

United States District Court,
S.D. California.

AMERICAN CALCAR INC., a Delaware corporation,
Plaintiff.

v.

BMW OF NORTH AMERICA, LLC, a New Jersey limited liability company,
Defendant.

No. 04cv0614 DMS (LSP)

June 1, 2005.

Frederick S. Berretta, Knobbe Martens Olson and Bear, San Diego, CA, for Plaintiff.

Joseph P. Lavelle, Thomas M. Dunham, Howrey LLP, Washington, DC, Russell B. Hill, William C. Rooklidge, Howrey Simon Arnold and White, Irvine, CA, for Defendant.

ORDER CONSTRUING PATENT CLAIMS

DANA M. SABRAW, District Judge.

In this intellectual property case, Plaintiff American Calcar, Inc. (ACI) alleges that Defendant BMW of North American, LLC infringed twelve of its patents. The patents "generally focus[] on the manner in which a driver interfaces with the automobile for controlling automobile functions and providing useful information to the driver." Pl.'s Opening Br. at 2. On May 6, 2005, the Court held a hearing pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), to construe the disputed claim terms of United States Patent Numbers 6,009,355; 6,282,464; 6,330,497; 6,438,465; 6,459,961; 6,542,795; 6,587,758; 6,587,759; 6,148,261; 6,529,824; 6,275,231; and 6,703,944. The parties agreed that one independent claim for each of the twelve asserted patents, and the associated dependent claims, would serve as representative claims for each asserted patent. The Court commends the attorneys for a helpful tutorial and an excellent presentation of the legal issues. After careful consideration of the arguments of counsel, the joint appendix (JA), and the applicable law, the Court has construed the claims as indicated in the attached chart (Court's Exhibit 1).

DISCUSSION

Claim construction is an issue of law. *Markman*, 517 U.S. at 372. "The construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims." *Gart v. Logitech, Inc.*, 254 F.3d 1334, 1339 (Fed Cir.2001) (quoting *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed.Cir.2000) (internal quotations and citation omitted)).

For the most part, the Court agrees with Plaintiff that the ordinary meaning of the term provided a sufficient

and accurate statement of the invention. The claims are not technical, and indeed the patents are intended to teach the average driver how to use the sophisticated features of the vehicle. A jury will generally be familiar with the features of an automobile (such as climate control, navigation aids, and entertainment systems). In those instances when the Court agreed with the Plaintiff's view that no construction was necessary, the Court has followed "[t]he general rule ... that terms in the claim are to be given their ordinary and accustomed meaning." *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1362 (Fed.Cir.1999); *accord Teleflex, Inc. v. Ficoso N. Am. Corp.*, 299 F.3d 1313, 1324-26 (Fed.Cir.2002). No further discussion is necessary on those claims.

The Court briefly explains its reasons for its interpretation of the following terms: "advisory," "in response," "personal digital communication device," "specified maximum number of listings," "distance," "defined distance," and "reference distance."

1. " *Advisory* "

Claims 8, 9, 11, and 12 of the '464 patent describe a "method for use in a system for providing messages of varying importance levels." The patent categorizes and prioritizes messages into a three-level hierarchy of urgency. The importance level is directed to the degree of attention warranted by the message and is accordingly directed to either the central, front, or rear speakers, depending upon the classification. An urgent message requires immediate action.

The Court agrees with Defendant that, in the context of this patent as a whole, the mid-level "message" is an "advisory." In other words, the '464 patent defines "advisory" as a specific type of "message"-one that requires the driver to take some action at some time (though not immediately). *Bell Atlantic Network Serv. v. Covad Comm. Group, Inc.*, 262 F.3d 1258, 1268 (Fed.Cir.2001) (specifications "can provide *guidance* as to the meaning of the claims, thereby dictating the manner in which the claims are to be construed, *even if the guidance is not provided in explicit definitional format.* ") (emphasis added) (quoting *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1344 (Fed.Cir.2001)). The patent as a whole distinguished "advisory" messages from "tips," which are informational hints that do not require the driver to take an action.

