

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

CARITAS TECHNOLOGIES, INC,
Plaintiff.

v.

COMCAST CORPORATION,
Defendant.

No. 2:05-CV-339-DF

Oct. 18, 2006.

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CLAIM CONSTRUCTION ORDER

DAVID FOLSOM, District Judge.

Caritas Technologies ("Plaintiff") brings this cause of action against Comcast ("Defendant") alleging infringement of U.S. Patent Number 6,661,779 (the "'779 patent"). Dkt. No. 1. Defendant denies all allegations of infringement, asserts affirmative defenses of invalidity and misuse, and counterclaims for judgment of non-infringement, patent invalidity, and patent misuse. Dkt. No. 11.

Before the Court is Plaintiff's Opening Claim Construction Brief. Dkt. No. 135. Also before the Court is Defendant's brief in response and Plaintiff's reply. Dkt. Nos. 160 and 166. The Court conducted a claim construction hearing on July 31, 2006. After considering the patents, the parties' submissions, arguments of counsel, and all other relevant pleadings and papers, the Court finds that the claims of the '779 patent should be construed as set forth herein.

I. LEGAL PRINCIPLES OF CLAIM CONSTRUCTION

A determination of patent infringement involves two steps. First, the patent claims are construed, and, second, the claims are compared to the allegedly infringing device. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1455 (Fed.Cir.1998) (en banc).

The legal principles of claim construction were recently reexamined by the Federal Circuit in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed.Cir.2005) (en banc). Reversing a summary judgment of non-infringement, an en banc panel specifically identified the question before it as: "the extent to which [the court] should resort to and rely on a patent's specification in seeking to ascertain the proper scope of its claims." *Id.* at 1312. Addressing this question, the Federal Circuit specifically focused on the confusion that had amassed from its recent decisions on the weight afforded dictionaries and related extrinsic evidence as compared to intrinsic evidence. Ultimately, the court found that the specification, "informed, as needed, by the prosecution history," is the "best source for understanding a technical term." *Id.* at 1315 (quoting *Multiform Dessicants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1478 (Fed.Cir.1998)). However, the court was mindful of its decision and quick to point out that *Phillips* is not the swan song of extrinsic evidence, stating:

[W]e recognized that there is no magic formula or catechism for conducting claim construction. Nor is the court barred from considering any particular sources or required to analyze sources in any specific sequence, as long as those sources are not used to contradict claim meaning that is unambiguous in light of the intrinsic evidence.

Phillips, 415 F.3d at 1324 (citations omitted). Consequently, this Court's reading of *Phillips* is that the Federal Circuit has returned to the state of the law prior to its decision in *Texas Digital Sys. v. Telegenix, Inc.*, 308 F.3d 1193 (Fed.Cir.2002), allotting far greater deference to the intrinsic record than to extrinsic evidence. "[E]xtrinsic evidence cannot be used to vary the meaning of the claims as understood based on a reading of the intrinsic record." *Phillips*, 415 F.3d at 1319.

Additionally, the Federal Circuit in *Phillips* expressly reaffirmed the principles of claim construction as set forth in *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed.Cir.1995) (en banc), *aff'd*, 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576 (Fed.Cir.1996), and *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111 (Fed.Cir.2004). Thus, the law of claim construction remains intact. Claim construction is a legal question for the courts. *Markman*, 52 F.3d at 979. The claims of a patent define that which "the patentee is entitled the right to exclude." *Innova*, 381 F.3d at 1115. The claims are "generally given their ordinary and customary meaning" as understood by "a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Vitronics*, 90 F.3d at 1582. However, the Federal Circuit stressed the importance of recognizing that 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." *Phillips*, 415 F.3d at 1313.

Advancing the emphasis on the intrinsic evidence, the *Phillips* decision explains how each source, the claims, the specification as a whole, and the prosecution history, should be used by courts in determining how a skilled artisan would understand the disputed claim term. *See, generally, id.* at 1314-17. The court noted that the claims themselves can provide substantial guidance, particularly through claim differentiation. Using an example taken from the claim language at issue in *Phillips*, the Federal Circuit observed that "the claim in this case refers to 'steel baffles,' which strongly implies that the term 'baffles' does not inherently mean objects made of steel." *Id.* at 1314. Thus, the "context in which a term is used in the asserted claim can often illuminate the meaning of the same term in other claims." *Id.* Likewise, other claims of the asserted patent can be enlightening, for example, "the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." *Id.* at 1315 (citing *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed.Cir.2004)).

Still, the claims "must be read in view of the specification, of which they are part." Markman, 52 F.3d at 978. In *Phillips*, the Federal Circuit reiterated the importance of the specification, noting that "the specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Phillips*, 415 F.3d at 1315 (quoting *Vitronics*, 90 F.3d at 1582). To emphasize this position, the court cited extensive case law, as well as "the statutory directive that the inventor provide a 'full' and 'exact' description of the claimed invention." *Id.* at 1316 (citing *Merck & Co., v. Teva Pharms. USA, Inc.*, 347 F.3d 1367, 1371 (Fed.Cir.2003)); *see also* 35 U.S.C. s. 112, para. 1. Consistent with these principles, the court reaffirmed that an inventor's own lexicography and any express disavowal of claim scope is dispositive. *Id.* at 1316. Concluding this point, the court noted the consistency with this approach and the issuance of a patent from the Patent and Trademark Office and found that "[i]t is therefore entirely appropriate for a court, when conducting claim construction, to rely heavily on the written description for guidance as to the meaning of the claims." *Id.* at 1317.

Additionally, the *Phillips* decision provides a terse explanation of the prosecution history's utility in construing claim terms. The court simply reaffirmed that "the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." *Id.* (citing *Vitronics*, 90 F.3d at 1582-83). It is a significant source for evidencing how the patent office and the inventor understood the invention. *Id.*

Finally, the Federal Circuit curtailed the role of extrinsic evidence in construing claims. In pointing out the less reliable nature of extrinsic evidence, the court reasoned that such evidence (1) is by definition not part of the patent, (2) does not necessarily reflect the views or understanding of a person of ordinary skill in the relevant art, (3) is often produced specifically for litigation, (4) is far reaching to the extent that it may encompass several views, and (5) may distort the true meaning intended by the inventor. *See id.* at 1318. Consequently, the Federal Circuit expressly disclaimed the approach taken in *Texas Digital*. While noting the *Texas Digital* court's concern with regard to importing limitations from the written description, "one of the cardinal sins of patent law," the Federal Circuit found that "the methodology it adopted placed too much reliance on extrinsic sources such as dictionaries, treatises, and encyclopedias and too little on intrinsic sources, in particular the specification and prosecution history." *Id.* at 1320. Thus, the court renewed its emphasis on the specification's role in claim construction.

