United States District Court,
N.D. Georgia, Atlanta Division.

STS SOFTWARE SYSTEMS, LTD,
Plaintiff.
v.
WITNESS SYSTEMS, INC,
Defendant.

Civil Case No. 1:04-CV-2111-RWS

Oct. 10, 2006.

Daniel Arthur Kent, Nagendra Setty, Fish & Richardson, P.C., Joseph C. Sharp, William Bradley Hill, Jr., Ashe Rafuse & Hill, Atlanta, GA, Josh Krevitt, Kevin W. Cherry, Richard Koehl, Gibson Dunn & Crutcher LLP, Robert Laurenzi, Sarah W. Saunders, Scott G. Lindvall, Kaye Scholer LLP, New York, NY, Kelly A. Clement, Kaye Scholer, LLP, Washington, DC, for Plaintiff.

Robert Laurenzi, Scott G. Lindvall, Kaye Scholer LLP, New York, NY, Christopher Owen Green, Daniel Arthur Kent, Nagendra Setty, George Laszlo Kanabe, Noah C. Graubart, Fish & Richardson, P.C., Atlanta, GA, for Defendant.

SPECIAL MASTER'S REPORT AND RECOMMENDATION ON CLAIM CONSTRUCTION

RODERICK R. McKELVIE, Judge.

This is a patent infringement case. Plaintiff STS Software Systems, Ltd. is an Israeli corporation with its principal place of business in Ra'anana, Israel. STS is a wholly owned subsidiary of NICE Systems, Ltd., also an Israeli corporation. STS is the owner by assignment of U.S. Patent No. 6,122,665 ("the '665 Patent"), which describes a communication management system for computer network-based telephones.

STS is also the owner by assignment of U.S. Patent No. 6,865,604 ("the '604 Patent"), which describes a method for extracting a computer network-based telephone session performed through a computer network; U.S. Patent No. 6,871,229 ("the '229 Patent"), which describes a method for storing on a computer network a portion of a communication session between a packet source and a packet destination; and U.S. Patent No. 6,880,004 ("the '004 Patent"), which describes a method for restoring a portion of a communication session transmitted over a computer network. The '604 Patent, '229 Patent, and '004 Patent (collectively, the "patents-in-suit") all claim priority from the ' 665 Patent. FN1

FN1. The '604 Patent, '229 Patent, and '004 Patent are all continuations of U.S. Patent Application No. 09/664,755 (the "C-I-P Application"), which is a continuation-in-part of the application from which the '665 Patent issued. The C-I-P Application was filed on September 19, 2000 and was later abandoned.

Defendant Witness Systems, Inc. is a Delaware corporation with its principal place of business in Roswell, Georgia.

On July 20, 2004, STS filed a complaint in the United States District Court for the Southern District of New York, alleging that Witness's eQuality ContactStore for IP product and any other Witness products incorporating systems and methods for monitoring a computer network to detect data packets that are part of a communications session infringe all the claims of the ' 665 Patent (the "New York Litigation"). Later that same day, Witness filed a declaratory judgment action in this Court, seeking a declaration of non-infringement of the '665 Patent.

On September 21, 2004, STS filed a motion to dismiss Witness's declaratory judgment action for lack of personal jurisdiction and insufficient service or, in the alternative, to transfer the case to the Southern District of New York. STS later stated that if the New York Litigation were transferred to this Court, then STS would withdraw its motion to dismiss. On December 16, 2004, the New York Litigation was transferred to this Court. On January 14, 2005, this Court consolidated the two cases. That same day, STS withdrew its motion to dismiss.

On July 7, 2005, the Court granted STS's unopposed motion to supplement its complaint to assert claims of infringement of the '604 Patent, '229 Patent, and '004 Patent, which had issued subsequent to the filing of the initial complaint. That same day, STS filed its amended complaint. On July 29, 2005, Witness filed its answer, denying STS's allegations of infringement; asserting affirmative defenses of, *inter alia,* prosecution history estoppel, invalidity, and laches; and seeking a declaratory judgment of invalidity and noninfringement.

On August 5, 2005, STS filed a notice of a covenant not to sue Witness for infringement of the '665 Patent and asked Witness to stipulate to the dismissal, with prejudice, of all claims relating to the '665 Patent. Witness rejected the stipulation, on the grounds that the covenant contained inadequacies. On August 22, 2005, STS filed a motion to dismiss all claims relating to the '665 Patent for lack of subject matter jurisdiction, asserting that STS's execution of a covenant not to sue removed any case or controversy between the parties concerning the '665 Patent. On January 6, 2006, the Court denied STS's motion, on the grounds that the covenant presented by STS was insufficient to eliminate any reasonable apprehension of suit on Witness's part. On February 24, 2006, the parties reached agreement on a covenant not to sue, and stipulated to dismiss with prejudice all claims relating to the '665 Patent.

Because of the anticipated complexity of discovery issues and claim construction in this case, on March 14, 2006, the Court, with the consent of counsel, appointed Judge Roderick R. McKelvie of Covington & Burling LLP as Special Master to supervise discovery proceedings and to preside over the claim construction hearing.

On July 27, 2006, the Special Master held a hearing in accordance with Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996) to construe the disputed claims of the patents-in-suit. The principal disputes between the parties concern the "receiving," "analyzing," and "storing" steps, and the ordering of the steps in the independent claims of all three patents at issue. This is the Special Master's Report and Recommendation on the construction of the disputed terms.

I. ***FACTUAL AND PROCEDURAL BACKGROUND***

The Special Master draws the following facts from the affidavits and documents submitted by the parties, their presentations at the July 27, 2006 hearing, and from the prosecution histories of the patents-in-suit and the '665 Patent.

A. ***General Description of the Technology***

The patents at issue relate to Voice over Internet Protocol ("VoIP") technology for monitoring, extracting, recording, and replaying telephone communications sessions performed through a computer network. VoIP works by translating a voice signal into a digital signal that can then be transmitted over a computer network from the sender to a receiver. VoIP enables the routing of telephone calls over the Internet, an intranet, or other packet-switched networks using the Internet Protocol ("IP"), instead of through a traditional circuit-switched telephone service.

A packet-switched network transmits data in units called "packets," which are routed individually over a computer network to their intended destination addresses. A packet generally consists of two parts: (1) a "header," which is located at the beginning of a packet and contains information related to the transmission of the packet, and (2) a "payload," which is the data being transported. Some packets may also contain a "trailer," which is located at the end of a packet and contains additional control information.

