

United States District Court,
S.D. California.

LUCENT TECHNOLOGIES, INC,
Plaintiff.

v.

GATEWAY, INC. and Gateway Country Stores LLC; and, Microsoft Corporation; and, Dell, Inc,
Defendants.

Nos. 02CV2060-B(LAB), 03CV0699-B(LAB), 03CV1108-B(LAB)

Feb. 25, 2004.

David A. Hahn, Attorney at Law, San Diego, CA, Edward Charles Donovan, Gregory F. Corbett, Karen Michelle Robinson, Kirkland & Ellis LLP, Washington, DC, Elizabeth T. Bernard, James E. Marina, Jeanne M. Heffernan, John M. Desmarais, Jonas Reale McDavit, Jordan N. Malz, Michael P. Stadnick, Paul A. Bondor, Robert A. Appleby, Tamir Packin, Kirkland and Ellis, New York, NY, Eric D. Hayes, Kirkland and Ellis, Chicago, IL, Kenneth H. Bridges, Kirkland and Ellis, San Francisco, CA, for Plaintiff.

Joseph A. Micallef, Scott M. Border, John L. Newby, Arnold and Porter LLP, Washington, DC, Ryan M. Nishimoto, Arnold & Porter LLP, Los Angeles, CA, for Defendants.

ORDER CONSTRUING CLAIMS FOR UNITED STATES PATENT NUMBER 5,347,295

RUDI M. BREWSTER, District Judge.

Before the Court is the matter of claims construction for U.S. Patent Number 5,347,295 ("the Agulnick '295 Patent") in the above titled cases for patent infringement. FN1 Pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), the Court conducted a Markman hearing regarding construction of the disputed claim terms for the Agulnick ' 295 Patent on September 24-25, 2003 and February 3-9, 2004. Plaintiff Lucent Technologies, Inc. ("Lucent") was represented by the Kirkland & Ellis law firm, Defendant Gateway Inc. ("Gateway") was represented by the Dewey Ballantine law firm, Defendant Microsoft Corporation ("Microsoft") was represented by the law firm of Fish and Richardson and Defendant Dell, Inc. ("Dell") was represented by the Arnold and Porter law firm.

FN1. Lucent originally filed two separate patent infringement actions, one against Defendant Gateway (02CV2060), and a second against Defendant Dell (03CV1108). Microsoft intervened in the action filed by Lucent against Gateway. Microsoft also filed a declaratory judgment action against Lucent (03CV0699) and Lucent filed counterclaims for patent infringement against Microsoft in that action. On July 7, 2003, the Court entered an order consolidating these three cases. There are a total of 15 different patents involved in these three cases collectively.

The purpose of the Markman hearing was for the Court, with the assistance of the parties, to prepare jury instructions interpreting the pertinent claims for all claim terms at issue in the Agulnick '295 Patent. Additionally, the Court and the parties prepared a "case glossary" for terms found in the claims and the specification for the Agulnick '295 Patent, considered to be technical in nature and which a jury of laypersons would not understand clearly without specific definition. As the case advances, the parties may request additional terms to be added to the glossary as to further facilitate the jury's understanding of the disputed claims.

After careful consideration of the parties' arguments and the applicable statutes and case law, the Court **HEREBY CONSTRUES** all claim terms in dispute in the Agulnick '295 Patent and **ISSUES** the relevant jury instructions as written in exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in exhibit B, attached hereto.

IT IS SO ORDERED

EXHIBIT A

**VERBATIM CLAIM
ELEMENT** [FN2]

**MEANING AS DECIDED IN
MARKMAN HEARING**

FN2. All terms which are underlined and bold-faced in the verbatim column are clarified and/or defined in the corresponding "meaning" column.

CLAIM 1	
An Apparatus for controlling a computer system comprising a screen for displaying information and a stylus having a tip for inputting information into the computer, including:	As is.
	Stylus -a pen-like object whose position and contact with a surface can be continuously detected electronically.
first detecting means coupled to said computer for detecting a stroke of the stylus tip in contact with the screen	Function: detecting a stroke of the stylus tip in contact with the screen.
	Corresponding Structure: Pen position digitizer 20, as shown in figs. 2 and 3 and described in the specification at Col. 6: 21-22; and Col 6: 53-68.
	Stroke -a single drawing movement, including a tap.
second detecting means coupled to said computer for detecting a departure of the stylus tip from the screen;	Function: detecting a departure of the stylus tip from the screen.
	Corresponding Structure: Pen position digitizer 20, as shown in figs. 2 and 3 and described in the specification at Col. 6: 21-22;