Many other principles of claim construction, though not addressed in *Phillips*, remain significant in guiding this Court's charge in claim construction. The Court is mindful that there is a "heavy presumption" in favor of construing claim language as it would be plainly understood by one of ordinary skill in the art. *Johnson Worldwide Assocs., Inc. v. Zebco Corp.*, 175 F.3d 985, 989 (Fed.Cir.1999); *cf. Altiris, Inc., v. Symantec Corp.*, 318 F.3d 1364, 1372 (Fed.Cir.2003) ("[S]imply because a phrase as a whole lacks a common meaning does not compel a court to abandon its quest for a common meaning and disregard the established meaning of the individual words.") The same terms in related patents are presumed to carry the same meaning. *See Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1334 (Fed.Cir.2003) ("We presume, unless otherwise compelled, that the same claim term in the same patent or related patents carries the same construed meaning.")

Claim construction is not meant to change the scope of the claims but only to clarify their meaning. *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed.Cir.2000) ("In claim construction the words of the claims are construed independent of the accused product, in light of the specification, the prosecution

history, and the prior art.... The construction of claims is simply a way of elaborating the normally terse claim language[] in order to understand and explain, but not to change, the scope of the claims.") (citations and internal quotations omitted). Regarding claim scope, the transitional term "comprising," when used in claims, is inclusive or open-ended and "does not exclude additional, unrecited elements or method steps." *CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1235 (Fed.Cir.2005) (citations omitted). Claim constructions that would read out the preferred embodiment are rarely, if ever, correct. *Vitronics*, 90 F.3d at 1583-84.

The Court notes that a patent examiner's "Reasons for Allowance," where merely summarizing a claimed invention and not specifically noting that patentability is based on a particular feature, do not limit the scope of the claim. *See Apex Inc. v. Raritan Computer, Inc.*, 325 F.3d 1364, 1375 (Fed.Cir.2003). Similarly, an examiner's unilateral statements in a "Notice of Allowance" do not result in the alteration of claim scope. *See id.*; *see also Salazar v. Procter & Gamble Co.*, 414 F.3d 1342, 1346-47 (Fed.Cir.2005). The Federal Circuit has "declined to apply the doctrine of prosecution disclaimer where the alleged disavowal of claim scope is ambiguous." *Omega Eng'g*, 334 F.3d at 1324.

The doctrine of claim differentiation is often important in claim construction. *Phillips*, 415 F.3d at 1315 (citing *Liebel-Flarsheim Co.*, 358 F.3d at 910). "Claim differentiation" refers to the presumption that an independent claim should not be construed as requiring a limitation added by a dependent claim. *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380 (Fed.Cir.2006). This is in part because "reading an additional limitation from a dependent claim into an independent claim would not only make that additional limitation superfluous, it might render the dependent claim invalid." *Id.*; *see also SRI Int'l. v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1122 ("It is settled law that when a patent claim does not contain a certain limitation and another claim does, that limitation cannot be read into the former claim in determining either validity or infringement.") This doctrine is based in part on the presumption that each claim has a different scope. 35 U.S.C. s. 282; *Curtiss-Wright Flow Control Corp.*, 438 F.3d at 1380. The difference in meaning and scope between claims is presumed to be significant to the extent that the absence of such difference in meaning and scope would make a claim superfluous. *Free Motion Fitness, Inc. v. Cybex Int'l*, 423 F.3d 1343, 1351 (Fed.Cir.2005). Although a validity analysis is not a regular component of claim construction, if possible, claims should be construed to preserve their validity. *Phillips*, 415 F.3d at 1327; *see also Rhine v. Casio, Inc.*, 183 F.3d 1342, 1345 (Fed.Cir.1999).

Whether or not the preamble acts as a limitation is properly an issue of claim construction, and therefore a matter of law within the province of the court. *Markman*, 52 F.3d at 979; *see also Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 115 Fed. Appx. 84, 87 (Fed.Cir.2004, unpublished) ("Determining whether a preamble constitutes a limitation is a matter of claim construction") There is no presumption that the preamble either is or is not a claim limitation, and there is no litmus test to apply. *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d at 1257. A preamble is a limitation where it gives "meaning to the claim." *Id.* As the Federal Circuit has noted, this "may merely state the problem rather than lead one to the answer." *Id.* To determine whether or not the preamble is a part of the claim, a review of the entire patent is necessary. *Id.* This is because a claim preamble has the import that the claim as a whole suggests for it. *Bell Communications Research v. Vitalink Communications Corp.*, 55 F.3d 615, 620 (Fed.Cir.1995). General claim construction principles apply to the determination of whether or not a preamble is a limitation. *Id.* ("We construe claim preambles, like all other claim language, consistently with [claim construction] principles.")

As set forth in *Catalina Mktg.*, the case law provides some guidelines for this determination. 289 F.3d at

808-09. The preamble may operate as a limitation where: a claim depends on a preamble phrase for an antecedent basis; the preamble is essential to understand limitations or terms in the claim; the preamble recites additional structure or steps underscored as important by the specification; or the patentee has clearly relied on the preamble during prosecution to distinguish the claimed invention from the prior art. *Id.* The preamble generally does not operate as a limitation where the preamble language merely extols benefits or features of the claimed invention or the preamble describes the purpose or use of an invention. *Id.* at 809. "[W]hen the limitations in the body of the claim rely upon and derive an antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention." *Eaton Corp. v. Rockwell Int'l Corp.*, 323 F.3d 1332, 1339 (Fed.Cir.2003).

With these principles in mind, the Court turns to the '779 patent.

