United States District Court,
C.D. California.

LEGEND FILMS, INC,
Plaintiff.
v.
WEST WING STUDIOS, INC., et al,
Defendants.

No. CV 04-9494-R

Jan. 25, 2006.

Daniel C. Cotman, Dalina Law Group, La Jolla, CA, Edward C. Schewe, Schewe & Associates, Manhattan Beach, CA, for Plaintiff.

Michael D. Harris, Socal IP Law Group, Westlake Village, CA, for West Wing Studios, Inc.

ORDER FOLLOWING CLAIM CONSTRUCTION HEARING

MANUEL L. REAL**, District Judge.**

On December 12, 2005, the parties appeared in Court for a claim construction hearing. *See* Markman v. Westview Instr., Inc., 52 F.3d 967 (Fed.Cir.1995)(*en banc*), *aff'd,* 517 U.S. 370 (1996) (holding patent claim construction is an issue of law for a court). The Court declined to hear oral testimony, but has reviewed the parties' briefs filed in support of their asserted constructions.

LEGAL STANDARD TO EVALUATE CLAIM CONSTRUCTION

Determining patent infringement involves two steps: (1) to determine the meaning and scope of the patent claims allegedly infringed; and (2) then to compare the constructed claims to the allegedly infringing device. Markman, 52 F.3d at 976. Claim construction is a matter of law for the court. Id. at 977. In developing a claim construction, courts should evaluate the intrinsic evidence of the claims themselves, specifications, and prosecution history. Id. at 979. Extrinsic evidence may be used, however its value depends upon the ambiguity of relevant, intrinsic evidence. Id. at 979-980; Bell & Howell Document Mgmt. Prods. Co. v. Altek Sys., Inc., 132 F.3d 701, 706 (Fed.Cir.1997).

Under 35 U.S.C. s. 112, para. 6 FN1, patent applicants have the alternative to describe an element of the subject device by either the result accomplished or function served. The term "means" in the patent invokes section 112. *Mas-Hamilton Group v. LaGard, Inc .,* 145 F.3d 1206, 1211 (Fed.Cir.1998). Use of "means" creates a presumption of statutory means-plus-function clauses, which may be rebutted when: (1) the claim element recites no corresponding function for the "means," or (2) even if a function is specified, the presumption is overcome when the element recites sufficient structure, material or acts within the claim to

perform that function. *See* Sage Prods., Inc v. Devon Indus., Inc., 126 F.3d 1420, 1427-1429 (Fed.Cir.1997). For actual infringement, the accused device must: (1) perform the identical function recited in the means limitation; and (2) perform that function using the structure disclosed in the specification or equivalent structure." Carroll Touch, Inc. v. Electro Mech. Sys., Inc., 15 F.3d 1573, 1578 (Fed.Cir.1993).

FN1. That section provides, in relevant part:
An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. s. 112, para. 6.

CLAIM CONSTRUCTION

The Court concludes that the disputed claim elements have the following meanings:

I. Patent No. 4,984,072

A. '072 Patent, **Claim 1**

Claim Language: 1.a. capturing the image digitally, as a series of picture elements, each having a gray-scale value representative of its brightness.

Court's Construction: "Capturing the image digitally" means "converting a black and white film strip image into a digital format." The phrase means more than preserving, because the input is not already in digital format awaiting uploading into computer memory.

Claim Language: 1.b. defining one or more masks, each comprising one or more closed regions of picture elements representative of one or more operator-perceived objects with the image having the same operator-designated hue

Court's Construction: "Having the same operator-designated hue" means "resembling in every relevant respect the hue the operator indicated for the masked region." While the claim and specification differ in using "same" and "similar," both parties have used the term "same" in some fashion. This construction is straightforward and comprehensible, concentrating upon the operator's discretion.

Claim Language: 1.c. defining a color transfer function for each of said masks identifying each of said picture element gray-scale values within each of said masks with a unique combination of hue, luminance, and saturation values

Court's Construction: "Unique combinations" means "that for every gray-scale value within the mask, the process can only have one combination of hue, luminance, and saturation." The element suggests variables, i.e. mask and picture element, so that for a color function to exist with all these variables, the particular hue, luminance, and saturation ("HLS") combination must be "one of a kind" in that instance. Of course, the operator is free to create another "one of kind" HLS combination, but that too would be unique and yield a distinct result.

Claim Language: 1.d. applying said color transfer function for each of said masks to said corresponding picture element gray-scale values, thereby deriving unique combinations of hue, saturation, and luminance values corresponding to each gray-scale value

Court's Construction: "Applying" in this context means "putting to use." While the color transfer function itself may "convert" the gray-scale image into color, the grammatical structure of the sentence renders Defendant's construction improper. Here, color transfer function is not the subject of the sentence, instead the subject device is, thus the subject device "applies" the function, the device does not "convert" the function into anything.