<p>means coupled to said computer for defining termination of a gesture comprising at least one stroke in response to said departure of the stylus tip;</p>	<p style="text-align: right;">and Col. 6: 53-68.</p> <p>Function: defining termination of a gesture comprising at least one stroke in response to the departure of the stylus tip from the screen.</p> <p>Corresponding Structure: (1) Pen position digitizer 20, as shown in figs. 2 and 3 and described in the specification at Col. 6: 21-22; and Col. 6: 53-68; and</p> <p>(2) Pen position digitizer co-processor 90, with software that determines that a gesture is complete, as shown in fig. 3 and described in the specification at Col. 6: 36-37, Col.1:65-Col.2:5, and Col. 17:1-14.</p>
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<p>means coupled to said computer for recognizing a plurality of said gestures, said recognizing means including means for comparing each said gesture to at least one predefined shape;</p>	<p style="text-align: right;">Gesture-a symbol or mark.</p> <p>Function: recognizing a plurality of said gestures which function includes the availability of using means for comparing each said gesture to at least one predefined shape.</p> <p>Corresponding Structure: (1) Pen position digitizer co-processor 90, as shown in fig. 3 and described in the specification at Col. 6: 36-37;</p> <p>Programmed with one of the following handwriting recognition algorithms:</p> <p>(2) The techniques for recognizing gestures disclosed in "Automatic Recognition of Handprinted Characters-The State of the Art," Proceedings of the IEEE, pages 469-487, Vol. 68, No. 4, April 1980 (<i>see</i> Col. 4:41-46); or</p> <p>(3) the techniques for recognizing gestures disclosed in U.S. Patent No. 5,151,950 to Hullender, entitled "Method For Pattern Recognition" (<i>see</i> Col. 5:1-6); or</p>
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	<p>(4) The Handwriting Translation Subsystem, disclosed in Appendix I, Architecture Reference Manual, Part Five, Input and Handwriting Translation, Chapter 1.2, pp. 7-10</p>
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<p>means coupled to said computer for implementing each said recognized gesture, said implementing means including means for performing a predetermined action associated with each said predefined shape, said predetermined action being determined by the context in which said gesture was used, including a first context in which said action is executed upon an operating system</p>	<p>Function: implementing each said recognized gesture which function includes the availability of using means for performing a predetermined action associated with each said predefined shape</p>
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level object and a second context in which said action is executed upon an **application level object**.

Corresponding Structure: CPU 50 programmed with algorithms known to persons skilled in the art for implementing gestures, as referenced in Col. 4:32-41 and Col. 4:49-56.

This paragraph specifically claims the system's design allowing use of a single set of gestures for identical executable commands at both the operating system level and the application level.

Operating System Level Object-an object that can be manipulated by a user, which is displayed outside the context of an application program

	Application Level Object -an object that can be manipulated by a user, which is displayed within the context of an application program.
CLAIM 3	

The apparatus of claim 1, wherein: said second detecting means includes means for detecting proximity of the **stylus** tip to the screen; and

Function: detecting proximity of the stylus tip to the screen

Corresponding Structure: Complimentary electronic circuitry by which the proximity of the stylus tip to the computer is sensed, including:

(1) Stylus 4, including radio frequency inductor/capacitor circuit 42 and switch 44 (see Figs. 1-2; Col. 6:16-18; Col. 6: 26-31; Col. 1:18-21; and Abstract); and

	(2) Pen position digitizer 20, as shown in Figs. 2 and 3 and described in the specification at Col. 6:21-22; and Col. 6:61-68.
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said apparatus further includes means coupled to said computer for displaying an indicator of the proximity of the **stylus** tip to the screen

Function: Displaying an indicator of the proximity of the stylus tip to the screen

Corresponding Structure:

(1) Pen position digitizer co-processor 90 and CPU 50 (see Fig. 3; and Col. 6:33-34 and Col. 6:36-37)

