United States District Court,
C.D. California.

In re KATZ INTERACTIVE CALL PROCESSING PATENT LITIGATION.

This document relates to,
This document relates to:.
Ronald A. Katz Technology Licensing L,
Ronald A. Katz Technology Licensing LP.
v.
Genesys Conferencing, Inc,
et al.
CV 07-2254 RGK (FFMx,
CV 07-2254 RGK (FFMx).

No. 07-ml-01816-B RGK (FFMx)

March 4, 2008.

Order RE: Claim Construction

R. GARY KLAUSNER**, District Judge.**

I. *INTRODUCTION*

The Judicial Panel on Multidistrict Litigation consolidated numerous cases filed around the country by plaintiff Ronald A. Katz Technology Licensing L.P. for pretrial proceedings and transferred the consolidated cases to this Court (07-MDL-1816). Most of those cases involve a family of interactive call processing patents. However, this order relates to CV 07-2254 RGK (FFMx) which involves a different family of five teleconferencing patents. The patents are U.S. Patent No. 4,939,773 (the '773 patent), U.S. Patent No. 4,987,590 (the '950 patent), U.S. Patent No. 5,297,197 (the '197 patent), U.S. Patent No. 5,442,688 (the '688 patent), and 6,157,711 (the '711 patent). All five patents share the same written description and the same title "Multiple Party Telephone Control System."

On August 15, 2007, this Court issued an order allowing the parties to file claim construction briefs on various disputed claim terms. The parties have selected 20 phrases, from six asserted claims, for consideration at this stage.

II. *JUDICIAL STANDARD*

Interpretation of patent claims is a question of law allocated to the Court. Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct 1384, 1396, 134 L.Ed.2d 577 (1996). "In the exercise of that duty, the trial judge has an independent obligation to determine the meaning of the claims, notwithstanding the views asserted by the adversary parties." Exxon Chemical Patents, Inc. v. Lubrizol Corp., 64 F.3d 1553,

1555 (Fed.Cir.1995).

Words in a claim are generally given their ordinary and customary meaning. Phillips v. AWH Corp, et al., 415 F.3d 1303, 1312 (Fed.Cir.2005) (*en banc*) (citations omitted). The ordinary and customary meaning of a 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. Id. at 1313. The person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification. In addition to consulting the specification, we also look to the patent's prosecution history. Id. at 1317. The specification and the prosecution history are both considered intrinsic evidence.

A long line of cases indicates that the intrinsic record is the primary source for determining claim meaning. In *Phillips v. AWH Corp,* the Federal Circuit reaffirmed this principle in an *en banc* decision. *Id.* at 1312-1324. Under this approach to claim construction, evidence extrinsic to the patent document "can shed useful light on the relevant art," but is less significant than the intrinsic record in determining the "legally operative meaning of disputed claim language." Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n, 366 F.3d 1311, 1318 (Fed.Cir.2004). Particularly, the Federal Circuit's case law suggests that extrinsic evidence cannot alter any claim meaning discernible from intrinsic evidence. *See, e.g.,* Intel Corp. v. VIA Techs., Inc., 319 F.3d 1357, 1367 (Fed.Cir.2003) ("When an analysis of intrinsic evidence resolves any ambiguity in a disputed claim term, it is improper to rely on extrinsic evidence to contradict the meaning so ascertained.").

III. *CLAIM CONSTRUCTION*

A. *Control Structure and Terminals*

1. "*Control Structure*"-*'688:1* FN1

FN1. The 'XXX:Y format refers to the patent number and claim number where the disputed term appears. In some cases the claim in dispute is a dependent claim and the disputed term may be found in the base claim.

The specification does not use the term "control structure." Instead, the specification discloses a control unit 14 which appears to correspond to the "control structure" recited in claim 1 of the '688 patent. "Generally, the control unit 14 may comprise a minicomputer of varying capacity depending on the number of lines L1 through LN and the degree of flexibility desired for the interfaces." ('773 patent at 3:19-22; *see also* Figure 1.) The control unit controls the multiplexer switch 12 and the connection equipment 10. Id. at 3:14-17.

The plaintiff argues that the term "control structure" refers to an "electronic structure, such as a computer, that is capable of controlling telephonic communications." The defendants argue that the term carries a narrower meaning and their proposal defines the term to mean "a computer containing a processor programmed to control the operation of an audio generator, a switching apparatus and an apparatus to qualify callers at remote terminals."

This Court is aware that it may not import limitations from the specification. *See* Phillips, 415 F.3d at 1320. However, in this case, the only evidence that any party has offered to define a "control structure" is the specification. Unless this Court uses the specification, it is left with nothing but the words "control" and "structure" to define the term. However, relying solely on those words will result in a definition that does

not convey what the specification meant. Instead, this Court relies on those portions of the specification that describe the control unit in its most general terms. Specifically, the control unit is introduced by (1) describing its function, controlling the multiplexer switch and connection equipment, and (2) providing an example of its structure, a minicomputer. ('773 patent at 3:14-22.)

The specification actually provides far greater detail on the control unit 14. For example, the specification indicates that the control unit is programmed to control the operation of specific phases within the entire unit CS. *Id*. at 3:27-30; 5:21-23. Those phases are also described in detail. These details are not necessary to define a control structure. Therefore, this Court declines to include them in its definition because to do so would improperly import limitations from the specification.

The defendants also argue that a control structure must be "a computer containing a processor" while the plaintiff suggests that a control structure is simply an "electronic structure." The specification only states that a control unit "may" comprise a minicomputer of varying capacity. The only characteristic this statement conveys is that that the control unit is a computer. There is no other evidence that helps define a control structure's makeup.

Based on the foregoing, this Court defines a control structure as "a computer that controls the operation of equipment used to switch and connect telephone calls."

2. "*Remote terminals*"/"*remote telephone terminals*"-'*197:5, '688:1, 37, ' 711:28*

In the "Background and Summary of the Invention", the specification discusses the need to increase the flexibility and control of multiple party telephonic communications with the capability to interface a large number of "remote terminals." ('773 patent at 1:27-34.) Plaintiff defines "remote terminals" to mean "devices or instruments for connecting callers to a telephone network for voice and digital communication, including, but not limited to, conventional telephones." Defendants argue that the definition of remote terminal should also indicate they are "distinct from the primary terminal."

The specification consistently describes the primary terminal and remote terminals separately. (*See, e.g.* '773 patent at Figure 1, 1:38-41 ("the present invention may be embodied to implement and control interfaces through a telephone network between a primary terminal and a large number of remote terminals").) As a result, the defendants argue that the additional language they seek is justified. In response, the plaintiff argues that defining the remote terminal to be distinct from the primary terminal is misleading because the "primary terminal may be the same type of telephonic as the remote terminals." (Plaintiff's Br. at p. 7.) The specification provides no insight into whether the primary terminal and the remote terminal may or may not be the same type of telephonic device. Moreover, the term "distinct" simply indicates that the primary and remote terminals cannot be the very same device-not that they need to be different types of devices.

