United States District Court,
S.D. Florida.

EXPONENTIAL SOLUTIONS LLC, A Florida Limited Liability Company,
Plaintiff.
v.
SUN MICROSYSTEMS, INC., A California Corporation,
Defendant.

No. 07-80318-CIV

Nov. 19, 2007.

John Scarola, Searcy Denney Scarola Barnhart & Shipley, West Palm Beach, FL, Joseph S. Beckman, The Intellect Law Group, Palm City, FL, for Plaintiff.

Celine Jimenez Crowson, M. Scott Stevens, Matthew A. Levy, Raymond A. Kurz, Hogan & Hartson, Washington, DC, for Defendant.

John F. O'Sullivan, Julie Elizabeth Nevins, Hogan & Hartson, Miami, FL.

ORDER

DONALD M. MIDDLEBROOKS**, District Judge.**

THIS CAUSE comes before the Court upon the parties' Markman briefs (DE 39 and DE 41), filed on September 17, 2007, the parties' Responsive Markman briefs (DE 56 and 57), filed on October 5, 2007, the parties' Joint Statement of Issues for Construction (DE 60), filed on October 15, 2007, and a Markman hearing held on November 9, 2007. FN1 The Joint Statement includes a list of terms and their respective constructions to which the parties agreed. The Joint Statement also listed terms to which the parties did not agree and each party's proposed construction for such terms.

FN1. The transcript from this hearing will be referred to throughout this Order as Trans. followed by the appropriate page number.

As part of the pending litigation between the parties, Plaintiff Exponential claims Defendant Sun Microsystems has infringed on two of its patents, the '548 patent and the '437 patent. The claims in dispute are claims 1, 11, and 19 of the '548 patent, and claims 1 and 10 of the '437 patent. For purposes of claim construction, the terms and definitions to which the parties agreed are hereby incorporated into this Order. FN2 The remainder of this Order will construe the terms for which construction was disputed between the parties.

FN2. This includes the construction of "task," "reward," "data or data portion," and the footnote about "result collation module."

Legal Standard

Construing a patent is a question of law to be determined by the Court. Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). This includes defining patent terms of art in the patent claim as required to determine a patentee's rights. *Id*. at 1387. In determining a claim interpretation the Court can look to both intrinsic and extrinsic evidence. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). However, the Court should look to intrinsic evidence first. *Id*. Intrinsic evidence includes the patent itself and prosecutorial history if present. *Id*. Typically, the words of the claim are given their ordinary meaning, unless the patentee used a specific definition of the term and such definition is clearly included in the patent specification or file history. *Id*. If an ambiguity is resolved on intrinsic evidence alone, the Court should not go forward and evaluate extrinsic evidence. *Id*. at 1583. However, if there are technical terms, procedures, or substances which are unknown to the Court, testimony of witnesses and other sources of information may be received by the Court. Markman, 517 U.S. at 388. In interpreting an asserted patent claim, the Court should look to preserving the patent's internal coherence and ensuring that claims are clearly stated so as to give notice to the public as to the extent of legal protection afforded by the patent. All Dental Prodx, LLC v. Advantage Dental Prods., Inc., 309 F.3d 774, 779 (Fed.Cir.2002).

Terms

"Single originating module" means a single piece of software running on a single server that sends a task to a data processing device for computation when the task is assigned to the processor of the data processing device, such that the processing device does not need to separately communicate with more than one server to obtain the task instructions in order to start to perform the assigned task. This is Defendant's proposed construction with several modifications. This construction maintains the "single" aspect which the Defendant advocated for and which was present throughout the file history, while also emphasizing the fact that a "single originating module" is not just one piece of software, as the Plaintiffs contended. This construction also modifies Defendant's construction to avoid redefining "task," as the Plaintiff suggested at the hearing and to which the Court agrees would be redundant.

"Initiator of the task" means the entity or person associated with the single originating module. This is Defendant's proposed construction, without the language about the initiator being the "owner." Defendant agreed to this modification. Trans. at 42. The Court agrees with Defendant's use of the word "association" because this is the same language used in Claim 10 of the '437 patent.

"Extracting" means actively partitioning the overall algorithm or overall data into portions. This is Defendant's proposed construction, without the language differentiating it from a zip file. The Court agrees with Defendant that the partitioning appears to be "active." The specification in '548 patent lends strong support for the idea that the partitioning is active, stating: "In one exemplary embodiment, the originating server receives the algorithm and the data, and then extracts the sub-algorithms or algorithm portions from algorithm. The originating server also extracts the data portions from the data. In another exemplary embodiment, the algorithm and data are *separated into the appropriate portions* before being delivered to the originating server." Col. 4, ll 41-48 (emphasis added). The Court excludes the unzipping language because there is no support for its inclusion and it appears extraneous.

"Result collation module" means a module that assembles results in a proper numerical or logical sequence. This is Defendant's proposed construction without any modifications. The Court agrees with Defendant that this construction is supported by the specification in the '548 patent, which states that "the result collation server analyzes and organizes the results into a recognizable pattern, or result set." Col. 6, ll 54-56. Also, there appears to be no intrinsic evidence supporting Plaintiff's contention that "collation" should mean "correlation."

"Parallel data processing system" means a collection of data processing devices connected by a network, which work together on a single problem. This is Defendant's proposed construction without any modifications. The debate between the parties on this construction was limited to whether or not the

"parallel data processing system" should be defined by the fact that it is "capable" of working together on a single problem or by the fact that it simply "works" together on a single problem. The Court thinks that Defendant has the better of this argument since nothing in the patents or their file history indicate that what is being patented is the "capability" to engage in "parallel data processing system."

"Method" means process. This is Defendant's proposed construction without any modifications. Plaintiff appears to agree to this construction. Trans. at 32.

"Algorithm portion" means a sequence of steps or instructions that, when followed, solve the task. This is Defendant's proposed construction without any modifications. The debate between the parties on this construction was limited to whether or not the "algorithm portion" is solving a "task" or a "problem." The Court agrees with Defendant that the language in the claims of the '548 and '437 patents is directed at solving the "task," and makes no mention of any kind of "problem."

"Instructions" means a portion of an algorithm. This is Defendant's proposed construction without any modifications. The Court agrees with Defendant that "instructions" is defined by the specification of the '548 patent which states: "Instructions representing a portion of an algorithm are provided." Col. 2, ll 19-20.

There are 19 more disputed terms: "plurality," "data processing device," "coupled," "network," "processor," providing," "use," "portions," "sending," "over," "recipient," "associated," "relating," "storing," "retrieving," "executes," "process (data)," "result," and "offering." Plaintiff has proffered definitions for each of them. *See* DE 41. Defendant's position is that there is no need to construe these terms as they are commonly used words and the patents-in-suit do not ascribe any special or particular meaning to them. The Court agrees with Defendant. *See* Orion IP, LLC v. Staples, Inc., 406 F.Supp.2d 717, 737-38 (E.D.Tex.2005)(holding that terms submitted for construction that do not have a meaning unique to the patents-at-suit do not require construction despite the possibility for ambiguity).

Conclusion

ORDERED AND ADJUDGED that the above terms shall be construed as set forth above until further modification. As stated at the hearing, the parties may file objections and/or comments on the Court's construction. These objections and/or comments are due November 23, 2007.

DONE AND ORDERED.

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