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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

AIRCRAFT TECHNICAL PUBLISHERS, a
California company,

Plaintiff,

vs.

AVANTEXT, INC, a Pennsylvania corporation,

Defendant.

Case No: C 07-4154 SBA

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF AND DEFENDANT’S SUMMARY JUDGMENT MOTIONS REGARDING CLAIMS CONSTRUCTION, AND STRIKING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT REGARDING LACHES AFFIRMATIVE DEFENSE

[Docket 100, 106, 110]

This is a patent infringement action brought by Plaintiff Aircraft Technical Publishers (“Plaintiff”) against Defendant Avantext, Inc. (“Defendant”). The Court has original jurisdiction pursuant to 28 U.S.C. § 1331. The parties presently are before the Court on: (1) Defendant’s Motion for Summary Judgment as to Claim Construction (Docket 100); (2) Plaintiff’s Cross-Motion for Partial Summary Judgment Regarding Claim Construction (Docket 106); and (3) Plaintiff’s Cross-Motion for Partial Summary Judgment Regarding Laches Affirmative Defenses (Docket 110).

Having read and considered the papers filed in connection with this matter, and for the reasons set forth below, the Court: (1) GRANTS in part and DENIES in part the parties’ respective summary judgment motions regarding claims construction, and construes the ten disputed claim terms of United States Patent No. 6,292,806 (hereinafter “the ‘806 Patent”) as set forth below; and (2) STRIKES Plaintiff’s motion for summary judgment as to the issue of laches. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b).

1 **I. BACKGROUND**

2 **A. FACTUAL SUMMARY**

3 Plaintiff is a provider of maintenance and repair information for the aircraft industry and
4 is the holder of the '806 Patent. The '806 Patent, entitled "Computer Aided Maintenance and
5 Repair Information System for Equipment Subject to Regulatory Compliance," was issued by
6 the United States Patent and Trademark Office ("PTO") on September 18, 2001. The patent
7 discloses "[a] computer based apparatus which provides access to complex technical
8 information employed to maintain and repair complicated equipment, such as aircraft, to enable
9 compliance with regulatory requirements." ('806 Patent, Abstract.) The '806 Patent contains
10 twenty claims, and is a continuation of Patent No. 5,987,474 which is, in turn, a continuation of
11 another patent. (Id. at 1:8-14.)¹

12 According to the specification of the patent, the aviation industry depends upon
13 maintenance and repair publications to ensure compliance with regulatory requirements. ('806
14 Patent at 1:17-63.) These publications contain "complex technical information" and often are
15 updated with new information and new maintenance requirements. (Id.) The invention
16 disclosed in the '806 Patent is intended to provide a solution "to facilitate access to, and update
17 of, maintenance and repair information by the aviation industry." (Id. at 1:49-51.)
18 Specifically, the system permits a user to search for and manage maintenance and repair
19 publications, as well as related updates, based on the "profile" information selected by the user.
20 (Id. at 2:45-3:17.) A profile consists of specific information selected by the user to perform a
21 search of the database. For example, the user can search for publications and identify "aircraft-
22 specific maintenance tasks" required in those publications—and any updates—by setting the
23 user profile based on a particular make, model and serial number of a particular aircraft. (Id. at
24 2:45-50.) The information is stored in a database which, when queried, will display an index of
25 documents along with any updates or revisions thereto. (Id. at 61:32-60.)

26 _____
27 ¹ On June 22, 2008, the Court denied Plaintiff's motion for leave to allege infringement
28 claims based on Patent No. 5,987,474. (Docket 137 at 2-3.) In the same ruling, the Court denied
Plaintiff's motion for an extension of time to serve infringement contentions as to Patent No.
5,778,381. Therefore, the only patent-in-suit construed herein is the '806 patent.