2. " *In Response* "

Both Claim 12 of the '961 patent and Claim 15 of the '759 patent relate to the system displaying information about a notable condition (*e.g.*, low fuel or engine overheating). Defendant contends that the phrase "in response" means "something constituting a reply" and "therefore requires a preceding triggering event." Def.'s Opening Br. at 18 (quoting Merriam-Webster's Collegiate Dictionary 998 (10th ed.1997)). Defendant argues that the claim must be construed to incorporate a specific temporal sequence. *Id.* at 18-20.

The Court agrees with Plaintiff that the patent does not limit itself to a particular order and that no interpretation is necessary. That is, the tip option could appear before or be displayed simultaneously with (or in addition to) the notable condition. *Cf. Mantech Envtl. Corp. v. Hudson Envtl. Serv., Inc.*, 152 F.3d 1368, 1375 (Fed.Cir.1998). Thus, the Court follows the general rule that " '[u]nless the steps of a method actually recite an order, the steps are not ordinarily construed to require one.' " *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369 (Fed.Cir.2003) (quoting *Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1342-43 (Fed.Cir.2001)). Plaintiff's invention was distinguishable from the prior art because it provided the driver with an option to select to retrieve additional information about the condition. *See* JA 1997-98.

3. " *Personal Digital Communicator Device* "

Claim 26 of the '261 patent uses the phrase "personal digital communicator device." Defendant argues that the term is defined in the patent to refer to the global positioning system (GPS) used for navigation. Defendant contends that the preamble expressly defines "personal digital communicator device" as deriving from a source external to the automobile. For example, a CD-ROM stores a finite amount of information, but the GPS receives real time navigation information from a remote source. Def.'s Opening Br. at 28-29 (quoting JA 3332 ('261 at 2:53-63)).

The Court agrees with Plaintiff that the preamble does not limit the term. The limitations of Claim 26 describe a complete invention without any reference to the preamble. "If the preamble adds no limitations to those in the body of the claim, the preamble is not itself a claim limitation and is irrelevant to proper construction of the claim." *IMS Tech., Inc. v. Haas Automation, Inc.*, 206 F.3d 1422, 1434 (Fed.Cir.2000). Here, the preamble is not limiting because the "patentee define[d] a structurally complete invention in the claim body and use[d] the preamble only to state a purpose or intended use for the invention." *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed.Cir.2002) (quoting *Rowe v. Dror*, 112 F.3d 473, 478 (Fed.Cir.1997)). The "preamble language merely extoll[s] benefits or features of the claimed invention." *Id.* at 809. The claim alone explains the device with all the limitations necessary to understand the invention.

4. " *Specified Maximum Number of Listings* "

Claim 8 of the '824 patent sets forth a method for storing map data and non-map data. Non-map data includes items such as restaurants or gas stations in the area. Defendant contends that the context of the claim indicates that the user must request a specific number of entries, e.g., five listings for French restaurants. Defendant cites the specification as supporting this interpretation because there is a data field for the user to fill in the "maximum number of listings to be provided by the data supplier ." JA 3536 ('824 at 13:66-14:20). By contrast, Plaintiff contends the user makes the request for listings, but the data provider can automatically return a preset maximum number of listings.

The Court rejects Defendant's proposed interpretation because it attempts to add a limitation that the user specify a number of listings for the data provider to return. Defendant has cited JA 2243-44 as support for its view that Plaintiff limited its terminology to distinguish the invention from the DeLorme prior art. This citation, however, does not support the Defendant's argument. The Court found no statement by the inventor to narrow the claim by requiring the user to specify the maximum number of listings that the user would like to receive.

5. " *Distance.*" " *Defined Distance.*" and " *Reference Distance* "

Claim 1 of the '4 patent deals with the adaptive cruise control technology which allows the automobile to maintain a safe distance from other vehicles and objects. The parties dispute the terms that explain the distance element, namely, the "distance between the [driver's] vehicle and a detectable object outside the vehicle," and "the defined distance," which cannot be "smaller than a reference distance." (The driver can set the "defined distance" to be equal to the comfort zone set by the manufacturer's "reference distance.") Both parties acknowledge that distance can be a separation in time *or* of space. Plaintiff argues that no construction is necessary, but the Court agrees with Defendant that the intrinsic evidence shows these terms have specific meanings suggesting physical distance.