Claim Language: 1.e. assigning said derived hue, saturation, and luminance values to said picture elements corresponding to each of said masks

Court's Construction: "Assigning" means "fixing or specifying in correspondence or relationship, and then storing in computer memory." This recognizes that both Plaintiff and Defendant's proposed constructions are necessary. Plaintiff's construction is necessary because the HLS values must first be fixed, then later stored into the computer memory. Defendant's construction overlooks the first step, but it correctly posits that assigning is then followed by storage in the specification.

B. '072 Patent, **Claim 5**

Claim Language: 5.a. selecting an arbitrary operator-defined hue value intended for application to the picture elements corresponding to each of said masks

Court's Construction: "Arbitrary operator defined hue value" means "discretionary hue value defined by the operator." The operator chooses the hue value without reference to any specified set of rules or guidelines.

C. '072 Patent, **Claim 6**

Claim Language: 6.a. for at least one operator-defined mask, for which an operator defined arbitrarily selected hue value has been designated in accordance with step (a) of claim 5, (b) selecting at least one arbitrary second hue value representative of an operator-designated hue of an illumination source

Court's Construction: The phrase "arbitrary second hue value representative of an operator-designated hue of an illumination source" means "selecting at least another hue value selected [depending on individual discretion] that is representative of a hue indicated by the operator as the hue of an illumination source." While this "designation" construction may seem perplexing, without the construction, the claim is simply abstruse.

D. '072 Patent, **Claim 7**

Claim Language: 7.a. selecting a luminance value representative of the average brightness of the picture elements corresponding to said mask

Court's Construction: "Average" means "about midway between extremes." The operator selects a value that fits best with the mask, which is not necessarily the arithmetic average.

E. '072 Patent, Claim 9

Claim Language: 9.a. capturing and storing each image frame digitally, as a series of picture elements, each having a gray-scale value representative of it brightness

Court's Construction: "Capturing storing each image frame digitally" means "converting a black and white film strip image into a digital format, and placing each image frame in computer memory for later use." This construction of capturing is consistent with that in claim 1, element a. The latter construction fully realizes the purpose of the data storage.

Claim Language: 9.c. using said key frame, defining one or more maps, each comprising one or more closed regions of picture elements representative of one or more objects designated to have the same hue

Court's Construction: This claim needs no construction; the claim's language of "same hue" is sufficiently clear to indicate a single hue.

Claim Language: 9.d. defining for at least one of said maps a color transfer function identifying said picture element gray scale values with unique combinations of hue, luminance, and saturation values

Court's Construction: "Unique combinations" means "that for every gray-scale value within the mask, the process can only have one combination of hue, luminance, and saturation," as previously set forth in claim 1, element c.

Claim Language: 9.e. correlating said picture element gray-scale values to said color transfer function, thereby deriving unique hue, saturation, and luminance values corresponding to each gray-scale value

Court's Construction: "Correlating" means "establishing a mutual or reciprocal relation between them." In this context, "correlating" is also distinct from the act of converting because correlating is an initial step in the process, with converting following this step.

Claim Language: 9.f. assign[ing] said hue, saturation, and luminance values to said picture elements comprising said map

Court's Construction: "Assign[ing]" means "fixing or specifying in correspondence or relationship, and then storing in computer memory." This construction is consistent with that in claim 1, element e.

Claim Language: 9.j. establishing a modified map by modifying a copy of each of said maps by selective deletion of picture elements which no longer define said objects, and addition of picture elements which define said objects, in accordance with said determined differences in the locations of said objects

Court's Construction: The phrase "selective deletion of picture elements" needs no construction because its meaning is self evident. The parties's constructions do not additional clarity in Plaintiff's case, or are unsupported by the relevant evidence in Defendant's case.

Claim Language: 9.k. storing said modified maps in association with said recalled frames.

Court's Construction: Based upon the elements a and j of claim 9, "storing" means "placing each image

frame in computer memory for later use."

F. '072 Patent, **Claim 10**

Claim Language: 10.a. means for capturing the image digitally, as a series of picture elements, each having a gray-scale value representative of its brightness

Court's Construction: "Means for capturing the image digitally" is "a device such as a video camera, image scanner, frame buffer, disk, tap or other storage device for preserving image data in digital form so that image can be transferred into random access memory." This element represents a means-plus-function as governed by 35 U.S.C. s. 112, para. 6. Given the manner in which there is a means to capture the images, this construction is reasonable.

