

United States District Court,  
N.D. California, San Jose Division.

**CRYPTOGRAPHY RESEARCH, INC,**  
Plaintiff.

v.  
**VISA INTERNATIONAL SERVICE ASSOC., et al,**  
Defendant.

No. C 04-04143 JW

**Feb. 26, 2008.**

Darren E. Donnelly, J. David Hadden, Lynn Harold Pasahow, Erin Catherine Jones, Ryan Aftel Tyz, Saina Sason Shamilov, Fenwick & West LLP, Mountain View, CA, David Douglas Schumann, Jedediah Wakefield, Fenwick & West LLP, San Francisco, CA, Laurie Michelle Charrington, Day Casebeer Madrid & Batchelder LLP, Cupertino, CA, Stephen Roger Dartt, Mountain View, CA, for Plaintiff.

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### **SEVENTH CLAIM CONSTRUCTION ORDER**

JAMES WARE, **District Judge.**

On September 28, 2007, the Court issued its Fourth Claim Construction Order. (hereafter, "Fourth CC," Docket Item No. 352.) On January 14, 2008, Plaintiff Cryptography Research, Inc., moved the Court to reconsider the construction of the phrase "depth parameter D" in Claim 21 the '092 Patent. ( *See* Docket Item No. 406.) Plaintiff also moved the Court to reconsider the conclusion reached in the Fourth Claim Construction Order that Claim 30 of the '092 Patent is arguably indefinite. Defendant has timely filed its opposition. Defendant only opposes the latter request by Plaintiff. ( *See* Docket Item No. 418.)

With respect to the phrase "depth parameter D," the parties do not dispute the appropriateness of revising the claim construction. Therefore, the Court vacates its construction of the phrase "depth parameter D" as written in the Fourth Claim Construction Order. The Court now construes the phrase "**depth parameter D**" as it is used in Claim 21 of the '092 Patent to mean: **a system parameter used to determine which transformation function to use in the secret state transformation process, and a parameter whose**

**value determines the maximum number of transformation iterations in a transformation operation.**

With respect to the Court's conclusion that Claim 30 is arguably indefinite, the parties dispute whether the Court should reconsider that finding. In the Fourth Claim Construction Order, the Court was asked to construe Claim 28, which, for reasons stated in the Order, the Court declined to do. The Court stated that in its consideration of Claim 28, its attention was drawn to dependent Claim 30. The Court commented on an arguable basis for finding Claim 30 indefinite based on an inconsistency between the inventor's use of "smartcard" in Claims 14 and 18 to mean a *client* device and the inventor's use of the same word in Claim 30 to mean a *server*.(Fourth CC at 12.)

In the motion for reconsideration, the Court's attention has been directed to, *inter alia*, the following statement in the written description: "For example, the client could be a smartcard, and the server could be a mainframe computer, or vice versa." ('092 Patent, Col. 3:40-42.) Thus, the Court finds that a person of ordinary skill in the art at the time of the invention reading the patent documents would understand that the inventor could have used the word "smartcard" in Claim 30 to mean a server, depending upon other relevant limitations. Since Claim 30 was not construed by the Court, it was premature for the Court to comment on the arguable indefiniteness of the word in Claim 30.

Although it was not part of a definitive ruling, the Court is persuaded to retract the conclusion of arguable indefiniteness of Claim 30. Accordingly, **the analysis and conclusion stated on page 12:17-21 in the September 28, 2007 Fourth Claim Construction Order is STRICKEN and VACATED.**

N.D.Cal.,2008.

Cryptography Research, Inc. v. Visa Intern. Service Ass'n

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