

United States District Court,  
E.D. Texas, Marshall Division.

**ALEXSAM, INC,**

v.

**DATASTREAM CARD SERVICES LIMITED.**

Civil Action No. 2:03-CV-337

**June 10, 2005.**

Randy J. McClanahan, McClanahan Myers Espey, LLP, Houston, TX, C. Dale Quisenberry, Colin E. Errington, John T. Polasek, Polasek, Quisenberry & Errington, LLP, Bellaire, TX, Franklin Jones, Jr., Jones & Jones, Marshall, TX, Otis W. Carroll, Jr., Ireland Carroll & Kelley, Tyler, TX, Sidney Calvin Capshaw, III, Capshaw Derieux, LLP, Longview, TX, for Alexsam, Inc.

John G. Bisbikis, Joseph H Paquin, Jr., Linda A. Lamberson, Margaret M. Duncan, McDermott Will & Emery, Chicago, IL, J. Thad Heartfield, The Heartfield Law Firm, Beaumont, TX, Thomas Foster Lillard, Hunton & Williams, John Paul Pinkerton, Gardere Wynne Sewell, Dallas, TX, Jason Riley Searcy, Attorney at Law, Longview, TX, for Datastream Card Services Limited, et al.

## ***ORDER***

**T. JOHN WARD, District Judge.**

This court issues this claim construction order to resolve the parties' various disputes over the meaning of the terms used in the claims of the patents in suit.

### **1. Introduction.**

The plaintiff, Alexsam, Inc., asserts various claims of two patents in suit, United States Patent 6,000,608 ("the '608 patent") and United States Patent 6,189,787 B1 ("the '787 patent"). These patents are entitled "multifunction card system" and describe a system accessible from retail point-of-sale ("POS") terminals.

The '608 patent explains that at the point-of-sale, a retailer has an existing POS device, such as a card swipe machine, cash register, or computer terminal. A gift, loyalty, or phone card has a magnetic strip, similar to a credit or debit card, with a card number encoded on the strip. The card number includes a bank identification number which the retailer's POS device is able to read.

The novel aspect of the invention is the use of the bank identification number in connection with the card number to take advantage of existing POS devices. At the time of the application, existing POS terminals were pre-programmed to read bank identification numbers associated with card issuing institutions. By incorporating a bank identification number into the card number, the inventor created a system that did not

require the retailers to modify and pre-program their existing POS terminals.

The system allows the retail clerk to activate the cards at the point of sale and route the information to the processing hub which creates an account. When a user makes a card purchase, the system routes the data to a processing hub which compares the purchase price to the balance and issues an approval code back to the retailer and decrements the balance or declines the transaction if there is an insufficient balance on the card. The system also enables a user to re-charge the account balances. Finally, the system enables the use of "smart cards" which can perform multiple functions (such as a gift certificate coupled with a pre-paid phone card).

## **2. Law Governing Claim Construction.**

"A claim in a patent provides the metes and bounds of the right which the patent confers on the patentee to exclude others from making, using or selling the protected invention." *Burke, Inc. v. Bruno Indep. Living Aids, Inc.*, 183 F.3d 1334, 1340 (Fed.Cir.1999). Claim construction is an issue of law for the court to decide. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970-71 (Fed.Cir.1995) (en banc), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996).

To ascertain the meaning of claims, the court looks to three primary sources: the claims, the specification, and the prosecution history. *Markman*, 52 F.3d at 979. Under the patent law, the specification must contain a written description of the invention that enables one of ordinary skill in the art to make and use the invention. A patent's claims must be read in view of the specification, of which they are a part. *Id.* For claim construction purposes, the description may act as a sort of dictionary, which explains the invention and may define terms used in the claims. *Id.* "One purpose for examining the specification is to determine if the patentee has limited the scope of the claims." *Watts v. XL Sys., Inc.*, 232 F.3d 877, 882 (Fed.Cir.2000).

