United States District Court,
D. Delaware.

ABB AUTOMATION INC,
Plaintiff.
v.
SCHLUMBERGER RESOURCE MANAGEMENT SERVICES, INC,
Defendant.

No. Civ.A. 01-077-SLR

May 6, 2003.

MEMORANDUM ORDER

ROBINSON**, J.**

At Wilmington this 6th day of May, 2003, having reviewed papers submitted in connection with plaintiff's motion for reconsideration and recognizing that the following legal principles govern these proceedings, to wit:

1. Means-plus-function claim limitations in which the disclosed structure is a microprocessor programmed to carry out an algorithm are to be construed according to the Federal Circuit's guidance in WMS Gaming, Inc. v. International Game Technology, 184 F.3d 1339 (Fed.Cir.1999).

2. In *WMS Gaming,* the court held that "the [district] court erred by failing to limit the claim to the algorithm disclosed in the specification. The structure of a microprocessor programmed to carry out an algorithm is limited by the disclosed algorithm." *Id* . at 1348. Thus, a court must identify the algorithm disclosed in the specification (often in the form of figures or flowcharts) when construing means-plus-function claim limitations involving a microprocessor programmed to carry out an algorithm. *See id*. at 1349 ("Accordingly, the structure disclosed for the 'means for assigning' limitation of claim 1 of the Telnaes patent is a microprocessor programmed to perform the algorithm illustrated in Figure 6."); *see also* GTE Wireless, Inc. v. Qualcomm, Inc., 188 F.Supp.2d 1201, 1210 (S.D.Cal.2002) ("The Federal Circuit [in *WMS Gaming*] concluded the corresponding structure was the algorithm disclosed in the written description portion of the specification, not the claims.") (emphasis in original); Itron, Inc. v. Benghiat, 169 F.Supp.2d 1073, 1092 (D.Minn.2001) ("Upon review of *WMS Gaming* and recent Federal Circuit caselaw, the Court believes that the more appropriate construction is to construe the disclosed structure relating to the various means responsive limitations to be the particular flowcharts disclosed in the patent.").

NOW, THEREFORE, IT IS ORDERED that plaintiff's motion for reconsideration of the construction of the "logic for" limitations of Schlumberger's 5,469,049 and 5,631,554 patents (D.I.147) is granted and the relevant terms construed as follows, consistent with the tenets of claim construction set forth by the United States Court of Appeals for the Federal Circuit:

1. "First Logic for Periodically Performing a Preselected Set of Diagnostic Tests on Said Multi-phase Electrical System and Recording Any Errors Detected Therefrom."

This claim limitation is in means-plus-function format. The claimed function is "periodically performing a

preselected set of diagnostic tests on the multi-phase electrical system and recording any errors detected therefrom." The corresponding structure is a processor programmed to perform the algorithm illustrated in figures 4-13, and structural equivalents. ('049 patent, col. 4, ll. 38-45; col. 5, ll. 23-30)

2. "Logic for Automatically Periodically Performing a Preselected Test of Meter Checks and Recording Any Errors Detected Therefrom."

This claim limitation is in means-plus-function format. The claimed function is "automatically periodically performing a preselected test of meter checks and recording any errors detected therefrom." The corresponding structure is a processor programmed to perform the algorithm disclosed, and structural equivalents. The algorithm includes a test to check for (i) microprocessor memory (RAM, ROM, EEPROM), (ii) register full scale overflow, (iii) system clock, (iv) time of use, (v) mass memory, (vi) reverse power flow and (vii) low battery. ('554 patent, col. 5, ll. 10-17; col. 5, ll. 60-67; col. 15, l. 12-col. 16, l. 63)

3. "Logic for Automatically Periodically Performing a Preselected Series of System Diagnostics Tests and Recording Any Results Which Exceed Predefined Thresholds."

This claim limitation is in means-plus-function format. The claimed function is "automatically periodically performing a preselected series of system diagnostics tests and recording any results which exceed predefined thresholds." The corresponding structure is a processor programmed to perform the algorithm illustrated in figures 4-13 and 19-20, and structural equivalents. ('554 patent, col. 5, ll. 10-17; col. 5, ll. 60-67)

4. "Logic for Automatically Determining the Type of Electrical Service in Which the Meter Is Installed."

This claim limitation is in means-plus-function format. The claimed function is "automatically determining the type of electrical service in which the meter is installed." The corresponding structure is a processor programmed to perform the algorithm illustrated in figures 22-23, and structural equivalents. ('554 patent, col. 5, ll. 10-17; col. 5, ll. 60-67)

5. "Logic for Automatically Determining the Type of Polyphase Electrical System in Which a Meter Including the System Checking and Troubleshooting Package Is Installed."

This claim limitation is in means-plus-function format. The claimed function is "automatically determining the type of polyphase electrical system in which a meter including the system checking and troubleshooting package is installed." The corresponding structure is a processor programmed to perform the algorithm illustrated in figures 22-23, and structural equivalents. ('554 patent, col. 5, ll. 10-17; col. 5, ll. 60-67)

D.Del.,2003.
ABB Automation, Inc. v. Schlumberger Resource Management Services, Inc.