United States District Court,
S.D. California.

HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P,
Plaintiff.
v.
GATEWAY, INC,
Defendant.
Gateway, Inc,
Counterclaim-Plaintiff.
v.
Hewlett-Packard Development Company, L.P., Hewlett-Packard Company and Compaq Information Technologies Group, L.P,
Counterclaim-Defendants.

Civil No. 04CV0613-B(LSP)

Nov. 7, 2005.

John Allcock, DLA Piper, San Diego, CA, for Plaintiff/Counterclaim-Defendant.

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CLAIM CONSTRUCTION ORDER FOR UNITED STATES PATENT NUMBER 5,966,732

RUDI M. BREWSTER**, Senior District Judge.**

Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), on September 20, 2005, the Court conducted a Markman hearing in the above-titled patent infringement action regarding construction of the disputed claim terms for U.S. Patent Number 5,966,732 ("the '732 patent"). Plaintiff Hewlett-Packard Development Company, L.P. ("HP") was represented by the law firm of DLA Piper Rudnick Gray Cary U.S. LLP, and Defendant Gateway, Inc. ("Gateway") was represented by the law firm of Dewey Ballantine LLP.

At the Markman hearing, the Court, with the assistance of the parties, analyzed the claim terms in order to prepare jury instructions interpreting the pertinent claims at issue in the '732 patent. Additionally, the Court prepared a case glossary for terms found in the claims and the specification for the '732 patent considered to be technical in nature which a jury of laypersons might not understand clearly without specific definition.

After careful consideration of the parties' arguments and the applicable statutes and case law, the Court **HEREBY CONSTRUES** the claims in dispute in the '732 patent and **ISSUES** the relevant jury instructions as written in Exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in Exhibit B, attached hereto.

IT IS SO ORDERED.

EXHIBIT A

UNITED STATES PATENT NUMBER 5.966.732-CLAIM CHART	
VERBATIM CLAIM LANGUAGE	***COURT'S CONSTRUCTION***
Claim 1	
1. A method for changing the size of a ***reserve area*** on a disk in a ***disk drive,***	1. A method for changing the size of a ***reserve area*** [*portion of the disk that cannot be accessed by a user*] on a disk in a ***disk drive*** [*machine that reads data from and write data onto a disk*],
said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,	said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,
said reserve storage area having a predetermined storage capacity,	said reserve storage area having a predetermined storage capacity,
said ***disk drive*** also including a user accessible area having a predetermined storage capacity,	said ***disk drive*** also including a user accessible area having a predetermined storage capacity,
said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive.***	said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive,***
the method for adding to the ***reserve area*** comprising the steps of:	the method for adding to the ***reserve area*** comprising the steps of:
executing a first command to read the maximum track to which the user has access; and	executing a first command to read the maximum track to which the user has access; and
executing a second command for increasing or reducing a portion of the user accessible area to additional reserve area;	executing a second command for increasing or reducing a portion of the user accessible area to additional reserve area;
inputting non-user accessible information to the added ***reserve area,***	inputting non-user accessible information to the added ***reserve area,***
wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a set of virus scan instructions to the added ***reserve area.***	wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a set of virus scan instructions to the added ***reserve area.***
Claim 2	
2. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting virus scan instructions to the added ***reserve area*** includes adding the instruction step of periodically scanning the disk for viruses.	2. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting virus scan instructions to the added ***reserve area*** includes adding the instruction step of periodically scanning the disk for viruses.
Claim 3	
3. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting virus scan instructions to the added ***reserve area*** includes adding the instruction step of scanning information to be written on the disk for viruses before the information is stored to the	3. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting virus scan instructions to the added ***reserve area*** includes adding the instruction step of scanning information to be written on the disk for viruses before the information is stored to the disk.