The structure of a header is defined by communications protocols, which are sets of rules that govern the routing and delivery of packets. Figures 4B-4D of the patents-in-suit depict the headers of IP packets constructed according to four protocols associated with VoIP: H.225, H.245, Real-time Transport Protocol ("RTP"), and Real-time Transport Control Protocol ("RTCP").

The format or content of a payload is defined by a protocol or generated by an application. The payload of a packet may include or "encapsulate" another packet. Each encapsulated packet forms a layer that performs a specific and different function. For example, an RTP packet must be encapsulated into a larger, four-layer "stack" before it can be transmitted over a VoIP network. The lowest layer of the stack is known as the "application layer" and consists of the RTP packet itself, whose payload is the audio or video data being transported. The next layer is the "transport layer," which consists of an UDP packet whose payload is the RTP packet. The third layer is the "network layer," which consists of an IP packet whose payload is the UDP packet. The final layer is the "link layer," which consists of an Ethernet packet whose payload is the IP packet. Thus, the packet that is transmitted over a computer network consists of the Ethernet header, IP header, UDP header, RTP header, and RTP payload.

B. ***Prosecution History of the*** '665 Patent

The '665 Patent issued from U.S. Patent Application No. 09/140453 ("the '453 Application"), which was filed on August 26, 1998. As initially filed, the '453 Application included a total of 24 claims directed to a communication management system for computer network-based telephones. In the specification, the applicants listed four objectives of the present invention: (1) "to provide a system and a method for recording communications sessions performed over a computer network"; (2) "to provide such a system and method for analyzing data transmitted over the computer network in order to detect audio and video data for recording"; (3) "to provide such a system and method for displaying recorded video and audio data upon request"; and (4) "to provide such a system and method for analyzing, recording and displaying communication sessions conducted with a LAN-based telephone system."

1. ***Office Action of November 24, 1999***

On November 24, 1999, the PTO examiner rejected all claims of the '453 Application as obvious in light of U.S. Patent No. 5,101,402 ("Chiu") combined with U.S. Patent No. 5,717,879 ("Moran"). Chiu issued on March 23, 1992 and is directed to an apparatus and method for real-time monitoring of network sessions in a local area network. Moran issued on February 10, 1998 and is directed to a system for the capture and replay of temporal data representing collaborative activities. The examiner concluded that "[i]t would have been obvious to one of ordinary skill in the art to combine the teaching of Chiu with Moran because it would enable [sic] Moran system of [sic] efficiently capture data packets (e.g., audio, video, whiteboard data) associated with a collaborative session."

2. ***Response of February 23, 2000***

On February 23, 2000, the applicants responded to the November 24 Office Action. They canceled claim 9 of the original application and amended independent claims 1 and 11 and dependent claims 2-3, 5, 12-14, 16, 17, and 20-24.

In response to the examiner's rejection of the claims as obvious, the applicants argued that their invention was distinguishable from Chiu and Moran in part because those references do not teach or suggest the analysis of the data itself in the packets, which is required in order to store computer network-based telephone session data. The applicants stated:

[T]he present invention is a method and system for analyzing packet data with regard to particular types of packets, which are packets involved in computer network-based telephone sessions. The packet data itself is of interest for the present invention, since such data may be audio or video data, and since such data is required for storing, analyzing and replaying these telephone sessions. Therefore, the packets of the present invention are not merely discrete units of data, as for the teachings of Moran, nor are these packets only of interest for header information, as for the teachings of Chiu.

Neither Chiu nor Moran, alone or in combination, teaches or suggests a method for storing computer network-based telephone session data, which requires the analysis of the data itself in the packets. The present invention examines such data at three levels: as session data for a plurality of packets, as packets with header data, and as packet data. By contrast, Chiu and Moran alone only examine one of these three levels, and even in combination could not involve the examination of the data at all three levels. Thus, Moran and Chiu, alone or in combination, do not teach or suggest the present invention.

3. ***Notice of Allowability***

On May 4, 2000, the examiner allowed Claims 1-8 and 10-24 of the '453 Application as amended. The claims were re-numbered 1-23.

4. ***Issuance of the*** '665 Patent

On September 19, 2000, the United States Patent and Trademark Office issued the '665 Patent to STS as assignee of the inventors, Eitan Bar and Nisani. The '665 Patent is entitled "Communication Management System for Computer Network-Based Telephones."

C. ***Prosecution History of the*** '604 Patent

The '604 Patent issued from U.S. Patent Application No. 10/962,677 ("the '677 Application"), which was filed on October 13, 2004. The '677 Application claims priority from the application from which the '665 Patent issued. Specifically, the '677 Application is a continuation of a continuation-in-part of the '453 Application. As initially filed, the '677 Application included a total of 8 claims directed to a method for extracting a computer network-based telephone session performed through a computer network.

1. ***Interview Summary***

On November 16, 2004, the PTO examiner conducted an interview with the applicants' representatives to discuss claim 1 and prior art references Chiu and Moran. The Interview Summary submitted by the examiner states that the general substance of the interview was as follows: "Applicant will file a preliminary amendment. Examiner agrees that the selective monitoring step (b) of claim 1 is not suggest [sic] by Moran and Chiu. Examiner reserves judgment on the patentability of claim 1 subject to additional searches." The examiner noted in the Interview Summary that agreement with respect to the claims was not reached during the interview.

2. ***Statement of the Substance of the Interview***

On December 14, 2004, the applicants submitted a "Statement of the Substance of the Interview" to the PTO, in relation to the November 16, 2004 interview. The applicants stated that they concurred with the substance of the examiner's Interview Summary and believed it to be "a proper recordation of the items that it addresses." The applicants also supplemented the Interview Summary, requesting that the record reflect that the parent '665 Patent was in litigation. The applicants explained that the litigation was the reason that their representatives had requested both the November 16th interview and expedited handling of the '677 Application.

3. ***Notice of Allowability***

On December 16, 2004, the examiner allowed claims 1-8, provided that claims 1 and 2 were amended pursuant to an agreement reached with the applicants' representatives during the November 16th interview. FN2 The examiner's statement of reasons for allowance was as follows:

FN2. Claim 1 was amended as follows

A method for monitoring data packets transmitted across a computer network in order to extract a computer network-based telephone session that has been performed through the computer network for display in response to a request, comprising the steps of
(a) analyzing *data within the* data packets that are transmitted on the computer network to select one or more data packets that contain audio data, video data, or audio and video data;
(b) identifying data packets that are associated with one or more IP addresses representing sessions to be monitored;
(c) storing the audio data, video data, or audio and video data contained in the identified data packets;
(d) organizing the audio data, video data, or audio and video data contained in the identified data packets into a specific telephone session based at least in part on a computer network-based telephone session to which the data packets belong; and
(e) outputting the audio data, the video data, or the audio and video data that is included in the organized data packets upon receipt of a signal representing the request of a user for the specific telephone session.
Claims 1-8 are allowable because the prior art does not teach not [sic] reasonably suggest system that

analyzes the data portions of packets to determine the telephone communication session to which the packets belong, stores and outputs those packets as claimed.