Claim Language: 10.b. means for defining one or more masks, each comprising one or more closed regions of picture elements representative of one or more operator-perceived objects within the image having the same operator-designated hue

Court's Construction: "One or more operator-perceived objects within the image having the same operator-designated hue" means "any object in the image the operator observes." This element is controlled by section 35 U.S.C. s. 112, para. 6. This construction follows the plain language of the element and is consistent with the construction of claim 1, element b.

Claim Language: 10.c. means for defining a color transfer function for each of said masks identifying said picture element gray-scale values within each of said masks with unique combinations of hue, luminance, and saturation values

Court's Construction: "Means" refers to "software implemented tools," by the parties' stipulation. "Unique combination" means "one of a kind," as set forth in claim 1, element c.

Claim Language: 10.d. means for applying said color transfer function for each of said masks to said corresponding picture element gray-scale values, thereby deriving unique combinations of hue, saturation, and luminance values corresponding to each gray-scale value

Court's Construction: Consistent with the earlier finding, "means for applying" means "putting to use" as in claim 1, element d. Likewise, "unique combinations" means "one of a kind," just as in claim 1, element c.

Claim Language: 10.e. means for assigning said derived hue, saturation, and luminance values to said picture elements corresponding to each of said masks

Court's Construction: "Means for assigning" means "software implemented tools." This construction is consistent with the claims and specifications in the patent. No further construction is necessary.

G. '072 Patent, **Claim 11**

Claim Language: 11.a. recording said source image digitally, as a first series of picture elements, each having a gray-scale value representative of its brightness

Court's Construction: "Recording said source image digitally" means "causing the source image to be

registered on something as a disc or magnetic tape in reproducible form in the form of numerical digits." This construction which is consistent with the specifications and the use of the device.

Claim Language: 11.b. defining a first series of one or more masks within said source image, each comprising one or more closed regions of picture elements representative of one or more operator-perceived objects within the image having the same operator-designated hue

Court's Construction: The phrase "having the same operator-designated hue" means "resembling in every relevant respect the hue the operator indicated for the masked region as previously discussed in claim 1, element b.

Claim Language: 11.c. defining a color transfer function for each of said masks identifying said picture element gray-scale values with unique combinations of hue, luminance, and saturation values

Court's Construction: "Unique combination" means "one of a kind," as discussed in claim 1, element c.

Claim Language: 11.d. applying said color transfer function to each of picture element gray-scale values, thereby deriving unique combinations of hue, saturation, and luminance corresponding to each gray-scale value; and

Court's Construction: "Applying" means "putting to use," as discussed in claim 1, element d.

Claim Language: 11.e. assigning said derived hue, saturation, and luminance values to a second series of picture elements in a second series of masks, each such mask corresponding in shape, size and position to a mask in said first series of masks, and storing said assigned values

Court's Construction: "Assigning" in this instance means "fixing or specifying in correspondence or relationship." This construction necessarily differs from the construction of "assigning" in claim 1, element e because the subject element here adds "storing" as a second step in this process, unlike that in claim 1, element e.

H. '072 Patent, **Claim 12**

Claim Language: 12.a. determining whether said unique saturation value which corresponds to said picture element gray-scale value is beyond a maximum saturation value limit which approximates the maximum, visually perceivable saturation value for said unique luminance values which corresponds to said picture element gray-scale value

Court's Construction: "Maximum, visually perceivable saturation value" means "the maximum saturation value limit is the greatest saturation value that people can perceive." This construction lies best in line with the specifications. No further construction is necessary.

Claim Language: 12.b. assigning said maximum saturation value as a new saturation value for said picture element if said unique saturation value is beyond the maximum saturation value for said unique luminance values which corresponds to said picture element gray-scale value

Court's Construction: "Assigning" in this instance means "fixing or specifying in correspondence or

relationship, and then storing in computer memory." This construction is consistent with claim 1, element e because assigning there involved the dual steps, fixing and storing as is the case here. This construction is also consistent with claim 11, element e because element e in claim 11 expressly recognized a computer storage component, thus no requiring a more detailed construction.

I. '072 Patent, **Claim 15**

Claim Language: 15. The method of claim 12, wherein said maximum saturation values for all unique luminance values defines a boundary for a double conic space in a hue, luminance, saturation (HLS) coordinate system

Court's Construction: "Double conic space" means "the computer must create a graph of two cones in which an upper cone is on a lower cone. The outsides of the cones represent the maximum saturation values as defined in claim 12." This construction falls in line with the specifications and by a person skilled in the art.

J. '072 Patent, **Claim 19**

Claim Language: 19. The method of claim 6 wherein said predetermined hue-luminance-saturation transfer function is adapted to cause the hue values of said operator defined mask to be displayed in brighter portions thereof as if said operator defined mask hue value was the hue value of said operator designated hue value of an illumination source.

