

United States District Court,
W.D. Missouri, Western Division.

CERNER CORPORATION,
Plaintiff.

v.

VISICU, INCORPORATED,
Defendant.

No. 04-1033-CV-W-GAF

July 23, 2008.

Bart A. Starr, Basil Trent Webb, Jonathan N. Zerger, Shook Hardy & Bacon LLP, Kansas City, MO, for Plaintiff.

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CLAIM CONSTRUCTION OF '656 AND '708 PATENTS

GARY A. FENNER, District Judge.

Now before the Court are the arguments propounded by each side regarding how terms and phrases used in the disputed patents, United States Patent No. 6,804,656 ("the '656 patent") and United States Patent No. 7,256,708 ("the '708 patent"), should be construed and interpreted. Patent infringement disputes are resolved using a two-step process. The present Order involves the first step and delineates the meaning of terms in the '656 and '708 patents as a matter of law.

DISCUSSION

I. Legal Principles of Claim Construction

As previously indicated, the district court resolves infringement disputes by working through two steps. *Kegel Co. v. AMF Bowling, Inc.*, 127 F.3d 1420, 1425 (Fed.Cir.1997). In the first step, the court interprets the meaning and the scope of the words and phrases used in the patent claims. *Id.* As the Supreme Court has stated, the construction of a claim is a legal matter and is "exclusively within the province of the court." *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). In the second step, the jury, or other finder of fact, evaluates whether the disputed device infringes upon the patent as interpreted by the court. *Kegel*, 127 F.3d at 1425.

While there are many sources upon which a court may rely when construing a claim, the court should be

guided first, and foremost, by intrinsic evidence of record, such as the language of the claim itself, the specification, and the prosecution history. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996). "[T]he claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed.Cir.2005) (en banc) *quoting* *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111 (Fed.Cir.2004). A court must "look to the words of the claims themselves, both asserted and nonasserted, to define the scope of the patented invention." *Vitronics Corp.*, 90 F.3d at 1582.

A court should endeavor to give terms contained in a patent claim their "plain ordinary and accustomed meaning[.]" *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342 (Fed.Cir.2001). The ordinary and customary meaning is that which the term would have to a person of ordinary skill in the art in question at the time of the invention. *Phillips*, 415 F.3d at 1313. "[T]he 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." *Id.*

Intrinsic evidence, including the specification and the prosecution history, has been described as " 'the most significant source of the legally operative meaning of claim language.' " *Kegel*, 127 F.3d at 1426 *quoting* *Vitronics Corp.*, 90 F.3d at 1582. Indeed, the specification " 'is the single best guide to the meaning of a disputed term' " and is often dispositive. *Phillips*, 415 F.3d at 1315 *quoting* *Vitronics Corp.*, 90 F.3d at 1582. Nonetheless, the Court should be careful to avoid importing limitations from the specification into the claims. *Varco, L.P. v. Pason Sys. USA Corp.*, 436 F.3d 1368, 1372-73 (Fed .Cir.2006) (quotation omitted). The prosecution history also provides evidence of how the PTO and the inventor understood the patent. *Phillips*, 415 F.3d at 1317. However, the value of the prosecution history, which often lacks the clarity of the specification, is more limited because it represents an ongoing negotiation rather than the final product of that negotiation. *Id.* (citations omitted).

The Court may also use extrinsic evidence, such as expert testimony or dictionaries and treatises, to construe a claim. *Vitronics Corp.*, 90 F.3d at 1582. However, extrinsic evidence is generally less reliable than the patent and its prosecution and should be considered in the context of the intrinsic evidence. *Phillips*, 415 F.3d at 1318. It is improper to rely on extrinsic evidence unless an analysis of the intrinsic evidence fails to unambiguously describe the scope of the patented invention. *Vitronics Corp.*, 90 F.3d at 1583.

Guided by the above directions, the Court concludes that the following definitions of terms and phrases are appropriate. The following includes those claim constructions to which the parties stipulated and those in dispute. In the case of each disputed construction, the Court finds the preferred construction is more accurately supported by the intrinsic evidence, specifically the language of the claims themselves and the prosecution history. Each definition shall carry throughout the entirety of the claim unless stated otherwise.

II. Claim Construction

A. The '656 Patent

Claims 17-26

"A method for providing expert critical care simultaneously to a plurality of geographically dispersed

intensive care units (ICUs) from a remote location comprising" means a method for providing expert care simultaneously to severely ill patients in a plurality of geographically dispersed intensive care units (ICUs) from a remote location.

"[C]omprising" means including, but not limited to.

"[G]eographically dispersed" means in different geographic locations.

"[R]emote command center" means a dedicated location for monitoring and managing the care of hospitalized patients, which location is apart from the geographically dispersed ICUs.