4. ***Comments on Reasons for Allowance***

On December 24, 2004, the applicants submitted Comments on Reasons for Allowance, stating that they wished to "clarify the record with respect to the basis for the patentability of claims in the present application." The Comments further stated that while the applicants did not "disagree with the Examiner's indication that certain identified features are not disclosed by the references," they submitted that "each of the claims in the present application recite a particular combination of features, and that the basis for patentability of each of these claims is based on the totality of the particular features recited therein."

5. ***Issuance of the*** '604 Patent

On March 8, 2005, the United States Patent and Trademark Office issued the ' 604 Patent to STS as assignee of the inventors, Nisani and Bar. The '604 Patent is entitled "Method for Extracting a Computer Network-Based Telephone Session Performed through a Computer Network."

D. ***Prosecution History of the*** '229 Patent

The '229 Patent issued from U.S. Patent Application No. 10/962,676 ("the '676 Application"), which was filed on October 13, 2004. The '676 Application claims priority from the application from which the '665 Patent issued. Like the '677 Application, the '676 Application is a continuation of a continuation-in-part of the '453 Application. As initially filed, the '676 Application included a total of 25 claims directed to a method for storing on a computer network a portion of a communication session between a packet source and a packet destination.

1. ***Interview Summary***

On November 16, 2004, the PTO examiner conducted an interview with the applicants' representatives to discuss claims 1, 3, and 13 and prior art references Chiu and Moran. The Interview Summary submitted by the examiner states that the general substance of the interview was as follows: "Applicant has filed a Terminal Disclaimer. Examiner will favorably consider the application and make the attached change by examiner amendment in order to place the application in allowable condition. Applicant advises the Examiner that an IDS was filed on Nov. 12, 2004." The examiner noted in the Interview Summary that agreement with respect to the claims was reached during the interview.

2. ***Statement of the Substance of the Interview***

On December 14, 2004, the applicants submitted a "Statement of the Substance of the Interview" to the PTO, in relation to the November 16, 2004 interview. That Statement was identical to the one the applicants submitted, on the same day, during prosecution of the '604 Patent.

3. ***Notice of Allowability***

On December 16, 2004, the examiner allowed claims 1-25, provided that claims 1, 3, 13, 24, and 25 were amended pursuant to an agreement reached with the applicants' representatives during the November 16th interview. FN3 The examiner's statement of reasons for allowance was as follows:

FN3. Claim 3 was amended as follows.

A method for storing at least a portion of a computer network-based communication session being performed on a computer network between a packet source and a packet destination, the method comprising the steps of
(a) receiving data packets on the computer network;
(b) filtering each of the received data packets to accept the data packets that are associated with a session to be monitored,
(c) analyzing *the data within* the accepted data packets to determine a communication session to which each accepted data packet belongs; and
(d) storing *a portion of the communication session performed on the computer network* the accepted data packets in association with a specific communication session

Claim 13 was amended as follows:

A method for storing at least a portion of a communication session being performed on a computer network between a packet source and a packet destination, the method comprising the steps of:
(a) receiving data packets on the computer network, the data packets containing at least the portion of the communication session containing audio data, video data, or both audio data and video data;
(b) filtering the data packets using filtering information;
(c) accepting the data packets according to the filtering information;
(d) analyzing *data within* the accepted data packets to determine *communication sessions to which* a type of data contained in the data packets *belong;* and
(e) storing the portion of the computer *communication* sessions contained in the data packets according to the *analyzing step* type.
Claims 1-11[sic] are allowable because the prior art does not teach not [sic] reasonably suggest system that analyzes the data portions of packets to determine the telephone communication session to which the packets belong, stores and outputs those packets as claimed.

4. *Comments on Reasons for Allowance*

On December 24, 2004, the applicants submitted Comments on Reasons for Allowance that were identical to those they submitted, on the same day, during prosecution of the '604 Patent.

5. *Issuance of the* '229 Patent

On March 22, 2005, the United States Patent and Trademark Office issued the ' 229 Patent to STS as assignee of the inventors, Nisani and Bar. The '229 Patent is entitled "Method for Storing on a Computer Network a Portion of a Communication Session between a Packet Source and a Packet Destination."

E. *Prosecution History of the* '004 Patent

The '004 Patent issued from U.S. Patent Application No. 10/962,679 ("the '679 Application"), which was filed on October 13, 2004. The '679 Application claims priority from the application from which the '665 Patent issued. Like the '677 and '676 Applications, the '679 Application is a continuation of a continuation-in-part of the '453 Application. As initially filed, the '679 Application included a total of 11 claims directed to a method for restoring a portion of a communication session transmitted over a computer network.

1. ***Interview Summary***

On November 16, 2004, the PTO examiner conducted an interview with the applicants' representatives to discuss claim 1 and prior art references Chiu and Moran. The Interview Summary submitted by the examiner states that the general substance of the interview was as follows: "Applicant has filed a Terminal Disclaimer. Examiner will favorably consider the application and make the attached change by examiner amendment in order to place the application in allowable condition. Applicant advises the Examiner that an IDS was filed on Nov. 12, 2004." The examiner noted in the Interview Summary that agreement with respect to the claims was reached during the interview.

2. ***Statement of the Substance of the Interview***

On December 14, 2004, the applicants submitted a "Statement of the Substance of the Interview" to the PTO, in relation to the November 16, 2004 interview. That Statement was identical to the one the applicants submitted, on the same day, during prosecution of the '604 and '229 Patents.

3. ***Notice of Allowability***

On December 16, 2004, the examiner allowed claims 1-11, provided that claim 1 was amended pursuant to an agreement reached with the applicants' representatives during the November 16th interview. FN4 The examiner's statement of reasons for allowance was as follows:

FN4. Claim 1 was amended as follows.

In a communication system including computer network-based telephones, a method for restoring at least a portion of a telephone communication session, the method comprising:
(a) receiving data packets transmitted over a computer network;
(b) *analyzing a data portion of the data packets to determine the telephone communication session to which the data packets belong,*
(c) storing audio or video data contained in the data packets;
(c) *(d)* restoring the portion of the telephone communication session from the audio or video data contained in the data packets;
(d) *(e)* providing a terminal having a user interface, a data entry device and a display unit suitable for outputting audio data, video data, or both audio and video, and
(e) *(f)* outputting the portion of the telephone communication session using the display unit.
Claims 1-11 are allowable because the prior art does not teach not [sic] reasonably suggest system that analyzes the data portions of packets to determine the telephone communication session to which the packets belong, stores and outputs those packets as claimed.