(2) Display Controller 80 (see Fig. 3; Col. 6:36); and

	(3) Liquid Crystal display 10 (see Figs. 2-3; Col. 6: 20-21; and Col. 6: 48-52).
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Claim 4	
<p>The apparatus of claim 1, further including third detecting means for detecting a direction of motion of said gesture.</p>	<p>Function: detecting a direction of motion of the gesture.</p> <p>Corresponding Structure: (1) Pen position digitizer 20 (see Figs. 2-3; Col. 6: 21-22; and Col. 6:53-68); and</p>
	(2) Pen position digitizer co-processor 90 (see Fig. 3 and Col. 6:36-37).
Claim 6	
<p>The apparatus of Claim 1, further including means coupled to said computer for displaying on said screen a shape representing the actual gesture made by a user of the computer</p>	<p>Function: displaying on the screen a shape representing the actual gesture made by a user of the computer.</p> <p>Corresponding Structure: (1) Pen position digitizer co-processor 90 and CPU 50 (see Fig. 3 and Col. 6:33-34 and Col. 6:36-37)</p> <p>(2) Display Controller 80 (see Fig. 3; Col. 6:36); and</p>
	(3) Liquid Crystal display 10 (see Figs. 2-3; Col. 6: 20-21; and Col. 6: 48-52).
Claim 12	
<p>The apparatus of claim 3, further including means for terminating display of said indicator when the stylus tip departs from proximity to the screen.</p>	<p>Function: terminating display of said indicator when the stylus tip departs from proximity to the screen</p> <p>Corresponding Structure: (1) Pen position digitizer co-processor 90 and CPU 50 (see Fig. 3 and Col. 6:33-34 and Col. 6:36-37)</p> <p>(2) Display Controller 80 (see Fig. 3; Col. 6:36); and</p>
	(3) Liquid Crystal display 10 (see Figs. 2-3; Col. 6: 20-21; and Col. 6: 48-52).
Claim 39	
<p>An apparatus for controlling a computer system, the computer system comprising a screen for displaying information and a stylus having a tip for inputting information into the computer, including:</p>	Stylus -a pen-like object whose position and contact with a surface can be continuously detected electronically.
<p>detecting means coupled to said computer for detecting a stroke of the stylus tip in contact with the screen;</p>	<p>Function: detecting a stroke of the stylus tip in contact with the screen.</p> <p>Corresponding Structure: Pen position digitizer 20, as shown in figs. 2 and 3 and described in the specification at Col. 6:21-22; and Col 6: 53-68.</p>
	Stroke -a single drawing movement, including a tap.
<p>means coupled to said computer for recognizing a gesture</p>	Gesture -a symbol or mark and an event

at least one **stroke gesture**, said recognizing means including means for comparing said **gesture** to at least one predefined shape and being for recognizing at least a first **gesture**, a second **gesture**, and a third **gesture** comprising said first and second **gestures**; and

indicating termination of the

Function: recognizing a gesture comprising at least one stroke and an event indicating termination of the gesture, which function includes the availability of using means for comparing said gesture to at least one predefined shape and being for recognizing at least a first gesture, a second gesture, and a third gesture comprising the first and second gestures.

Corresponding Structure: (1) Pen position digitizer co-processor 90, as shown in fig. 3 and described in the specification at Col. 6: 36-37;

Programmed with one of the following gesture termination algorithms (2 below) and one of the following handwriting recognition algorithms (3-5 below);

(2) Col.1:65-Col. 2:5, and Col. 17:1-14; and

(3) The techniques for recognizing gestures disclosed in "Automatic Recognition of Handprinted Characters---The State of the Art," Proceedings of the IEEE, pages 469-487, Vol. 68, No. 4, April 1980 (see Col. 4:41-46); or

(4) the techniques for recognizing gestures disclosed in U.S. Patent No. 5,151,950 to Hullender, entitled "Method For Pattern Recognition" (see Col.5:1-6); or

(5) The Handwriting Translation Subsystem, disclosed in Appendix I, Architecture Reference Manual, Part Five, Input and Handwriting Translation, Chapter 1.2, pp. 7-10.

implementing means coupled to said computer for implementing each recognized **gesture**, said implementing means including means for performing a first predetermined action associated with said first **gesture**, a second predetermined action associated with said second **gesture**, and a third predetermined action associated with third said **gesture**.

Function: implementing said recognized gesture which function includes the availability of using means for performing a first predetermined action associated with said first gesture, a second predetermined action associated with said second gesture, and a third predetermined action associated with said third gesture."