Nonetheless, it is the function of the claims, not the specification, to set forth the limits of the patentee's claims. Otherwise, there would be no need for claims. *SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed.Cir.1985) (en banc). The patentee is free to be his own lexicographer, but any special definition given to a word must be clearly set forth in the specification. *Intellicall, Inc. v. Phonometrics*, 952 F.2d 1384, 1388 (Fed.Cir.1992). And, although the specification may indicate that certain embodiments are preferred, particular embodiments appearing in the specification will not be read into the claims when the claim language is broader than the embodiments. *Electro Med. Sys., S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 1054 (Fed.Cir.1994).

To assess the ordinary meaning of terms used in a patent claim, a court may properly rely on dictionary definitions. The Federal Circuit has noted that "[i]t has long been recognized in the precedent of our predecessor court, the Court of Customs and Patent Appeals, that dictionaries, encyclopedias and treatises are particularly useful resources to assist the court in determining the ordinary and customary meaning of claim terms." *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (Fed.Cir.2002). The court reasoned that such sources are objective resources that serve as reliable sources of information on the established meanings that would have been attributed to the terms of the claims by those of skill in the art. *Id.* at 1202-03. According to the court, dictionaries, encyclopedias, and treatises "constitute unbiased reflections of common understanding not influenced by expert testimony or events subsequent to the fixing of the intrinsic record by the grant of the patent, not colored by the motives of the parties, and not inspired by litigation." *Id.* at 1203. Bearing these standards in mind, the court now turns to the task of construing the claims in this case.

### **3. Discussion.**

#### **1. Electronic gift certificate card.**

The plaintiff contends that this term means "a prepaid card which can be used in lieu of cash." The defendants contend the term means "a retailer-issued card, having a specified monetary amount, that operates through an exchange of electronic signals and that can be used in lieu of cash to purchase items at a particular one or more retail locations."

The specification indicates a broad meaning for this term. In the '608 patent, at Col. 7, ll. 35-67, the patentee describes the electronic gift certificate card as having the typical attributes of a gift card, but also noting that the activation method "would allow the card to be used as a prepaid card substitute for travelers checks and money orders." Thus, the use of the term appears to connote a broader meaning than what is ordinarily associated with a gift certificate. The plaintiff's definition, however, conspicuously omits the "electronic" requirement imposed by the plain language of the claim term. At the claim construction hearing, the plaintiff offered no explanation for why this language was omitted from its construction. Therefore, although the term has broad play, the court would have to ignore the word "electronic" to adopt the plaintiff's proposed construction. The court defines this term to mean "a pre-paid card that operates through an exchange of electronic signals and that can be used in lieu of cash."

#### **2. Bank Identification Number Approved by the American Banking Association for Use in a Banking Network.**

During the prosecution of the '608 patent application, the applicant amended each independent claim to include this limitation. At the time of the application, existing POS devices were programmed to recognize certain types of cards, like Master Card, Visa, American Express, or Discover. The specification of the '608 patent provides:

As a rule, these POS devices must be reprogrammed before they will accept a new type of card. However, since POS devices already recognize cards issued by these popular card issuers, a new type of card will also be recognized by such devices if it has a BIN that begins with the same number used by one of the popular card issuers.

'608 patent, Col. 4, ll. 51-57. Incorporation of the BIN numbers allowed the existing POS devices to read the cards.

The plaintiff argues that the court should construe this term to mean "a number approved by the American *Bankers* Association that permits access to a banking network." (emphasis added). The defendants define the term to mean "a numeric code that uniquely identifies a card issuing financial institution and that is officially sanctioned by the American *Banking* Association." The defendants argue that the claim language states American *Banking* Association, and the court should therefore include this in the construction.

The problem with the defendants' construction is that there is no American *Banking* Association, and the reference to it in the claims is a typographical error. A court may correct typographical errors when (1) the correction is not subject to reasonable debate based on a consideration of the claim language and the specification and (2) the prosecution history does not suggest a different interpretation. *Group One, Ltd. v. Hallmark Cards, Inc.*, 407 F.3d 1297, 2005 WL 1138998 (Fed.Cir. May 16, 2005); *Novo Indus. L.P. v.*

Micro Molds Corp., 350 F.3d 1348, 1357 (Fed.Cir.2003). Both of these conditions are satisfied in this case.