4. ***Comments on Reasons for Allowance***

On December 24, 2004, the applicants submitted Comments on Reasons for Allowance that were identical to those they submitted, on the same day, during prosecution of the '604 and '229 Patents.

5. ***Issuance of the*** '004 Patent

On April 12, 2005, the United States Patent and Trademark Office issued the ' 004 Patent to STS as assignee of the inventors, Nisani and Bar. The '004 Patent is entitled "Method for Restoring a Portion of a

Communication Session Transmitted over a Computer Network."

II. *DISCUSSION*

The construction of the claims in a patent is a matter exclusively within the province of the court. Markman, 517 U.S. at 391. In construing a patent's claims, the court must begin with the intrinsic evidence in the record, namely the words of the claims themselves, the specification, and the prosecution history. Phillips v. AWH Corp., 415 F.3d 1303, 1314 (Fed.Cir.2005) (en banc). "Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996).

The starting point in claim construction is the language of the claims themselves. *Id*. Words of a claim are generally given their ordinary and customary meaning, unless a patentee has clearly set forth a different definition in the specification or file history. *Id*. Moreover, "the ordinary and customary meaning of the claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." Phillips, 415 F.3d at 1313.

The claims do not stand alone and must be read in view of the specification, of which they are a part. *See* id. at 1315. As the Federal Circuit has stated:

The specification contains a written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it. Thus, the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.

Vitronics, 90 F.3d at 1582. Additionally, the prosecution history is often of critical significance in determining the meaning of the claims. Id. at 1583 ("The prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution.") (quotations omitted) (citing Southwall Tech., Inc. v. Cardinal IG Co., 54 F.3d 1570, 1576 (Fed.Cir.1995)).

Although the Federal Circuit has held that claims should be read in light of the specification and prosecution history, the court has repeatedly cautioned against limiting the scope of the claim to the preferred embodiment or specific examples disclosed in the specification. *See, e.g.,* Ekchian v. Home Depot, 104 F.3d 1299, 1303 (Fed.Cir.1997); Intervet Am., Inc. v. Kee-Vet Labs., Inc., 887 F.2d 1050, 1053 (Fed.Cir.1989) ("[L]imitations appearing in the specification will not be read into claims, and ... interpreting what is meant by a word in a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.' ").

The court may exercise its sound discretion to consider extrinsic evidence presented by the parties. Phillips, 415 F.3d at 1319. All evidence external to the patent and prosecution history is considered extrinsic. Id. at 1317. Although extrinsic evidence can shed light on the relevant art, it is less significant than intrinsic evidence in construing claims and "is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence." Id. at 1319. It is well-established that "extrinsic evidence may never be used for the purpose of varying or contradicting the terms in the claims." Interactive Gift Express, Inc. v. CompuServe, Inc., 256 F.3d 1323, 1332 (Fed.Cir.2001) (citation and quotations omitted).

A. *The "Receiving" Step*

Step (a) of claims 3 and 13 of the '229 Patent describes "receiving data packets on the computer network." Similarly, step (a) of claim 1 of the '004 Patent describes "receiving data packets transmitted over a computer network." Although the '604 claims do not expressly include a "receiving" limitation, step (a) of claim 1 describes "analyzing data within the data packets that are transmitted on the computer network." The parties agree that that step implicitly requires that the data packets being transmitted on the computer network be received.

STS contends that those phrases simply mean "receiving or acquiring data packets that are transmitted on a computer network." STS argues that the claim language of the "receiving" step is clear and unambiguous and that the specification does not contain any intentional disclaimer or disavowal of claim scope.

Witness counters that the phrases mean "receiving all data packets presented to the network interface regardless of the packet destination." In support of its proposed construction, Witness first argues that the specification only teaches a "passive" method of recording, or a "promiscuous mode" in which a network interface card ("NIC") collects each and every packet that passes by and then later filters out the relevant packets. *See, e.g.,* '604 Patent, col. 7, In. 66-67 ("All data packet traffic on intranet 14 is passed to a filtering module 24 through NIC 16."). Witness contends that because the specification only discloses passive tapping, the "receiving" step must be narrowly defined so as to exclude conferencing and other active methods of recording.

Witness next argues that extrinsic evidence further supports its proposed construction. Specifically, Witness contends that inventor Mordechai Nisani and STS's expert witness Dr. Kevin Jeffay both admitted in deposition that the specification only teaches passive tapping. Witness also contends that STS/NICE literature shows that STS has admitted, outside the context of this litigation, that the specification teaches only passive methods of recording.

After reviewing the specification, the Special Master finds that the phrases "receiving data packets on the computer network" and "receiving data packets transmitted over a computer network" should be construed according to their plain meanings. Nothing in the specification indicates that the claimed invention is directed exclusively towards passive methods of VoIP recording or that systems or methods employing active modes of VoIP recording are outside the scope of the invention. *See* Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1327 (Fed.Cir.2002) (holding that claim terms take on their ordinary and accustomed meanings, unless the patentee uses words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope); *see also* Alloc, Inc. v. ITC, 342 F.3d 1361, 1370 (Fed.Cir.2003) ("[I]t is impermissible to read the one and only disclosed embodiment into a claim without other indicia that the patentee so intended to limit the invention."). Therefore, the Special Master adopts the existing claim language.

B. *The "Analyzing" Step*

Step (c) of claim 3 of the '229 Patent describes "analyzing the data within the accepted data packets to determine a communication session to which each accepted data packet belongs." Step (d) of claim 13 of the '229 Patent contains a similar limitation: "analyzing data within the accepted data packets to determine communication sessions to which the data packets belong." Step (b) of claim 1 of the '004 Patent describes "analyzing a data portion of the data packets to determine the telephone communication session to which the data packets belong." Similarly, step (a) of claim 1 of the '604 Patent requires "analyzing data within the

data packets that are transmitted on the computer network to select one or more data packets that contain audio data, video data, or audio and video data." Those limitations will be referred to collectively as the "analyzing" step.

STS contends that those phrases simply mean "examining data within the accepted data packets to determine the communication sessions to which the data packets belong." STS points to the plain meaning of the claims, arguing that the terms "data within the accepted data packets" and "a data portion of the data packets" are open-ended terms indicating that headers alone may be examined to determine the type of data packet. STS argues that the claim language of the "analyzing" step is clear and unambiguous and that the intrinsic record does not contain any special definition of that step or intentional disclaimer of claim scope.