II. THE '779 PATENT

The '779 patent, entitled "Dial Up Telephone Conferencing System Controlled by an Online Computer Network," issued on December 9, 2003. The Abstract states:

In a telephone conferencing system, a digital communication network such as the Internet is used to establish and control the telephone connections between multiple conferees with the telephone network being the means of exchanging verbal information. Each conferee may have a computer connected to the digital network, and each has an independent telephone instrument connected to the public switched telephone network. An in-charge conferee utilizes his computer containing appropriate software to initiate the conference and to control the participation of the conferees. The in-charge conferee sends digital control signals to a switch interface controlling a telephone switch as a gateway to the telephone network using SS7 control signals. These SS7 control signals include the commands by which the conferee telephones are rung up, brought on line, or dropped from the conference. The switch provides telephone status information back over the digital network, and the in-charge conferee, as well as other conferees provided with appropriate software, display this status information on their PC monitors.

The '779 patent is the fourth in a family of patents that includes U.S. Patent Nos. 6,072,780, 6,266,328, and 6,480,474. This family traces its origin to an application filed August 26, 1996. Dkt. No. 135 at 1. This is the "time of the invention" relevant to claim construction. *Vitronics*, 90 F.3d at 1582.

III. CLAIM CONSTRUCTION

The parties request that the Court construe six terms appearing in the patent-in-suit. These terms are: "plurality of conferees;" "conference among the plurality of conferees;" "dial up communication network;" "telephonic connection;" "connection status information;" and "controlling and monitoring telephonic connections over an Internet Protocol (IP) network." In their respective briefing, the parties focus their arguments on the three independent claims of the '779 patent, namely claims 1, 17, and 33. These claims are repeated below with the disputed terms in bold:

1. A system for controlling communication among a **plurality of conferees**, the system comprising: a digital computer for **controlling and monitoring telephonic connections over an Internet Protocol (IP) communication network**; and a switch interface in communication with the digital computer over said IP communication network and further in communication with a **dial up communication network**, wherein: the digital computer transmits digital control signals to the switch interface over the IP communication network; the switch interface transmits telephonic control signals to the **dial up communication network** in

response to said digital control signals to establish at least one **telephonic connection** for a **conference among the plurality of conferees**; and the digital computer subsequently monitors the at least one **telephonic connection** over the IP communication network.

17. A method for controlling communication among a **plurality of conferees**, the method comprising: transmitting digital control signals from a digital computer over an Internet Protocol (IP) communication network to a switch interface that transmits telephonic control signals to a **dial up communication network** in response to the digital control signals to establish at least one **telephonic connection** for a **conference among the plurality of conferees**; and monitoring the at least one **telephonic connection** by the digital computer over the IP communication network.

33. A method for controlling communication among a **plurality of conferees**, the method comprising: receiving digital control signals over an Internet Protocol (IP) communication network; transmitting telephonic control signals to a **dial up communication network** in response to the digital control signals to establish a **telephonic connection** to at least one conferee telephone devices for a **conference among the plurality of conferees**; obtaining connection status information from the **dial up communication network**; and transmitting the **connection status information** over the IP communication network.

A. "Plurality of Conferees"

The term "plurality of conferees" appears in the preamble to claims 1, 17, and 33, as well as in the body of the claims as part of the larger term "conference among the plurality of conferees," discussed in s. III. B., infra.

1. The Parties' Positions

Plaintiff proposes that "plurality of conferees" means "two or more conferees." Dkt. No. 135 at 7. Defendant proposes that the term means "a call requiring at least 3 telephones." Dkt. No. 160 at 26.

As support, Plaintiff cites the general rule used by the Federal Circuit that a "plurality" is two or more. Dkt. No. 135 at 7. Further, Plaintiff argues that a "conferee" is a person and not a telephone. *Id.*

Defendant proposes that "plurality of conferees," by itself, can mean "two or more conferees." Dkt. No. 160 at 30. However, Defendant argues that the term is limited by its usage in conjunction with the word "conference," which Defendant argues requires at least three conferees. *Id.*

2. Claim Construction

The parties disagree as to whether a conferee is a telephone or a person. The specification discloses "[c]onferee stations" consisting of "telephones" and, optionally, "PC computers." U.S. Pat. No. 6,661,779 at 2:10-11. This usage of "conferee," separate from the description of the "telephones" and "computers," suggests that a conferee is not a telephone or a computer. Also, the specification discusses controlling the "conferees ['] telephones." *Id.* at 2:44-45. Because the specification refers to a telephone as something that a conferee possesses, the specification makes a distinction between "conferees" and "telephones" that supports reading "conferee" to mean a person rather than a telephone. A person of ordinary skill in the art reading the term "conferee" in the context of the entire patent would therefore understand the term "conferee" to refer to a person.

The term "plurality" encompasses the "range ... bounded by two and infinity." *Bilstad v. Wakalopoulos*, 386 F.3d 1116 (Fed.Cir.2004). This "state of being plural" is the "plain meaning" of "plurality" and should be applied absent contrary evidence in the file history. *York Prods., Inc. v. Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1575 (Fed.Cir.1996). Defendant acknowledges that "plurality of conferees," in isolation, "could refer to two or more conferees." Dkt. No. 160 at 30.

The term "plurality of conferees" appears by itself in the preamble. Because this term first appears without limitation in the preamble, its meaning is not limited by later usage in the body of the claim without "contrary evidence" of an intent to so limit its meaning. *York Prods., Inc.*, 99 F.3d at 1575. Usage of the word "conference" preceding the term "plurality of conferees" in the body of the claim is not sufficiently "contrary" to justify departing from the well established meaning of plurality. *Id.*; *see also* s. III. B., *infra*.

Moreover, the claim language supports a reading of "plurality of conferees" to include two conferees because Claims 1 and 17 employ "at least one telephonic connection for a conference among the plurality of conferees." U.S. Pat. No. 6,661,779 at 6:6-8 & 7:15-17. To make "at least one" includes making one, and one connection can only connect two conferees. The claims themselves thus teach a construction of "plurality of conferees" to mean two or more.

Finally, the word "conferees" is the plural noun form of the verb "confer," which means "to converse, talk together." *Oxford English Dictionary* (Second Edition 1989). This extrinsic evidence of meaning, while of limited weight, is nonetheless probative of how a person of ordinary skill in the art would understand the term. *See Phillips*, 415 F.3d at 1324. The parties have not indicated that the word "conferees" has a specialized meaning in the field of the invention. Therefore, the word "conferees" does not limit the ordinary meaning of "plurality."