The Court concludes that the specification teaches that the "defined distance" and "reference distance" are terms that refer to the "comfort zone" around the vehicle on all sides. JA at 3633 (Fig.8); JA 3647 (9:40 to 60). The inventor implied that distance referred to a spatial measurement. Bell Ati, 262 F.3d at 1268 ("the specification may define claim terms 'by implication' such that the meaning may be 'found in or ascertained by a reading of the patent documents.' ") (quoting Vitronics Corp. v. Conceptronic Inc., 90 F.3d 1576, 1582, 1584 n. 6 (Fed.Cir.1996)). Finally, the Court is persuaded by Defendant's argument at the *Markman* hearing that the technology allows the comparison of the "reference distance" and the "defined distance," thus each of these terms has to relate to a spatial or physical measurement.

CONCLUSION

For the reasons stated above, the Court hereby construes all disputed claims in this patent litigation as indicated in the attached Court's Exhibit 1. FN1

FN1. The term that is being construed is indicated in bold text, followed by the Court's construction in brackets and bold text.

IT IS SO ORDERED.

COURT'S CLAIM CONSTRUCTION CHART

American CalCar, Inc. v. BMW of North American, LLC, 04-cv-0614-DMS (LSP)

Court's Exhibit 1 to Order Construing Patent Claims

Terms for Construction in U.S. Patent No. 6,009,355:FN1

FN1. This chart is sorted by the three asserted patent families in this lawsuit designated "I," "II," and "III" for convenience, and by order of issuance within each family as follows: I-'355, '464, '497, '465, '961, '795, '758, '759; II-'261; '824; and III-'231, "4.

For simplicity, the parties included proposed constructions of the claim language in the claim wherein the terms for construction first appear. Unless otherwise noted, the parties agreed that the Court's claim construction for any given term shall apply to the term throughout the other asserted claims of the particular patent as well as the asserted claims in related patents of the same family.

Verbatim Claim Language	Court's Claim Construction
21. A method for use in a system in a vehicle for accessing information about a given aspect of said vehicle comprising:	21. A method for use in a system in a vehicle for accessing information [knowledge or intelligence] about a given aspect [part, accessory, capability, feature, or function] of said vehicle comprising:
displaying at least one option which is associated with said given aspect of said	displaying at least one option which is associated with [related to] said given aspect of said vehicle, the at least one

vehicle, the at least one option indicating a first status;	option indicating a first status;
selecting the at least one option, the selected at least one option indicating a second status;	selecting the at least one option, the selected at least one option indicating a second status;
providing the content of said selected at least one option; and	providing the content [a preview or purpose (of the selected option)] of said selected at least one option; and
activating said selected at least one option to access said information, the activated option indicating a third status.	activating said selected at least one option to access said information, the activated option indicating a third status.

23. The method of claim 21 wherein said second status is indicated by a highlight on said selected option in a first color.

23. The method of claim 21 wherein said second status is indicated by a highlight on said selected option in a first color.

Terms for Construction in U.S. Patent No. 6,282,464:

Verbatim Claim Language	Court's Claim Construction
8. A method for use in a system for providing messages of varying importance levels in a vehicle, the system including a plurality of audio output devices for providing the messages, the audio output devices being disposed in different areas in the vehicle, the method comprising:	8. A method for use in a system for providing messages of varying importance levels in a vehicle, the system including a plurality of audio output devices for providing the messages, the audio output devices being disposed in different areas in the vehicle, the method comprising:
assigning the audio output devices to a plurality of groups, each group including one or more of the audio output devices, each group of audio output devices corresponding to a respective one of the importance levels of the messages; and	assigning the audio output devices to a plurality of groups, each group including one or more of the audio output devices, each group of audio output devices corresponding to a respective one of the importance levels of the messages; and
providing a message using a group of audio output devices corresponding to an importance level of the message.	providing a message using a group of audio output devices corresponding to an importance level of the message.
9. The method of claim 8 wherein the group of audio output devices includes at least one audio output device disposed opposite a seat in the vehicle such that the message is provided toward a front part of a person occupying the seat.	9. The method of claim 8 wherein the group of audio output devices includes at least one audio output device disposed opposite a seat in the vehicle such that the message is provided toward a front part of a person occupying the seat.
11. The method of claim 9 wherein a second group of audio output devices includes at least a second audio output device disposed on a door in the vehicle, the message being more important than a second message provided using the at least second audio output device.	11. The method of claim 9 wherein a second group of audio output devices includes at least a second audio output device disposed on a door in the vehicle, the message being more important than a second message provided using the at least second audio output device.
12. The method of Claim 11 wherein the second message includes an advisory.	12. The method of Claim 11 wherein the second message includes an advisory [a message requiring actions to be taken sometime, but not immediately] .