1 **B. PROCEDURAL HISTORY**

2 On August 13, 2007, Plaintiff filed the instant patent infringement action in this Court
3 accusing Defendant of infringing the ‘806 Patent. A total of ten claim terms contained in
4 Claims 8 and 9 are in dispute. On March 16, 2009, the parties filed a Joint Claim Construction
5 Statement (“Joint Statement”) in which each side proposed their respective construction of the
6 disputed claim terms. (Docket 94.) Thereafter, the parties submitted cross-motions for
7 summary judgment in which each moved the Court to construe the disputed claims in the
8 manner set forth in their Joint Statement. (Docket 100, 106.) Neither of the parties’ respective
9 summary judgment motions specifically analyzes any of the disputed claim terms. In its
10 motion, Plaintiff simply argues that this Court is obligated to follow the ruling of Judge
11 Gregory Frost in the Eastern District of Ohio in the case of TData v. Aircraft Tech. Publishers,
12 No. 03-264, in which the district court construed some of the same claim terms in the ‘806
13 Patent that are in dispute here. (Docket 108, Ex. 1.) In its cross-motion, Defendant disputes
14 that Judge Frost’s decision is controlling, and argues that Court should construe the claims
15 through the pending summary judgment motions instead of conducting a Markman hearing.²

16 Separately, Plaintiff filed a motion for summary judgment as to Defendant’s affirmative
17 defense of laches. (Docket 110.) In particular, Plaintiff contends that it did not act
18 unreasonably, as a matter of law, by waiting almost six years after becoming aware of
19 Defendant’s alleged infringement before filing the instant action. Plaintiff did not meet and
20 confer with Defendant nor did it file the requisite certification as required by this Court’s
21 Standing Orders prior to filing this motion. In response, Defendant requests that the Court
22 strike the motion for failing to comply with the Court’s Standing Orders.

23 **II. LEGAL STANDARD**

24 Rule 56(c) of the Federal Rules of Civil Procedure authorizes summary judgment if
25 there is no genuine issue as to any material fact and the moving party is entitled to judgment as

26 _____
27 ² To construe their disputed claims terms, each party relies on their arguments set forth in
28 the Joint Statement.

1 a matter of law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The
2 moving party bears the initial burden of demonstrating the absence of a triable issue of material
3 fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party meets this initial
4 burden, the burden then shifts to the non-moving party to present specific facts showing that
5 there is a genuine issue for trial. Fed.R.Civ.P. 56(e); Celotex, 477 U.S. at 324; Matsushita
6 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986).

7 “Claim construction is a question of law properly decided on summary judgment.”
8 Markman v. Westview Instruments, Inc., 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc), aff’d,
9 517 U.S. 370 (1996); Cybor Corp. v. FAS Techs., 138 F.3d 1448, 1454 (Fed. Cir. 1998) (en
10 banc). In construing a claim, a court looks first to intrinsic evidence, consisting of the claim
11 language, the patent specification, and the prosecution history to the extent that it is part of the
12 record. Id. at 1313. “The appropriate starting point ... is always with the language of the
13 asserted claim itself.” Comark Commc’n, Inc. v. Harris Corp., 156 F.3d 1182, 1186 (Fed. Cir.
14 1998).³ The specification is also highly instructive and is the “single best guide to the meaning
15 of a disputed term[.]” Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc).
16 As for the preferred embodiment, it “can shed light on the intended scope of the claim,” but it
17 should not as a general matter be construed to limit the scope of a patent claim. C.R. Bard Inc.
18 v. United States Surgical Corp., 388 F.3d 858, 865 (Fed. Cir. 2004); Phillips, 415 F.3d at 1323
19 (“although the specification often describes very specific embodiments of the invention, we
20 have repeatedly warned against confining the claims to those embodiments”).

21 Extrinsic evidence may be considered only if necessary to assist the court in
22 determining the meaning or scope of technical claim terms. Vitronics Corp. v. Conceptronic,
23 Inc., 90 F.3d 1576, 1583 (Fed. Cir. 1996). Extrinsic evidence “consists of all evidence external
24 to the patent and prosecution history, including expert and inventor testimony, dictionaries, and
25 learned treatises.” Phillips, 415 F.3d at 1317. Courts should not rely on extrinsic evidence in
26

27 ³ A patent consists of an abstract, specification of the invention, a detailed description of the
28 preferred embodiment and claims. See Pandrol USA, LP v. Airboss Ry. Prods., Inc., 320 F.3d
1354, 1363 (Fed. Cir. 2003).

