

United States District Court,
C.D. California.

REMOTEMDX, INC,

v.

SATELLITE TRACKING OF PEOPLE, LLC.

No. CV 08-2899 ODW(FMOx)

April 29, 2009.

Gary M. Anderson, Fulwider Patton, Los Angeles, CA, for Remotemdx, Inc.

C. Dennis Loomis, Baker and Hostetler, Los Angeles, CA, Thomas J. Vetter, Wendy R. Stein, Gibbons PC, New York, NY, for Satellite Tracking of People, LLC.

Proceedings (In Chambers): Order Vacating February 6, 2009 Claim Construction Order [107];

Order on New Claim Construction;

Order DENYING Defendant's Motion for Summary Judgment as to Non-Infringement [70]

The Honorable OTIS D. WRIGHT II, District Judge.

Raymond Neal, Deputy Clerk.

I. INTRODUCTION

On February 6, 2009, this Court issued a claim construction order as to the fifth step of Claim 11 of the patent-in-suit (U.S. Patent No. 7,330,122 ("the '122 Patent) (filed Aug. 10, 2005) (issued Feb. 12, 2008)). Since that time the Court has carefully scrutinized all submissions by the parties and the '122 Patent. In so doing, the Court vacates its previous Order, concluding that a different construction is appropriate. FN1

FN1. "District courts may engage in a rolling claim construction, in which the court revisits and alters its interpretation of the claim terms as its understanding of the technology evolves. This is particularly true where [the] issues involved are complex, either due to the nature of the technology or because the meaning of the claims is unclear from the intrinsic evidence." *Guttman v. Kopykake Enters. Inc.*, 302 F.3d 1352, 1361 (Fed.Cir.2002) (internal citation omitted).

Additionally, the Court has examined all submissions related to Defendant's Motion for Summary Judgment as to Non-Infringement. It is apparent that genuine issues of material fact remain in dispute. There are also

many similarities and potential overlapping elements between Defendant's product and the '122 Patent. While it is certainly not clear whether Defendant's product in fact infringes the '122 Patent, it is evident that summary judgment in Defendant's favor would be improper at this stage. Therefore, Defendant's Motion for Summary Judgment as to Non-Infringement is DENIED.

II. FACTUAL BACKGROUND

Plaintiff RemoteMDx, Inc. ("Plaintiff") filed its original Complaint on May 2, 2008. The Complaint alleged that Defendant STOP was engaging in "unauthorized conduct and activities" that constituted infringement of the '122 Patent. On July 16, 2008, the Court granted STOP's Motion to Dismiss with leave to amend. The Court instructed Plaintiff to amend the Complaint to provide more detailed allegations regarding both Defendant's allegedly infringing conduct and the product at issue.

On August 5, 2008, Plaintiff filed a First Amended Complaint ("FAC") for Patent Infringement. Remote's FAC alleges that Defendant's Global Positioning System ("GPS") tracking and communication devices and systems including Blutag(R) and VeriTracks(R) infringe the method claims of the '122 Patent. On August 26, 2008, Defendant answered the FAC and asserted counterclaims seeking declaratory judgments of non-infringement and invalidity.

The '122 Patent is directed to a remote tracking and communication device. One use of the device is an ankle bracelet used to monitor the location of individuals subject to house arrest or other confinement conditions.

More specifically, the '122 Patent is directed to a remote tracking and communication device comprising of a processor, a memory, a position locator, a first transmitter, and a second transmitter. (*See* '122 Patent, abstract.) The device, intended for wear by an individual, captures GPS data for tracking purposes, and supports two-way voice communications between the wearer and call center. (*Id.*)

In layman's terms, the '122 Patent claims are directed to a small housing unit containing certain technology. The technology contained within the housing unit includes a processor, memory chip, a GPS receiver, transmitters capable of sending and receiving wireless voice and data signals in a digital format, removable battery, speaker, microphone, and a button to activate voice communications. The device also comes with an ankle strap. The strap contains optical fiber and a conductor extending from one end of the strap to the other. Aside from the "hardware" contained within the device, there is a method for processing data. This "method" is explained in Claim 11, which is at the heart of Defendant's Motion for Summary Judgment and this Claim Construction Order.