Terms for Construction in U.S. Patent No. 6,330,497:

Verbatim Claim Language	Court's Claim Construction
30. A method for operating a device to perform a function in a vehicle comprising:	30. A method for operating a device to perform a function in a vehicle comprising:
displaying at least one option which is associated with the function of the vehicle, the at least one option indicating a first status	displaying at least one option which is associated with [related to] the function of the vehicle, the at least one option indicating a first status
selecting the at least one option, the selected at least one option indicating a second status	selecting the at least one option, the selected at least one option indicating a second status
providing information concerning the selected at least one option	providing information concerning the selected at least one option
activating the selected at least one option, the activated option indicating a third status; and causing the device to perform the function after the selected at least one option is activated.	activating the selected at least one option, the activated option indicating a third status; and causing the device to perform the function after the selected at least one option is activated.
32. The method of claim 30 wherein the second status is indicated by a highlight on the selected at least one option in a first color.	32. The method of claim 30 wherein the second status is indicated by a highlight on the selected at least one option in a first color.

Terms for Construction in U.S. Patent No. 6,438,465:

Claim Language	Court's Claim Construction
10. A method for use in a system in a vehicle comprising:	10. A method for use in a system in a vehicle comprising:
storing in a memory a plurality of displays having predetermined contents, the plurality of displays being associated with a plurality of aspects of the vehicle;	storing in a memory a plurality of displays having predetermined contents, the plurality of displays being associated with a plurality of aspects of the vehicle;
receiving an entry of a query to conduct a search concerning an aspect of the vehicle;	receiving an entry of a query to conduct a search concerning an aspect of the vehicle;
receiving from an input device a selection of a result of the search;	receiving from an input device a selection of a result of the search;
in response to the selected result, identifying at least one of the plurality of displays which is associated with the aspect of the vehicle; and	in response to the selected result, identifying at least one of the plurality of displays which is associated with the aspect of the vehicle; and
showing the at least one display.	showing the at least one display.

Terms for Construction in U.S. Patent No. 6,459,961:

Claim Language	Court's Claim Construction
12. A method for use in a system in a vehicle, the system being responsive to a notable condition, the system including a display element, the method comprising:	12. A method for use in a system in a vehicle, the system being responsive to a notable condition, the system including a display element, the method comprising:
providing information concerning at least one device	providing information concerning at least one device

in the vehicle;	in the vehicle;
in response to the notable condition, interrupting a provision of the information concerning the at least one device with a provision of information concerning the notable condition,	in response to the notable condition, interrupting a provision of the information concerning the at least one device with a provision of information concerning the notable condition,
and providing an option for selection on the display element, thereby prompting a user to select the option;	and providing an option for selection on the display element, thereby prompting a user [moving a user to action] to select the option;
receiving a selection of the option; and	receiving a selection of the option; and
in response to the selection of the option, providing selected information for coping with the notable condition.	in response to the selection of the option, providing selected information for coping with the notable condition.
14. The method of claim 12 wherein the at least one device includes a speedometer.	14. The method of claim 12 wherein the at least one device includes a speedometer [an instrument for displaying current speed] .
17. The method of claim 12 wherein the at least one device includes a temperature gauge.	17. The method of claim 12 wherein the at least one device includes a temperature gauge [an instrument that indicates current temperature] .

