United States District Court, S.D. California.

HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P, Plaintiff. v. GATEWAY, INC, Defendant. Gateway, Inc, Counterclaim-Plaintiff. v. Hewlett-Packard Development Company, L.P., Hewlett-Packard Company and Compaq Information Technologies Group, L.P, Counterclaim-Defendants.

Civil No. 04CV0613-B(LSP)

Nov. 7, 2005.

John Allcock, DLA Piper, San Diego, CA, for Plaintiff/Counterclaim-Defendant.

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CLAIM CONSTRUCTION ORDER FOR UNITED STATES PATENT NUMBER 5,966,732

RUDI M. BREWSTER, Senior District Judge.

Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), on September 20, 2005, the Court conducted a Markman hearing in the above-titled patent infringement action regarding construction of the disputed claim terms for U.S. Patent Number 5,966,732 ("the '732 patent"). Plaintiff Hewlett-Packard Development Company, L.P. ("HP") was represented by the law firm of DLA Piper Rudnick Gray Cary U.S. LLP, and Defendant Gateway, Inc. ("Gateway") was represented by the law firm of Dewey Ballantine LLP.

At the Markman hearing, the Court, with the assistance of the parties, analyzed the claim terms in order to prepare jury instructions interpreting the pertinent claims at issue in the '732 patent. Additionally, the Court prepared a case glossary for terms found in the claims and the specification for the '732 patent considered to be technical in nature which a jury of laypersons might not understand clearly without specific definition.

After careful consideration of the parties' arguments and the applicable statutes and case law, the Court **HEREBY CONSTRUES** the claims in dispute in the '732 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

UNITED STATES PATENT NUMBER 5.966.732-CLAIM CHART

VERBATIM CLAIM LANGUAGE	COURT'S CONSTRUCTION
Claim 1	
1. A method for changing the size of a	1. A method for changing the size of a reserve area [portion of the
reserve area on a disk in a disk drive,	disk that cannot be accessed by a user] on a disk in a disk drive [
	machine that reads data from and write data onto a disk],
said <i>disk drive</i> manufactured with a	said <i>disk drive</i> manufactured with a predetermined reserve storage
predetermined reserve storage area for	area for storing selected non-user accessible information,
storing selected non-user accessible	
information,	
said reserve storage area having a	said reserve storage area having a predetermined storage capacity,
predetermined storage capacity,	
said <i>disk drive</i> also including a user	said <i>disk drive</i> also including a user accessible area having a
accessible area having a predetermined	predetermined storage capacity,
storage capacity,	
said <i>reserve area</i> and said user	said <i>reserve area</i> and said user accessible area comprising the total
accessible area comprising the total	storage capacity of the <i>disk drive</i> ,
storage capacity of the disk drive.	
the method for adding to the <i>reserve</i>	the method for adding to the <i>reserve area</i> comprising the steps of:
area comprising the steps of:	
executing a first command to read the	executing a first command to read the maximum track to which the
maximum track to which the user has	user has access; and
access; and	
executing a second command for	executing a second command for increasing or reducing a portion
increasing or reducing a portion of the	of the user accessible area to additional reserve area;
user accessible area to additional	
reserve area;	
inputting non-user accessible	inputting non-user accessible information to the added reserve area,
information to the added <i>reserve area</i> ,	
wherein the step of inputting non-user	wherein the step of inputting non-user accessible information to the
accessible information to the added	added <i>reserve area</i> includes adding a set of virus scan instructions
reserve area includes adding a set of	to the added <i>reserve area</i> .
virus scan instructions to the added	
reserve area.	
Claim 2	
2. The method for changing the size of a	2. The method for changing the size of a <i>reserve area</i> on a disk in a
<i>reserve area</i> on a disk in a <i>disk drive</i> of	<i>disk drive</i> of claim 1 wherein the step of inputting virus scan
claim 1 wherein the step of inputting	instructions to the added <i>reserve area</i> includes adding the
virus scan instructions to the added	instruction step of periodically scanning the disk for viruses.
reserve area includes adding the	
instruction step of periodically scanning	
the disk for viruses.	
Claim 3	
3. The method for changing the size of a	3. The method for changing the size of a <i>reserve area</i> on a disk in a
reserve area on a disk in a disk drive of	disk drive of claim I wherein the step of inputting virus scan
claim I wherein the step of inputting	instructions to the added <i>reserve area</i> includes adding the
virus scan instructions to the added	instruction step of scanning information to be written on the disk
reserve area includes adding the	for viruses before the information is stored to the disk.
instruction step of scanning information	
to be written on the disk for viruses	
perfore the information is stored to the	