disk.	
Claim 4	
4. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a set of instructions to the added reserve area to predict a ***disk drive*** failure.	4. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a set of instructions to the added ***reserve area*** to predict a ***disk drive*** failure.
Claim 5	
5. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a portion of the ***basic input output system (BIOS)*** instruction set to the added ***reserve area.***	5. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a portion of the ***basic input output system (BIOS)*** [*software that enables a computer to perform operational functions such as starting up the computer and transferring information among components of the computer*] instruction set to the added ***reserve area.***
Claim 6	
6. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding ***emergency boot instructions*** to the added ***reserve area.***	6. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1 wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding emergency boot instructions [*instructions that can be used as an alternate source for starting up the computer*] to the added ***reserve area.***
Claim 7	
7. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 1, wherein said ***disk drive*** further includes, a ***microcontroller*** and a ***Read only memory*** with a ***firmware instruction set*** for operating the ***microcontroller,*** said first command being executed after a ***password*** is recognized by the ***firmware.***	7. The method for changing the size of a ***reserve area*** on a disk in a disk drive of claim 1, wherein said ***disk drive*** further includes, a ***microcontroller*** [*an integrated circuit that fetches and executes instructions in order to control other circuits, e.g.* a microprocessor] and a ***Read only memory*** [*memory whose contents are readable and not typically changed during normal* operation] with a ***firmware instruction set*** [*one or more firmware instructions that the microcontroller can recognize and execute*] for operating the ***microcontroller,*** said first command being executed after a ***password*** [*previously set information used to authenticate or permit subsequent action*] is recognized by the firmware [*software stored in Read Only Memory*].
Claim 8	
8. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 7 wherein the step of issuing the first command includes sending a ***password*** to the ***disk drive,*** wherein the ***firmware*** recognizes the ***password*** and allows execution of the second command.	8. The method for changing the size of a ***reserve area*** on a disk in a ***disk drive*** of claim 7 wherein the step of issuing the first command includes sending a ***password*** to the ***disk drive,*** wherein the ***firmware*** recognizes the ***password*** and allows execution of the second command.
Claim 9	
9. A computer system comprising:	9. A computer system comprising:
a bus for passing commands and data to	a bus for passing commands and data to components

components communicatively attached to the bus;	communicatively attached to the bus;
a ***microcontroller*** communicatively attached to the bus;	a ***microcontroller*** communicatively attached to the bus;
a memory communicatively attached to the bus;	a memory communicatively attached to the bus;
an input/output controller communicatively attached to the bus; and	an input/output controller communicatively attached to the bus; and
a ***disk drive*** having a disk with ***non-user accessible area*** and user accessible area,	a ***disk drive*** having a disk with ***non-user accessible area*** [*a portion of the disk that cannot be accessed by a user*] and user accessible area,
said ***disk drive*** attached to the input/output controller,	said ***disk drive*** attached to the input/output controller,
said ***microcontroller*** capable of sending commands over said data bus via said input/output controller to change the amount of non user accessible area on the ***disk drive,*** wherein the ***disk drive*** is capable of executing another command from said microprocessor to convert user accessible area on the disk to ***non-user accessible area*** on the disk and to input non-user accessible information to the added ***non-user accessible area.***	said ***microcontroller*** capable of sending commands over said data bus via said input/output controller to change the amount of non user accessible area on the ***disk drive,*** wherein the ***disk drive*** is capable of executing another command from said microprocessor to convert user accessible area on the disk to ***non-user accessible area*** on the disk and to input non-user accessible information to the added ***non-user accessible area.***
Claim 10	
10. A computer system comprising:	10. A computer system comprising:
a bus for passing commands and data to components communicatively attached to the bus;	a bus for passing commands and data to components communicatively attached to the bus;
a ***microcontroller*** communicatively attached to the bus;	a ***microcontroller*** communicatively attached to the bus;
a memory communicatively attached to the bus;	a memory communicatively attached to the bus;
an input/output controller communicatively attached to the bus; and	an input/output controller communicatively attached to the bus; and
a ***disk drive*** attached to the input/output controller, said ***microcontroller*** capable of sending commands over said data bus via said input/output controller to change the amount of non user accessible area on a ***disk drive,*** wherein the ***microcontroller*** is capable of sending a ***password*** to the ***disk drive,*** wherein the command to change the amount of non user accessible area on a ***disk drive*** is executed when the ***password*** is correct and	a ***disk drive*** attached to the input/output controller, said ***microcontroller*** capable of sending commands over said data bus via said input/output controller to change the amount of non user accessible area on a ***disk drive,*** wherein the ***microcontroller*** is capable of sending a ***password*** to the ***disk drive,*** wherein the command to change the amount of non user accessible area on a ***disk drive*** is executed when the ***password*** is correct and
wherein non-user accessible information is added after the size of the ***non-user***	wherein non-user accessible information is added after the size of the ***non-user accessible area*** is changed.