Based on the foregoing, this Court adopts defendants' definition and defines "remote terminals/remote telephone terminals to be "devices or instruments, distinct from the primary terminal, for connecting callers to a telephone network, including, but not limited to, conventional telephones." FN2

FN2. The defendants' definition also differs from the plaintiff's in that it omits the term "for voice and digital communication" after "telephone network." The parties did not argue that there was a substantive difference and this Court adopts the simpler language for the benefit of the jury.

3. "Primary terminal"/"primary telephone terminal"-'773:1, '197:5, '688:1, 32, '771:28

The specification discloses interfacing a "primary terminal" to a number of remote terminals. ('773 patent at 1:38-41; 2:1-48 and Figure 1.) The parties proposed definitions focus on several different issues. First, the plaintiff argues that a primary terminal is used by the primary conference participant to conduct or moderate the conference. Second, the plaintiff argues that the primary terminal enables control over other participants' ability to participate in the conference. The defendants' definition does not contain either of the two requirements proposed by the plaintiff. Instead, the defendants' proposal is directed at a third issue; they define a "primary terminal" to be "a terminal capable of telephonic communication that is *directly connected* to a control system."

With respect to the first issue, this Court finds that the specification supports plaintiff's proposal. The specification refers to the telephone terminal used by the person conducting or moderating the conference as the "primary terminal." *See, e.g., id*. at 2:62-66 ("During the communication, the personage at the primary terminal PT may interface bilaterally with a small number of the key people, as by talking to them so as to enhance the report"); *id*. at 8:8-21 (explaining how the primary terminal may interface with the other callers either bilaterally or unilaterally); *id*. at 4:5-8 ("At a predetermined time, communication is complete between the select group ... and a person at the primary telephone terminal PT"). Moreover, although the defendants' definition did not include this requirement, the defendants never challenged this part of plaintiff's definition. Accordingly, the Court adopts the first part of plaintiff's definition.

The second part of plaintiff's definition and the defendants' definition address whether the "primary terminal" enables control of the telephone conference or whether it is simply directly connected to a control system. The cited portions of the specification use the terms "may", "might" and "can be" to describe the primary terminal's control of a telephone conference. ('773 patent at 8:2-4, 8:47-53, 8:14-19.) These terms indicate that the "primary terminal" can enable control of a conference, but they certainly do not require that all "primary terminals" do so. Therefore, this Court rejects the second part of plaintiff's definition.

The defendants' proposal suffers from similar flaws. The preferred embodiment shows that the primary terminal is directly connected to the control system (*see e.g*. Figure 1), but contrary to defendants' assertion, the specification does not describe that arrangement as being part of the invention.FN3 The Federal Circuit has made it clear that "[e]ven when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using 'words or expressions of manifest exclusion or restriction.' " Liebel-Flarsheim Co. et al., v. Medrad, Inc., 358 F.3d 898, 906 (Fed.Cir.2004) (citation omitted). Here, the defendants have only shown that the primary terminal is directly connected to a control system in the disclosed embodiment. Therefore, this Court rejects defendants' definition.

FN3. The defendants rely in part on the '773 patent at 2:43-48 which states that "[i]n accordance with the present invention" the remote terminals are connected through a telephone network and control system "to accommodate communication with a primary terminal PT." However, this passage never differentiates between a direct connection and indirect connection, or even uses the term "direct connection."

Based on the foregoing, this Court defines a "primary terminal/primary telephone terminal" to be a

"telephone terminal that is utilized by the conference participant designated to conduct or moderate the conference."

B. ***Claim Elements Relating to Qualification***

1. "***Preliminary screening structure***"***-'773:1***

The term "preliminary screening structure" is found in the first element of claim 1 of the '773 patent. The entire element states:

preliminary screening structure for confirming calls at select terminals and indicating an audio status to persons at connected terminals;

The parties agree that "preliminary screening structure" is a means plus function limitation governed by 35 USC s. 112, para. 6. The construction of a means-plus-function limitation follows a two-step approach. First, the claimed function must be identified. Next, the corresponding structures in the written description that perform those functions must be ascertained. Applied Med. Res. Corp. v. U .S. Surgical Corp., 448 F.3d 1324, 1332 (Fed.Cir.2006).

The parties agree that the recited function includes "confirming calls at select terminals and indicating an audio status to persons at connected terminals." However, the defendants argue that a second function of the element is "preliminary screening." Defendants suggest that the recited function is broken into two parts, one function located before the "means" portion of the claim and one function located after the means portion of the claim.

Neither party cited to any authority that is on point. The defendants' reliance on Signtech USA, Ltd. v. Vutek, Inc., 174 F .3d 1352, 1356 (Fed.Cir.1999) is misplaced because there is one function at issue in that case and that function was clearly recited before the means clause, "an ink delivery means." A term that appears before the means portion of the claim can be interpreted either as a characterization of the means element FN4 or it could actually recite a separate and different function. Here, the former interpretation is appropriate because the term "preliminary screening" serves to describe the entire function recited after the means clause "confirming calls at select terminals and indicating an audio status to persons at connected terminals." Moreover, if the patentee intended to draft the limitation in the manner defendants suggest, the element should have been written to state, "structure for preliminary screening, confirming calls at select terminals and indicating an audio status to persons at connected terminals." That is not how the element was drafted. Therefore, this Court declines to adopt defendants' interpretation of the recited function.

FN4. For example, in the hypothetical phrase, "a computing means for calculating square roots", computing generally describes calculating square roots, but it does not recite additional functions for the purposes of s. 112 para. 6 analysis.

The parties also disagree about what corresponding structures in the specification perform the recited functions. The plaintiff argues that the corresponding structures are engagement processor 18; or register 38, comparator 46, memory 14b, and audio unit 36. The defendants argue that the specification fails to disclose any corresponding structures. However, if such structures exist, the defendants identify the connection equipment 10, control computer and memory unit 14, cable 16, and all elements of engagement processor 18 shown in FIG. 2.

To show that the engagement processor 18 corresponds to the recited functions, plaintiff quotes the following portion of the specification:

Under control of the command signal I1, an engagement processor 18 provides audio signals through the multiplexer switch 12, the equipment 10 and the telephone network facility F to individual telephone terminals T1 through TN. That is, the processor 18 incorporates audio response apparatus to provide voice signals to cue and inform. Accordingly, at a specific terminal, the voice or audio signals may instruct, advise or cue a person with regard to a pending group connection. During such operation (command signal I1) a person at the terminal may be tested for authorized participation in a select group.