For all of these reasons, the Court therefore construes "plurality of conferees" to mean two or more conferees.

B. "Conference Among the Plurality of Conferees"

1. The Parties' Positions

Plaintiff proposes that "conference among the plurality of conferees" means a "conference among the two or more conferees." Dkt. No. 135 at 9. Defendant argues that a "conference among the plurality of conferees" is "a call requiring at least 3 telephones ." Dkt. No. 160 at 26.

Defendant cites the specification, which refers to both "conferencing" and "two party call-back." *Id.* at 27. Defendants argue that the differentiation of these terms in the specification shows that "conferencing and two party calls are two different things." *Id.*

Defendant cites the prosecution history, arguing that the Plaintiff purposely excluded "conference" language from the claims of the '474 patent (an earlier patent in the family) entitled "*Telephone Call-Back System Controlled by an Online Data Network in Real Time*." *Id.* at 28 (citing U.S. Pat. No. 6,480,474 (emphasis added)).

Defendant also argues that a person of ordinary skill in the art of telephony would understand the ordinary meaning of "conference" to require at least three conferees. *Id.* Defendant cites dictionary definitions that define a "conference call" as requiring "three or more different telephone lines" or "more than two main

stations." *Id.* at 27 (citing *McGraw Hill Illustrated Telecom Dictionary* (Second Edition 2000) & *Hargraves Communication Dictionary*, IEEE Press (2001)).

Defendant argues that "nothing in the claims or specification provides that plurality of conferees broadens the narrower term 'conference.'" Dkt. No. 160 at 30-31. Defendant argues that Plaintiff cannot "bootstrap a broader definition of conference from the term 'plurality of conferees.'" *Id.* at 30.

Plaintiff replies that Defendant improperly attempts to substitute the ordinary meaning of "conference call" for that of "conference." Dkt. No. 166 at 4.

2. Claim Construction

The term "plurality of conferees" must retain the same meaning throughout the patent "unless otherwise compelled." *Omega Eng'g, Inc.*, 334 F.3d at 1334. The Court has construed that term to mean "two or more conferees." *See s. III. A., supra*. Therefore, the term "plurality of conferees" presumably retains its meaning of two or more when it appears in the body of the claims as part of the term "conference among the plurality of conferees."

"[W]hen the limitations in the body of the claim rely upon and derive an antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention." *Eaton*, 323 F.3d at 1339; *see also Catalina Mktg.*, 289 F.3d at 808-09. A claim preamble has the import that the claim as a whole suggests for it. *Bell Communications Research*, 55 F.3d at 620. The term "plurality of conferees" appears in the preambles of claims 1, 17, and 33 and forms the antecedent basis for the term "plurality of conferees" used later in the claims as part of the term "conference among *the* plurality of conferees." *Eaton*, 323 F.3d at 1339 (emphasis added). The use of the word "the" indicates a reference to the antecedent "plurality of conferees." This is not "bootstrapping," as Defendant urges, because the use of "plurality of conferees" in the preamble directs the meaning of that term as used in the body of the claim. *Id.* at 30; *Catalina Mktg.*, 289 F.3d at 808. The use of the word "among" also suggests that "plurality of conferees" retains its meaning without limitation. *See Bell Communications Research*, 55 F.3d at 620. Therefore, "conference among the plurality of conferees" is presumed to mean "conference among the two or more conferees." *Omega Eng'g, Inc.*, 334 F.3d at 1334. As discussed below, the intrinsic and extrinsic evidence do not "otherwise compelled" a contrary finding. *Id.*

A person of ordinary skill in the art might understand "conference," in isolation, to be synonymous with "conference call" in the telecommunications industry. The ordinary meaning of the term "conference call" to include three or more participants is therefore probative. *Johnson Worldwide, Inc.*, 175 F.3d at 989. Nonetheless, the relevant meaning is that which one of ordinary skill in the art would understand upon reading the claim. *Phillips*, 415 F.3d at 1313. Intrinsic evidence of meaning takes precedence over extrinsic evidence of ordinary meaning because the specification, "informed, as needed, by the prosecution history," is the "best source for understanding a technical term." *Id.* at 1315.

The specification discloses an "invention relate[d] to telephone conferencing," and describes the "system of Fig. 1." U.S. Pat. No. 6,661,779 at 1:21 & 4:40-41. This "system of Fig. 1" has "inherent call-back capability" such that by using "the same conferencing software described above, call-back can be between just two parties." *Id.* at 4:40-44. Defendant notes that this disclosure was not present in the 1996 application, but Defendant has raised it. Hr'g Tr., Dkt. No. 194 at 91-92 (July 31, 2006); Dkt. No. 160 at 27. Even if a person of ordinary skill in the art would find that the ordinary meaning of "conference" is, in isolation,

synonymous with that of "conference call" and requires at least three participants, the term must be read in the context of the entire claim and the specification. Phillips, 415 F.3d at 1313. Because the *same system* has both multi-party capability and "inherent" two-party capability, a person of ordinary skill in the art would read the term "conference among the plurality of conferees" to mean a conference among two or more people. U.S. Pat. No. 6,661,779 at 4:40-44.

For all of these reasons, the Court construes "conference among the plurality of conferees" to mean a conference among two or more conferees.

C. "Dial Up Communication Network"

1. The Parties' Positions

Plaintiff proposes that "dial up communication network" refers to the Public Switched Telephone Network (the "PSTN"). Dkt. No. 135 at 13-16. Defendant proposes this term means a "switched circuit network that can use dial or push-button telephones to initiate calls." Dkt. No. 160 at 13.

In support, Plaintiff notes that the embodiments discussed in the specification utilize SS7 switching and that the PSTN is the only SS7-controlled network. Dkt. No. 135 at 15. Further, Plaintiff proposes that the term "dial up communication network" is ordinarily synonymous with the PSTN. Dkt. No. 135 at 13. Plaintiff draws support from the dictionary definitions of two similar terms: "dial up telephone system" and "dial up network." *Id.* (citing *McGraw-Hill Dictionary of Scientific and Technical Terms* (5th ed.1994) at 556 & *McGraw-Hill Computer Desktop Encyclopedia* (9th ed.2001) at 237, respectively).