The trade name for the association of banks is the "American Bankers Association." The balance of the claim term refers to bank identification numbers, or "BIN" numbers, which are referred to in the industry as a set of numbers appearing on a credit card which identify a card-issuing financial institution. *Dictionary of Banking Terms* at 46 (Barrons 3d ed.1997)(defining Bank Identification Number to mean "numeric code identifying bank card issuing financial institutions associated with Visa or MasterCard International. The BIN number is the first six digits of the ACCOUNT NUMBER. Banks use BIN tables in routing transactions to the appropriate bank for credit approval and final settlement."). Given the explicit reference in the specification to the same first number used by either VISA or MasterCard, it is not subject to reasonable debate, from the face of the patent, that this is what the patent means. Moreover, the prosecution history supports this conclusion.

Nevertheless, the plaintiff's proposed construction, that the term be defined as a number that "permits access to a banking network," is too broad. A review of the claim language in light of the specification and the prosecution history reveals that the patentee was referring to the bank identification number used by card-issuing financial institutions. As such, the court defines this term to mean "a numeric code which identifies a card-issuing financial institution and that is sanctioned by the American Bankers Association."

### **3. Transaction Processor.**

The plaintiff argues that this term means "a device that receives or routes data." The defendants argue that this term means "a processor, other than the processing hub, controlled by a bank that assumes responsibility for the financial transaction and that is remote from the unmodified existing standard retail point-of-sale device."

Both parties are wide of the mark. The specification and the claim language suggests that the transaction processor is a computer disposed between the POS device and the processing hub. The specification demonstrates multiple types of processors so disposed. These processors include those maintained by banks and those maintained by non-banking entities. For instance, Figure 2 of the '608 patent describes multiple means of implementing the system and includes routing onto the existing debit card network, routing through a sponsor bank processor, and routing through a retailer's "central processor." When the patentee wanted to use the term "bank processor," he did so explicitly. *See* '608 patent, Fig. 2, blocks 208 and 209. The court is also not persuaded that the transaction processor must "assume responsibility" for the financial transaction. As such, the court construes this term to mean "a computer, other than a processing hub, that facilitates the card transaction and that is remote from the unmodified existing standard retail point-of-sale device."

### **4. Unmodified Existing Standard Retail Point-of-Sale Device.**

The plaintiff argues that this phrase means "a device such as a stand-alone POS terminal, cash register with POS interfacing, computer with POS interfacing or other similar device that recognizes bank identification numbers, other than for use in a closed system." The defendants propose a much more limited construction of this term to mean "a terminal for making purchases at a retail location of the type in use as of July 10, 1997, containing magnetic stripe reading electronics, that has not been reprogrammed, customized, or otherwise altered with respect to its software or hardware." As revealed by the proposed constructions, the primary dispute between the parties is whether the use of the terms "existing" and "standard" imply a temporal component into the claim language, restricting the claims to those systems incorporating the types

of POS devices in existence at the time of the application. A secondary, but also important, dispute is whether the use of the term "unmodified" requires the court to impose the limitation that software and/or hardware modifications to the device are unnecessary. A recent Federal Circuit decision answers the first question; the plain meaning of "unmodified" answers the second.

One of the features of the '608 patent is the ability of the systems to use existing standard POS devices. As the specification and the prosecution history explain, use of the bank identification numbers made it unnecessary to saddle retailers with the start-up costs of new hardware and software to activate and accept the gift certificate, loyalty, and phone cards described in the patents. The specification provides for a broad definition of the types of devices included in the scope of this claim term, stating "these devices 105 include stand-alone POS terminals, cash registers with POS interfacing, and other similar devices which can be used to access the banking system. As used herein, POS device includes all such devices, whether data entry is effected by swiping a card through the device or by manual entry," '608 Patent, Col. 4, ll. 29-35.