STS also contends that Witness's proposed construction would exclude preferred embodiments described in the patents-in-suit. In support of that argument, STS first asserts that the specification expressly states that one of the preferred embodiments performs the "analyzing" step by examining a header of the packet. *See* '604 Patent, col. 3, In. 40-43 ("Preferably, the step of analyzing the data packet is performed by examining a header of the data packet."). Second, STS asserts that the specification uses the term "data portion 70" to describe the "payload" of the IP data packet depicted in Fig. 4a of the patents-in-suit. *See* '604 Patent, col. 10, In. 16-39. STS states that because "data portion 70" may contain encapsulated data packets that themselves contain headers and payloads, the specification's use of the term "data portion of the data packet" means that headers alone (such as a header encapsulated in the payload of another data packet) may be analyzed.

Witness counters that the "analyzing" step should be construed to mean "analyzing the information, including any payload (application layer information), within the accepted data packets to determine communication sessions to which the data packets belong." The essence of the parties' dispute over the "analyzing" step is whether the "analyzing" step requires the examination of application layer information.

Witness argues that the prosecution histories of the '665 Patent and the patents-in-suit support its proposed construction. Witness first points to an office action dated November 24, 1999, in which the PTO examiner rejected all claims of the '453 Application (from which the '665 Patent issued), as obvious in light of Chiu combined with Moran. Witness contends that in the response that STS sent to the PTO on February 23, 2000, STS stated that the references cited in the November 24 office action do not teach or suggest analysis of the data itself in a packet, and that such analysis is required in order to store computer network-based telephone session data. Witness asserts that STS distinguished Chiu on the grounds that, *inter alia,* the claimed invention is concerned with analyzing the "packet data" itself, and not merely header data. Moreover, Witness argues that STS defined "packet data" as application layer information such as audio or video data. In support of those assertions, Witness points to the following statements by STS:

[T]he present invention is a method and system for analyzing packet data with regard to particular types of packets, which are packets involved in computer network-based telephone sessions. The packet data itself is of interest for the present invention, since such data may be audio or video data, and since such data is required for storing, analyzing and replaying these telephone sessions. Therefore, the packets of the present invention are not ... only of interest for header information, as for the teachings of Chiu.

Neither Chiu nor Moran, alone or in combination, teaches or suggests a method for storing computer network-based telephone session data, which requires the analysis of the data itself in the packets. The present invention examines such data at three levels: as session data for a plurality of packets, as packets

with header data, and as packet data. By contrast, Chiu and Moran alone only examine one of these three levels, and even in combination could not involve the examination of the data at all three levels. Thus, Moran and Chiu, alone or in combination, do not teach or suggest the present invention.

Second, Witness contends that during prosecution of the patents-in-suit, STS acquiesced to claim amendments requiring analysis of "a data portion of the data packets," and that the examiner stated that among his reasons for allowance of the claims of the patent-and-suit was that the prior art does not teach or reasonably suggest a system that analyzes the data portion of packets.

After reviewing the specification and the prosecution histories of the patents-in-suit and the '665 Patent, the Special Master finds support for STS's proposed construction.

During prosecution of the '665 Patent, STS distinguished its invention from Chiu by stating that the present invention examines data at three levels: (1) as session data, (2) as data packets with headers, and (3) as data packets alone. Unlike the asserted claims of the patents-in-suit, the one independent method claim of the '665 Patent contains two separate limitations involving the word "analyzing":

10. A method for storing at least a portion of a computer network-based telephone session performed on a computer network, the computer network-based telephone session being performed between a packet source and a packet destination, the steps of the method being performed by a data processor, the method comprising the steps of:

(a) receiving a data packet from the packet source on the computer network;

(b) analyzing said data packet to determine if said data packet is a computer network-based telephone session packet;

(c) if said data packet is said computer network-based telephone session packet, filtering at least data in said data packet to determine if said data includes computer network-based telephone session data;

(d) if said data includes computer network-based telephone session data, *analyzing said computer network-based telephone session data;* and

(e) storing said computer network-based telephone session packet to form a stored packet according to said type, such that said stored data packet forms at least a portion of the computer network-based telephone session.

'665 Patent, col. 16, In. 57-col. 17, In. 1-11 (emphasis added). Element (b) of claim 10 of the '665 Patent examines data at one level: it examines the data packet alone to determine if it is a session packet. Element (d) of claim 10 of the '665 Patent then examines data at another level: it examines session data. The Special Master concludes that in the context of the claim language of the '665 Patent, STS's statements during prosecution of the ' 665 Patent suggest that the type of data being examined is not determined by the word "analyzing" itself, but by what the particular claim element states is being examined.

The Special Master therefore concludes that the "analyzing" step means analyzing data within the accepted data packets to determine the communication sessions to which the data packets belong.

C. *The "Storing" Step*

Step (d) of claim 3 of the '229 Patent describes "storing a portion of the communication session performed on the computer network." Step (e) of claim 13 of the '229 Patent similarly requires "storing the portion of the communication sessions contained in the data packets according to the analyzing step." Step (c) of claim 1 of the '004 Patent describes "storing audio or video data contained in the data packets." Step (c) of claim 1 of the '604 Patent similarly requires "storing the audio data, video data, or audio and video data contained in the identified data packets." These limitations will be referred to collectively as the "storing" step.

STS contends that those phrases simply mean "storing or saving at least a portion of the communication session." STS argues that the claim language is clear and unambiguous, and that the specification contains no language constituting an intentional disavowal or special definition that would limit the claims to either storage of whole data packets or storage in "secondary storage." STS asserts that references in the specification to storage of data packets are limited to preferred embodiments. Additionally, STS states that the term "storing" is used broadly and in a varied manner throughout the specification, indicating that the applicants had no intention to impart a special meaning to the term.

In support of its proposed construction, STS also relies on the doctrine of claim differentiation, contending that the recitation in claim 10(e) of the ' 665 Patent of "storing said computer network-based telephone session packet to form a stored packet ..., such that said stored data packet ..." implies that when the inventors wanted to limit the claim to storing whole data packets only, they expressly stated so in the claim. Finally, STS points to the prosecution histories of the patents-in-suits, arguing that the following amendment of claim 3 of the '229 Patent broadened the scope of the "storing" step and shows that the applicants intended to store more than just whole data packets; "*storing a portion of the communication session performed on the computer network* the accepted data packets in association with a specific communication session."

Witness counters that the intrinsic record indicates that the "storing" step should be construed to mean "storing analyzed data packets to secondary storage." The essence of the parties' dispute over the "storing" step is twofold: whether the step requires the storage of whole packets, and whether it requires storage in "secondary storage."