1 claim construction to contradict the meaning of claims that can be discerned from examination
2 of the claims, the written description, and the prosecution history. See Pitney Bowes, Inc. v.
3 Hewlett-Packard Co., 182 F.3d 1298, 1308 (Fed. Cir. 1999) (citing Vitronics, 90 F.3d at 1583).
4 “In most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a
5 disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence.”
6 Vitronics, 90 F.3d at 1583.

7 **III. DISCUSSION**

8 **A. PRELIMINARY ISSUES**

9 As a threshold matter, Plaintiff contends, without citation to any relevant legal
10 authority, that a motion for summary judgment is an improper means to construe the disputed
11 patent claims. (Docket 120 at 2-3.) The Court disagrees. As set forth above, claim
12 construction presents a question of law for the Court to decide. See Cybor Corp., 138 F.3d at
13 1454. As such, the Federal Circuit has held that claims may be construed by way of a motion
14 for summary judgment. See Gentex Corp. v. Donnelly Corp., 69 F.3d 527, 530 (Fed. Cir.
15 1995) (“Claim interpretation is a question of law amenable to summary judgment.”); accord
16 Laitram Corp. v. Morehouse Indus., Inc., 143 F.3d 1456, 1462 (Fed. Cir. 1998) (affirming
17 motion for summary judgment on issues of claim construction). Also without merit is
18 Plaintiff’s ancillary assertion that Defendant’s motion is infirm, ostensibly because it does not
19 clearly state the relief sought. (Docket 120 at 2.) To the contrary, Defendant’s moving papers
20 unequivocally state that the relief sought is to have the disputed claims construed in the manner
21 advocated by Defendant in the Joint Statement.

22 Next, the parties dispute the legal significance of a prior claim construction ruling by
23 Judge Frost in TData Inc. v. Aircraft Technical Publishers, No. 03-264, which involved many
24 of the same disputed terms at issue in this case. Without citation to relevant authority, Plaintiff
25 contends Judge Frost’s “order is entitled, as a matter of law, to deference by this Court, and it
26 should be followed in its entirety.” (Pl.’s Mot. for Partial Summ. J. Re Claim Construction at
27 2.) Plaintiff is incorrect. “While uniformity of treatment of a given patent is important,” one
28 district court is not bound to automatically accept the claim construction of another district

1 court. Johnson & Johnson Vision Care, Inc. v. Ciba Vision Corp., 540 F. Supp. 2d 1233,
2 1242 (M.D. Fla. 2008). Rather, this Court has an independent obligation to construe the claims
3 in dispute, and to render its own independent claim construction. Id. With regard to Judge
4 Frost's ruling, the Court will certainly consider his analysis, but is not obligated to accord his
5 decision any particular deference. See Visto Corp. v. Sproqit Techs., Inc., 445 F. Supp. 2d
6 1104, 1108 (N.D. Cal. 2006) (district court may accord another district court's claim
7 construction deference to the extent it finds the other court's decision persuasive) (Chen, J.).

8 **B. DISPUTED CLAIM TERMS**

9 The ten claim terms at issue in the pending summary judgment motions are set forth in
10 Claims 8 and 9 of the '806 Patent. The disputed terms are numbered, highlighted in bold and
11 underlined, as follows:

12 8. A ¹system to provide information to maintain and repair
13 equipment or provide services, comprising ²a program running
14 on a computer to enable ³knowledge-based access to, and
15 management of, a technical database comprising electronically
16 stored publications which are displayable, the technical database
17 ⁴being structured to enable a plurality of access modes
18 comprising name of publication, key word, and ⁵identified profile
19 with migration capability between related records, the computer
20 program ⁶generating a ⁷compliance record that contains a list of
21 required maintenance for components associated with the
22 identified profile and status of compliance with maintenance
23 required by the publications for the components associated with
24 the identified profile, the compliance record being stored onto an
electronic storage medium.

20 9. The system of claim 8 wherein the technical database
21 further comprises a ⁸cumulative index of revisions to
22 publications and the computer program accesses a ⁹revision
23 selection list of revised publications and identifies maintenance
24 required by the publications, the computer program being
¹⁰responsive to the revision selection list for updating the
compliance record for the identified profile to include
maintenance required based on revisions to the publications.