Terms for Construction in U.S. Patent No. 6,542,795:

Verbatim Claim Language	% Court's Claim Construction
12. A method for use in a system in a vehicle comprising:	12. A method for use in a system in a vehicle comprising:
receiving a request concerning an aspect of the vehicle, the request including a user description of the aspect of the vehicle	receiving a request concerning an aspect of the vehicle, the request including a user description of the aspect of the vehicle
selecting, based on the user description, a display which contains at least one option for selection, the at least one option pertaining to the aspect of the vehicle showing the selected display; and	selecting, based on the user description, a display which contains at least one option for selection, the at least one option pertaining to the aspect of the vehicle showing the selected display; and
allowing a selection of the at least one option on the selected display.	allowing a selection of the at least one option on the selected display.

Terms for Construction in U.S. Patent No. 6,587,758:

Verbatim Claim Language	Court's Claim Construction
1. A method for use in a system for adjusting a function in a vehicle, the system including a display element, the function being operated based on a preferred setting thereof, the method comprising:	1. A method for use in a system for adjusting a function in a vehicle, the system including a display element, the function being operated based on a preferred setting thereof, the method comprising:
detecting an adjustment of the function based on comparison of the preferred setting with a current setting of the function	detecting an adjustment of the function based on comparison of the preferred setting with a current setting of the function
providing, on the display element, an option in response to a detection of the adjustment	providing, on the display element, an option in response to a detection of the adjustment
receiving a selection of the option	receiving a selection of the option

in response to the selection of the option, adopting the current setting as a new preferred setting of the function; and	in response to the selection of the option, adopting the current setting as a new preferred setting of the function; and
operating the function based on the current setting.	operating the function based on the current setting.

Terms for Construction in U.S. Patent No. 6,587,759:

Verbatim Claim Language	Court's Claim Construction
15. A method for use in a system in a vehicle, the system including a display element, the method comprising:	15. A method for use in a system in a vehicle, the system including a display element, the method comprising:
providing information concerning at least one device in the vehicle;	providing information concerning at least one device in the vehicle;
identifying a notable condition of the vehicle;	identifying a notable condition of the vehicle;
providing an alert indicating the notable condition, a provision of the information concerning the at least one device being interrupted by the alert; and	providing an alert indicating the notable condition, a provision of the information concerning the at least one device being interrupted by the alert; and
providing an option on the display element in response to the notable condition,	providing an option on the display element in response to the notable condition,
thereby prompting a user to select the option to obtain information to cope with the notable condition.	thereby prompting a user [moving a user to action] to select the option to obtain information to cope with the notable condition.
22. The method of claim 15 the at least one device includes a temperature gauge.	22. The method of claim 15 the at least one device includes a temperature gauge [an instrument that indicates current temperature] .

Terms for Construction in U.S. Patent No. 6,148,261:

Verbatim Claim Language	Court's Claim Construction
26. A personal digital communicator device comprising:	26. A personal digital communicator device comprising:
a GPS receiver for receiving GPS signals	a GPS receiver for receiving GPS signals
a processor to determine the device location based on the GPS signals, the processor being programmed to format requests for specified data regarding unspecified locations within a geographic area from a data provider and to process responsive data to the requests received by a communications means, the responsive data including geographic location data;	a processor to determine the device location based on the GPS signals, the processor being programmed to format requests for specified data regarding unspecified locations within a geographic area from a data provider and to process responsive data to the requests received by a communications means, the responsive data including geographic location data;
the communication means providing a means for requesting and receiving map information from digital map storage devices; and	the communication means [the structure corresponding to the claimed function is shown in Figure 4 of the ' 261 Patent and consists of a processor, data bus (24) and one or more of modem (29N), cellular transceiver (29C), radio transceiver (29D) or infrared port (29E)] providing a means for requesting and receiving map information from digital

	map storage devices; and
a display for displaying external map information received from digital map storage devices and the device location.	a display for displaying external map information received from digital map storage devices and the device location.