In support of its proposed construction, Witness argues that the specification unequivocally describes the storage of whole data packets and nothing less. Witness asserts that the specification neither enables nor provides support for a method of stripping voice or audio data from packets and then storing the stripped data. Witness also contends that the claim language supports its construction. Specifically, Witness points to claim 1 of the '004 Patent, wherein step (c) contains the "storing" step and step (d) describes a "restoring" step. Dependent claim 3 of the '004 Patent requires that the restoring step include "obtaining time-stamp data from each of the data packets." Witness asserts that time-stamp data is only found in packet headers, and that one of ordinary skill in the art would therefore know that in order to obtain time-stamp data in the "restoring step," the preceding "storing" step would necessarily involve the storage of both header and data packet data-i.e., entire packets.

After reviewing the specification, the Special Master finds that the phrases "storing a portion of the communication session performed on the computer network," "storing the portion of the communication sessions contained in the data packets according to the analyzing step," "storing audio or video data contained in the data packets," and "storing the audio data, video data, or audio and video data contained in

the identified data packets" should be construed according to their plain meanings. Nothing in the specification or prosecution history indicates that the claimed invention is directed exclusively towards storage of entire data packets or that storage of less than entire data packets is outside the scope of the invention. The varied use of the word "storing" in the specification suggests that the type of data being stored is not determined by the word "storing" itself, but by what the particular claim element states is being stored. *See, e.g.,* '604 Patent, col. 2, In. 28-32 ("The present invention provides a system and method for ... selectively recording audio and video data packets, for organizing this stored information...."); '604 Patent, Abstract ("The data contained in the identified data packets are stored."); '004 Patent, Abstract ("Audio or video data contained in the data packets is stored."); *cf.* Johnson Worldwide Assocs. v. Zebco Corp., 175 F.3d 985, 991 (Fed.Cir.1999) ("Varied use of a disputed term in the written description demonstrates the breadth of the term rather than providing a limited definition.' ").

Similarly, the Special Master finds no support for limiting the "storing" step to storage in "secondary storage." Nothing in the specification or prosecution history indicates that the claimed invention is directed exclusively towards secondary storage or that primary storage is outside the scope of the invention. Therefore, the Special Master adopts the existing claim language.

D. *Ordering of the Steps*

The parties disagree on whether the steps of the asserted independent claims of the patents-in-suit must be performed in the order written. STS argues that, with the exception of claim 3 of the '229 Patent, nothing in the language of the claims or the specification requires the ordering of steps. STS concedes that claim 3 of the '229 Patent must be performed in the order recited, "as a result of the use of antecedence." FN5 Witness counters that the plain language of the claims and the specification imply that the steps of the claims should be performed in the order written. Each of the parties contends that Altiris, Inc. v. Symantec Corp., 318 F.3d 1363 (Fed.Cir.2003) and Interactive Gift Express, Inc. v. CompuServe, Inc., 256 F.3d 1323 (Fed.Cir.2001) support its respective position.

FN5. Claim 3 of the '229 Patent states

A method for storing at least a portion of a computer network-based communication session being performed on a computer network between a packet source and a packet destination, the method comprising the steps of:
(a) receiving data packets on the computer network;
(b) filtering *each of the received data packets* to accept the data packets that are associated with a session to be monitored;
(c) analyzing the data *within the accepted data packets* to determine a communication session to which each accepted data packet belongs; and
(d) storing a portion of the communication session performed on the computer network.

'229 Patent, col 16, In. 15-28 (emphasis added).
The Federal Circuit has applied a two-part test for determining whether the steps of a method claim that does not otherwise recite an order, must nevertheless be performed in the order written. Altiris, 318 F.3d at 1369. First, a court must examine the claim language to determine "if, as a matter of logic or grammar, they must be performed in the order written." *Id.* If not, a court must then examine the specification to determine "whether it directly or implicitly requires such a narrow construction." *Id.* at 1370 (citation omitted).

Upon review of the claim language and specification, the Special Master finds that claim 1 of the '604 Patent, claim 13 of the '229 Patent, and claim 1 of the '004 Patent should be performed in the order written. The specification states that "[t]he present invention provides a system and a method for analyzing data packets on a computer network, for selectively recording audio and video data packets, for organizing this stored information, and for displaying the stored information upon request." *See, e.g.,* '229 Patent, col. 2, In. 30-35. The specification repeatedly refers to the steps of the claimed method in that order. *See, e.g .,* '229 Patent, col. 1, In. 16-22; '229 Patent, col. 5, In. 60-67; '229 Patent, col. 7, In. 11-17; *cf.* ' 229 Patent, col. 2:37-54. Further, all of the embodiments in discussed in the specification involve a method with steps in that order.FN6

FN6. Additionally, it is worth noting that STS itself describes the method claims of the patents-in-suit in the same order. In its opening brief, STS states: "Each of the asserted independent method claims of the patents-in-suit contains similar steps. First, there is a 'receiving step'.... The next step is an 'analyzing step' .. Third, there is a step in which the communication session information is stored. Finally, some independent claims have steps for organizing and displaying (playback) the communication sessions"

The ordering of steps recited in claim 1 of the '604 Patent, claim 13 of the '229 Patent, and claim 1 of the '004 Patent is consistent with the sequence discussed in the specification. For example, claim 1 of the '604 Patent FN7 recites the "analyzing" step first.FN8 Step (c) describes storing data contained in "the identified data packets," which implies that step (b) ("identifying data packets ...") comes before step (c). The specification makes clear that step (d) ("organizing ... the identified data packets ...") comes after steps (b)-(c). *See, e.g.,* ' 604 Patent, col. 2, In. 28-31 ("The present invention provides a system and method ... for organizing this stored information"). Logically, the "outputting" step must occur subsequent to the other steps in the claim. *Cf.* ' 604 Patent, col. 2, In. 1-7 ("There is therefore a need for, and it would be highly advantageous to have, a system and a method ... which would record both audio and video information, organize such information, *and then* display such information upon request.") (emphasis added). The Special Master finds that steps recited in claim 13 of the ' 229 Patent and claim 1 of the ' 004 Patent should be performed in the order written, for similar reasons.

FN7. Claim 1 of the '604 Patent states:

A method for monitoring data packets transmitted across a computer network in order to extract a computer network-based telephone session that has been performed through the computer network for display in response to a request, comprising the steps of:
(a) *analyzing data* within the data packets that are transmitted on the computer network to select one or more data packets that contain audio data, video data, or audio and video data;
(b) *identifying data packets* that are associated with one or more IP addresses representing sessions to be monitored;
(c) *storing* the audio data, video data, or audio and video *data contained in the identified data packets,*
(d) *organizing* the audio data, video data, or audio and video *data contained in the identified data packets* into a specific telephone session based at least in part on a computer network-based telephone session to which the data packets belong, and
(e) outputting the audio data, the video data, or the audio and video data that is included in the organized data packets upon receipt of a signal representing the request of a user for the specific telephone session.