disk.	
Claim 4	
4. The method for changing the size of a	4. The method for changing the size of a <i>reserve area</i> on a disk in a
reserve area on a disk in a disk drive of	<i>disk drive</i> of claim 1 wherein the step of inputting non-user
claim 1 wherein the step of inputting	accessible information to the added <i>reserve area</i> includes adding a
non-user accessible information to the	set of instructions to the added <i>reserve area</i> to predict a <i>disk drive</i>
added <i>reserve area</i> includes adding a	failure.
set of instructions to the added reserve	
area to predict a <i>disk drive</i> failure.	
Claim 5	
5 The method for changing the size of a	5 The method for changing the size of a <i>reserve area</i> on a disk in a
reserve area on a disk in a disk drive of	<i>disk drive</i> of claim 1 wherein the step of inputting non-user
claim 1 wherein the step of inputting	accessible information to the added <i>reserve area</i> includes adding a
non-user accessible information to the	portion of the basic input output system (BIOS) [software that
added reserve area includes adding a	enables a computer to perform operational functions such as
nortion of the <i>basic input output</i> system	starting up the computer and transferring information among
(BIOS) instruction set to the added	components of the computer l instruction set to the added reserve
reserve area	area
Claim 6	<i>ureu</i> .
6 The method for changing the size of a	6. The method for changing the size of a reserve area on a disk in a
o. The method for changing the size of a	disk drive of cloim 1 wherein the step of inputting non user
reserve area on a disk in a aisk arive of	accessible information to the added <i>reserve area</i> includes adding
non user accessible information to the	emergency boot instructions [instructions that can be used as an
added reserve area includes adding	alternate source for starting up the computer 1 to the added reserve
added reserve area includes adding	anerhale source for starting up the computer f to the added reserve
entergency bool instructions to the	ureu.
Claim 7	
7 The method for changing the size of a	7. The method for changing the size of a regering great on a disk in a
7. The method for changing the size of a	disk drive of claim 1, wherein said disk drive further includes a
alaim 1 wherein said disk drive further	mission of the first of the state of the sta
includes a microscontrollar and a <i>Paad</i>	instructions in order to control other circuits a g
and mamony with a firmulana	mistructions in order to control other circuits, e.g. a
instruction set for operating the	are readable and not typically changed during normal operation
mismonontrollar, said first command	with a firmware instruction set [one or more firmware instructions
being executed ofter a nanoward is	with a <i>jimware instruction set</i> [one of more jimware instructions that the microcontroller can recognize and execute] for operating
being executed after a password is	the microcontroller can recognize and execute 1 101 operating
recognized by the <i>jirmware</i> .	negeword [previously set information used to authenticate or
	password [previously set information used to duinemicate of
	stored in Read Only Memory]
Claim 8	storea în Redu Only Memory].
Cuum o 8. The method for changing the size of a	9. The method for changing the size of a regering great on a disk in a
o. The method for changing the size of a	o. The method for changing the size of a <i>reserve area</i> of a disk in a disk drine of cloim 7 wherein the step of issuing the first command
reserve area on a disk in a aisk arive of	ask arive of claim / wherein the step of issuing the first command
first a surger d in the step of issuing the	finduces sending a <i>passwora</i> to the <i>aisk arive</i> , wherein the
inst command includes sending a	<i>firmware</i> recognizes the <i>passwora</i> and allows execution of the
<i>passwora</i> to the <i>aisk arive</i> , wherein the	second command.
Jumware recognizes the passwora and	
anows execution of the second	
Claim 0	
9. A computer system comprising:	9. A computer system comprising:
a bus for passing commands and data to	a bus for passing commands and data to components

a bus for passing commands and data to a bus for passing commands and data to components