('773 col. 3:44-55.)

This passage describes an engagement processor 18 that uses audio signals to cue and inform callers. However, there is no mention of the recited functions-"confirming calls" and "indicating an audio status." Although these functions *might* be specific examples of cuing and informing, the specification never connects the recited functions to cuing or informing. Indeed, so far as this Court can determine, the recited functions are not described anywhere in the specification.

"The duty of a patentee to clearly link or associate structure with the claimed function is the quid pro quo for allowing the patentee to express the claim in terms of function under section 112, paragraph 6" *See,* Medical Instrumentation & Diagnostic Corp. v. Elekta AB, 344 F.3d 1205, 1211 (Fed.Cir.2003). "The inquiry is whether one of skill in the art would understand the specification itself to disclose a structure, not simply whether that person would be capable of implementing a structure." Biomedino, LLC v. Waters Technologies Corp. 490 F.3d 946, 953 (Fed.Cir.2007). Since the recited functions-"confirming calls" and "indicating an audio status"-are not found anywhere in the specification, this Court finds that the engagement processor 18 does not correspond to the recited functions of the "preliminary screening structure."

The specification does not show that plaintiff's alternative structures-register 38, comparator 46, memory 14b, and audio unit 36-correspond to the recited function either. Except for memory 14b, these structures are merely components of the engagement processor 18. Again, plaintiff cites to passages in the specification that do not mention "confirming calls" or "indicating audio status." Therefore, this Court finds that these structures also do not correspond to the recited functions.

These findings clearly suggest that the relevant claims maybe invalid under 35 U.S.C. s. 112. Since this issue has not been fully briefed, this Court will await the summary judgment motions before making an informed decision on validity.

2. "*Preliminary structure*"-'*197:5,* '*590:9*

a. *Claim 5 of the* '197 patent

The term "preliminary structure" is found in the first element of claim 5 of the '197 patent. That element states:

preliminary structure for calls at connected terminals to provide audio information to persons at connected terminals;

The parties agree that "preliminary structure" is a means plus function limitation governed by 35 USC s. 112, para. 6. The construction of a means-plus-function limitation follows a two-step approach. First, the claimed function must be identified. Next, the corresponding structures in the written description that perform those functions must be ascertained. Applied Med., 448 F.3d at 1332.

The parties agree that the recited function is "to provide audio information to persons at connected terminals." However, the parties disagree about what corresponding structures in the specification perform the recited functions. The plaintiff argues that the corresponding structure is the engagement processor 18 or audio unit 36. The defendants argue that the specification fails to disclose any corresponding structures. However, if such structures exist, the defendants identify connection equipment 10, control computer and memory unit 14, cable 16, and all elements of engagement processor 18 shown in FIG. 2.

To show that the engagement processor 18 corresponds to the recited function, plaintiff cites to the '773 patent at 4:44-47 which states:

... an engagement processor 18 provides audio signals through the multiplexer switch 12, the equipment 10 and the telephone network facility F to individual telephone terminals T1 through TN.

The plaintiff also cites to several passages in the specification that show that the audio unit 36 which is a component of the engagement processor 18 sends some form of audio information. (*See, e.g.,* '773 col. 5:46-48 ("the subject's name is set in an audio unit 36 to greet and cue the subject"); 6:44-46 ("the audio unit 36 (FIG.2) is actuated to greet and cue the caller"); 7:43-5 ("a termination message is provided by the audio unit 36 (FIG.2)").)

These passages disclose structures that perform the function of providing audio information to persons at connected terminals. Although one of the passages describes the engagement processor as providing audio signals, the other portions of the specification make it clear it is one component within the engagement processor, the audio unit 36. Accordingly, this Court finds that in claim 5 of the '197 patent, the recited function of the preliminary structure is "to provide audio information to persons at connected terminals" and the corresponding structure is the audio unit 36.

b. *Claim 9 of the* '590 patent

The term "preliminary structure" is also found in the first element of claim 9 of the '590 patent. That element states:

preliminary structure for calls at connected of said remote terminals;

Unlike, claim 5 of the '197 patent, this element does not recite the functional language "to provide audio information." Therefore, for the purposes of claim 9 of the '590 patent, the parties do not suggest that the term is a means plus function limitation.

Instead, the plaintiff argues that in claim 9, "preliminary structure" means a device including audio response capability that greets and screens individual calls. However, the plaintiff does not cite to any passage in the specification that mentions the term "preliminary structure," let alone, describes it as a device that includes audio response capability of any sort. Instead, the plaintiff argues that "the parallel recitation of 'preliminary

structure' and 'preliminary screening structure" throughout the claims confirms the intended scope of the term." (Plaintiff's Opening Br. at p. 14.) FN5 These claims contain additional limitations that further define the preliminary structure recited in these claims. The plaintiff's definition appears to borrow from these limitations. For example, the first element of claim 1 of the ' 590 patent recites "a preliminary structure for calls at connected terminals to provide vocal information to persons at connected terminals." Thus, the plaintiff argues that the "preliminary structure" in claim 9 must include "audio response capability." However, this Court must interpret a claim based on the language found in the claim itself, not other claims.

FN5. Plaintiff cites to claim 1 of the '590 patent, claim 1 of the '773 patent and claims 5, 7 and 14 of the '197 patent.

Without any analysis whatsoever, the defendants respond by simply stating that the term "preliminary structure" in claim 9 of the '590 patent is invalid under s. 112 para. 2. Again, this Court will defer ruling on the indefiniteness issue until reviewing the parties' briefs on summary judgment. However, the Court will not construe the term in question at this time.

3. "*Qualification reference data*"-'*688:1, 35 and 37*

The term "qualification reference data" is found in claims 1, 35 and 37 of the '688 patent. In each of these claims, "qualification reference data" relates to callers and is used to interface those callers with a multiple-party control system.

The plaintiff argues that "qualification reference data" means "previously stored data used to qualify one or more persons to participate in a conference call." In contrast, the defendants argue that the phrase refers to a "personal identification number identifying qualified callers at remote terminals." These proposals differ in two respects. First, plaintiff's argues that the term encompasses any kind of data that is used to qualify callers while the defendants' definition limits the term to "personal identification numbers." Second, plaintiff argues that the use of "reference" indicates that the patentee is referring to the data stored in the system (i.e. reference data), as opposed to data received by the system from the caller.

In addressing the first issue, this Court first turns to the specification. The specification never uses the term "qualification reference data," but it does discuss qualifying callers.

During the engagement period, persons at individual terminals can be greeted, then *qualified* on the basis of digital communication provided from the individual terminals via the telephone touch keyboard.

('773 patent 1 :57-61 (emphasis added).)

