in a particular outcome can lead a person or entity to exhibit bias towards that outcome. On the flip side, an individual or entity that is not interested in an outcome is more likely to act in an unbiased manner. The Court, therefore, finds Propat's construction more fitting than RPost's, but, as explained below, in light of the prosecution history, also not completely appropriate.

In Amendment 1 contained in the prosecution history, the patentee argues that his invention overcomes prior art by "employing an independent, non-interested authenticator not associated with either the sender or the recipient to generate the evidence of the dispatch and secure the evidence." (Amendment 1, p. 12.) Later in

this document, the patentee again refers to an authenticator that is "not associated with either the sender or the recipient." (E.g. Amendment 1, p. 15.) The Court finds that it cannot ignore this language in the prosecution history. *See Southwall*, 54 F.3d at 1579 ("Arguments made during prosecution regarding the meaning of a claim term are relevant to the interpretation of that term in every claim of the patent absent a clear indication to the contrary."). According to the Federal Circuit, if, in the prosecution history, a claim has been narrowed in order to obtain issuance over prior art, these limitations cannot be dismissed during an infringement action. *Elekta Instruments*, 214 F.3d at 1308. The construction of the phrase "functioning as a non-interested third party with respect to the sender and the recipient," therefore, must take into account the phrase "not associated with either the sender or the recipient."

It is clear from Amendment 1 that patent counsel attempted to distinguish *Bouricius et al.* on the basis that, in that invention, the sender and recipient participate in the authentication process. Under *Bouricius et al.*, "both the sender and the recipient play an *active role*, that is, they both participate and cooperate in the evidence generation process." (Amendment 1, p. 11 [emphasis in the original]; *accord id.* at 16 ["mutual cooperation of the sender and recipient ... in the process"].) In light of these statements and the remainder of the "Remarks" section, it is readily apparent that the phrase "not associated with either the sender or the recipient" is not intended to convey a broad concept of lack of association but, rather, is merely shorthand for the concept of non-participation of the sender and the recipient in the process performed by the authenticator. FN2

Based on the foregoing, the Court adopts a claim construction that reflects the constructions proposed by both Propat and RPost: "The authenticator functions like an unbiased party would function with respect to the sender and the receiver, in carrying out the operations of the authenticator, and carries out its authentication function without the participation of the sender or the recipient."

The Court notes that this construction gives due weight to the prosecution history while also honoring the claims differentiation doctrine FN3, in that it does not render dependent claims 29, 59, 70, 81, and 89 superfluous. To be sure, the doctrine only creates a presumption; it is not a rigid rule. *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1376 (Fed.Cir.2001). On numerous occasions, the Federal Circuit has held that the claim differentiation doctrine must give way when a patent term's construction based on intrinsic evidence, including the prosecution history, compels the conclusion that different claims have identical scopes. *See, e.g., Fantasy Sports Properties, Inc. v. Sportsline.com, Inc.*, 287 F.3d 1108, 1116 (Fed.Cir.2002) (holding that the presumption of claim differentiation "is overcome by Fantasy's disclaimer of subject matter in the prosecution history"). As discussed above, a full appreciation of Amendment 1, however, does not require abandonment of the claim differentiation doctrine, nor can it be said that Amendment 1 requires anything more than an explicit negation of the sender's and the recipient's participation in the authentication process.

5. "Providing" and "Provided"

Each party's proposed constructions of "Providing" and "Provided" are as follows:

	Propat's Proposed Claim Construction	RPost's Proposed Claim Construction
"Providing" and "Provided"	"Supplying; making available" and "Made available; supplied"	"Supplying by a party to another party" and "Supplied by a party to another party"

Propat proposes that the terms "provided" and "providing" be given the their ordinary and usual meanings,

as defined by Random House Webster's Unabridged Dictionary. Propat contends that RPost's proposed construction includes an unnecessary limitation.

RPost argues that the Court should not adopt Propat's proposed construction because it permits any party to provide information to any party, including itself.

The Court adopts Propat's construction because it sees no reason to include the limitation proposed by RPost. In fact, the Patent specification explicitly teaches against such a limitation. On several occasions, the Patent describes situations in which information is provided without the limitation of one party to another party, i.e. from one party to itself. (*See, e.g.*, Patent, col. 7, ll. 12-14.) RPost's construction, therefore, conflicts with the language of the Patent and must be rejected.

Accordingly, Propat's constructions of "provided" and "providing" are adopted.

6. "**Representation**"

Each party's proposed constructions of "Representation" are as follows:

	Propat's Proposed Claim Construction	RPost's Proposed Claim Construction
"Representation"	"A 'representation' of an element or elements comprises any number of any combination in any form of: the elements themselves; identical or equivalent elements such as copies thereof or information describing, or identifying these elements; information expressive as a mathematical function of on or more of these elements and so forth. Each combination may be maintained jointly, or separately, as desired. The representation can comprise a representation of one or more of the above."	"An image or likeness of something"

In support of its proposed construction, Propat argues that the patentee has acted as his own lexicographer for the term "representation." RPost, on the other hand, argues that Propat's construction is vacuous and would rob the term of all meaning. RPost seeks, instead, for this Court to adopt the common and ordinary meaning of "representation."

