

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

JUXTACOMM-TEXAS SOFTWARE, LLC,
Plaintiff-Appellant,

v.

TIBCO SOFTWARE, INC.,
Defendant-Appellee,

AND

SAS INSTITUTE, INC.,
Defendant-Cross Appellant,

AND

DATAFLUX CORPORATION,
Defendant-Appellee,

AND

PERVASIVE SOFTWARE, INC.,
Defendant-Appellee.

2013-1004, -1025

Appeals from the United States District Court for the Eastern District of Texas in No. 10-CV-0011, Judge Leonard Davis.

Decided: September 30, 2013

REX S. HEINKE, Akin Gump Strauss Hauer & Feld, LLP, of Los Angeles, California, argued for plaintiff-appellant. On the brief were R. LAURENCE MACON, KIRT S. O'NEILL, MELANIE G. COWART and GEORGE A. L. ROSBROOK, of San Antonio, Texas. Of counsel on the brief were ALBERT S. IAROSI and EMILY C. JOHNSON, of Washington, DC. Of counsel was L. RACHEL LERMAN, of Los Angeles, California.

GREGORY A. CASTANIAS, Jones Day, of Washington, DC, argued for all defendants-appellees and defendant-cross appellant. With him the brief were HILDA C. GALVAN, MARGARET I. LYLE, KEITH B. DAVIS and COURTNEY A. CARRELL, of Dallas, Texas, for defendant-cross appellant and defendant-appellee DataFlux Corp. On the brief were JAMES C. MARTIN, Reed Smith LLP, of Pittsburgh, Pennsylvania; SCOTT D. BAKER and JONAH D. MITCHELL, of San Francisco, California, for defendant-appellee TIBCO Software, Inc. On the brief was CHARLES D. HUSTON, Daffer McDaniel LLP, of Austin, Texas, for defendant-appellee Pervasive Software, Inc.

Before RADER, *Chief Judge*, LINN, and REYNA, *Circuit Judges*.

LINN, *Circuit Judge*.

The decisions of the district court, Amended Memorandum Opinion, *JuxtaComm-Texas Software, LLC v. Axway, Inc.*, No. 10-CV-0011, 2011 WL 6102057 (E.D. Tex. Dec. 7, 2011), and Order, *JuxtaComm-Texas Soft-*

ware, LLC v. Axway, Inc., No. 10-CV-0011, 2012 WL 7637197 (E.D. Tex. July 5, 2012), construing the relevant claim language of U.S. Patent No. 6,195,662 and granting the motion for summary judgment of invalidity based on 35 U.S.C. § 112 ¶ 2, are affirmed on the basis of the district court's opinions. The language of the claims controls their construction, and the invention set forth in the claims "is not what the patentee regarded as his invention." *Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1349 (Fed. Cir. 2002).

With respect to the cross-appeal regarding the disqualification of Akin Gump Strauss Hauer & Feld, LLP ("Akin Gump"), this court dismisses the cross-appeal as moot in the present proceeding, but notes that the district court did not address the merits of the issues raised by the 2007 Retention Agreement between Akin Gump and JuxtaComm-Texas Software, LLC, which, therefore, were not adjudicated.

AFFIRMED-IN-PART AND DISMISSED-IN-PART