Defendant argues that while the term "dial up communication network" includes the PSTN, the term is not limited to the PSTN. *Id.* at 14. Defendant invokes the doctrine of claim differentiation and argues that Claim 3, which depends from Claim 1, adds an SS7 limitation that therefore cannot be present in Claim 1. *Id.* Defendant also notes that the PSTN is a circuit-switched network. *Id.* at 15. Thus, Defendant proposes that while the PSTN is included within its proposed claim term meaning, other circuit-switched networks, such as Private Branch Exchanges ("PBXs"), FN1 should also be included. *Id.* at 13.

FN1. The testimony of Dr. Forsy at the Claim Construction Hearing is explanatory:

Q: Okay. What is a PBX?

A: Well, before I said the PSTN was a Public Switch[ed] Telephone Network. PBX is a Private Branch Exchange. It means that it's something that's not owned by the regulated telephone companies, it's owned by private individuals or entities or companies, normally.... It's a private telephone system. Again, it's not regulated. You usually have phones that are dedicated to that kind of PBX.... It's not an ordinary phone that's used. So it has a lot of differences. You know you are on a PBX when you have to dial 9 to get out. You get a second dial tone.... It has the appearance of a [regular telephone] line [to a switch on the PSTN.] It gives you a dial tone.

Hr'g Tr., Dkt. No. 194 at 12-13.

Plaintiff replies that the PSTN is not necessarily an SS7-controlled network. Dkt. No. 166 at 5. Thus, Plaintiff argues, dependent Claim 3 simply limits the PSTN of Claim 1 to an SS7-controlled PSTN. *Id.* Plaintiff also argues that it is irrelevant whether the PSTN is circuit-switched or not. *Id.* at 6.

2. Claim Construction

Independent Claims 1, 17, and 33 do not provide a basis for limiting the term "dial up communication network" to the PSTN or to SS7. The doctrine of claim differentiation favors a construction that is not limited to SS7 because the limitation to an SS7 network found in dependent Claim 3 gives rise to a strong presumption that independent Claim 1 does not contain that limitation. Phillips, 415 F.3d at 1314-15. If independent Claim 1 were limited to SS7, dependent Claim 3 would add nothing. Thus, the term "dial up communication network" is not limited to an SS7-controlled network.

There is a "heavy presumption" in favor of construing claim language as it would be plainly understood by one of ordinary skill in the art. Johnson Worldwide, 175 F.3d at 989. Even if, as Plaintiff proposes, a person of ordinary skill in the art would understand the term "dial up communication network," in isolation, to refer to the PSTN, this is not determinative. A 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." Phillips, 415 F.3d at 1313. Therefore, the Court must turn to the claims and specification.

The only means of controlling calls disclosed in the specification is circuit-switching. *See, e.g.*, U.S. Pat. No. 6,661,779 at 2:46-47. Further, the claims support a construction that limits the term "dial up communication network" to a circuit-switched network. Claim 1 distinguishes between an "Internet Protocol (IP) communication network" and a "dial up communication network," and the claim refers to a "switch interface" for interacting with the latter. *See, e.g.*, *id.* at 5:62-67 & 6:4-5. A person of ordinary skill in the art would understand that a "switch interface" interacts with a circuit-switched network to "establish at least one telephonic connection." *Id.* at 6:4-7. This understanding is further supported by the construction of the term "telephonic connection," which finds that such a connection is a type of circuit path in a circuit-switched network. *See s. III. D., infra.*

The claims and specification of the '779 patent do not limit the term "dial up communication network" to the PSTN. The '779 specification makes no explicit reference to the PSTN other than in the Abstract. The system disclosed in the specification functions by "controlling telephone calls via switch." U.S. Pat. No. 6,661,779 at 2:46-47. Although the specification discusses SS7, this does not support limiting the term to the PSTN because the differentiation between Claims 1 and 3 shows that the circuit-switched network need not be SS7-controlled.

Further, neither the claims nor the specification require the "dial up communication network" to be public. A PBX is a "private telephone system" and may or may not be circuit-switched. A person of ordinary skill in the art would not distinguish between public and private systems because the patent does not do so. Rather, such a person would distinguish between circuit-switched and packet-switched systems because that is the distinction taught by the patent. *See, e.g.*, U.S. Pat. No. 6,661,779 at 6:1-5. Therefore, a person of ordinary skill in the art would read the term at issue to include any circuit-switched telephone network and not necessarily a public one. Because a circuit-switched network need not be part of the PSTN, the term "dial

up communication network" is not limited to the PSTN. *See* Microsoft v. Multi-tech Sys., Inc., 357 F.3d 1340, 1345 n. 2 (Fed.Cir.2004) (giving the PSTN as an example of a "circuit-switch network").

For all these reasons, the Court construes the term "dial up communication network" to mean a circuit-switched telephone network.

D. "Telephonic Connection"

1. The Parties' Positions

Plaintiff proposes that "telephonic connection" means a "connection over the PSTN associated with a specific conferee." Dkt. No. 135 at 17. Defendant proposes this term means a "switched circuit path between two telephones." Dkt. No. 160 at 16.

The parties disagree about three points: (1) whether the connection must be over the PSTN, (2) whether the connection must be a "switched circuit" connection, and (3) whether a telephonic connection is associated with a specific conferee (conferee-to-conference) or is between two telephones (conferee-to-conferee). Dkt. No. 135 at 17.

Plaintiff notes that the first two points turn on the construction of the term "dial up communication network." Dkt. No. 135 at 17. Defendant agrees. Dkt. No. 160 at 17.

The parties disagree as to whether a "telephonic connection" is a connection associated with a specific conferee or is any path between two telephone devices. Dkt. Nos. 135 at 17 & 160 at 16. Plaintiff argues that in a conference there are as many "telephonic connections" as there are conferees. *See, e.g.*, Dkt. No. 135 at 21. Defendant argues that a "telephonic connection" is an end-to-end connection between telephones. Defendant cites the uses of the term "telephone connection" in the claims of a related patent to refer to connections between telephones. Dkt. No. 160 at 18 (citing U.S. Pat. 6,072,780).