Next, the Court looks to what type of data the specification discloses for qualifying callers. Although the specification describes using personal identification data to qualify callers (*id*. at 2:58-61, 6:21-26, Fig. 2), that is not the only type of data used. In another example, the specification uses "test criteria" based on "demographics" to qualify a caller. *Id*. at 7:33-40. Thus, the defendants' definition of "qualification reference data" improperly imports a limitation from one embodiment. *See,* Phillips, 415 F.3d at 1323 (discussing improperly importing limitations from the preferred embodiment).

This analysis is reinforced by the doctrine of claim differentiation. Independent claim 15 of the '688 also

uses the term "qualification reference data." Moreover, dependent claim 17 further limits claim 15 so that the qualification is based on a "personal identification number." These limitations would be superfluous if the meaning of "qualification reference data" was limited to a "personal identification number." *See,* Allvoice Computing PLC v. Nuance Commc'n, Inc., 504 F.3d 1236, 1247 (Fed.Cir.2007)("claim differentiation takes on relevance in the context of a claim construction that would render additional, or different, language in another independent claim superfluous.") Therefore, this Court adopts the plaintiff's position on the first issue.

Next, the Court must determine whether "qualification reference data" refers to data stored. The plaintiff argues that the specification differentiates between "reference" and "received" signals. The relevant portion of the specification states:

In response to a cue, the actuation of alphanumeric buttons at the calling telephone terminal produces digital signals representing the subject's I.D.... Specifically, the separate *reference* and *received* identification signals are compared by the comparator 46. In that regard, the *received* signals are supplied from the register 38 (FIG.2) to the comparator 46, the *reference* signals having been supplied from the memory 14b.

Id. 20-32 (emphasis added).

This passage explains how "received" signals are compared to "reference" signals that are already stored in the memory. The defendants never address this passage in their briefs. Again, this Court adopts the plaintiff's position on the second issue as well.

Based on the foregoing, the Court adopts the plaintiff's definition with one minor modification. The plaintiff has not shown why the term "previously" should be in the definition. Thus, the term "qualification reference data" means "stored data used to qualify one or more persons to participate in a conference call."

4. "*Means for receiving signals*"-'*688:1*

The phrase "means for receiving signals" is found in the fourth element of claim 1 of the '688 patent. That element describes a control structure as follows:

control structure coupled to said audio generator and said switching apparatus and further including:

a memory for storing qualification reference data relating to said callers at said remote terminals for interfacing said callers to said multiple-party control system:

means for receiving signals from said callers at said remote terminals; and

means for testing said qualification reference data against said signals received from said remote terminals for authorized participation (emphasis added).

The parties agree that "preliminary screening structure" is a means plus function limitation governed by 35 USC s. 112, para. 6. The construction of a means-plus-function limitation follows a two-step approach. First, the claimed function must be identified. Next, the corresponding structures in the written description that perform those functions must be ascertained. Applied Med., 448 F.3d at 1332.

The parties appear to agree that the claimed function is "receiving signals from said callers at said remote terminals." FN6 However, the parties identify different structures that perform the recited function. The plaintiff argues that the corresponding structure is the "engagement processor 18; or register 38; or register 34; or buffer 24." The defendants argue that the correct structure is the connection equipment 10, I.D. register 38 and calling number register 34. Thus, the parties agree that the I.D. register and calling number register both perform the recited function. They disagree about whether to include other structures.

FN6. Plaintiff's Opening Br. at p. 16 indicated that defendants further defined the term "signals" in the recited function to refer to "DTMF data representing personal identification numbers." However, Defendants' Opening Br. does not raise that argument.

The plaintiff seeks to include the engagement processor 18 or buffer 24, but the plaintiff's briefs do not explain how these structures perform the recited function. At most, this Court can infer that the plaintiff has identified the engagement processor 18 because the two registers that perform the recited function are components of the engagement processor. Again, this Court declines to find that devices that contain structures that perform the recited function are also alternative structures for the purposes of means plus function analysis. With respect to the buffer 24, the plaintiff offers no justification for including this structure at all.

The defendants argue that the connection equipment 10 also performs the recited function. However, the plaintiff argues that the connection equipment should not be included because it merely operates as a conduit. The specification states that "... signals are received through the connection equipment 10 and the multiplexer switch 12 (FIG.1) into a calling number register 34 (FIG .2) as indicated by a block 56 in FIG. 3." *Id*. at 5:55-62. This Court will not include structures that simply operate as a conduit. Otherwise, all conduits would be judged to be part of the means for receiving signals-a nonsensical result.

Based on the foregoing, this Court finds that the recited function of the "means for receiving signals" is "receiving signals from said callers at said remote terminals." The corresponding structures are the I.D. register 38 or calling number register 34.

5. "*Means to test data*"/"*Means for testing*"-'773:2, '688:1

The phrases "means to test data" and "means for testing" are found in claim 2 of the '773 patent and claim 1 of the '688 patent respectively. Claim 2 of the '773 states:

A system according to claim 1 wherein said preliminary screening structure comprises *means to test data* to selectively maintain an interface with select terminals (emphasis added).

The relevant portion of claim 1 of the '688 patent states:

... control structure coupled to said audio generator and said switching apparatus and further including:

* * *

means for testing said qualification reference data against said signals received from said remote terminals for authorized participation (emphasis added).

The parties agree that these phrases are means plus function limitations governed by 35 USC s. 112, para. 6. They also agree that the recited functions relate to testing data to qualify callers. However, they cannot agree on what structure(s) corresponds to the recited function.

The plaintiff argues that the correct structure is the engagement processor 18 or comparator 46. The defendants argue that the correct structures are the control computer and memory unit 14, multiplexer switch 12, connection equipment 10, cable 16, and comparator 46.

The plaintiff correctly notes that the comparator 46 within the engagement processor 18 performs the recited "testing" function. (*See, e.g.,* '773 patent at 5:48-50 ("the subject's identification number is set in a comparator 46 to be tested with a received identification number from a register"); id. at. 7:27-32 ("the separate reference and received identification signals are compared by the comparator 46").) Again, this Court declines to identify the component that contains the structure that performs the recited function as an alternative structure. Therefore, this Court will include comparator, but not the engagement processor in its definition.

The defendants also argue that the control computer and memory unit 14, multiplexer switch 12, connection equipment 10 and cable 16 also perform the recited function. However, they merely point out that the sub-command signal t_3, which governs the testing operation, is transmitted to these structures. This evidence does not show that these structures actually perform the recited testing function. Therefore, the Court declines to include these structures in its definition.

Based on the foregoing, this Court finds that that the recited function of the "means to test data" found in claim 2 of the '773" is to "test data to selectively maintain an interface with select terminals." The recited function of claim 1 of the '688 patent is "testing said qualification reference data against said signals received from said remote terminals for authorized participation." The corresponding structure that performs the recited function in both claims is the comparator 46.