25 In the sections that follow, the Court will set forth the disputed claim term and Plaintiff and
26 Defendant's proposed construction of that term, followed by the Court's analysis and
27 conclusion regarding each disputed term.

1 or steps” nor is it “necessary to give life, meaning, and vitality to the claim.” NTP, Inc., 418
2 F.3d at 1305. As such, there is no need to construe this term.

3 Even if “system” were intended as a claim limitation, the claim construction proposed
4 by Defendant is untenable. Defendant purports to construe “system” as “a program, a technical
5 database, and a single stand-alone computer including hardware components associated with
6 the computer.” (Jt. Stmt. at 3-4.) While the claim and specification indicate that “system”
7 refers to a computer-based program that works in tandem with a database, there is no
8 requirement for the use of “a single stand alone computer” or “hardware components
9 associated with the computer.” (Jt. Stmt. at 3-4.) Though such hardware is mentioned in the
10 preferred embodiment (see ‘806 Patent at 3:37-67), there is no indication that the use of such
11 hardware was intended as a limitation in Claim 8. See Phillips, 415 F.3d at 1323; Comark
12 Comms., Inc. v. Harris Corp., 156 F.3d 1182, 1187 (Fed. Cir. 1998) (same). In light of the
13 record presented, the Court concludes that no construction of “system” is necessary. See
14 Altiris, Inc., 318 F.3d at 1371 (“It is well settled that if the body of the claim sets out the
15 complete invention, and the preamble is not necessary to give life, meaning and vitality to the
16 claim, then the preamble is of no significance to claim construction because it cannot be said to
17 constitute or explain a claim limitation.”).

18 **2. “a program running on a computer”**

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20	<hr/> Disputed Term comprising <u>a program running on a computer</u> <hr/>
21	Plaintiff’s Construction one or more computer software programs in operation on one or more computers <hr/>
22	Defendant’s Construction a set of instructions to accomplish a specific task being executed by a single stand alone computer <hr/>
23	

24 Next, the parties disagree as to the meaning of “program running on a computer,” which
25 also appears in Claim 8 of the ‘806 Patent. (‘806 Patent at 83:33-34.) Plaintiff contends that
26 “program” and “computer” should be construed to mean “one or more computer software
27 programs in operation on one or more computers.” (Jt. Stmt. at 8 (emphasis added).) As a
28 general matter, the Federal Circuit has recognized that an indefinite articles such as “a” or “an”

1 in a patent claim is presumptively interpreted to mean “one or more.” KCJ Corp. v. Kinetic
2 Concepts, Inc., 223 F.3d 1351, 1356 (Fed. Cir. 2000) (holding that an element of patent
3 requiring “a” continuous chamber was not limited to a single chamber); accord Baldwin
4 Graphic Sys., Inc. v. Siebert, Inc., 512 F.3d 1338, 1342-43 (Fed. Cir. 2008). Here, although the
5 reference to “program” and “computer” are in the singular, no intrinsic or extrinsic evidence
6 has been offered by Defendant to demonstrate an intent to disclaim the use of multiple
7 programs or computers. KCJ Corp., 223 F.3d at 1356 (noting that absent any indication to
8 disclaim the use of multiple elements, the singular use of “a” or “an” is to be construed as
9 meaning one or more).

10 Similarly, there is little, if any, support for Defendant’s proposed construction of
11 “program running on a computer” to mean “a set of instructions to accomplish a specific task
12 being executed by a single stand alone computer.” (Jt. Stmt. at 8.) By definition, a computer
13 program or software is “the set of instructions, known as code, that directs a computer to
14 perform specified functions or operations [.]” See Microsoft Corp. v. AT & T Corp., 550 U.S.
15 437, 447 (2007) (internal quotations and citation omitted). There is no need to construe
16 “program,” since neither party seeks to depart from the ordinary meaning of that term. See
17 Biotec Biologische Naturverpackungen GmbH & Co. KG v. Biocorp, Inc., 249 F.3d 1341,
18 1349 (Fed. Cir. 2001) (“melting” did not require construction where parties did not deviate
19 from its ordinary meaning). Moreover, as discussed above, there is nothing in the patent to
20 support the conclusion that the program must be “executed by a single stand alone computer,”
21 as suggested by Defendant. (Jt. Stmt. at 8.) In accordance with Federal Circuit case law in
22 tandem with the language of Claim 8 and the patent specification, the Court construes “a
23 program running on a computer” as “one or more computer software programs in operation on
24 one or more computers.”