Defendant asserts, "there is no such thing as a connection to a 'conference' " and explains that Plaintiff must be proposing that the connection is "either from a conferee to a switch, or from a conferee to a conference bridge." Dkt. No. 160 at 21. Defendant argues that construing "telephonic connection" to mean a connection from a conferee to a switch must fail because there is only "a single connection between the two telephones that is no more associated with one conferee than the other." *Id.* Defendant then argues that Plaintiff's proposed construction fails because it requires the use of a conference bridge to establish the telephonic connections and the '779 specification and claims refer to switches but not to a conference bridge. *Id.* at 21 & 23.

Plaintiff replies that its proposed construction does not require a conference bridge because, for example, "most SS7-controlled switches contain [a three port conference circuit (bridge)]" Dkt. No. 166 at 10. Plaintiff further replies that the claims of the '779 patent do not require any "specific pieces of PSTN hardware," so such hardware is "irrelevant to claim construction." Dkt. No. 166 at 13.

Defendant further argues that Plaintiff's construction is barred by "prosecution disclaimer." Dkt. No. 160 at 23. Defendant argues that a "telephonic connection" must be an end-to-end connection because during prosecution of the '779 patent, Plaintiff disclaimed connections traveling across both the telephone network and the Internet. *Id.* at 24. Defendant cites Plaintiff's statement to the Examiner that certain prior art (U.S. Pat. No. 6,069,890, the "White patent," or "White") "does not disclose telephonic connections in a telephone

network." *Id.* (citing Exh. I at 4-5). Defendant argues that a review of White shows that this "representation can only be correct if a telephonic connection is an end to end connection in a telephone network." *Id.*

Plaintiff replies that the '328 patent history is irrelevant because the '779 patent deals with "establishment of telephonic connections, not on how the voice traffic is sent after the connection is established." Dkt. No. 166 at 14. Plaintiff argues that there was no unequivocal waiver of claim scope to overcome the White prior art because the "'779 patent claims contain several limitations not present in White." Dkt. No. 166 at 16. Further, Plaintiff argues, the portion of White cited by the Examiner as part of the rejection is irrelevant because it dealt with delivery of voice-mail via SS7 packets. Dkt. No. 166 at 17.

Each party also argues that Claims 9 and 10 of the '779 patent are more compatible with each party's construction. *See* Dkt. Nos. 135 at 22 & 160 at 25-26.

2. Claim Construction

As to the parties' first point of disagreement, because the term "dial up communication network" has been construed to mean a circuit-switched telephone network, a "telephonic connection" need not be over the PSTN. *See* s. III. C., *supra*.

As to the second point, the parties agree that this point also turns on the construction of the claim term "dial up communication network." Dkt. Nos. 135 at 17 & 160 at 17. In light of the Court's construction of "dial up communication network," the Court concludes that a "telephonic connection" must be a circuit-switched connection.

As to the third point, the parties disagree as to whether a "telephonic connection" is a "connection associated with a specific conferee" or is a "path between two telephone devices." Dkt. Nos. 135 at 17 & 160 at 16. The term must be construed in light of its use in the specification. Phillips, 415 F.3d at 1313. The use of "telephonic" in the term "telephonic connection" imparts a limitation on the term "connection." *See* Phillips, 415 F.3d at 1314 (finding that the term "steel" limited the term "baffles" in the term "steel baffles"). An inquiry into the meaning of "telephonic" is therefore appropriate. *See Altiris*, 318 F.3d at 1372 (finding that a court should not "disregard the established meaning of the individual words").

The claims teach that a "telephonic connection" must be "established" between "conferees" by the use of "telephonic control signals." *Id.* at 6:4-8. The specification teaches that these control signals, such as SS7 commands, are used to "act on ... the telephone network to control the conferees telephones ." *Id.* at 2:43-45. Further, Claim 1's use of the term "telephonic" in teaching that "the switch interface transmits telephonic control signals to the dial up communication network" shows that something "telephonic" can be carried over the dial up communications network. *Id.* at 6:4-5. This meaning is highlighted by the contrast in Claim 1 between "telephonic control signals," which travel over the "dial up communications network," with "digital control signals," which travel over the "IP communication network." *Id.* at 6:1-4. The key distinction between the "dial up communication network" and the "IP communication network" is that the former is circuit-switched while the latter is packet-switched. *See id.* at 4:28; *see also* s. III. C., *supra*. Thus, the claims teach that the primary purpose of the word "telephonic" is to limit the term "telephonic connection" to a circuit switched connection rather than a packet-switched one.

The claims and specification also teach that the term "telephonic" requires that the connection be between telephone devices. Claims 2 and 33 both teach that a conferee participates in the conference by using a

"conferee telephone device." *Id.* at 6:6:14-16. The specification teaches this as well, referring to the "conferees['] telephones." *Id.* at 2:45. This comports with the common definition of "telephonic" as "of, pertaining to, of the nature of, or conveyed by a telephone." *Oxford English Dictionary*; see *Altiris*, 318 F.3d at 1372 (finding that a court should consider the established meaning of words within a disputed term). Thus, the term "telephonic connection" refers to connections between telephone devices.

This construction also comports with the ordinary meaning of a connection in the telecommunications context as "[a] path between telephones that allows the transmission of speech and other signals." Dkt. No. 160 at 29 (quoting *Newton's Telecom Dictionary* 260 (7th ed.1994)). Plaintiff's argument attempts to undermine this ordinary meaning by employing a physical meaning and applying it to create the appearance of absurdity. See Dkt. No. 135 at 19. Plaintiff claims "geometrically increasing confusion" where "[i]n the case of 5, 6, and 7 conferees, each conferee's telephone line would be simultaneously carrying 4, 5, and 6 of [Defendant's] 'telephonic connections.'" *Id.* However, this accords with the ordinary interpretation of "telephonic connection" as a path and not as the physical telephone "line" suggested by Plaintiff. *Id.* Between any two conferees there is, at least in part, a circuit path. Otherwise, those conferees would be unable to confer. This path may overlap other paths between other conferees. This is not "geometrically increasing confusion" but rather an expected consequence of the ordinary interpretation that a person of ordinary skill in the art would make of the term "telephonic connection" as read in the context of the '779 patent. Adding "a telephonic connection for [an] added conferee" is to connect the added conferee to the circuit paths in place among the existing conferees. U.S. Pat. No. 6,661,779 6 :53-54. This simultaneously creates circuit paths between the added conferee and all of the existing conferees.