Despite this passage in the specification, the claim language limits the scope of devices to those existing at the time of the application. As issued, the claim language uses such terms as "existing" and "standard." These terms import a temporal limitation to the types of devices embraced by the claim language. *PC Connector Solutions LLC v. Smartdisk Corporation and Fuji Photo Film U.S.A., Inc.*, --- F.3d ----, 04-1180 (Fed.Cir. May 6, 2005). In that case, the court held that the terms "normally," "conventional," "traditionally," and "standard" possessed descriptive properties which were implicitly time-dependent. As such, the court held that the district court did not err in construing "the literal scope of the claim limitations qualified by those terms as being limited to technologies existing at the time of the invention." In the present case, the language of the disputed claim term uses the words "existing" and "standard" which are implicitly time-dependent. As directed by the holding of *PC Connector Solutions*, the court therefore construes the claim limitation to refer to those types of devices in existence as of July 10, 1997.

The second dispute involves the term "unmodified." The examiner required the inclusion of that word to clarify that the systems claimed in the '608 patent did not require any hardware and/or software modifications to the existing standard retail POS devices. It is a stretch of grammar to propose a construction of the simple word "unmodified" that is divorced from the meaning actually implied by the word itself, which is *without modification*. The court therefore construes the term "unmodified existing standard POS device" to mean "a terminal for making purchases at a retail location of the type in use as of July 10, 1997 that has not been reprogrammed, customized, or otherwise altered with respect to its software or hardware for use in the card system."

## **5. Activation amount.**

The plaintiff contends that "activation amount" should be construed to mean "an amount used to activate or add value to an account." The defendants contend that the term means "the total value of goods or services that the user may obtain upon the prepaid account being made functional for use." The defendants' construction is correct. The patentee used the term "activation" and that language suggests that the term refers to the point in time that the account is made functional for use. As such, the court defines this term to mean "the total value of goods or services that the user may obtain upon the prepaid account being made functional for use."

## **6. Processing hub**

The plaintiff argues that the term "processing hub" should be defined as "a device that processes data for

multiple cards." The defendants argue that the term means "a computer that is in communication with any given point-of-sale device through the banking network and that provides front-end point of sale device management, provides message processing for card authorization and activation, and coordinates the databases corresponding to the functions of the multifunction card."

The plaintiff argues that the defendants' definition imports too many of the functional limitations of the hub as set forth in the preferred embodiment. Although the plaintiff cites cases which hold that the court should not import functional limitations from the preferred embodiment into claim language, the cases do not hold that the court must disregard the language of the specification when attempting to define terms that do not have a well-understood meaning in the art. In this case, the specification provides a definition of the processing hub as that term is used in this invention: "The processing hub 103 of the present invention provides front-end POS device management and message processing for card authorizations and activations. The processing hub can be implemented using any computer having acceptable processing and storage capacity." '608 patent, col. 10, ll. 66-67-col. 11, ll. 1-3. The court therefore defines processing hub to mean "a computer which provides front-end POS device management and message processing for card authorizations and activations."

### **7. Activating an account.**

The plaintiff argues that this term means "to make an account active." The defendants argue that the court should define this term to mean "making an account functional for use." After reviewing the briefs and considering the arguments of the parties, the court is persuaded that the defendants' proposal is correct and the court adopts it.

### **8. Corresponding to**

The court adopts the plaintiff's proposed definition of this term and defines it to mean "agreeing to, conforming to, consistent to, or analogous to."

### **9. Banking network**

The plaintiff contends that the court should define the term to mean "two or more computers that exchange financial information electronically." The defendants contend that this term means "terminals, computers and processors of multiple banks, issuers, and third-party processors that are linked together for the purpose of processing financial transactions, and which incorporates and utilizes a bank processing hub." The court is persuaded that the term "banking network" means "a set of interconnected computers used by banks and financial institution for purposes of conducting and processing financial transactions."

