

United States District Court,
E.D. Texas, Tyler Division.

Z4 TECHNOLOGIES, INC,
Plaintiff.

v.
MICROSOFT CORPORATION, and Autodesk, Inc,
Defendants.

No. 6:06-CV-142

April 12, 2006.

Elton Joe Kendall, Provost Umphrey, Dallas, TX, Thomas John Ward, Jr., Ward & Smith Law Firm, Longview, TX, Ernie L. Brooks, Frank A. Angileri, John S. Le Roy, John E. Nemazi, Robert C.J. Tuttle, Thomas A. Lewry, Brooks & Kushman, Southfield, MI, for Plaintiff.

Isabella Fu, Microsoft Corporation, Redmond, WA, John Marcus Bustamante, Fish & Richardson, Austin, TX, John A. Dragseth, Fish & Richardson, Minneapolis, MN, John E. Gartman, Matthew C. Bernstein, Katherine Ford Horvath, Matthew C. Bernstein, Seth M. Sproul, Fish & Richardson, San Diego, CA, Jennifer Parker Ainsworth, Wilson Sheehy Knowles Robertson & Cornelius PC, Allen Franklin Gardner, Cindy Marie Allen, Michael Edwin Jones, Potter Minton PC, Tyler, TX, John A. Dragseth, Fish & Richardson, Minneapolis, MN, for Defendants.

ORDER

LEONARD DAVIS, District Judge.

In the context of the trial, the parties raised the issue of the meaning of the term "user" as it appears in both U.S. Patent Nos. 6,785,825 ("the '825 patent") and 6,044,471 ("the '471 patent"). Recognizing the importance of the claim term "user" to the litigation, and in light of the Federal Circuit's holding in *Markman v. Westview Instruments, Inc.* that the Court has an obligation to "construe as a matter of law the meaning of language used in the patent claim," the Court construes the term. 52 F.3d 967, 979 (Fed.Cir.1995). After hearing oral argument from both parties outside the presence of the jury, the Court construes the term "user" as "a person, a person using a computer, a computer, or computers."

The term "user" is found in multiple claims of both the '471 and '825 patents. Defendants Microsoft Corporation and Autodesk, Inc. ("Defendants") contend that the term "user" should be construed to include a person but to exclude a computer or computers. Plaintiffs z4 Technologies, Inc. ("z4") does not dispute that the term "user" is inclusive of a person but argues that the term "user" should be construed such that it does not exclude a computer from the meaning of the term.

Claims "must be read in view of the specification, of which they are a part." Phillips v. AWH Corp., 415

F.3d 1303, 1315 (Fed.Cir.2005) (en banc)(quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 978 (Fed.Cir.1995)). "[T]he specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.' " *Id.* (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996)); *Teleflex, Inc. v. Ficos N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed.Cir.2002). Furthermore, the specification may resolve ambiguous claim terms "where the ordinary and accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone." *Teleflex, Inc.*, 299 F.3d at 1325.

The specification of both the '825 and '471 patents support a construction of the term "user" to include a computer or computers as well as a person or a person using a computer. The specification of both the '825 and '471 patents state that "[e]ach authorized user preferably has software with a unique identifier, such as a serial number, whether the authorized user is an individual, such as user 30, or a group or region, indicated generally by reference numeral 32." '825 patent, Col. 4:43-46; '471 patent, Col. 4:20-23. In Figure 1, user 30 is represented by the picture of a person and reference numeral 32 is represented by a collection of computers, and a single computer in that group is identified by the number 34. Furthermore, the specification of both patents identifies 34 as a computer when it states that "[d]uring the initial use or installation of the software on computers, 12, 34" '471 patent, Col. 4:33-34; '825 patent, 4:56-57. The specification of both patents states, "each end user 34 associated with an organization or site 32 may have the same password or series of passwords." '825 patent, Col. 4-49-51; '471 patent, 4:26-28. This language specifically identifies a computer, 34, as an end user. These excerpts from the specification indicate that the term "user," whether an "authorized user" or an "end user," includes a computer or computers as well as a person.

Furthermore, the specification of the '471 patent states, "During any of the contact periods between the source and the user, the source may elect to download software updates or additional information 154." Col. 7-50-52. This excerpt from the specification supports a construction of the term "user" to include a computer. The source cannot download software updates to a person. However, the source can download software updates and additional information to a computer. Therefore, a construction of the term "user" that excludes a computer would lead to an unreasonable reading of Column 7, lines 50 through 52. Accordingly, and for the reasons set forth above, the Court construes the term "user" as "a person, a person using a computer, a computer, or computers."

So ORDERED.

E.D.Tex.,2006.

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