Court's Construction: "Transfer function" means "the transfer function must have a term that causes part of the mask to display a hue value that is not related to the real life hue of an illumination source." This construction is clear and consistent with the relevant patent history.

K. Claim 20

Claim Language: 20.Preamble. A system for coloring a monochrome image having a plurality of regions comprising

Court's Construction: "Regions" are "defined areas within an image." This construction recognizes the distinction between regions and masks within the patent specifications.

Claim Language: 20.b. Means for storing a product of a separate color transfer function for each of said regions

Court's Construction: "Product of a separate color transfer function" means "something produced by a distinct relationship that identifies hue, luminance and saturation values for given gray scale values." This construction is on all fours with the context and use of "color transfer function" for the '072 Patent claims.

Claim Language: 20.c. means for digitally storing, for each pixel, a region identifier by which one of said color transfer functions is associated with said pixel

Court's Construction: "Associated with said pixel" means: "The memory must assign every pixel to a single region. Thus, each pixel has a static location and cannot be part of two or more regions." This construction is consistent with the specifications use of static location for pixels, as opposed to dynamic or

multiple locations for each pixel. No further construction is necessary.

L. '072 Patent, **Claim 26**

Claim Language: 26.Preamble. A system for coloring a monochrome image having a plurality of regions comprising

Court's Construction: Consistent with claim 20, "regions" means "defined areas within an image."

Claim Language: 26.b. means for digitally storing for each pixel, a region identifier by which each of said pixels is associated with one of said regions

Court's Construction: "Means for digitally storing" is "the computer must assign every pixel to a single region, so that each pixel has a static location and cannot be part of two or more regions." This view recognizes the static pixel locations as discussed in claim 20, element c.

M. '072 Patent, **Claim 32**

Claim Language: 32.b. means for digitally storing, for each pixel, a region identifier by which one of a color transfer function is associated with each of said regions

Court's Construction: Per the parties' stipulation, "means for digitally storing" is computer memory.

N. '072 Patent, **Claim 37**

Claim Language: 37.a. said color transfer functions are constructed of operator manipulated relationships of hue, luminance, saturation, and gray-scale values

Court's Construction: "Said color transfer functions" needs no further construction, except to use the previous construction from claim 20, element b of "color transfer functions" as "relationships that identifies hue, luminance and saturation values for given gray-scale values."

II. Patent No. 5,534,915

A. Patent '915**, Claim 1**

Claim Language: 1.c. displaying a representation of said first base color at a first index value on a display graph having an axis defined by a plurality of base color index values corresponding to an allowable number of base colors

Court's Construction: First, "index value" means " "refers to assigning a value to memory instead of accessing memory directly." This construction rings true to the specifications and the reality of limited computer functionality, when the patentee submitted its application. Second, "axis" means "one of the reference lines of a coordinate system." This construction is consistent to the use of those skilled in the art.

Claim Language: 1.h. applying said first base color and said at least one additional base color to corresponding pixels of said selected region using a color transfer function comprising a look-up table.

Court's Construction: First, "applying" here means "putting to use," because there is no conversion or transformation occurring by this process. Second, "look-up table" means "data structure, usually an array or associative array, used to replace a runtime computation with a simpler lookup operation." This construction is closer to the specifications and use because it accurately describes the purpose of that table.

B. Patent '915**, Claim 7**

Claim Language: 7.h. means for applying said first base color and at least one additional base color to corresponding pixels of said selected region using a color transfer function comprising a look-up table

Court's Construction: "Means for applying" is "computer computation." This construction falls outside the perimeters of 35 U.S.C. s. 112, para. 6 because it specifies the function with sufficient structure, material or acts. Importantly, the element evinces something more than a stagnant computer memory waiting to be accessed.

C. '915 Patent, **Claim 8**

Claim Language: 8. The System of claim 7 wherein said means for displaying a representation of said first base color and said means for displaying a representation of said at least one additional base color in association with said first base color comprise a display graph having an axis defined as a base color index corresponding to an allowable number of base colors.

Court's Construction: "Means for displaying" means "the computer must display a graph with an axis that displays a representation of an allowable number of base colors and a value on that axis of the selected base colors." This construction is true to the specifications with the consideration of 35 U.S.C. s. 112, para. 6.

D. '915 Patent, **Claim 9**

Claim Language: 9. The system of claim 8 wherein said display graph further includes an additional axis defined as a luminance value scale representative of luminance values associated with each base color.

Court's Construction: "The second axis of the graph must show luminance values associated with each base color." Governed by 35 U.S.C. s. 112, para. 6, this construction best illustrates the purpose of the element.

It is so ORDERED.

C.D.Cal.,2006.
Legend Films, Inc. v. West Wing Studios, Inc.

Produced by Sans Paper, LLC.