6. "*Engagement phase of operation*"-*'773:1, '590:9, '197:5, '688:13*

The specification provides a table entitled "Operating Phases," which describe five operating phases, I1, I2, I3, I4 and I5. ('773 patent at 4:59-5:20.) The specification states that I1 and I2 correspond to the engagement interval or "phase" in which callers "are greeted, qualified and bridged into a select group to receive periodic status reports." Id. at 3:33-37; *see also,* id. at 4:40-48. Thus, there is no dispute that the "engagement phase" generally relates to the preliminary phase of establishing communication with a multitude of people. ('773 patent at 1:54-57.) However, the parties disagree on specific details.

The plaintiff defines the phrase to mean:

The stage of operation during which the system greets callers and qualifies them to enter the conference prior to any communication with a primary terminal.

The defendants generally agree with the plaintiff's definition, but the defendants' definition also requires that individuals be "individually identified." Thus, the defendants' define the "engagement phase of operation" to mean:

Phase of operation in which remote terminals are individually identified, greeted and qualified for authorized participation prior to any communication with a primary terminal.FN7

FN7. The plaintiff also argued that defendants' definition improperly allows the phrase to cover "live operators." However, the defendants conceded that "the use of live operators to identify, greet and qualify callers is not within the scope of RAKTL's claims." (Defendants' Opening Br. at p. 9, fn. 27.)

In support of their position, the defendants state that "every example in the specification where remote callers dial-in involves either manual entry of the remote terminal's phone number or automatic capture by ANI, so that the participant may be individually identified and greeted." (Defendants' Opening Br. at p. 9 citing to '773 patent at 5:39-62; 6:21-51; FIGs. 2-3.) The plaintiff disagrees with this characterization because the specification teaches qualification based on shared demographic identification. In response, the defendants argue that this example is not relevant because the claims relate to inbound calling while the qualification based on demographics is only found in the dial-out polling example.

Regardless of whether the dial-out polling example is relevant, this Court will not import a limitation from the specification unless the defendants can demonstrate a clear intent to limit the scope of the claim using words or expressions of manifest exclusion or restriction. Liebel-Flarsheim Co. et al., v. Medrad, Inc., 358 F.3d 898, 906 (Fed.Cir.2004). At most, the defendants have shown that callers are individually greeted and qualified in all the relevant embodiments. Nevertheless, defendants have pointed to no other evidence that would clearly indicate that the phrase "engagement phase of operation" requires that participants be individually greeted and qualified. Certainly, parsing the words in the phrase does not convey that meaning.

Based on the foregoing, this Court adopts plaintiff's definition of "engagement phase of operation."

C. *Grouping of Qualified Callers*

1. "*Pending phase of operation*", *'773:1, '197:5, '688:13*

Although the specification does not use the term "pending phase," the parties agree that the second phase, I2, in the "Operating Phases" table generally corresponds to the "pending phase of operation" recited in the claims. The table describes the "operation" of I2 as "hold calls of select group *pending* live communication." ('773 patent at 4:68-5:7 (emphasis added).)

The plaintiff defines the phrase to mean:

The stage of operation during which the system puts qualified callers on hold prior to any communication with the primary terminal.

The defendants generally agree with the plaintiff's definition, but the defendants' argue that at least two other concepts should be included. First, the defendants' definition adds the term "bridged" to describe how the callers are connected to the primary terminals. Second, the defendants' definition states that synchronized status information is received during this phase. Specifically, defendants' definition states:

A phase of operation during which qualified remote terminals are bridged to receive synchronized status information collectively as a group before being connected for live communication with the primary terminal.

Although the specification does use the term "bridged" to describe how callers are connected for gang communications (*id*. at 1:62-68), the defendants fail to explain how this term will help the jury or what meaning "bridged" conveys. Therefore, this Court declines to adopt this portion of defendants' definition.

As for the defendants' second issue, the plaintiff argues that the specification only demonstrates that callers "may receive" synchronized communication as a group during the pending phase. In response, the defendants argue that their definition only indicates that the pending phase is the phase where a caller "may receive" such a communication; the definition does not require that such a communication is actually received. Although this is one interpretation of defendant's definition, the most straightforward interpretation is that it requires "receiving synchronized status information" during the pending phase. However, there is nothing in the specification that suggests such a requirement. Moreover, there is nothing is the specification that suggests that the pending phase must be the phase where synchronized status information is received. Rather, the word "pending" itself and the specification are consistent with plaintiff's definition. Therefore, this Court adopts that definition in whole.

2. "*Gang holding*"/"*gang holding callers*"/"*gang holding remote telephone terminals*"-'*688:32, '711: 28, 32*

The term "gang holding" or one of its variations is found in several different claims. The plaintiff defines "gang holding" to be " 'on hold' as a group prior to any communication with the primary terminal." FN8 Again, the defendants appear to agree with the plaintiff's definition so far as it goes, but their definition also requires gang holding to allow callers to receive "synchronized status information" during the hold period. Specifically, the defendants' proposed definition states:

FN8. The plaintiff also defines the other variations separately, but these definitions do not have any significant differences.

Placing all qualified callers at remote terminals on hold to receive synchronized status information collectively as a group before being connected for live communication with the primary terminal.
In support of their position, the defendants cite to the following passage. "As the engagement period proceeds, a growing group of qualified terminals are bridged for *gang* communication to receive call status information collectively. *Id*. at 1:62-64 (emphasis added). The passage uses the term "gang" to suggest that callers are grouped. *See also, id*. at 2:43-48; 3:11-13 (also using the term gang to refer to a group or being grouped). Although this passage also states that callers "receive call status information", that reference does limit the term "gang" anyway.

The defendants also cite to portions of the file history arguing that they support the defendants' position (June 25, 1990 Amendment at pp. 9-12, Ex. 5 to Campagna Decl.) However, a review of the cited portions of the file history merely shows that the applicant used the phrase ganging or ganged to refer to connecting a group of callers. Therefore, this Court rejects the additional language that defendants seek and instead this Court adopts plaintiff's definitions of "gang holding" and its variations.

3. "*Gang holding structure*"-'*773:1, '197:5 '688:13, '590:9*

a. *Claims, 1, 5 and 13 of the '773,* '197 patent ***and*** '688 patents ***respectively***

Several claims recite a "gang holding structure." For example, in claim 1 of the '773 patent the gang holding structure is the second element of the claim. The entire element states:

gang holding structure for collectively communicating with persons at said select terminals collectively as a group;

The gang holding structure in the other claims are described with similar language. The parties agree that, in each case, the term is a means plus function limitation governed by 35 USC s. 112, para. 6. The construction of a means-plus-function limitation follows a two-step approach. First, the claimed function must be identified. Next, the corresponding structures in the written description that perform those functions must be ascertained. Applied Med., 448 F .3d at 1332.

