

United States District Court,  
N.D. California.

**NEXTBUS INFORMATION SYSTEMS, INC., a California Corporation,**  
Plaintiff.

v.  
**DIGITAL RECORDERS, INC., and David Turney,**  
Defendants.

No. C-01-2449 VRW

**July 24, 2002.**

A. James Isbester, Law Offices of A. James Isbester, Berkeley, CA, Jonathan M. Eisenberg, Manatt, Phelps & Phillips, LLP., Los Angeles, CA, for Plaintiff.

Michael A. O'Neil, Dallas, TX, Robert C. Holtzapple, Farella, Braun & Martel, San Francisco, CA, for Defendants.

### **CLAIM CONSTRUCTION ORDER**

**VAUGHN R. WALKER, District Judge.**

On July 3, 2002, the court conducted a claim construction hearing. Based on the parties' arguments at this hearing and their submissions to the court, the court issues the following order.

#### **I**

Plaintiff Nextbus Information Systems, Inc (Nextbus) owns United States Patent No 6,006,159 ('159 patent), which describes a method for determining the arrival times for busses in a transit system. While the patent describes such a method for public transit vehicles, for ease of exposition, the court refers to these vehicles as "busses," with the understanding that this term includes a broader range of public transit vehicles, including subway cars, trolleys and, of course, cable cars. The invention contains several components. First, each bus has a device that communicates its position to a global positioning satellite (GPS). The GPS relays this information to a central computer. The information about the bus' location is then compared against historical data of travel times under different conditions. Based on the current conditions, including weather and road conditions, the computer calculates an accurate estimate of the bus' arrival time at the stops on its route. These estimates are then broadcast to end users at the stops, on the bus and via wireless technology. To refine the estimate of the arrival time further, a computer on the bus can monitor its passenger load and send this information to the central computer as well.

Nextbus originally filed suit against defendant Digital Recorder, Inc (DRI) on February 7, 2001. See Case No 01-606-VRW. Nextbus voluntarily dismissed the action when DRI asserted that no device which

potentially could infringe existed. On June 25, 2001, DRI filed a declaratory judgment action against Nextbus in the Northern District of Texas. Nextbus responded by filing the instant action the same day. The Texas action has since been dismissed for lack of personal jurisdiction. Thus, the only current action between the parties is the above captioned action.

## II

Claim construction, or the interpretation of the language of the claims in a patent, is a matter of law for the court to determine. See *Markman v. Westview Instruments*, 517 U.S. 370, 391, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The goal of claim construction is "to interpret what the patentee meant by a particular term or phrase in a claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249 (Fed.Cir.1998). In determining what a patentee meant by a term or phrase, the court looks first to the claim itself.

"Absent a special and particular definition created by the patent applicant, terms in a claim are to be given their ordinary and accustomed meaning." *York Prods., Inc. v. Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1572 (Fed.Cir.1996). In order to determine whether a term has been used with a special or particular meaning, the court should review the specification. See *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996) (noting that "it is always necessary to review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning.").

Besides the claims themselves, the specification includes a written description of the invention, which must be sufficiently clear and complete to enable those of ordinary skill in the art to make and use the invention. See *id.* As part of this description, the inventor must set forth the "best mode contemplated by the inventor of carrying out his invention." 35 USC s. 112.

In construing claim terms, the court must consider whether the description and the best mode, or the embodiment, of the invention may assist in determining what the patentee meant by a claim term. Using the specification, of which the claims are one part, in order to interpret what the patentee meant by a word or phrase in a claim, however, "is not to be confused with adding an extraneous limitation appearing in the specification, which is improper." *EI Du Pont*, 849 F.2d at 1433. By "extraneous," the Federal Circuit means "a limitation read into a claim from the specification wholly apart from any need to interpret what the patentee meant by particular words or phrases in the claim." *Id.*

The court may also consider the prosecution history of the patent, if in evidence, in order to determine the meaning of claim terms. *Vitronics*, 90 F.3d at 1582. Any interpretation of a claim term that is provided or disavowed during the prosecution of the patent informs the scope of the claim. See *Renishaw*, 158 F.3d at 1249 n3. The rule that the court does not impose extraneous limitations on claim terms from language in the specifications, however, is also "applicable to the impropriety of injecting into claims limitations from the prosecution history." *Intervet America, Inc. v. Kee-Vet Laboratories, Inc.*, 887 F.2d 1050, 1053 (Fed.Cir.1989). "Ambiguity, undue breadth, vagueness, and triviality are matters which go to claim *validity* for failure to comply with 35 USC s. 112-para. 2, not to interpretation or construction." *Id.*, emphasis in original.