	Corresponding Structure: CPU 50 programmed with algorithms known to persons skilled in the art for implementing gestures, as referenced in Col. 4:32-41 and Col. 4:49-56.
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Claim 40	
The apparatus of claim 39, wherein the shapes of said first and second gestures are substantially identical.	As is.

Claim 41	
An apparatus for controlling a computer system, the computer system comprising a screen for displaying information and a stylus having a tip for inputting information into the computer, including	Stylus -a pen-like object whose position and contact with a surface can be continuously detected electronically.

first detecting means coupled to said computer for detecting a **stroke** of the **stylus** tip in contact with the screen;

Function: detecting a stroke of the stylus tip in contact with the screen.

Corresponding Structure: Pen position digitizer 20, as shown in figs. 2 and 3 and described in the specification at Col. 6: 21-22; and Col 6: 53-68.

	Stroke -a single drawing movement, including a tap.
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means coupled to said computer for recognizing a **gesture** comprising at least one **stroke** and an event indicating termination of the **gesture**, said recognizing means including means for comparing said **gesture** to at least one predefined shape, each **stroke** of said **gesture** being located in substantially the same area of the screen:

Gesture-a symbol or mark

Function: recognizing a gesture comprising at least one stroke and an event indicating termination of the gesture, which function includes the availability of using means for comparing said gesture to at least one predefined shape, where each stroke of said gesture is located in substantially the same area of the screen

Corresponding Structure: (1) Pen position digitizer co-processor 90, as shown in fig. 3 and described in the specification at Col. 6: 36-37;

Programmed with one of the following gesture termination algorithms (2 below) and one of the following handwriting recognition algorithms (3-5 below);
 (2) Col.1:65-Col. 2:5, and Col. 17:1-14; and
 (3) The techniques for recognizing gestures

disclosed in "Automatic Recognition of Handprinted Characters-The State of the Art," Proceedings of the IEEE, pages 469-487, Vol. 68, No. 4, April 1980 (see Col. 4:41-46); or (4) the techniques for recognizing gestures disclosed in U.S. Patent No. 5,151,950 to Hullender, entitled "Method For Pattern Recognition" (see Col.5:1-6); or

	(5) The Handwriting Translation Subsystem, disclosed in Appendix I, Architecture Reference Manual, Part Five, Input and Handwriting Translation, Chapter 1.2, pp. 7-10.
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second detecting means for detecting a direction of motion of the creation of said **gesture**, wherein the predefined shape of said recognized **gesture** also represents said direction of motion; and

Function: detecting a direction of motion of the creation of said gesture, wherein the predefined shape of said recognized gesture also represents said direction of motion
 Corresponding Structure: (1) Pen position digitizer 20 (see Figs. 2-3; Col. 6: 21-22; and Col. 6:53-68); and

	(2) Pen position digitizer co-processor 90 (see Fig. 3 and Col. 6:36-37).
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implementing means coupled to said computer for implementing said recognized **gesture**, said implementing means including means for performing a predetermined action associated with said predefined shape.

Function: implementing said recognized gesture which function includes the availability of using means for performing a predetermined action associated with said predefined shape

	CPU 50 programmed with algorithms known to persons skilled in the art for implementing gestures, as referenced in Col. 4:32-41 and Col. 4:49-56.
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Claim 43

The apparatus of claim 41, further including means coupled to said computer for displaying on said screen a shape representing the actual **gesture** made by a user of the computer.

Function: displaying on the screen a shape representing the actual gesture made by a user of the computer.

Corresponding Structure: (1) Pen position digitizer co-processor 90 and CPU 50 (see Fig. 3 and Col. 6:33-34 and Col. 6:36-37)
 (2) Display Controller 80 (see Fig. 3; Col. 6:36); and

	(3) Liquid Crystal display 10 (see Figs. 2-3; Col. 6: 20-21; and Col. 6: 48-52).
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Claim 46

The apparatus of claim 41, wherein said direction of motion of said **gesture** is associated with said

As is.

predetermined action.

EXHIBIT B

Stylus-a pen-like object whose position and contact with a surface can be continuously detected electronically.

Stroke-a single drawing movement, including a tap.

Gesture-a symbol or mark.

Operating System Level Object-an object that can be manipulated by a user, which is displayed outside the context of an application program

Application Level Object-an object that can be manipulated by a user, which is displayed within the context of an application program.

S.D.Cal.,2004.

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Produced by Sans Paper, LLC.