components communicatively attached communicatively attached to the bus; to the bus; a *microcontroller* communicatively a *microcontroller* communicatively attached to the bus; attached to the bus; a memory communicatively attached to a memory communicatively attached to the bus; the bus; an input/output controller an input/output controller communicatively attached to the bus; and communicatively attached to the bus; and a *disk drive* having a disk with *non-user accessible area* [*a* a disk drive having a disk with nonuser accessible area and user accessible portion of the disk that cannot be accessed by a user] and user accessible area. area. said *disk drive* attached to the said *disk drive* attached to the input/output controller, input/output controller, said *microcontroller* capable of sending said *microcontroller* capable of sending commands over said data commands over said data bus via said bus via said input/output controller to change the amount of non input/output controller to change the user accessible area on the *disk drive*, wherein the *disk drive* is capable of executing another command from said microprocessor to amount of non user accessible area on convert user accessible area on the disk to non-user accessible area the *disk drive*, wherein the *disk drive* is capable of executing another command on the disk and to input non-user accessible information to the from said microprocessor to convert added non-user accessible area. user accessible area on the disk to *non*user accessible area on the disk and to input non-user accessible information to the added *non-user accessible area*. Claim 10 10. A computer system comprising: 10. A computer system comprising: a bus for passing commands and data to a bus for passing commands and data to components components communicatively attached communicatively attached to the bus; to the bus; a *microcontroller* communicatively a *microcontroller* communicatively attached to the bus; attached to the bus; a memory communicatively attached to a memory communicatively attached to the bus; the bus; an input/output controller an input/output controller communicatively attached to the bus; and communicatively attached to the bus; and a *disk drive* attached to the input/output a *disk drive* attached to the input/output controller, said controller, said *microcontroller* capable *microcontroller* capable of sending commands over said data bus via said input/output controller to change the amount of non user of sending commands over said data bus via said input/output controller to accessible area on a *disk drive*, wherein the *microcontroller* is change the amount of non user capable of sending a *password* to the *disk drive*, wherein the accessible area on a *disk drive*, wherein command to change the amount of non user accessible area on a disk drive is executed when the password is correct and the *microcontroller* is capable of sending a *password* to the *disk drive*, wherein the command to change the amount of non user accessible area on a *disk drive* is executed when the *password* is correct and

wherein non-user accessible information wherein non-user accessible information is added after the size of is added after the *non-user accessible area* is changed.

accessible area is changed.	
Claim 11	
11. A disk drive communicatively	11. A <i>disk drive</i> communicatively coupled to a host computer,
coupled to a host computer,	
said <i>disk drive</i> having a <i>maximum</i> , <i>addressable logical block address</i> , and having a <i>reserve area</i> for storing information unavailable to a user, said <i>disk drive</i> comprising:	said <i>disk drive</i> having a maximum addressable logical block address [<i>the greatest number used to locate a block of data within the user accessible area on a disk</i>], and having a <i>reserve area</i> for storing information unavailable to a user, said <i>disk drive</i> comprising:
an interface between the <i>disk drive</i> and a host computer;	an interface between the <i>disk drive</i> and a host computer;
a first apparatus recognizing a command sent over the interface by said host computer to reduce the <i>maximum addressable logical block</i> <i>address</i> to allow an increase in the size of the <i>reserve area</i> ;	a first apparatus recognizing a command sent over the interface by said host computer to reduce the <i>maximum addressable logical</i> <i>block address</i> to allow an increase in the size of the <i>reserve area</i>
	Means-plus-function claim
	Function: "recognizing a command sent over the interface by said host computer to reduce the maximum addressable logical block address."
	Structure: processing circuitry configured to recognize a SetMax command. See Col. 3 ln. 41-43, Col. 4 ln. 24-30 and 39-44, Col. 5 ln. 44-54
a second apparatus for increasing the amount of disk space devoted to a <i>reserve area</i> for storing information unavailable to a user of the host computer and for inputting non-user accessible information to the added <i>reserve area;</i> and	a second apparatus for increasing the amount of disk space devoted to a <i>reserve area</i> for storing information unavailable to a user of the host computer and for inputting non-user accessible information to the added <i>reserve area;</i> and
	Means-plus-function claim
	Function: "increasing the amount of disk space devoted to a reserve area for storing information unavailable to a user of the host computer and for inputting non-user accessible information to the added reserve area"
	Structure: processing circuitry configured to execute SetMax command and load information into the added reserve area. See Col. 3 ln. 41-43, Col. 4 ln. 39-44, Col. 5 ln. 44-59.
a third apparatus for checking some disk parameters to determine the amount of user accessible area on the disk convertible to <i>reserve area</i> on	a third apparatus for checking some disk parameters to determine the amount of user accessible area on the disk convertible to <i>reserve area</i> on the disk and vice versa.