The plaintiff defines the recited function to be some type of "collective communicating." The details for each claim differ slightly. To derive the recited function, the plaintiff simply relies on the specific language following "gang holding structure" for each claim. Again, the defendants agree with the plaintiff so far as it goes, but they argue that the element has another recited function, "gang holding." Here, the term "gang holding" cannot be interpreted as simply a way to refer to a structure that performs the function of collective communicating. The function of "holding" is clearly different from "collective communicating." Therefore, this Court adopts the defendants' interpretation of the recited functions. The recited functions include both "gang holding" and the specific variation of "collective communicating" mentioned in each claim.

Next, we must determine what structures correspond to the recited functions. The plaintiff identifies the multiplexer switch 12 and group synchronizer 20 as performing the collective communicating function. The defendants argue that because "the specification does not use the claim terminology 'gang holding structure,' it cannot meet the requirement of clearly linking structure to the function recited in the claims." However, like the plaintiff, the defendants identified the multiplexer switch 12 and group synchronizer 20 as "possible structures." In addition, the defendants identified the control computer and memory unit 14 and cable 16.

Here, the plaintiff has identified portions of the specification that clearly link both the multiplexer switch 12 and group synchronizer 20 to the "collective communicating" function. (*See e.g.,* '773 patent at 3:7-11, 3:56-66; Figure 1.) The switch connects the group synchronizer to the various remote terminals so that the synchronizer can "collectively advise" persons at these terminals pending live communication. *Id*. at 3:56-66. Likewise, the switch 12 performs the function of gang holding. *Id*. at 7:51-55 (describing the switch 12 connecting held callers to the group synchronizer); 8:5-8 (describing the switch 12 connecting the callers to the primary terminal for "live communication" i.e., taking the callers off hold).

The additional structures the defendants identify do not correspond to the recited function. The defendants have merely pointed out that these structures are involved in the recited functions, but they have not shown that the additional structures actually perform the recited functions. Therefore, this Court identifies the "multiplexer switch 12 and group synchronizer 20" as the structures that correspond to the functions recited by the "gang holding structure" in claims, 1, 5 and 13 of the '773, '197 patent and '688 patents respectively.

b. ***Claim 9 of the*** '590 patent**.**

The second element of claim 9 of the '590 patent also recites a "gang holding structure" for collectively communicating. Unlike the other claims, claim 9 also requires receiving digital signals from the connected remote terminals. Specifically, claim 9 states:

gang holding structure for collectively communicating vocally to persons at said connected terminals as a group and receiving digital signals therefrom;

Again, the parties agree that this element is a means plus function limitation governed by 35 USC s. 112, para. 6. They also agree that recited function includes "collectively communicating vocally to persons at said connected terminals as a group and receiving digital signals therefrom." However, defendants argue that "gang holding" must also be a recited function. For the reasons discussed above, this Court agrees and finds that the recited functions of the "gang holding structure" in claim 9 of the '590 patent include this additional function.

Next, we must determine what structures correspond to collectively communicating, receiving digital signals and gang holding. As discussed above, this Court finds that the multiplexer switch 12 and group synchronizer 20 correspond to the collectively communicating and gang holding function. All that remains is determining what structures correspond to the receiving digital signals function. As the plaintiff notes, this is basically the same function performed by "means for receiving signals" construed earlier. For the reasons discussed in that section, this Court finds that the corresponding structures are I.D. register 38 or calling number register 34.FN9 Thus, the structures that correspond to the recited function of the "gang holding structure" in claim 9 of the ' 590 patent are the multiplexer switch 12, group synchronizer 20 and either the I.D. register 38 or calling number register 34.

FN9. The plaintiff provided no explanation why buffer 24 should be part of the disclosed structure. Therefore, the Court has not included it in its definition.

D. ***Connection Terminology***

1. ***"Switching Apparatus"-'688:1***

The second element of claim 1 of the '688 patent is a "switching apparatus." The entire element states:

switching apparatus for bridging a multitude of said remote terminals under control of signals from said remote terminals;

The defendants argue that even though the term "means" is not used, this element is a means plus function limitation governed by 35 USC s. 112, para. 6. The plaintiff disagrees.

A claim term that does not use "means" will trigger a rebuttable presumption that s. 112 para. 6 does not apply." DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc, 469 F.3d 1005, 1023 (Fed.Cir.2006). This presumption can be rebutted by showing that the claim element recites a function without reciting sufficient structure for performing that function. *Id*. "[T]he presumption flowing from the absence of the term 'means' is a strong one that is not readily overcome." Lighting World, Inc. v. Birchwood Lighting, Inc., 382 F.3d 1354, 1358 (Fed.Cir.2004). In this case, the switching apparatus limitation clearly recites the function of "bridging." Thus, the issue is whether the term "switching apparatus" also recites a structure that performs this function.

The plaintiff argues that a "switching apparatus" does refer to a specific structure. In support of its position, the plaintiff points to Katz Technology Licensing L.P. et al. v. AT & T Corp., 63 F.Supp.2d 583

(E.D.Penn.1999) (hereinafter referred to as " *AT & T* ") and Verizon Cal. Inc. v. Ronald A. Katz Tech. Licensing L .P., 326 F.Supp.2d 1060, 1096-1097 (C.D. Cal.2003. Both those decisions found that the term, "switching structure" was not governed by s. 112 para. 6 because "the term would have connoted a specific set of structures to those of ordinary skill in the art." *Id*. at 607. Although these decisions involved a different set of the plaintiff's patents, this particular finding is still relevant here because it establishes that "switch" refers to a well known structure.

In response, the defendants recognize that a "switching apparatus" can refer to a structure, but they argue that it only switches or routes calls from "one" location to another. Thus, the defendants argue that the limitation does not recite sufficient structure because a switching apparatus cannot perform the recited function of bridging *a multitude* of terminals.

In support of their position, defendants rely on a dictionary and textbook. (Ex. 6 and 7 to Campagna Decl.) However, a closer examination of the Kelleher and Cross reference (Ex. 7) shows that it is describing a particular type of switch, a PBX switch. The passage defendants quote states that a PBX switch "cannot successfully link more than three or fours ports...." Contrary to defendants' argument, this evidence shows that a PBX switch links more than "one" location. Moreover, the evidence fails to prove that other types of switches cannot link even more locations. The specification also contradicts the defendants' position by showing a switching apparatus, the multiplexer switch 12, that performs the recited function. (*See e.g.,* '773 patent at 3:7-13.)