### **10. Multifunction card system.**

This term appears only in the preambles of some claims, but it appears in the bodies of several others. With respect to those instances in which the term appears in the preamble, the court holds that it is not a claim limitation. *See, e.g.*, '608 patent, claim 57. With respect to those claims which use the phrase "multifunction card system" in the body of the claim, the court rejects the argument that the claims are necessarily limited to systems which are capable of processing "multifunction cards." It is true that the specification describes a need in the art for credit/debit cards capable "of performing a plurality of functions." '608 patent, col. 1 ll. 26-30. But the specification also describes a "need in the art for a prepaid phone card activating system which is easily and inexpensively deployed, and which allows cards to be purchased in varying amounts and

to be recharged without requiring the use of a closed system to handle the transactions." '608 patent, col. 2, ll. 15-19.

The claims of the patents also support the plaintiff's proposed construction. As but one example, in the '608 patent, claim 57 requires "at least one card." Dependent claim 58 requires that the card be selected from the group consisting of "an electronic gift certificate card, a phone card, a loyalty card, and a medical information card," suggesting that the "at least one card" claimed in the preceding claim has only one function. Claim 59, however, depends from claim 57, and requires "the said card" to perform the functions of "an electronic gift certificate card, a phone card, a loyalty card, and a medical information card." It appears from the language of the claims that the patents read on systems performing multiple functions (activation, recharge, and transaction approval) on cards that serve only a single application as well as on systems performing those functions on intelligent, or smart cards which might serve several different applications. The plaintiff's proposed definition accommodates both of these possibilities. Accordingly, the court defines "multifunction card system" as "a card system that can serve a number of functions."

### **11. Phone card/Pre-paid phone card**

The parties dispute whether these two terms should be defined differently. After a careful review of the specification and the claim language, and mindful of the usual rules governing claim construction, the court holds that these two terms should be defined consistently. The patentee uses the terms "phone card" and "pre-paid phone card" interchangeably throughout the specification, which suggests that the patentee referred to them as one and the same. *See generally* '608 patent, cols 5-7. The claim language is consistent with this usage. *See* '608 patent, claim 27 (referring in the preamble to a "prepaid phone card" and in the body of the claim to "the phone card"). After considering the language of the claims and the specification, the court defines these terms to mean "a card with a unique identification number having, upon activation, a specific purchase amount usable only to make telephone calls." The court is not persuaded that the defendants' proposed additional limitation-that the number be magnetically encoded-is appropriate.

### **12. Prepaid card**

The plaintiff contends that the term means "a card that requires a prepaid amount before it can be used." The defendants contend that the term means "a card associated with a prepaid amount and usable to make purchases at a select location or locations." The court is persuaded that the plaintiff's construction is correct and adopts it.

### **13. Swiping**

The plaintiff contends that the term "swiping," means "entering data from the card to the point-of-sale device." The defendants contend that this term means "sliding a card with a magnetically encoded stripe through a magnetic stripe reader." The court defines the term "swiping" to mean "passing or sliding a card through an electronic card reader."

### **14. Recharge/Recharging**

The court is persuaded that the preambles of claims 23 and 27 of the '608 patent act as claim limitations. They act as limitations because the preambles include the BIN number limitation required for patentability. The plaintiff contends that the term "recharging" appearing in the preambles, means "adding value to an account." The defendants maintain that the term means "purchase value for a previously activated card." The

plain meaning of "recharge" suggests an action on a previously activated account. The specification, moreover, refers to the distinct acts of "activating" and "recharging" accounts. *See, e.g.*, col. 5, l. 27, l. 62, ll. 66-67. The court therefore construes this term to mean "purchase value for a previously activated card."

**15. Means for receiving electronic gift certificate card activation data from an unmodified existing standard retail point of sale device when said electronic gift certificate card is swiped through the point of sale device ...**

At issue with respect to this limitation is what structure performs the receiving function. The plaintiff points to the specification, Figure 2, as illustrating the alternative pathways that the data can be transmitted from the POS device to the processing hub. The plaintiff identifies the processors, the debit network, and/or the processing hub, as the corresponding structure. The defendants take a similar approach. They contend, however, that the court should identify all of the specific alternatives as well as "undisclosed software" on the processing hub as performing the receiving function. Proper construction of a means-plus-function limitation identifies structure disclosed in all alternative embodiments described in the patent. *Micro Chemical, Inc. v. Great Plains Chemical Co., Inc.*, 194 F.3d 1250, 1258-59 (Fed.Cir.1999). After reviewing the specification, the court identifies the specific, alternative, combinations of structure which form the pathways for receiving the data from the POS device. These include the various combinations of the retailer processors, the bank processors, the debit network, and the processing hub as shown in Figure 2. '608 patent, Fig. 2.