The parties agree that only such intrinsic evidence as the claim language, the specification and the prosecution history is required to construe the claims at issue. See *Def Opp (Doc # 42)* at 2 n4; *Pl Br (Doc # 39)* at 8.

While the '159 patent contains 28 claims, only 16 are at issue in this action. Specifically, the following claims are at issue:

independent claim 1 and its dependent claims 2 and 3;

independent claim 6 and its dependent claim 7;

independent claim 10 and its dependent claim 12;

independent claim 13 and its dependent claim 14;

independent claims 20, 23 and 24; and

independent claim 25 and its dependent claims 26-28.

In its opening memorandum, Nextbus asserts that the language of the patents is straightforward and should be interpreted based on the common meaning of the terms. See Pl Br (Doc # 39) at 8. Nextbus provides a proposed claim construction for every claim, see Pl Br (Doc # 39) at Exh A, but focuses its argument on some specific terms common to several claims: "predetermined routes in a transit system," "global positioning system device," "central processor," "transit data table," "communication," "calculated vehicle arrival," "receiver," "display" and "passenger load." See Pl Br (Doc # 39) at 9-12. In its opposition, DRI does not directly dispute Nextbus' argument with respect to these claims, but instead argues that three terms "different conditions," "current conditions" and "passenger load" are dispositive. See Def Opp (Doc # 42) at 2. DRI provides its proposed claim construction for each of the independent claims, that is, claims 1, 6, 10, 13, 20, 23, 24 and 25. At oral argument, the parties agreed that only two terms remained in dispute: "different conditions" and "historical transit data table." The court considers the proper interpretation of these two phrases in turn.

## A

DRI contends that the phrase "different conditions" as found in claim 1 should be construed as follows:

"Different conditions" shall mean information as to *historical circumstances* affecting movement of traffic along the transit vehicle's path. Such circumstances include, but are not limited to, the month, week, day and time of day, as well as other historical factors or patterns including holidays, vacation seasons, school year holidays, severe weather, transit line or other surface road construction, and other construction activity.

This interpretation is based upon the stipulated interpretation of "current conditions along a given route":

"Current conditions along a given route" shall mean information as to affecting movement of traffic along the transit vehicle's path. Such circumstances include, but are not limited to, severe weather, transit line or other surface road construction, and other construction activity.

Stip at 2 (emphasis added). Nextbus agrees with most of DRI's proposed construction of "different conditions," but argues that different conditions are not necessarily historical circumstances. Nextbus therefore proposed the following interpretation:

"Different conditions" shall mean information as to dissimilar circumstances affecting movement of traffic along the transit vehicle's path. Such circumstances include, but are not limited to, the month, week, day and time of day, as well as other historical factors or patterns including holidays, vacation seasons, school year holidays, severe weather, transit line or other surface road construction, and other construction activity.

Thus, the parties simply dispute whether different conditions are "dissimilar circumstances" or "historical circumstances."

The court finds the language of the claim unambiguous. It describes, in pertinent part:

[a table containing] the travel times necessary for said vehicles to move from one stop to another along their routes under different conditions \* \* \*.

'159 Patent (Doc # 43, Exh A) at 15:32-37. Under different conditions, in this context, does not mean "under historical circumstances." It means "under different circumstances." While Nextbus suggests that the phrase "under dissimilar circumstances" is appropriate, the court finds that "dissimilar" and "different" are not synonyms; dissimilarity is an extreme form of difference. As such, the court finds that Nextbus' interpretation of the phrase "different conditions" is also inappropriate.