"The remote command center comprising a database and workstation" means the remote command center includes but is not limited to a database and workstation.

"[M]onitoring patient data elements of patients in a plurality of geographically dispersed ICUs" means monitoring from the command center data elements of patients who are located in a plurality of geographically dispersed ICUs.

"[M]onitored patient data elements" means patient data elements that are monitored at the "remote command center."

"[R]ules engine" means computer-executable instructions for comparing data against a patient-specific rule in order to automate detection of a change in a patient's medical condition.

"[A]pplying a rules engine continuously to at least two patient data elements stored in the database" means continuously and automatically applying a rules engine to analyze at least two patient data elements stored in the database.

"[U]tilizing an output from the rules engine to determine if intervention is warranted" means using information generated by the rules engine to determine if intervention is warranted to manage the care of an individual patient.

"[W]herein the monitoring and determining if intervention is warranted for individual patients occurs in an automated fashion at the remote command center 24 hours per day 7 days per week" means automatically and on a 24/7 basis at the remote command center, monitoring data from individual patients in the plurality of geographically dispersed ICUs and utilizing the output of the rules engine to determine if intervention is warranted to manage the care of an individual patient.

Claim 18

"[D]ecision support algorithm" means an algorithm (separate from and in addition to) the rules engine, for managing the care of an ICU patient.

Claim 19

"[D]ata server/data warehouse" means a data server (separate from and in addition to the database server in the remote command center) that stores data received from the remote command center.

"[A]nalyzing the data from the command center; and providing results of the analysis over a second network to the remote command center" requires no construction.

B. The '708 Patent

Claims 1, 9, 14-16, 22, 29, 32, 34-36, 63, and 87

The parties agree "geographically dispersed," "remote command center," "rules engine," and "decision support algorithm" as used in the above-listed claims should be given the same construction as in the '656 patent.

"[H]ospitalized patients" means people admitted to treatment facilities capable of providing twenty-four hour medical care.

"[M]onitored data elements" means the data elements obtained from monitoring the geographically dispersed hospitalized patients.

"[P]atient data elements" is a claim term of the '656 patent but, by itself, is not a separate claim term of the '708 patent. Thus, this phrase should only be construed in the context of the limitations set forth in the '708 patent as described below.

"[A]ccess[ing] patient data elements indicative of a medical condition associated with each of the geographically dispersed hospitalized patients" means accessing patient specific data (other than monitored data elements) indicative of a medical condition associated with each of the geographically dispersed hospitalized patients.

"[A]ccess[ing]" means find[ing], obtain[ing], and/or retrieve[ing].

"[T]he patient data elements associated with a hospitalized patient" means the elements of patient-specific data indicative of a medical condition associated with that hospitalized patient.

"[P]atient-specific rule" means a rule tailored to the medical condition of a patient.

"[E]stablish[ing] patient-specific rules associated with each of the geographically dispersed hospitalized patients" means establish[ing] patient-specific rules for each of the individual, geographically dispersed hospitalized patients.

"[A]pply[ing] the patient-specific rules continuously and simultaneously using a rules engine" means apply[ing] the patient-specific rules associated with each of the geographically dispersed hospitalized patients continuously and at the same time using the rules engine.

"[D]etermine [making a determination] in an automated fashion at the remote command center whether the patient-specific rule for the hospitalized patient has been contravened" means the rules engine determines automatically, i.e., without human intervention, whether the patient-specific rule has been contravened.

"[A]nd in the event the patient-specific rule for the hospitalized patient has been contravened issue[ing] an alert from the remote command center" means issue[ing] from the remote command center an alert, which is an indication that provides relevant information about the patient's current condition, based on the patient-

specific rule which has been contravened.

Claims 1, 9, 14-16, 22, and 63

"[M]onitoring stations comprising monitoring equipment adapted to monitor data elements from geographically dispersed hospitalized patients" means stations associated with individual, geographically dispersed hospitalized patients, which stations include monitoring equipment adapted to monitor data elements from those patients.

Claims 9 and 29

"[P]atient intervention protocol and order" means a protocol and order, which can be approved by a physician, for managing the care of a hospitalized patient in response to a change in the patient's condition.

Claims 14-16

"[P]atient support system" means an interactive system which accesses and applies a decision support algorithm to selected data elements in order to provide patient care advice.

"[U]ser" means a health care professional, typically a nurse or doctor.

"[U]ser input" means user-provided information specific to a patient.

Claims 22, 29, 32, 34-36, and 87

"[C]ontinuous assessment" means assessment that is continuous.

IT IS SO ORDERED.

W.D.Mo.,2008.

Cerner Corp. v. Visicu, Inc.

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