Claim 11 of the '122 Patent is directed to a "method of processing data" consisting of five steps. Claim 11 reads as follows:

11. A method of processing data generated by a remote tracking device, the method comprising:

- processing location and status data generated by the remote tracking device at the remote tracking device;
- initiating an alert at the remote tracking device when the data indicates that the remote tracking device is violating one or more pre-programmed rules;

-transmitting the location and status data from the remote tracking device to a call center when the alert requires notification of the call center;

-directly providing notification of the alert to an administrator of the remote tracking device; and

- *providing a report to the administrator which includes the location and status data generated over a predetermined time period during which the alert occurred.*

(122 Patent, 12: 4-18.) STOP's Motion for Summary Judgment rests on the fifth and last step, italicized above. This fifth step is also the focus of the Court's claim construction.

III. DISCUSSION

A. Claim Construction

The task before the Court is to provide the patent's terms "the meaning that [they] would have to a person of ordinary skill in the art in question" in the context of the entire patent. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed.Cir.2005). Claim construction must *begin with-and remain centered on-the claim language itself*, for that is the language the patentee has chosen to particularly point out and distinctly claim the subject matter which the patentee regards as his invention. *Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1116 (Fed.Cir.2004) (citations omitted) (reaffirmed in *Phillips*, 415 F.3d at 1312).

The first term in Claim 11 the parties attempt to define is "providing a report." Looking to the '122 Patent specification, there is no definition set forth regarding "providing a report."

Defendant argues that the term "report" should be defined as it is used in the specification. Specifically, Defendant points to two places in the specification where "report" is used to refer to "periodic reports." The first reference states, "the data is stored in the database 234 and reported to the administrative user in periodic reports which at least list all alarm conditions received since provision of the last report. All recorded data may optionally be included in the report." ('122 Patent, 9: 19-23.) The next mention of "report" states, "[t]he device will still transmit all alarms identified during suspension to the central server, which will in turn include all identified alarms in the periodic reports (e.g., weekly) to the administrative user." ('122 Patent, 9: 39-42.) Thus, Defendant contends that "report," as used in Claim 11, means "periodic reports."

In its February 6, 2009 Order, the Court agreed with Defendant and concluded that the term "report" as used in Claim 11 was a "periodic report" as discussed in the specification. After further consideration, however, the language of Claim 11 itself does not support such an interpretation. Notably, in its earlier construction, the Court focused almost entirely on the specification's use of "report" without giving due credence to the claim's language. This method of claim construction was improper. *See Smith v. Snow*, 294 U.S. 1, 11, 55 S.Ct. 279, 79 L.Ed. 721 (1935) ("[T]he claims of the patent, not its specifications, measure the invention."); *Cont'l Paper Bag Co. v. E. Paper Bag Co.*, 210 U.S. 405, 419, 28 S.Ct. 748, 52 L.Ed. 1122 (1908) ("In making his claim the inventor is at liberty to choose his own form of expression, and while the courts may construe the same in view of the specifications and the state of the art, they may not add to or detract from the claim." (citation omitted)); *White v. Dunbar*, 119 U.S. 47, 52, 7 S.Ct. 72, 30 L.Ed. 303 (1886) ("The claim is a statutory requirement, prescribed for the very purpose of making the patentee define precisely what his invention is; and it is unjust to the public ... to construe it in a manner different from the plain

import of its terms."); Innova/Pure Water, Inc., 381 F.3d at 1115-16 (Same).

Claim 11 states that a report is "generated over a predetermined time period during which the alert occurred." Therefore, the Court's definition of "report" must include an interpretation of the interrelated phrase "over a predetermined time period." In its previous Order, the Court decided that "over a predetermined time period" must mean "periodic" (e.g.daily, weekly, etc.). However, the plain language of the claim indicates that the "predetermined time period" is only triggered by an alert's occurrence. Previously, the Court essentially disregarded the critical phrase: "during which the alert occurred." Because the predetermined time is triggered by an alert, however, construing the report's "time period" as daily or weekly was improper. Instead, the predetermined time is a window of time, which includes the time of the alert and the time before and/or after an alert occurs. For example, the administrator might program the device and/or software to provide a report that includes the location and status data for a two-hour time period leading up to and including the time an alert occurs. Thus, the "predetermined time period" *frames* the alert whereby the report provides data from a time before and/or after, and including, an alert.

Plaintiff contends that the phrase "predetermined time period" is only a temporal limitation stating *when* the data is generated, not how much data. Defendant, on the other hand, argues that the claim limitation defines "how much data" is included in the report.