Finally, the second sentence of the proposed interpretations, identical for both parties, simply mimics the specification's description of possible circumstances that affect transit times. See '159 Patent (Doc # 43, Exh A) at 9:51-56, 9:62-64. The court adopts the parties' inclusion of this sentence in the interpretation of "different conditions." The court therefore construes the term "different conditions" as follows:

"Different conditions" means information as to different circumstances affecting movement of traffic along the transit vehicle's path. Such circumstances include, but are not limited to, the month, week, day and time of day, as well as other historical factors or patterns including holidays, vacation seasons, school year holidays, severe weather, transit line or other surface road construction, and other construction activity.

## **B**

The parties also dispute the correct interpretation of "historical transit data table" in claim 1. Claim 1 states, in pertinent part:

(2) central processor means (a) storing an historical transit data table containing vehicle schedules of the travel times necessary for said vehicles to move from one stop to another along their routes under different conditions, advertisements and information for the operators of the vehicles \* \* \*.

'159 Patent (Doc # 43, Exh A) at 15:33-38. DRI contends that the phrase "containing vehicle schedules of the travel times\* \* \*, advertisements and information for the operators of the vehicles" is a dependent clause listing the contents of an historical transit data table. Nextbus contends that the phrase "storing an historical transit data table \* \* \*, advertisements and information for the operators of the vehicles" is a dependant clause listing the data stored in the central processor. Both constructions are viable; this is a case in which the formal construction of a sentence is not dispositive and the court must look to the context of the sentence to determine its meaning.

In this case, the context and plain language of the term "historical transit data table" suggest that Nextbus'

interpretation of the claim is more appropriate. The term "historical transit data table" suggests that the table at issue contains only transit data, rather than transit data, advertisements and information for the operators of the vehicles, as DRI suggests. In addition, several portions of the specification support the interpretation that historical transit data table does not include advertisements:

In one aspect, a transit data table comprises a file of electronic records formatted to include in each record the following: vehicle identification, route number, stop number, and the estimated time of arrival at a particular identified stop number together with the predicted passenger load at the identified stop.

'159 Patent (Doc # 43, Exh A) at 4:30-35. At another point, the specification states that transit data table information and advertisements are separate:

[I]n addition to transit data table information, public interest and commercial information, such as news briefs, announcements and advertisements, are available over the system.

'159 Patent (Doc # 43, Exh A) at 7:32-35. The court therefore finds that the term "historical transit data table" does not include advertisements or information for the operators of the vehicles and construes the term as follows:

Historical transit data table shall mean a table of data that contains vehicle schedules of the travel times necessary for said vehicles to move from one stop to another along their routes under different conditions.

### C

Finally, the court considers DRI's argument that the prosecution history estops Nextbus from asserting claims based on equivalency. DRI admits that "prosecution history estoppel is not properly before the court during claim construction," but argues that "the file history may be used \* \* \* to prevent an unwarranted extension of the claims beyond a fair scope of the patentee's invention." Def Opp (Doc # 42) at 3 (internal quotation marks omitted). DRI notes that this latter use of the file history, sometimes termed "claim construction estoppel," is related to prosecution history estoppel. It is the doctrine of prosecution history estoppel, however, that would apply to estop Nextbus from asserting equivalency claims. See *Catalina Mktg. Int'l v. Coolsavings*, 289 F.3d 801, 813 (Fed.Cir.2002). As prosecution history estoppel is not properly before the court at this time, the court declines to rule on DRI's estoppel argument.

### III

In summary, the court declines to rule on DRI's estoppel argument and construes the following two terms in the '159 patent:

"Different conditions" means information as to different circumstances affecting movement of traffic along the transit vehicle's path. Such circumstances include, but are not limited to, the month, week, day and time of day, as well as other historical factors or patterns including holidays, vacation seasons, school year holidays, severe weather, transit line or other surface road construction, and other construction activity.

Historical transit data table shall mean a table of data that contains vehicle schedules of the travel times necessary for said vehicles to move from one stop to another along their routes under different conditions.

Finally, as a housekeeping matter, Nextbus filed its memorandum in support of its claim construction

position as a motion. Having construed the claims, the court TERMINATES this motion (Doc # 39).

IT IS SO ORDERED.

N.D.Cal.,2002.

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