accessible area is changed.	
Claim 11	
11. A ***disk drive*** communicatively coupled to a host computer,	11. A ***disk drive*** communicatively coupled to a host computer,
said ***disk drive*** having a ***maximum, addressable logical block address,*** and having a ***reserve area*** for storing information unavailable to a user, said ***disk drive*** comprising:	said ***disk drive*** having a maximum addressable logical block address [*the greatest number used to locate a block of data within the user accessible area on a disk*], and having a ***reserve area*** for storing information unavailable to a user, said ***disk drive*** comprising:
an interface between the ***disk drive*** and a host computer;	an interface between the ***disk drive*** and a host computer;
a first apparatus recognizing a command sent over the interface by said host computer to reduce the ***maximum addressable logical block address*** to allow an increase in the size of the ***reserve area;***	a first apparatus recognizing a command sent over the interface by said host computer to reduce the ***maximum addressable logical block address*** to allow an increase in the size of the ***reserve area*** Means-plus-function claim Function: "recognizing a command sent over the interface by said host computer to reduce the maximum addressable logical block address."
	Structure: processing circuitry configured to recognize a SetMax command. See Col. 3 ln. 41-43, Col. 4 ln. 24-30 and 39-44, Col. 5 ln. 44-54
a second apparatus for increasing the amount of disk space devoted to a ***reserve area*** for storing information unavailable to a user of the host computer and for inputting non-user accessible information to the added ***reserve area;*** and	a second apparatus for increasing the amount of disk space devoted to a ***reserve area*** for storing information unavailable to a user of the host computer and for inputting non-user accessible information to the added ***reserve area;*** and Means-plus-function claim Function: "increasing the amount of disk space devoted to a reserve area for storing information unavailable to a user of the host computer and for inputting non-user accessible information to the added reserve area"
	Structure: processing circuitry configured to execute SetMax command and load information into the added reserve area. See Col. 3 ln. 41-43, Col. 4 ln. 39-44, Col. 5 ln. 44-59.
a third apparatus for checking some disk parameters to determine the amount of user accessible area on the disk convertible to ***reserve area*** on	a third apparatus for checking some disk parameters to determine the amount of user accessible area on the disk convertible to ***reserve area*** on the disk and vice versa.

the disk and vice versa.

Means-plus-function claim

Function; "checking some disk parameters to determine the amount of user accessible area on the disk convertible to reserve area on the disk and vice versa"

	Structure: no structure disclosed
Claim 12	
12. A method for changing the size of a ***reserve area*** on a disk in a ***disk drive,***	12. A method for changing the size of a ***reserve area*** on a disk in a ***disk drive,***
said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,	said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,
said reserve storage area having a predetermined storage capacity,	said reserve storage area having a predetermined storage capacity,
said ***disk drive*** also including a user accessible area having a predetermined storage capacity,	said ***disk drive*** also including a user accessible area having a predetermined storage capacity,
said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive,***	said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive,***
the method for adding to the ***reserve area*** comprising the steps of:	the method for adding to the ***reserve area*** comprising the steps of:
executing a first command to read the maximum track to which the user has access;	executing a first command to read the maximum track to which the user has access;
executing a second command for changing a portion of the user accessible area to additional ***reserve area;*** and	executing a second command for changing a portion of the user accessible area to additional ***reserve area;*** and
inputting non-user accessible information to the added ***reserve area,***	inputting non-user accessible information to the added ***reserve area,***
wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a set of instructions to the added ***reserve area*** to predict a ***disk drive*** failure.	wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a set of instructions to the added ***reserve area*** to predict a ***disk drive*** failure.
Claim 13	
13. A method for changing the size of a ***reserve area*** on a disk in a ***disk drive,***	13. A method for changing the size of a ***reserve area*** on a disk in a ***disk drive,***
said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,	said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,
said reserve storage area having a predetermined storage capacity,	said reserve storage area having a predetermined storage capacity,
said ***disk drive*** also including a user accessible area having a predetermined	said ***disk drive*** also including a user accessible area having a predetermined storage capacity,