**16. Means for activating an account corresponding to the electronic gift certificate card with a balance equal to the electronic gift certificate activation amount**

Claim 1 of the '608 includes this limitation. The plaintiff points to Figure 2 and the specification and urges that the corresponding structure is the processing hub 103. The defendants again contend that "undisclosed software" performs a part of this function, but they also ask the court to include the card databases serviced by the processing hub as bearing responsibility for performing the activation function.

The specification teaches that "[u]pon receipt of the transaction data, the hub 103 recognizes the card 101 as being an Electronic Gift Certificate card of the retail issuer and activates or recharges the card 101 in the appropriate amount in an EGC database 205 maintained by the processing hub." '608 patent, col. 7, ll. 65-col. 8, ll. 2. The means for activation is the processing hub 103.

**17. Means for allowing a user of the electronic gift certificate card to purchase goods and services....**

The plaintiff urges that the processing hub is the structure which corresponds to this function. The defendants identify a combination of many devices, from the pin pad at the POS to the processors involved in routing the data to the processing hub, urging that the claim limitation should be read broadly to include all of the structure necessary to enable the transaction. The court is persuaded that this limitation should be read more narrowly to focus on the means for allowing the transaction to proceed through the issuance of an authorization code. Thus, the court identifies the corresponding structure as the processing hub which issues the approval code. '608 patent, col. 8, ll. 25-28 ("If the balance is greater than the purchase amount, the processing hub will decrement the record in the database and will send back an approval code which will *allow* the transaction to proceed.")(emphasis added).

**18. Means for decreasing the balance of the account corresponding to the electronic gift certificate card....**

The plaintiff identifies the processing hub and, alternatively, the processing hub and the EGC database (which would maintain the account balance information). The defendants urge that the court should include all of the various databases because the card at issue must be a multi-functional card. The court has rejected that position. The corresponding structure is the processing hub. '608 patent, col. 8, ll. 25-27 ("If the balance is greater than the purchase amount, *the processing hub will decrement the record in the database*")(emphasis added).

**19. Means for allowing a user of the electronic gift certificate card to obtain long distance telephone calling time....**

This limitation appears in claim 4 of the '608 patent. This limitation requires the use of a card with multiple functions ("allowing a user of an electronic gift certificate card to obtain long distance telephone calling time"). The corresponding structure is described in the patent as the prepaid phone card issuer hub 104. '608 patent, col. 8, ll. 54-57; col. 7, ll. 13-22.

**20. Means for receiving phone card activation data from an unmodified existing standard retail point-of-sale device when said phone card is swiped through the point-of-sale device**

This limitation is similar to the "means for receiving" limitation set forth in claim 1 of the '608 patent. The difference is that the system requires a means for receiving phone card activation data and thus includes a phone card issuer hub. After reviewing the specification, the court identifies as the corresponding structure the specific alternative combinations of structure which form the pathways for receiving the data from the POS device together with the pre-paid phone card issuer hub. '608 patent, Fig. 2.

**21. Phone card activation amount**

This limitation is similar to the "activation amount" term defined above. The court construes this term consistently to mean the total value of telephone services that the user may obtain upon the prepaid phone card being made functional for use.

**22. Means for activating an account corresponding to the phone card with a balance equal to the phone card activation amount**

This limitation is found in claim 9 of the '608 patent. The specification states "[w]hen the issuer hub 104 receives the data from the processing hub 103, it activates the record ...." '608 patent, col. 7, ll. 15-16. The corresponding structure is therefore the phone card issuer hub 104.