Terms for Construction in U.S. Patent No. 6,529,824:

Verbatim Claim Language	Court's Claim Construction
8. A method for storing and transmitting geo-relevant information comprising:	8. A method for storing and transmitting geo-relevant information comprising:
storing map data for geographic areas and non-map data, with the non-map data in linked data fields concerning specific locations within the geographic areas;	storing map data for geographic areas and non-map data, with the non-map data in linked data fields concerning specific locations within the geographic areas;
receiving a request from a user for a specified maximum number of listings of non-map data;	receiving a request from a user for a specified maximum number of listings of non-map data;
searching the map data and the non-map data to obtain specific map data and non-map data in response to the request; and	searching the map data and the non-map data to obtain specific map data and non-map data in response to the request; and
automatically transmitting the specific map data and up to the maximum number of listings of non-map data to the user.	automatically transmitting the specific map data and up to the maximum number of listings of non-map data to the user.

Terms for Construction in U.S. Patent No. 6,275,231:

Verbatim Claim Language	Court's Claim Construction
40. A method for use in a system in a vehicle comprising:	40. A method for use in a system in a vehicle comprising:
receiving signals from a plurality of sources, the plurality of sources providing a plurality of entertainment programs, respectively, the entertainment programs being classified in a plurality of categories based on contents of the entertainment programs;	receiving signals from a plurality of sources, the plurality of sources providing a plurality of entertainment programs, respectively, the entertainment programs being classified in a plurality of categories based on contents of the entertainment programs;
deriving, from the received signals, information identifying at least respective categories of entertainment programs provided by the sources; and	deriving, from the received signals, information identifying at least respective categories of entertainment programs provided by the sources; and
presenting indicators representing respective ones of the plurality of sources, each indicator being selectable to receive entertainment programs from the source represented by the indicator, the indicators being arranged according to the respective categories of entertainment programs provided by the sources represented thereby.	presenting indicators representing respective ones of the plurality of sources, each indicator being selectable to receive entertainment programs from the source represented by the indicator, the indicators being arranged according to the respective categories of entertainment programs provided by the sources represented thereby.
44. The method of claim 40 wherein at least one of the indicators indicates a status concerning whether the at least one indicator has been selected.	44. The method of claim 40 wherein at least one of the indicators indicates a status concerning whether the at least one indicator has been selected.

45. The method of claim 44 wherein the status is indicated by a first color if the at least one indicator has been selected, and by a second color if the at least one indicator has not been selected.	45. The method of claim 44 wherein the status is indicated by a first color if the at least one indicator has been selected, and by a second color if the at least one indicator has not been selected.
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Terms for Construction in U.S. Patent No. 6,703,944:

Verbatim Claim Language	Court's Claim Construction
1. A method for use in a system in a vehicle, the system including a display element, the method comprising:	1. A method for use in a system in a vehicle, the system including a display element, the method comprising:
providing at least one indicator on the display element;	providing at least one indicator on the display element;
allowing a manipulation of the indicator on the display element to define a distance between the vehicle and a detectable object outside the vehicle, the defined distance being indicated on the display element, the manipulation of the indicator being restricted from defining the distance to be smaller than a reference distance, the reference distance being indicated on the display element and a function of a current speed of the vehicle relative to the detectable object;	allowing a manipulation of the indicator on the display element to define a distance [the length of a straight line between the subject vehicle and a detectable object] between the vehicle and a detectable object outside the vehicle, the defined distance [the distance specified by the user as the physical extent of the comfort zone] being indicated on the display element, the manipulation of the indicator being restricted from defining the distance [the length of a straight line between the subject vehicle and a detectable object] to be smaller than a reference distance [the minimum extent of the comfort zone specified by the manufacturer] , the reference distance being indicated on the display element and a function of a current speed of the vehicle relative to the detectable object;
determining whether a separation between the vehicle and a detectable object outside the vehicle is maintained at least the defined distance; and	determining whether a separation between the vehicle and a detectable object outside the vehicle is maintained at least the defined distance [the length of a straight line between the subject vehicle and a detectable object] ; and
providing an alert when it is determined that the separation of at least the defined distance is not maintained.	providing an alert when it is determined that the separation of at least the defined distance [the length of a straight line between the subject vehicle and a detectable object] is not maintained.

S.D.Cal.,2005.

American Calcar Inc. v. BMW of North America, LLC

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