storage capacity,	
said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive,***	said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive,***
the method for adding to the ***reserve area*** comprising the steps of:	the method for adding to the ***reserve area*** comprising the steps of:
executing a first command to read the maximum track to which the user has access;	executing a first command to read the maximum track to which the user has access;
executing a second command for changing a portion of the user accessible area to additional ***reserve area;*** and	executing a second command for changing a portion of the user accessible area to additional ***reserve area;*** and
inputting non-user accessible information to the added ***reserve area,***	inputting non-user accessible information to the added ***reserve area,***
wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a portion of the ***basic input output system (BIOS)*** instruction set to the added ***reserve area.***	wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding a portion of the ***basic input output system (BIOS)*** instruction set to the added ***reserve area.***
Claim 14	
14. A method for changing the size of a ***reserve area*** on a disk in a ***disk drive,***	14. A method for changing the size of a ***reserve area*** on a disk in a ***disk drive.***
said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,	said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,
said reserve storage area having a predetermined storage capacity,	said reserve storage area having a predetermined storage capacity,
said ***disk drive*** also including a user accessible area having a predetermined storage capacity,	said ***disk drive*** also including a user accessible area having a predetermined storage capacity,
said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive,***	said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive,***
the method for adding to the ***reserve area*** comprising the steps of:	the method for adding to the ***reserve area*** comprising the steps of:
executing a first command to read the maximum track to which the user has access;	executing a first command to read the maximum track to which the user has access;
executing a second command for changing a portion of the user accessible area to additional ***reserve area;*** and	executing a second command for changing a portion of the user accessible area to additional ***reserve area;*** and
inputting non-user accessible information to the added ***reserve area,*** wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding emergency boot instructions to the	inputting non-user accessible information to the added ***reserve area,*** wherein the step of inputting non-user accessible information to the added ***reserve area*** includes adding ***emergency boot instructions*** to the added ***reserve area.***

added ***reserve area.***	
Claim 15	
15. A method for changing the size of a ***reserve area on a disk in a disk drive,***	15. A method for changing the size of a ***reserve area*** on a disk in a ***disk drive,***
said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,	said ***disk drive*** manufactured with a predetermined reserve storage area for storing selected non-user accessible information,
said reserve storage area having a predetermined storage capacity,	said reserve storage area having a predetermined storage capacity,
said ***disk drive*** also including a user accessible area having a predetermined storage capacity,	said ***disk drive*** also including a user accessible area having a predetermined storage capacity,
said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive,***	said ***reserve area*** and said user accessible area comprising the total storage capacity of the ***disk drive,***
the method for adding to the ***reserve area*** comprising the steps of:	the method for adding to the ***reserve area*** comprising the steps of:
executing a first command to read the maximum track to which the user has access; and	executing a first command to read the maximum track to which the user has access; and
executing a second command for changing a portion of the user accessible area to additional ***reserve area,***	executing a second command for changing a portion of the user accessible area to additional ***reserve area,***
wherein said ***disk drive*** further includes, a ***microcontroller*** and a ***Read only memory*** with a ***firmware instruction set*** for operating the ***microcontroller,***	wherein said ***disk drive*** further includes, a ***microcontroller*** and a Read only memory with a ***firmware instruction set*** for operating the ***microcontroller,***
said first command being executed after a ***password*** is recognized by the ***firmware.***	said first command being executed after a ***password*** is recognized by the ***firmware.***

EXHIBIT B

UNITED STATES PATENT NUMBER 5,966.732-GLOSSARY OF TERMS

TERM	***DEFINITION***
Basic Input Output System (BIOS)	Software that enables a computer to perform operational functions such as starting up the computer and transferring information among components of the computer
Disk Drive	A machine that reads data from and write data onto a disk
Emergency Boot Instructions	Instructions that can be used as an alternate source for starting up the computer
Firmware	Software stored in Read Only Memory
Firmware Instruction Set	One or more firmware instructions that the microcontroller can recognize and execute
Maximum Addressable Logical Block Address	The greatest number used to locate a block of data within the user accessible area on a disk
Microcontroller	An integrated circuit that fetches and executes instructions in order to control other circuits, e.g. a microprocessor

Non-user Accessible Area	A portion of the disk that cannot be accessed by a user
Password	Previously set information used to authenticate or permit subsequent action
Read Only Memory	Memory whose contents are readable and not typically changed during normal operation
Reserve Area	A portion of the disk that cannot be accessed by a user

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