Based on the foregoing, this Court finds that the defendants have failed to overcome the presumption that s. 112 para. 6 does not apply to the "switching apparatus" limitation. Specifically, the defendants have failed to show that a switching apparatus does not perform the recited bridging function.

This Court must still construe what the term "switching apparatus" means. The plaintiff's proposed definition is "a device including hardware and associated software that can switch or route telephone calls or signals from one location or connection to another." This definition is consistent with the specification. (*See e.g.,* '773 patent at 3:7-13; 4:18-21.) Moreover, the defendants did not propose an alternative definition in the event that this Court found that s. 112 para. 6 does not apply. Accordingly, this Court adopts plaintiff's definition of "switching apparatus."

2. "*Controlled switch means*"-'*773:1, '590:9, '197:5, 688:13*

Claims from four of the patents contain an element that begins with the term "control switch means." For example, the third element of claim 1 of the ' 773 patent states:

controlled switch means for coupling individual terminals to said preliminary structure during an engagement phase of operation subsequently connecting said select terminals to said gang holding structure during a pending phase of operation and thereafter unilaterally connecting said gang holding structure to said primary terminal during an interface phase of operation (emphasis added).

The elements from the claims of the other three patents also recite the controlled switch means' various functions. Although the "controlled switched means" is phrased in means plus function language, the plaintiff argues that the controlled switch means is not governed by s. 112 para. 6 because it recites sufficient structure. An element that is expressed in means plus function language is presumed to be governed by s. 112 para. 6. "This presumption can be rebutted where the claim, in addition to the functional language,

recites structure sufficient to perform the claimed function in its entirety." Altiris, Inc. v. Symantec Corp. 318 F.3d 1363, 1375 (Fed.Cir.2005)

Thus, the issue is whether a "controlled switch" can accomplish the various recited functions. Plaintiff argues that the recited functions are essentially "switching and routing telephone calls," and a control switch can accomplish those functions. The defendants have not responded to this specific point. As discussed above with respect to "switching apparatus," this Court finds that the switch, or in this case, a controlled switch does recite sufficient structure. Therefore, the "controlled switched means" elements are not governed by s. 112 para. 6.

Next, the parties disagree about whether the claims require a specific sequence. The defendants' proposed definition states that "means must perform the recited functions in chronological sequence ." The plaintiff's definition makes no mention of any sequence.FN10 The terms "subsequently" and "thereafter" clearly indicate the sequence in which the functions are performed.

FN10. In its reply brief, the plaintiff argues that devices that are "capable" of performing the function in their recited sequence still infringe the claims. This issue is more appropriately addressed at the infringement stage and this Court makes not ruling now.

Based on the foregoing, this Court defines "controlled switch means" to refer to "an electronically controlled device, including hardware and associated software that can switch or route telephone calls or signals from one location or connection to another. In addition, the controlled switch means must perform its recited function in the order specified by the claim language."

3. "*Coupling Apparatus*"-'*688:1*

The term "coupling apparatus" is found in the third element of claim 1 of the '688 patent. The entire elements states:

coupling apparatus connected to said switching apparatus for connecting said multitude of said remote terminals to said primary terminal for receiving audio communication;

Again, the plaintiff argues it is not a means plus function limitation governed by s. 112 para. 6 and the defendants disagree. Here, "coupling apparatus" does not use the means language. Therefore, there is a rebuttable presumption that s. 112 para. 6 does not apply. DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc, 469 F.3d 1005, 1023 (Fed.Cir.2006). This presumption can be rebutted by showing that the claim element recites a function without reciting sufficient structure for performing that function. *Id*. "[T]he presumption flowing from the absence of the term 'means' is a strong one that is not readily overcome." Lighting World, Inc. v. Birchwood Lighting, Inc., 382 F.3d 1354, 1358 (Fed.Cir.2004).

The plaintiff has attached dictionary definitions that define "coupler" and "coupling" (Ex. J and Ex. K) and the defendants do nothing to rebut these definitions. Although intrinsic evidence is considered more reliable, dictionaries can be still helpful in understanding what a claim term means to a person of ordinary skill in the art. *Phillips,* 413 F.3d at 1319. Here, the parties have not cited to any intrinsic evidence that helps define "coupling apparatus." FN11 Therefore, this Court must rely on the dictionary definitions that the plaintiff provides. Since these definitions show that a "coupler" does recite structure, this Court finds that "coupling

apparatus" is not governed by s. 112 para. 6 and this Court adopts plaintiff's definition. A coupling apparatus is a device or component for connecting two devices so that energy or signals can be transferred from one to another.

FN11. On first blush, the lack of intrinsic evidence tends to support defendants' s. 112 argument. However, this Court makes no ruling on this defense. If defendants file a summary judgment motion based on s. 112, the Court will thoroughly examine the merits of that argument.

4. "*Bridging*"-'*688:1, 32 and* '*711:28*

The term "bridging" is repeatedly used in the specification to describe connecting the various callers together. Callers may be variously "[b]ridged together" ('773 Abstract), "bridged for gang communication" ('773 patent at 1:63-64 Background and Summary), "bridged into a select group" (Id. at 3:35-36), "bridged through the switch 12 (Fig.1) to the group synchronizer 20" (Id. at 7:54-56), among others; or the system may "bridg[e] the caller to the group" (Id. at 7:47-50).

The Plaintiff defines the term to mean "joining or associating for communication" while the defendants state that bridging is "connecting together for collectively receiving audio communication ." Thus, the defendants' definition contains two limitations that are not present in the plaintiff's definition.

First, the defendants argue that bridging requires "collective" communication. Second, the defendants' definition uses the term "receiving" in a manner that indicates that callers that are bridged only receive communications. Again, the defendants can only point to the fact that the preferred embodiment shows group communications and receiving communication. That does not provide a basis for defining "bridging" in the manner the defendants suggest. Moreover, with respect to the defendants' second argument, the specification describes bridged callers communicating both unilaterally and bilaterally. Id. at 8:5-15. Thus, there is no evidence that the term "bridging" has either of the two additional meanings the defendants suggest. Based on the foregoing, this Court adopts the plaintiff's definition.

5. "Unilateral"/"unilaterally"-'773:1; '197:5; '688:32; '711:28, 29

The term "unilateral" or "unilaterally" is used in the specification to refer to one way communication. (*See,* '773 patent at Abstract ("Deviations from the unilateral communication include select bilateral communication for a few of the remote terminals ...."); id. at 4:17-18 ("The remaining terminals continue in a unilateral or "listen only" mode").)

After originally disagreeing, the parties now agree that "unilateral communication"/"communicating unilaterally" in claim 5 of the '197 patent, claim 32 of the '688 patent and claims 28 and 29 of the '711 patent refers to "one-way" communication. This Court adopts these definitions.