Propat takes its construction of "representation" directly from a section of the Patent specification in which, the Court finds, the patentee acted as his own lexicographer. In the Court's opinion, the Patent specification clearly and deliberately assigns a special meaning to this term, and the Court must give it full force. *Renishaw*, 158 F.3d at 1249.

In addition, the Court finds that the construction proposed by RPost is too narrow because it does not accommodate embodiments of the Patent where the representations include the results of mathematical functions, which are neither images nor likenesses. For this reason, the Court must reject RPost's proposed construction.

The Court, therefore, adopts Propat's construction of "representation."

7. "Securing"

Each party's proposed construction of "securing" is as follows:

	Propat's Proposed Claim Construction	RPost's Proposed Claim Construction
"Securing"	"Operating on selected information so that information is resistant to or indicative of tampering"	"Provided in a manner that is resistant to or indicative of tampering"

Both Propat and RPost agree that the process of "securing" renders the information resistant to or indicative of tampering. Beyond that, the parties differ. Propat argues that its construction takes into account the full scope of all of the Patent claims and the entirety of the intrinsic evidence. RPost contends Propat's construction is wholly undefined and vague and that its own construction is proper because it is consistent with the Patent language and prosecution history. According to RPost, the prosecution history makes clear that the securing operation is storing. In other words, in RPost's estimation, securing is synonymous with storing.

First, the Court disagrees with RPost on this last issue.FN4 As mentioned above, the Court finds that the function of securing is not synonymous with storing. Such a finding would contradict the language of the Patent. For example, the Patent specification states, "If the stored information is also secured ..., the controller 'unsecures' them." (Patent, col.8, ll.2-5.) Clearly, the process of storing information is separate from that of securing information.

Next, the Court finds Propat's construction of "securing" more appropriate because the intrinsic evidence, including claims 1 and 30, indicates that "securing" may require affirmative operations, e.g. mathematical algorithms, on part of the authentication-information. Because RPost failed to reference such operations, the Court elects not to adopt its construction.

Finally, the Court disagrees with RPost that Propat's term "selected information" is so broad that it could mean anything. Because a term must be read in the context of the claims in which it is found, the Court finds that the "selected information" to be secured can easily be determined by reference to surrounding claim language. In most of the claims containing the term "securing," the "selected information" will be "at least part of the authentication-information [or authentication data]." (See, e.g. Patent, Claims 1, 16, 46, 80, 82.)

Accordingly, the Court adopts Propat's construction of "securing."

Conclusion

The Court construes the disputed terms as follows:

TERM	CONSTRUCTION
"Authentication-information"	"Authentication-information is information that is associated with the contents of the dispatch by generating a representation of at least the elements a1, a2, and a3, the representation comprises one or more elements, each comprising a representation of one or more elements of the set A."
"Authenticator"	"A sub-system that operates to authenticate a dispatch and functions as a non-

	interested third party with respect to the sender and the recipient."
"Dispatcher"	"A party or device that is different from the sender and the recipient and that operates to communicate a dispatch from the sender to the recipient."
[Authenticator] "functioning as a noninterested third party with respect to the sender and the recipient"	"The authenticator functions like an unbiased party would function with respect to the sender and the receiver, in carrying out the operations of the authenticator, and carries out its authentication function without the participation of the sender or the recipient."
"Providing" and "Provided"	"Supplying; making available" and "Made available; supplied"
"Representation"	"A 'representation' of an element or elements comprises any number of any combination in any form of: the elements themselves; identical or equivalent elements such as copies thereof or information describing, or identifying these elements; information expressive as a mathematical function of on or more of these elements and so forth. Each combination may be maintained jointly, or separately, as desired. The representation can comprise a representation of one or more of the above."
"Securing"	"Operating on selected information so that information is resistant to or indicative of tampering"

FN1. That Figure 7 is indeed an embodiment of the invention is confirmed in the text of the Patent. (Patent, col.4, ll.60-63.)

FN2. Indeed, one could conclude that the express limitation on "associated" is itself sufficient to convey this concept of non-participation. For example, the authenticator is described as "not associated with either the sender or the recipient *to generate the evidence of the dispatch and secure the evidence, thereby playing an active and crucial role in the evidence generation process.*" (Amendment 1, p. 12 [emphasis supplied]; *accord id.* at pp. 15, 16.)

FN3. As explained above, under claim differentiation, one claim should not be interpreted so as to make another claim identical in scope. *Chisum*, s. 18.03[6].

FN4. The Court notes that RPost's construction of "securing" never refers to storing. Therefore, the connection between RPost's arguments regarding the synonymy of storing and securing, and RPost's proposed construction of the term is wholly unclear.

C.D.Cal.,2005.

Propat Intern. Corp. v. RPost, Inc.

Produced by Sans Paper, LLC.