The term "predetermined" is not defined in the specification. The term appears to simply suggest to the administrator that it should program into the device a time span to be covered by the report. This time could be one hour or one day before and/or after, and including, the time in which an alert occurs. Regardless of the specific time limitation, it seems the claim is merely leaving the decision-of what should be the "predetermined time"-up to the administrator or programmer of the device. The Court's reasoning is supported by the specification where it states certain characteristics of the device "may be, and preferably are, defined by the administrator." ('122 Patent, 2: 9-10.) The specification also states, "[i]t should be noted that the reaction of the microprocessor is preferably entirely programmable by the administrative user through the web application or through a direct interface connection to the device." ('122 Patent, 8: 29-33.)

Further, the phrase "over a predetermined time period" limits *when* the data is generated. The fact that the report, at a minimum, "includes the location and status data" indicates *how much* data. *How much* data is "generated" includes, at a minimum, the location and status data recorded and stored during the predetermined time period. And all recorded data may optionally be included in the report. Contrary to Defendant's argument, it does not fit the purpose of steps two through five to require *all* data recorded during the predetermined time period. Instead, step five requires the report to provide, at a minimum, the location and status data generated.

In sum, based on the foregoing analysis, the phrase "providing a report" is defined as follows: "providing" means "supplying or making available," and "report" is not a "periodic report" but rather it is a report that frames the incident of an alert. The parties do not dispute the language "to the administrator which includes the location and status data generated." Regarding this language, Defendant only notes, and the Court agrees, that the word "includes" means "that the listed elements (i.e., method steps) are essential but other elements may be added." Lucent Technologies, Inc. v. Gateway, Inc., 525 F.3d 1200, 1214 (Fed.Cir.2008). Thus, the report must include "the location and status data," but can also include other elements. In addition, at the hearing the Court obtained the parties' consent to define the term "generated" as "recorded and stored."

The phrase "predetermined time period" is not defined because it is a time left to the discretion of the administrator/programmer of the device. The one limitation of the "predetermined time period" is that it must include a time "during which [an] alert occurred."

The Court therefore construes the fifth step of Claim 11 as follows:

Supplying or making available a report to the administrator that includes the location and status data recorded and stored over a predetermined time period. The duration of the "predetermined time" shall be defined by the administrator to encompass a period before and/or after, and including, the occurrence of an alert. While the report must include location and status data recorded over the predetermined window of time, all recorded data from that time may optionally be included in the report.

B. Defendant's Motion for Summary Judgment

After considering the Court's updated claim construction of Claim 11-Step Five, it has become apparent that Defendant's Motion for Summary Judgment must be denied. The Court finds that disputed issues of material fact exist as to whether any of Defendant's VeriTracks reports contain location and status data that correspond to an alert. Defendant's Vice President of Operations, Mr. Brian Sean Moran, testified at deposition regarding VeriTracks' capabilities. Mr. Moran discussed the "Event Tab" FN2 and explained "[t]here is a bunch of information depicted on the Event tab starting with a time range for the events that are listed. There is a function ... that allows you to change the time range for the list of events." (Moran depo, p. 28-29.) Further, Mr. Moran stated that zone violations would appear on this Event tab if they occurred "during the prescribed time frame." (*Id.* at 29-30.)

FN2. Mr. Moran explained that the term "event" means any kind of "change in status of the individual being tracked." (Moran depo, p. 15-16.) The Court concludes that "event" is synonymous with "alert."

The above is only one example of VeriTracks' capabilities. Because VeriTracks can be easily customized, it appears possible for other "reports" to provide location and status data over a predetermined time period during which an alert occurs. Accordingly, disputed issues of material fact preclude granting Defendant's Motion for Summary Judgment.

In addition, at the claim construction hearing and in the supplemental briefing, Defendant brought up a new argument stating that the "report" in Claim 11-Step 5 should not be read to include a "mapping" feature. The Court initially agreed with Defendant's contention. However, after becoming more familiar with the technology, it cannot be said that Claim 11 undeniably excludes a mapping feature. Further, Defendant only discussed the "mapping" issue at the hearing, after its initial briefing period concluded. Thus, the Court vacates its earlier findings related to the mapping inquiry. It suffices to say that material issues of fact remain in dispute as to whether the '122 Patent supports a mapping feature, the likes of which Defendant's product might infringe.

IV. CONCLUSION

The Court hereby vacates its February 6, 2009 Claim Construction Order. The updated construction of the fifth step of Claim 11 has been defined herein.

In addition, it is apparent that genuine issues of material fact regarding Blutag's and VeriTracks' capabilities

remain in dispute. Therefore, Defendant's Motion for Summary Judgment as to Non-Infringement is DENIED.

C.D.Cal.,2009.

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