However, the defendants argue that "unilaterally connecting" in claim 1 of the '773 patent means "connecting all gang held terminals at one time for one-way communication from the primary terminal." Again, the defendants rely chiefly on the fact that the preferred embodiment contains the characteristics that the defendants wish to inject into the definition of "unilaterally connecting." This evidence does not show that the disputed term is limited in the manner the defendants suggest. The defendants also identified sections of the file history and inventor deposition testimony to support their arguments. The cited passage in the file history did not even discuss the term "unilateral." (Amendment at pp. 9-10, Ex. 5.) The cited

deposition testimony was similarly unhelpful (Katz Dep. at pp. 108-111, Ex. 4.) Therefore, this Court rejects the defendants' definition.

Procedurally, the defendants raised the argument after the parties agreed on a list of disputed terms. Thus, the plaintiff was not provided an opportunity to address "unilaterally connecting" in its opening brief and it only offered a definition of "unilaterally." This Court will only construe the term that was originally in dispute.

Based on the foregoing, the Court finds that the term unilaterally in claim 1 of the '773 patent means one-way.

6. "*Controlled selective communication*"-'*590:9*

The plaintiff uses the ordinary meaning of the individual words in "controlled selective communication" to define the term. Thus, plaintiff's definition is:

"Controlled selective communication" means a form of communication in which each caller's ability to communicate is selectively controlled (either individually or as a group).

In contrast, the defendants provide a definition that contains numerous limitations from the preferred embodiment. They define "controlled selective communication" to be:

unilateral collective audio communication, followed by selective digital or bilateral audio communication between the primary terminal and remote terminals.

Again, the defendants cite to inventor's testimony (Katz Dep. at p. 110, Ex. 4) and the file history (Amendment at p. 13, Ex. 5) in an attempt to support their definition. But the cited testimony simply provides an example of one way communication. It does not discuss the meaning of "controlled selective communication." Similarly, the cited file history does not define the disputed term. Instead, it merely shows that that invention differs from the Stanley reference based on some of the attributes that the defendants would like to have inserted into the Court's definition. However, the file history never links these attributes to the term "controlled selective communication." Based on the foregoing, this Court adopts the plaintiff's entire definition.

E. *Digital Signal Elements*

1. "*Digital*"/"*digitally*"-'*590:9, 11; '711:28*

The term "digital"/"digitally" is used in various parts of the specification. ('773 patent at 4:28-30 ("digital signals are provided from select of the telephone terminals T1-TN by actuating the push buttons"); Id. at 8:32-35 ("digital signals formulated at individual terminals T1-TN are accumulated in the buffer memory 24 for subsequent processing in the unit 14"); id. at 8:42-46, 6:31-35, 1:12-14.) These passages do not appear to provide the term with any special meaning. Thus, without any explanation, the plaintiff simply proposes to define the term as "numerical." In contrast, the defendants provide a very specific definition:

DTMF signals provided by touch-tone telephone push-buttons at the remote telephone terminals.

Here, the defendants simply pick and choose features from the specification and import them into their

definition of "digital" or "digitally." The Court notes that the three claims in dispute use the term "digital" or "digitally" to describe a signal being sent from a remote terminal. For example, the relevant portion of claim 9 of the '590 patent states:

gang holding structure for collectively communicating vocally to persons at said connected [remote] terminals as a group and receiving *digital* signals therefrom; (emphasis added).

However, it is the other claim language that requires the digital signal be sent from the remote terminal. The term "digital" does not carry that meaning.

Other than citing to the prosecution history of another family of patents (Amendment at pp. 30-31 in the Reexamination of U.S. Patent N. 5,787,156 attached as Ex. A to Nassim Decl.), the defendants can provide no explanation for limiting "digital" or "digitally" in the various ways suggested by their definition.FN12 Therefore, this Court rejects the defendants' definition.

FN12. Citing to admissions made during the prosecution of an unrelated patent regarding a different claim term (digital phone as opposed to digital signal) is not helpful at all.

Here, although the specification uses the disputed terms, those passages do not suggest a definition. Moreover, neither party has provided an expert declaration or a dictionary definition explaining what the ordinary meaning of the term "digital" or "digitally" is. Rather, the parties' definitions are either unsupported or facially wrong. Thus, this Court has no choice but to turn to a dictionary. The first definition found in the Microsoft Computer Dictionary (5th Ed.2002) defines "digital" to mean "[a] reference to something based on digits (numbers) or their representation." This definition is entirely consistent with the way the terms are used in the specification. Accordingly, this Court defines "digital" or "digitally" to be "a reference to something based on digits (numbers) or their representation."

2. "*Digital means for receiving digital data*"-'590:11

The phrase "digital means for receiving digital data provided from said individual [remote] terminals" is found in claim 11 of the '590 patent. The phrase is expressed in means plus function language and the parties agree that it is covered by s. 112 para. 6. The parties agree that the recited function is receiving digital data provided from said individual terminals.

However, the parties disagree about what the corresponding structure is. The plaintiff argues that the corresponding structure is buffer memory 24. The defendants argue that the corresponding structure must also include the connection equipment 10 and multiplexer 12. However, the specification describes how the digital data is received by the buffer memory 24 after passing through the connection equipment 10 and multiplexer 12. ('773 patent at 4:22-25 ("digital data is received from the select group of terminals T1 through TN through the lines L1-LN, the equipment 10 and the switch 12 to a buffer memory 24"); *see also,* id. at 8:38-42.) Thus, the structure that corresponds to the recited function is the buffer memory 24 alone.

3. "*Communicating digitally*"-'711:28

The term "communicating digitally" is found in claim 28 of the '711 patent. The relevant portion of the claim states:

communicating digitally from said remote telephone terminals with said primary telephone terminal;

Here, the plaintiff proposes that "communicating digitally" should mean "communicating using telephone touch-tones." This term appears to be used in the same manner as "digital" or "digitally" is used above. However, the plaintiff suggests that the definition here should be different because the terminals are " *telephone* terminals" "communicating digitally." Without citing to any evidence, plaintiff argues that these phrases are "fairly understood" as communicating signals by telephone touch tones. The term touch-tone is not found in the specification nor does the plaintiff provide any reason why the court should equate digital communication with touch tone phones in this context. Thus, this Court rejects the plaintiff's definition.

The defendants' proposal does not suffer from the same inconsistency. They propose essentially the same definition they offered above:

communicating by DTMF signals provided by touch-tone telephone push-buttons at the remote telephone terminals.

Unfortunately, this definition suffers from the same flaws as discussed above with respect to "digital" and "digitally." Therefore, this Court defines communicating digitally to mean "communicating a reference to something based on digits (number)."

IT IS SO ORDERED.

C.D.Cal.,2008.
In re Katz Interactive Call Processing Patent Litigation