Means-plus-function claim

Function; "checking some disk parameters to determine the amount of user accessible area on the disk convertible to reserve area on the disk and vice versa"

	Structure: no structure disclosed
Claim 12	
12. A method for changing the size of a	12. A method for changing the size of a <i>reserve area</i> on a disk in a
reserve area on a disk in a disk drive,	disk drive,
said <i>disk drive</i> manufactured with a	said <i>disk drive</i> manufactured with a predetermined reserve storage
predetermined reserve storage area for	area for storing selected non-user accessible information,
storing selected non-user accessible	
information,	
said reserve storage area having a	said reserve storage area having a predetermined storage capacity,
predetermined storage capacity,	
said <i>disk drive</i> also including a user	said <i>disk drive</i> also including a user accessible area having a
accessible area having a predetermined	predetermined storage capacity,
storage capacity,	
said <i>reserve area</i> and said user	said <i>reserve area</i> and said user accessible area comprising the total
accessible area comprising the total	storage capacity of the <i>disk drive</i> ,
storage capacity of the disk drive,	
the method for adding to the <i>reserve</i>	the method for adding to the <i>reserve area</i> comprising the steps of:
<i>area</i> comprising the steps of:	
executing a first command to read the	executing a first command to read the maximum track to which the
maximum track to which the user has	user has access;
access;	
executing a second command for	executing a second command for changing a portion of the user
changing a portion of the user	accessible area to additional <i>reserve area</i> ; and
accessible area to additional <i>reserve</i>	
area; and	
inputting non-user accessible	inputting non-user accessible information to the added reserve area,
information to the added <i>reserve area</i> ,	
wherein the step of inputting non-user	wherein the step of inputting non-user accessible information to the
accessible information to the added	added <i>reserve area</i> includes adding a set of instructions to the
reserve area includes adding a set of	added reserve area to predict a disk drive failure.
instructions to the added reserve area to	
predict a <i>disk drive</i> failure.	
Claim 13	
13. A method for changing the size of a	13. A method for changing the size of a <i>reserve area</i> on a disk in a
reserve area on a disk in a disk drive,	disk drive,
said <i>disk drive</i> manufactured with a	said <i>disk drive</i> manufactured with a predetermined reserve storage
predetermined reserve storage area for	area for storing selected non-user accessible information,
storing selected non-user accessible	
information,	
said reserve storage area having a	said reserve storage area having a predetermined storage capacity,
predetermined storage capacity,	
said <i>disk drive</i> also including a user	said <i>disk drive</i> also including a user accessible area having a
accessible area having a predetermined	predetermined storage capacity,

storage capacity,	
said <i>reserve area</i> and said user	said <i>reserve area</i> and said user accessible area comprising the total
accessible area comprising the total	storage capacity of the <i>disk drive</i> ,
storage capacity of the disk drive,	
the method for adding to the <i>reserve</i>	the method for adding to the <i>reserve area</i> comprising the steps of:
area comprising the steps of:	
executing a first command to read the	executing a first command to read the maximum track to which the
maximum track to which the user has	user has access;
access;	
executing a second command for	executing a second command for changing a portion of the user
changing a portion of the user	accessible area to additional <i>reserve area</i> ; and
accessible area to additional <i>reserve</i>	
<i>area;</i> and	
inputting non-user accessible	inputting non-user accessible information to the added reserve area,
information to the added <i>reserve area</i> ,	
wherein the step of inputting non-user	wherein the step of inputting non-user accessible information to the
accessible information to the added	added <i>reserve area</i> includes adding a portion of the <i>basic input</i>
reserve area includes adding a portion	output system (BIOS) instruction set to the added reserve area.
of the basic input output system	
(BIOS) instruction set to the added	
reserve area.	
Claim 14	
14. A method for changing the size of a	14. A method for changing the size of a <i>reserve area</i> on a disk in a
reserve area on a disk in a disk drive,	disk drive.
said <i>disk drive</i> manufactured with a	said <i>disk drive</i> manufactured with a predetermined reserve storage
predetermined reserve storage area for	area for storing selected non-user accessible information,
storing selected non-user accessible	
information,	
said reserve storage area having a	said reserve storage area having a predetermined storage capacity,
predetermined storage capacity,	
said <i>disk drive</i> also including a user	said <i>disk drive</i> also including a user accessible area having a
accessible area having a predetermined	predetermined storage capacity,
storage capacity,	
said <i>reserve area</i> and said user	said <i>reserve area</i> and said user accessible area comprising the total
accessible area comprising the total	storage capacity of the <i>disk drive</i> ,
storage capacity of the <i>disk drive</i> ,	
the method for adding to the <i>reserve</i>	the method for adding to the <i>reserve area</i> comprising the steps of:
area comprising the steps of:	
executing a first command to read the	executing a first command to read the maximum track to which the
maximum track to which the user has	user has access;
access;	
executing a second command for	executing a second command for changing a portion of the user
changing a portion of the user	accessible area to additional <i>reserve area;</i> and
accessible area to additional <i>reserve</i>	
area; and	
inputting non-user accessible	inputting non-user accessible information to the added reserve area,
information to the added <i>reserve area</i> ,	wherein the step of inputting non-user accessible information to the
wherein the step of inputting non-user	added reserve area includes adding emergency boot instructions to
accessible information to the added	the added <i>reserve area</i> .
reserve area includes adding	
emergency boot instructions to the	