Defendant's "prosecution disclaimer" argument fails. Defendant has submitted prosecution history wherein the inventor distinguishes White. Dkt. No. 159 at Exh. M. However, this file history does not clearly show that the inventor limited the invention to end-to-end connections as Defendant argues. Instead, this history only states, "In no case does White use or suggest a digital computer attached to the Internet to initiate or otherwise control a telephone connection in a telephone network." *Id.* at 10. Because the Court must not "apply the doctrine of prosecution disclaimer where the alleged disavowal of claim scope is ambiguous," the claim scope of the '779 patent will not be limited by the referenced prosecution history. *Omega Eng'g*, 334 F.3d at 1324.

The Court therefore construes the term "telephonic connection" to mean a circuit-switched path between telephone devices on a circuit-switched telephone network.

E. "Connection Status Information"

1. The Parties' Positions

Plaintiff proposes that "connection status information" is defined by the specification as "ringing, off-hook, on-hook and busy status of a telephonic connection, as established by a PSTN switch." Dkt. No. 135 at 23. Defendant proposes the term means "information related to the status of a switched circuit path between two telephones." Dkt. No. 160 at 31. "[Defendant] proposes applying this term's plain meaning, while [Plaintiff] seeks to limit this term to four specific types of information listed in the specification and to add a limitation requiring the information to come from a PSTN switch." Dkt. No. 160 at 32.

Plaintiff argues that the phrase starting with "i.e." FN2 after the term "connection status information" defines that term. Dkt. No. 135 at 24 (citing *Abbott Labs. v. Novapharm Ltd.*, 323 F.3d 1324 (Fed.Cir.2003)).

FN2. "Two Latin words, meaning 'that is', used in works written in Latin to introduce an explanation of a word or phrase = 'that is to say'; retained in English in the same use, now usually in the abbreviated form i.e." *Oxford English Dictionary*.

Defendant counters that Plaintiff's proposed construction is too narrow. First, Defendant points to the deposition testimony of Plaintiff's expert, Dr. Forys, that the term could possibly be broader than the information suggested in the '779 specification. Dkt. No. 160 at 32. Second, Defendant argues Plaintiff's construction is too narrow because "even the specification does not require that the information come from a 'PSTN switch.'" *Id.* at 32-33. Defendant also counters Plaintiff's citation of *Abbott Labs* with a citation to *Pfizer, Inc. v. Teva Pharm., USA, Inc.*, 429 F.3d 1364, 1375 (Fed.Cir.2005).

Plaintiff replies that "i.e." defines the term because "connection status information" appears only once in the specification. Dkt. No. 166 at 18. Plaintiff argues that this distinguishes this case from *Pfizer*, where the specification contained a further discussion of the disputed claim term. *Id.*

2. Claim Construction

To begin, the patent does not require that "connection status information" come from a PSTN switch. As discussed above, the only reference to the PSTN in the entire '779 patent is found in the Abstract. *See s. III. C., supra*. While the specification discusses an SS7 commands, which are commonly associated with the PSTN, claim differentiation has shown that the independent claims are not limited to SS7. *Id.* Finally, the "dial up communication network" that includes the switches is not limited to the PSTN. *Id.* Therefore, the "connection status information" need not be "established by a PSTN switch." Dkt. No. 135 at 23.

The remaining issue is whether the use of "i.e." in the specification after the term "connection status information" is sufficient to invoke the general rule that the inventor's lexicography governs. "[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs." Phillips, 415 F.3d at 1316. The term "i.e." may be used "restrictively" or to provide "examples." Dkt. No. 160 at 33. If the latter, then the patentee has not been lexicographer. If the former, then the definition in the specification controls.

In *Abbott Labs*, the Federal Circuit found that "i.e." defined the meaning of a term. 323 F.3d at 1330. Defendant argues that there is no general rule in favor of reading "i.e." to define a term because the Federal Circuit in *Pfizer* interpreted "i.e." to indicate examples. 429 F.3d at 1374-75. However, the court in *Pfizer*, explicitly distinguished *Abbott Labs* on the facts in departing from the usually restrictive meaning of "i.e." *Id.* at 1373. Further, this interpretation of "i.e." is contrary to the literal meaning of this abbreviation for the Latin *id est*, meaning "that is." *Oxford English Dictionary*.

The specification in *Pfizer* referred to "saccharides (i.e., sugars)" 429 F.3d at 1373. The court in *Pfizer* found intrinsic evidence defining the term "saccharides" apart from the phrase following "i.e." *Id.* The specification contained an entire section labeled "SACCHARIDES," which contained a detailed explanation.FN3 Further, "[b]y using the label 'SACCHARIDES,' the patentee clearly intended for this section to address the meaning of the same term." *Id.* The court went on to find that the use of "i.e." did not limit the term "saccharides" to "sugars." *Id.* at 1374.

FN3. The relevant section of the patent specification in *Pfizer* reads as follows:

"The saccharide components to be used in the pharmaceutical products and methods of the invention are substances which are compatible with the alkali or alkaline earth metal-containing stabilizers. Generally, they are substances which do not contain groups which could significantly interfere with the function of either the metal-containing component or the drug component. Mannitol, lactose, and other sugars are preferred. Mixtures are operable."

By contrast, the specification in *Abbott Labs* did not contain any other explanation of the term. In *Abbott Labs*, the term at issue was: "co-micronization of fenofibrate and a solid surfactant (i.e., the micronization of an intimate mixture of fenofibrate and a solid surfactant)." The Federal Circuit affirmed the district court's conclusion that the phrase following "i.e." was the "only detailed example of co-micronization disclosed in the ... patent" and therefore excluded other ingredients or excipients. *Abbott Labs.*, 323 F.3d at 1327-28.