'604 Patent, col. 16, In. 6-29 (emphasis added).
FN8. In the context of construing the "receiving" step, the parties agreed that the "receiving" step is implicitly contained in step (a) of claim 1 of the '604 Patent. Additionally, it is undisputed that data packets must be received from the network before they can be analyzed. At the July 27, 2006 hearing, although STS argued that an infringing method could employ two "receiving" steps-one before the "analyzing" step and one after-it nevertheless effectively conceded that data packets must be "received" on the computer network before the "analyzing" step can occur

Interactive Gift Express, Inc. v. CompuServe, Inc. is inapposite. There, the Federal Circuit concluded that the district court had erred in construing the method claims to require that the steps be performed in the order written, on the grounds that alternative embodiments were described in the specification and that such a construction would not read on the preferred embodiment. Interactive, 256 F.3d at 1343-44. That is not the case here.

Altiris, Inc. v. Symantec Corporation is similarly inapposite. There, the Federal Circuit concluded that the district court had erred in construing the method claims to require a particular order, on the grounds that the written description clearly only discussed a single preferred embodiment containing the proposed sequence. Altiris, 318 F.3d at 1371. That is also not the case here. The specification describes the claimed invention, and not merely preferred embodiments, as performing the steps in the order written.

The Special Master therefore finds that claim 1 of the '604 Patent, claim 13 of the '229 Patent, and claim 1 of the '004 Patent should be construed to require that the steps be performed in the order written.

E. *The "Filtering" Step*

Step (b) of claim 3 of the '229 Patent describes "filtering each of the received data packets to accept the data packets that are associated with a session to be monitored." Step (b) of claim 13 of the '229 Patent requires "filtering the data packets using filtering information." These limitations will be referred to collectively as the "filtering" step.

STS argues that "filtering the data packets" means "selecting the data packets based on predefined information." Witness counters that "filtering the data packets" means "filtering the received data packets." The parties agree that the essence of their dispute is whether filtering must occur after the "receiving" step.

In accordance with the Special Master's finding that the asserted independent claims of the patents-in-suit should be construed to require that the steps be performed in the order written, the Special Master construes the phrase "filtering the data packets" to mean filtering the received data packets.

F. "*communication session*" *and* "*telephone session*"

Each of the independent claims of the patents-in-suit uses the term "communication session" and/or "telephone session."

STS contends that the specification expressly defines the term "communication session." Specifically, STS relies on the following passage from the specification:

Hereinafter, the term "communication session" includes both a conversation, in which at least two parties converse by exchanging audio and/or video information in "real time", and a message, in which at least one party records such audio and/or video information for reception by at least one other party at a later date.

'604 Patent, col. 4, In. 51-56. STS asserts that the use of the term "includes both" indicates that the applicant intended to define "communication session" to mean only a conversation and/or a message. STS also argues that the specification uses that term synonymously with "telephone call." *See* '604 Patent, col. 8, In. 55-58. STS therefore asserts that the terms "communication session" and "telephone session" should be construed synonymously.

Witness counters that those terms should be construed to mean "communication, including audio and/or video, between parties over packet streams." Witness contends that STS's proposed construction improperly limits the terms to specific examples provided in the specification. In particular, Witness argues that the use of the term "includes" in the specification indicates that the applicants were merely providing examples, and not a finite definition, of the term "communication session."

The Special Master finds support for STS's construction. The term "includes both," as used in the specification, indicates a closed-ended definition. For example, the specification clearly states that the present invention is of a system and method for displaying two types of recorded data, namely video and audio data. *See* '604 Patent, col. I, In. 14-20; '604 Patent, col. 2, In. 18-20. Accordingly, the specification provides the following definition of the term "display": "Hereinafter, the term "display" *includes both* the visual display of video data, and the production of sound for audio data." Id. col. 5, In. 22-24 (emphasis added). That example suggests that the patentees chose to use the term "includes both" to convey a finite definition, rather than an open-ended one. *Cf.* Vitronics, 90 F.3d at 1582 ("[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history."). In contrast, when the applicants wanted to provide specific examples, they used the term "includes but is not limited to." *See* '604 Patent, col. 5, In. 5-18 ("Hereinafter, the term 'computer' includes, but is not limited to, ... Hereinafter, the term 'Windows (TM)' includes but is not limited to....").

Accordingly, the Special Master construes "communication session" and "telephone session" to mean both a conversation, in which at least two parties converse by exchanging audio and/or video information in "real time," and a message, in which at least one party records such audio and/or video information for reception by at least one other party at a later date.

G. "*data packet*"

Each of the asserted independent claims of the patents-in-suit contains the term "data packet." The parties agree that the term possesses an ordinary meaning in the art. Both parties rely in part on Newton's Telecom Dictionary in formulating their proposed constructions.

STS proposes the following construction, consisting of a definition from Newton's Telecom Dictionary, which STS has modified to include the additional clause "which may include a data packet" in the description of "text or payload":

The term a "data packet" hereinafter means "a bundle of data, usually in binary form, organized in a specific way for transmission. The specific native protocol of the data network may term packet as a packet, block,

frame or cell. A packet consists of the data to be transmitted and certain control information. The three principal elements of a packet include: 1. Header-control information such as synchronizing bits, addresses of the destination or target device, address of originating device, length of packet, etc., 2. Text or payload-the data to be transmitted, which may include a data packet, and 3. Trailer-end of packet, error detection and correction bits.

STS asserts, however, that it accepts Witness's proposed construction so long as it is understood that the "entire data unit" language can include the concept of packet encapsulation.

Witness counters that the term "data packet" simply means "entire data unit containing a header and, in some cases, a payload ." Witness disagrees with STS's revision of the definition from Newton's Telecom Dictionary, but agrees that packets can be encapsulated or layered.

The Special Master finds that the term should be construed according to its ordinary and customary meaning in the art, and therefore construes "data packet" to mean an entire data unit containing a header and, in some cases, a payload. The Special Master finds that one skilled in the art would understand from that definition that packets can be encapsulated within one another.

H. "*audio data*" *and* "*video data*"

Claim 13 of the '229 Patent, claim 1 of the '604 Patent, claim 1 of the '004 Patent, and various asserted dependent claims of the patents-in-suit contain the terms "audio data" and/or "video data."