added <i>reserve area</i> .	
Claim 15	
15. A method for changing the size of a	15. A method for changing the size of a <i>reserve area</i> on a disk in a
reserve area on a disk in a disk drive,	disk drive,
said disk drive manufactured with a	said <i>disk drive</i> manufactured with a predetermined reserve storage
predetermined reserve storage area for	area for storing selected non-user accessible information,
storing selected non-user accessible	
information,	
said reserve storage area having a	said reserve storage area having a predetermined storage capacity,
predetermined storage capacity,	
said <i>disk drive</i> also including a user	said <i>disk drive</i> also including a user accessible area having a
accessible area having a predetermined	predetermined storage capacity,
storage capacity,	
said <i>reserve area</i> and said user	said <i>reserve area</i> and said user accessible area comprising the total
accessible area comprising the total	storage capacity of the <i>disk drive</i> ,
storage capacity of the <i>disk drive</i> ,	
the method for adding to the <i>reserve</i>	the method for adding to the <i>reserve area</i> comprising the steps of:
area comprising the steps of:	
executing a first command to read the	executing a first command to read the maximum track to which the
maximum track to which the user has	user has access; and
access; and	
executing a second command for	executing a second command for changing a portion of the user
changing a portion of the user	accessible area to additional <i>reserve area</i> ,
accessible area to additional <i>reserve</i>	
area,	
wherein said <i>disk drive</i> further includes,	wherein said <i>disk drive</i> further includes, a <i>microcontroller</i> and a
a <i>microcontroller</i> and a <i>Read only</i>	Read only memory with a <i>firmware instruction set</i> for operating
memory with a firmware instruction	the <i>microcontroller</i> ,
set for operating the <i>microcontroller</i> ,	
said first command being executed	said first command being executed after a <i>password</i> is recognized
after a <i>password</i> is recognized by the	by the <i>firmware</i> .
firmware.	

EXHIBIT B

UNITED STATES PATENT NUMBER 5,966.732-GLOSSARY OF TERMS	
TERM	DEFINITION
Basic Input Output	Software that enables a computer to perform operational functions such as
System (BIOS)	starting up the computer and transferring information among components of the computer
Disk Drive	A machine that reads data from and write data onto a disk
Emergency Boot	Instructions that can be used as an alternate source for starting up the computer
Instructions	
Firmware	Software stored in Read Only Memory
Firmware Instruction	One or more firmware instructions that the microcontroller can recognize and
Set	execute
Maximum Addressable	The greatest number used to locate a block of data within the user accessible
Logical Block Address	area on a disk
Microcontroller	An integrated circuit that fetches and executes instructions in order to control other circuits, e.g. a microprocessor

Non-user Accessible Area	A portion of the disk that cannot be accessed by a user
Password	Previously set information used to authenticate or permit subsequent action
Read Only Memory	Memory whose contents are readable and not typically changed during normal operation
Reserve Area	A portion of the disk that cannot be accessed by a user

S.D.Cal.,2005. Hewlett-Packard Development Co., L.P. v. Gateway, Inc.

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