The present case is analogous to *Abbott Labs* because the '779 specification contains no other definition of the term "connection status information," nor has any other intrinsic evidence been identified by the parties. *See* U.S. Pat. No. 6,661,779. The relevant portion of the specification reads:

It will be noted that the switch interface is bi-directional, and telephone connection status information as established by the switch, i.e. ringing, off-hook, on-hook busy, for all participants is transmitted back via the Internet to the Conference Meister for icon display on his PC.

Id. at 2:53-57.

Although the specification discusses information transmitted by the "switch interface" other than that listed after "i.e.," the "connection status information" is established by the "switch" in the telephone network and not by the "switch interface" that interfaces with the telephone network. So while the specification teaches other information transmitted to and from the "switch interface" that is not "ringing, off-hook, on-hook busy," that other information only teaches as to the "switch interface." This other information cannot counteract the restrictive effect of "i.e." because the "switch interface" is different from the "switch" because while the former sits between the Internet and the telephone network, the latter is entirely within the telephone network. Therefore, the specification does not teach any other meaning of "connection status information" besides that taught after "i.e." introduces a definition. Therefore, the use of "i.e." means that the patentee has "chosen to be his own lexicographer" and has defined the term "connection status information" to mean "ringing, off-hook, on-hook busy." *Abbott Labs.*, 323 F.3d at 1330; U.S. Pat. No. 6,661,779 at 2:54-55.

The Court construes the term "connection status information" to mean the ringing, off-hook, on-hook, or busy status of a switched circuit path between telephones provided by a switch.

F. "Controlling and Monitoring Telephonic Connections Over an Internet Protocol (IP) Communication Network"

1. The Parties' Positions

The parties agree that the only dispute is over the meaning of the term "controlling" within this term. Dkt.

Nos. 135 at 24 & 160 at 33. The only other part of the term at issue is "telephonic connections," which is construed above. *See* s. III. D., *supra*. Plaintiff proposes that "controlling" has its "ordinary meaning" and gives, as examples, "initiating, ending, and managing." Dkt. No. 135 at 25. Defendant proposes "controlling" means "initiating or terminating, and monitoring." Dkt. No. 160 at 33.

Plaintiff "suggest[s] some examples of controlling, namely, initiation (meaning to establish a connection, e.g. through control signals), ending (meaning disconnecting, e.g., through control signals), and managing (meaning everything in between)." Dkt. No. 135 at 25.

Defendant argues that "controlling" must include "the ability *both* to initiate *and* terminate telephonic connections." *Id.* (emphasis added). This must be true, Defendant argues, because "a circuit-switched connection has just two possible states, connected or disconnected." Dkt. No. 160 at 134. Further, Defendant argues, "[a] person of ordinary skill in the art would construe controlling a telephonic connection to require the ability to initiate and terminate the called party's telephonic connections." *Id.*

Plaintiff replies that "'controlling' has its ordinary meaning, and need not be specially construed by the Court." Dkt. No. 166 at 19. Plaintiff further notes that the '779 specification includes "control messages" that are not "'initiating' or 'terminating' as [Defendant] defines those terms." Dkt. No. 166 at 20; *see also* U.S. Pat. No. 6,661,779 at Table 1.

2. Claim Construction

The parties agree that "controlling" may include connecting or disconnecting. Plaintiff gives connecting ("establish[ing] a connection") and disconnecting as examples of controlling. Dkt. No. 135 at 25. Defendant defines its proposed terms ("initiating" and "terminating") as synonymous with connecting and disconnecting ("controlling requires the ability to initiate-connect-or terminate-disconnect-the telephonic connection"). Dkt. No. 160 at 34. The only remaining issues are whether the term "controlling" includes *both* connecting *and* disconnecting and whether the term includes "managing."

A 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." Phillips, 415 F.3d at 1313. Claims 1 and 17 discuss how the system "establish[es]" and "monitors the at least one telephonic connection" U.S. Pat. No. 6,661,779 at 6:6-10. Claim 33 discusses "establish[ing] a telephonic connection...." *Id.* at 7:15-18. A person of ordinary skill in the art would therefore understand "controlling" to necessarily include connecting. The specification as a whole teaches how to set up a conference among a plurality of conferees. Further, the specification teaches that "controlling telephone calls via switch" includes the command to "disconnect." *Id.* at 2:46-47 & Table 1. This comports with the understanding of a person of ordinary skill in the art that control "via switch," in a circuit-switched network, includes operating the switch to establish and disconnect connections. *See* Campbell Decl., Dkt. No. 160, Exh. 1 at para. 52. Plaintiff agrees that "establishing" (or "initiating") and "disconnecting" (or "terminating") are part of "controlling." Dkt. Nos. 135 at 25 & 166 at 19. Therefore, "controlling" must include connecting as well as disconnecting.

Plaintiff insists that the presence of what Plaintiff calls "control messages," which include "ESTABLISH CONNECTION" and "DISCONNECT" among others, in Table 1 of the '779 patent expands the term "controlling" to include "managing." Dkt. No. 166 at 20. However, Plaintiff has not justified any limitations in the proposed word "managing" that could not already be present in the ordinary meaning of the claim

term "monitoring," which the parties agree should retain its ordinary meaning and need not be specially construed by the Court. *See* Dkt. Nos. 135 at 24-25 & 160 at 3. The specification's teaching of additional "control messages" does not give support for a new term, "managing," which does not appear in the '779 patent. Instead, these "control messages" appear consistent with "monitoring," which is an undisputed part of the disputed term. Plaintiff argues that "managing" is part of "controlling" because "control messages" are used for "maintaining and reconstructing the conference information in the face of dropped connections and unreliable datagram transmissions." Dkt. No. 166 at 20 (quoting U.S. Pat. No. 6,661,779 at Table 1). Still, Plaintiff fails to show how this "reconstructing" is other than the combination of monitoring, connecting, and disconnecting taught by the remainder of the intrinsic record.

The Court therefore construes the term "controlling and monitoring telephonic connections over an Internet Protocol (IP) communication network" to mean connecting, disconnecting, and monitoring telephonic connections over an Internet Protocol (IP) communication network.

IV. CONCLUSION

Accordingly, the Court hereby **ORDERS** the disputed claim terms construed consistent herewith.

E.D.Tex.,2006.

Caritas Technologies, Inc. v. Comcast Corp.

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