STS contends that those terms should be construed to mean "data which represents or is related to audio information" and "data which represents or is related to video information," respectively. STS argues that Witness's proposed constructions are too narrow and improperly exclude metadata such as "audio CODEC data," which STS contends is a type of "audio data."

Witness counters that the terms "audio data" and "video data" should be construed to mean "information representing audible sounds" and "information representing visible images," respectively. Witness argues that the specification contains no support for STS's proposition that "audio data" encompasses metadata or other "audio-related data."

The Special Master agrees with Witness that the specification does not disclose or suggest that the terms "audio data" and "video data" encompass metadata. Accordingly, the Special Master adopts Witness's constructions of the terms "audio data" and "video data."

I. "*storage media*"

Claim 3 of the '604 Patent and claim 9 of the '229 Patent describe storage "on a storage media that is accessible through the computer network."

STS contends that the term "storage media" is defined in the specification to mean "a high capacity digital data storage device such as a hard disk magnetic storage device, an optical disk, a CD-ROM, a ZIP or DVD drive, or a DAT cassette, or a combination of such devices according to the operational needs of specific applications, or any other suitable storage media." '604 Patent, col. 8, In. 50-55.

Witness counters that the term "storage media" should be construed to mean "a medium suitable for

secondary storage." Witness argues that its proposed construction merely "classifies" the examples of storage media listed in the specification using the term "secondary storage." Witness contends that STS's proposal violates the prohibition against constructions that are too vague to provide legally operative meaning.

After reviewing the specification, the Special Master concludes that the term "storage media" should be construed according to its plain meaning. This construction is in accordance with the Special Master's construction of the "storing" step. Nothing in the specification indicates that the claimed invention requires secondary storage media or that primary storage media are outside the scope of the invention. Therefore, the Special Master will adopt the existing claim language.

J. "*time-stamp data*"

Claim 3 of the '004 Patent describes "obtaining time-stamp data from each of the data packets and re-assembling the telephone communication session using the time-stamp data to maintain an overall timing among the data packets that comprise the telephone communication session."

STS proposes that the term "time-stamp data" be construed according to its ordinary meaning, as "data representing a point in time." STS contends that there is no justification for Witness's narrow construction because the specification makes no reference to "time-stamp data" being generated by a "shared clock."

Witness counters that the term "time-stamp data" means "data representing a point on a time line established by a shared clock." Witness derives its proposed construction from a definition in RFC 1889, a reference cited on the face of the patents-in-suit. Witness argues that its proposed construction is consistent with the specification and with the understanding of one of ordinary skill in the art in 1998. Witness asserts that a skilled artisan in 1998 would have understood that "a 'timestamp' is used to provide synchronization between two relative events."

The Special Master agrees with STS that the specification does not require that the time-stamp data be established by a shared clock. Accordingly, the Special Master adopts STS's proposed construction and construes "time-stamp data" as data representing a point in time.

K. "*IP address*"

Step (b) of claim 1 of the '604 Patent describes "identifying data packets that are associated with one or more IP addresses representing sessions to be monitored." Claim 2 of the '604 Patent, claim 7 of the '229 Patent, and claim 8 of the '004 Patent also use the term "IP address."

STS proposes that the term "IP address" be construed as "an identification of the source or destination for an IP packet." STS proffers no additional arguments in support of its proposed construction or in opposition to Witness's proposal.

Witness counters that the term "IP address" should be construed to mean "a network-layer address in a TCP/IP network." Witness asserts that the term has an accepted meaning in the art. In support of its proposed construction, Witness points out that STS's expert Dr. Jeffay testified that Witness's proposal is acceptable.

The Special Master concludes that the term "IP address" should be construed according to its plain meaning.

STS has proffered no objections to Witness's proposed construction. Moreover, as Witness notes, STS's expert concedes that Witness's proposal is acceptable. Accordingly, the Special Master adopts Witness's proposed construction and construes the term "IP address" as a network-layer address in a TCP/IP network.

L. "*header*" *and* "*header of the data packets*"

Claim 7 of the '004 Patent describes "determining which data packets comprise the portion of the telephone communication session on the basis of information extracted from a header of the data packets."

The parties propose very similar constructions for the terms "header" and "header of the data packets." STS proposes construing the terms to mean "the control information such as synchronizing bits, address of the destination or target device, address of originating device, length of packet, etc. for the data packets." Witness proposes construing the terms as "control information at the beginning of the packet(s)." Witness asserts that the term "header" has a customary and accepted meaning in the art.

The Special Master agrees, and therefore concludes that the terms "header" and "header of the data packets" should be construed according to their plain meaning. The only differences between the parties' proposed constructions are that STS's proposed construction provides examples of the types of control information found in headers, and Witness's proposed construction makes clear that the header is found at the beginning of a data packet. The parties do not appear to dispute the merits of those differences. Accordingly, the Special Master construes the terms "header" and "header of the data packets" to mean control information at the beginning of a data packet, such as synchronizing bits, address of the destination or target device, address of the originating device, and length of the packet.

III. *CONCLUSION*

For the foregoing reasons, the disputed claims of the patents-in-suit are construed as follows.

"receiving data packets on the computer network," "receiving data packets transmitted over a computer network," and "analyzing data within the data packets that are transmitted on the computer network"	[The Special Master adopts the existing claim language.]
"analyzing the data within the accepted data packets ...," "analyzing data within the accepted data packets ...," "analyzing a data portion of the data packets ...," and "analyzing data within the data packets ..."	analyzing data within the accepted data packets to determine the communication sessions to which the data packets belong
"storing a portion of the communication session ...," "storing the portion of the communication sessions ...," "storing audio or video data contained in the data packets," and "storing the audio data, video data, or audio and video data contained in the identified data packets"	[The Special Master adopts the existing claim language.]
"filtering each of the received data packets to accept the data packets that are associated with the session to be monitored" and "filtering the data packets using filtering information"	filtering the received data packets
"communication session" and "telephone session"	both a conversation, in which at least two parties

	converse by exchanging audio and/or video information in "real time," and a message, in which at least one party records such audio and/or video information for reception by at least one other party at a later date
"data packet"	entire data unit containing a header and, in some cases, a payload
"audio data"	information representing audible sounds
"video data"	information representing visible images
"storage media"	[The Special Master adopts the existing claim language.]
"time-stamp data"	data representing a point in time
"IP address"	network-layer address in a TCP/IP network
"header" and "header of the data packets"	control information at the beginning of a data packet, such as synchronizing bits, address of the destination or target device, address of the originating device, and length of the packet

N.D.Ga.,2006.
STS Software Systems, Ltd. v. Witness Systems, Inc.