

United States District Court,
E.D. Texas, Texarkana Division.

CONSTELLATION IP, LLC,
Plaintiff.

v.

AVIS BUDGET GROUP, INC., et. al,
Defendants.

Civil Action No. 5:07-CV-38 (LED)

July 1, 2008.

Danny Lloyd Williams, Christopher Needham Cravey, J. Mike Amerson, Jaison Chorikavumkal John, Ruben Singh Bains, Terry D. Morgan, Williams Morgan & Amerson PC, John J. Edmonds, The Edmonds Law Firm, PC, Houston, TX, David Michael Pridham, David Pridham Law Office of David Pridham, Barrington, RI, Andrew Wesley Spangler, Spangler Law PC, Jason A. Saunders, Albritton Law Firm, Longview, TX, Clyde Moody Siebman, Susan Marie Fisher, Siebman Reynolds Burg Phillips & Smith LLP, Sherman, TX, Daniel Francisco Perez, The Perez Law Firm, Dallas, TX, David G. Hanson, Mark A. Cameli, Robert S. Jones, Reinhart Boerner Van Deuren, Milwaukee, WI, Marc A. Fenster, Russ August & Kabat, Los Angeles, CA, Patrick Rolf Anderson, Patrick R. Anderson, PLLC, Flint, MI, for Plaintiff.

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ORDER

LEONARD DAVIS, District Judge.

Plaintiff Constellation IP, LLC ("Plaintiff") brings this cause of action against Defendants FedEx Corporation and FedEx Corporate Services, Inc. (collectively "Defendants"), alleging Defendants infringe United States Patent 6,453,302 ("the '302 patent"). On December 10, 2007, the Magistrate Judge conducted a claim construction hearing in this matter. On February 19, 2008, the Magistrate Judge issued an Order construing certain terms of the '302 patent and denying Defendants' Motion for Summary Judgment of Invalidity Based on Indefiniteness.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure FN1 and 28 U.S.C. s. 636, Defendants have filed objections to the Magistrate Judge's February 19 Order, asserting the Order fails to consider the controlling precedent of this Court "because the Order dismisses FedEx's prosecution history and any alleged extrinsic evidence as required by *Halliburton*." (Defendants' Objections at pg. 1). Specifically,

Defendants contend the Magistrate Judge erred in finding the following claim terms not indefinite: (1) "impression characteristic;" (2) "in a manner which reinforces the identity of the selling entity;" (3) "selling entity element;" (4) "corporate image;" and (5) "indirectly convey." (Defendants' Objections at pgs. 1-2). Defendants further assert that if the Court does not find these terms indefinite, the Magistrate Judge erred because she did not adopt Defendants' proposed constructions for "impression characteristic," "selling entity element," "corporate image," and "indirectly conveys." (Defendants' Objections at pg. 2).

The Court first finds the Magistrate Judge relied on the appropriate legal authority and considered the appropriate aspects of the '302 patent. Regarding Defendants' indefiniteness arguments, Defendants assert that the terms "impression characteristic," "corporate image," "indirectly conveys" and "in a manner which reinforces the identity" require an analysis of "the subjective judgment of the customer," and therefore are indefinite.

To respect a patent's presumption of validity, *see* 35 U.S.C. s. 282, a court should hold a claim indefinite only after reasonable efforts at construction prove futile. *Exxon Research & Eng'g v. United States*, 265 F.3d 1371, 1375 (Fed.Cir.2001). A claim is not indefinite merely because it poses a difficult issue of claim construction. *Bancorp Services LLC v. Hartford Life Insurance Co.*, 359 F.3d 1367, 1371 (Fed.Cir.2004). "Only claims not amenable to construction or insolubly ambiguous are indefinite" and thus invalid. *Datamize v. Plumtree Software Inc.*, 417 F.3d 1342, 1347 (Fed.Cir.2005) (internal quotes omitted). If the claim's meaning is discernable, "even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree," the claim is "sufficiently clear to avoid invalidity on indefiniteness grounds." *Exxon Research*, 265 F.3d at 1375. A party must show invalidity for indefiniteness by clear and convincing evidence, and close questions of indefiniteness "are properly resolved in favor of the patentee." *Datamize*, 417 F.3d at 1348; *Exxon Research*, 265 F.3d at 1380.

The Court, having considered Defendants' objections and the response thereto, agrees with the Magistrate Judge that FedEx has not met its burden of showing, by clear and convincing evidence, that a person of ordinary skill in the art could not determine whether an accused device or method infringes the asserted claims of the '302 patent. The claims of the '302 patent, and specifically the terms Defendants have placed at issue with its objections, are not purely subjective as found by the courts in *Datamize v. Plumtree Software Inc.*, 417 F.3d 1342 (Fed.Cir.2005) and *Halliburton Energy Services, Inc. v. M-I, LLC*, 456 F.Supp.2d 811 (E.D.Tex.2006), *aff'd* 514 F.3d 1244 (Fed.Cir.2008). Defendants' objections regarding indefiniteness are without merit. The Court is of the opinion that the findings and conclusions of the Magistrate Judge on this issue are not clearly erroneous or contrary to law, and the relevant claim terms are construed as follows:

CLAIM TERM	COURT CONSTRUCTION
"customized proposal"	"a printed proposal image (for a specific customer)."
"a customer solution specific image"	"an image identifying part of the customer solution."
"integrating ... to reflect ... in a manner which maintains the corresponding visual impression characteristic"	"bringing together (parts or elements) in a way that maintains the corresponding visual impression characteristic."
"integrating, in a manner which maintains the corresponding impression characteristic"	"bringing together (parts or elements) in a way that maintains the corresponding visual impression characteristic."
"integrating ... into an integrated presentation output"	"to put or bring together (parts or elements) so as to form a presentation."
"integrate ... into a presentation output"	"to put or bring together (parts or elements) so as to form a

	presentation."
"impression characteristic"	"characteristic that conveys a notion, remembrance, or belief."
"presentation output template"	"1) a template that defines the format of the presentation, or 2) programs, rules, or instruction that define the format of a presentation."
"selling entity image(s)"	"image(s) identifiable with the selling entity."
"selling entity element(s)"	"element(s) that conveys directly or indirectly the identity of a selling entity."
"commodity"	"an article of commerce"
"product"	"product or service"
"retrieve[ing]"	No construction necessary.
"selected"	No construction necessary.
"output device"	No construction necessary.

In light of the Federal Circuit's opinion in *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, No.2007-1302, slip op. (Fed. Cir. April 3, 2008) and pursuant to this Court's June 3, 2008 Order, the Magistrate Judge is re-analyzing the nine claim terms FN2 not construed in the February 19 Order.

FN1. FED.R.CIV.P. 72(a) provides that a "district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law."

FN2. Those claim terms are (1) "presentation item;" (2) "a proposal image;" (3) "customer type; types of customers;" (4) "customer type element(s);" (5) "customer type information;" (6) "indirectly conveys;" (7) "in a manner which reinforces the identity of the selling entity;" (8) "outputting;" and (9) "corporate image."

E.D.Tex.,2008.

Constellation IP, LLC v. Avis Budget Group, Inc.

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