**23. Means for decreasing the balance of the account corresponding to the phone card by the value of the long distance telephone calling time obtained**

Again, the corresponding structure linked to the decreasing function is the phone card issuer hub 104. The specification explains: "[w]hen the call terminates, *the phone card issuer hub 104* decrements the appropriate record in its phone card database 204 and instructs the processing hub to do the same in the EGC database 205." '608 patent, col. 8, ll. 67-col. 9, ll. 1-3 (emphasis added).

**24. Means for receiving phone card recharge data from an existing standard retail point-of-sale device when said phone card is swiped through the point-of-sale device**

The difference between this limitation and the limitation in claim 9 involves the type of data received from the existing standard POS device. In claim 9, the data is "activation" data. In claim 10, at issue here, the data is "recharge" data. The corresponding structure is the same as that identified above with respect to the activation data (the alternative combinations of the devices shown in Figure 2 and the pre-paid phone card issuer hub).

## **25. Means for increasing the balance of the account corresponding to the phone card by the phone card recharge amount**

The court identifies the corresponding structure as the phone card issuer hub 104.

## **26. Bank processing hub computer**

This term is used in the '787 patent. Although the specification is not entirely clear, it appears that the "bank processing hub computer under bank hub software control" is similar to the transaction processors described by the '608 patent. The difference is that the processor must be identified with a "bank." The plaintiff contends that the term means "a device that receives or routes banking or financial data." The defendants propose a construction of the term to mean "a bank computer that is in communication with a point-of-sale device and a processing hub computer through the banking network." After considering the intrinsic record, the court is persuaded that the term "bank processing hub computer" should be construed as a transaction processor maintained by a bank. The court therefore defines the term to mean "a computer, other than a processing hub, that is maintained by a bank, that facilitates the card transaction and that is remote from the pre-existing standard retail point-of-sale device ." This definition is consistent with the one adopted for "transaction processor" except that the court requires this type of computer to be maintained by a bank. The term "under bank hub software control" needs no construction.

## **27. Communication**

The court defines "communication" as "the process of exchanging information."

## **28. Pre-existing standard retail point of sale device**

This term appears in the '787 patent. Unlike its counterpart in the '608 patent, this term does not include the word "unmodified." The court defines this term to mean "a terminal for making purchases at a retail location of the type in use as of July 10, 1997." The court declines to further restrict this term as proposed by the defendants because the claim language in the '787 patent does not include the "unmodified" language present in the '608 patent.

## **29. Gift certificate card computer under gift certificate card software control**

The court defines the term "gift certificate computer" to mean "a computer that processes data related to multiple gift certificate cards and their accounts." The phrase "under ... software control" requires no additional construction. Moreover, the balance of the claim language provides sufficient guidance as to the functional requirements of the gift certificate card computer.

## **30. Phone card computer under phone card software control**

The court defines the term "phone card computer" to mean "a computer that processes data related to

multiple phone cards and their accounts." The phrase "under ... software control" requires no additional construction.

### **31. Activating or recharging a magnetically encoded electronic gift certificate card**

The court has previously defined the terms "activating" and "recharging" sufficiently to provide guidance to the parties and the jury in this case.

### **32. Decrypting**

The court defines this term to mean "decoding or deciphering," consistent with its use in the specification. See '787 patent, col. 6, ll. 14-15; col. 7, ll. 4-9 (discussing "encrypting" and "decrypting").

### **33. Gift certificate card account balance**

The court defines this term to mean "the amount of funds available for use on a gift certificate card."

### **34. Approval code**

The court defines this term to mean "a code which allows a transaction to proceed." This is the plaintiff's proposed definition, and the one that best captures the meaning of this claim term. The defendants' proposal would require an "alpha numeric code." The evidence cited in support of this proposal, however, does not support the inclusion of this language.

### **35. Wherein said total value of goods and services purchased and long distance telephone calling time obtained using said gift certificate card cannot exceed said gift certificate card account balance**

At issue with respect to this limitation is whether the phrase is indefinite or whether it means that the card must be able to both act as a prepaid phone card and to purchase goods or services. The court holds, given the language of the claim, that the latter construction is accurate. Thus, the claim language requires the gift certificate card to be able to act as a prepaid phone card and be able to purchase goods or services.

E.D.Tex.,2005.

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