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1 The Court is also persuaded by Plaintiff’s construction of the second part of the
 2 disputed claim term, i.e., “management of.” (‘806 Patent at 83:35.) The patent specification
 3 states that the system is intended to not only facilitate access to, but also to allow the user to
 4 “update” information in the system database, which is consistent with the goal of assisting the
 5 user in his or her ability to ensure compliance with regulatory requirements. (*Id.* at 1:67-2:3.)
 6 “The software is designed for interactivity with the database residing on the hard drive of the
 7 computer and includes a way for the user to comment and add expertise to the system by
 8 allowing the user to opt for the ability to import data....” (*Id.* at 2:30-34.)

9 Defendant contends that “knowledge-based access to, and management of” should be
 10 construed to mean “using a separate database of external facts and inference rules that enable
 11 inferences to be drawn from external facts and then applied to data in a technical database in
 12 order to provide access to and management of.” (Jt. Stmt. at 11-12.) Aside from the fact that
 13 Defendant’s proposed construction is unintelligible, none of the various dictionary definitions
 14 or various intrinsic and extrinsic evidence cited by Defendant (Jt. Stmt. at 10-15) supports the
 15 proposed construction. Thus, the Court construes the disputed claim term to mean “access
 16 based on knowledge of the user, and control, which includes any and all changes to the
 17 database including but not limited to the creation, deletion, and modification of content.”

18 **4. “being structured”**

19 Disputed Term	the technical database being structured to enable a plurality 20 of access modes comprising name of publication, key word, 21 and identified profile with migration capability between related records
22 Plaintiff’s Construction	no construction needed due to plain meaning, but if construed, 23 the proposed construction is “set up or arranged”
24 Defendant’s Construction	being organized or arranged, in a manner other than a one- 25 dimensional database approach, which allows the same place to be reached through different methods

26 The parties dispute the term “being structured” as it appears in the following sentence:
 27 “A system to provide information to maintain and repair equipment or provide services,
 28 comprising a program running on a computer to enable knowledge-based access to, and

1 management of, a technical database comprising electronically stored publications which are
2 displayable, the technical database being structured to enable a plurality of access modes,...”
3 (‘806 Patent at 83:32-37.) Plaintiff contends that the “being structured” needs no construction
4 because in context, the term means simply that the database (which stores the aircraft technical
5 information) must be set up in a manner that allows information to be accessible from a variety
6 of “modes.” The Court concurs with this construction. As illustrated by the preferred
7 embodiment, the system discloses various modes that can be selected by the user to facilitate
8 his or her search of the database. Among others, there is “an aircraft specific mode,” which
9 allows the user to search the database based on the particular make, model and serial number of
10 the aircraft. (Id. at 2:45-49.) Another is the “bookshelf mode,” which allows access to
11 information based on the subject and title of the publication. (Id. at 3:5-7.) Thus, it is evident
12 the “being structured” means that the database must be set up in a fashion which enables it to
13 provide the user with access to information based on the type of query or mode being used.

14 Defendant argues that “being structured” means “being organized or arranged, in a
15 manner other than a one-dimensional database approach, which allows the same place to be
16 reached through different methods.” (Jt. Stmt. at 16.) There is nothing in the claim or patent
17 specification to support this assertion. Instead, Defendant again relies on the statement of
18 Plaintiff’s expert Mr. Sandifer in his expert report submitted during the reexamination process.
19 In his report, Mr. Sandifer opined that certain prior art was distinguishable because it “appears
20 to manage all its data using a one-dimensional database approach....” (Lavorgna Decl. Ex. 19
21 at 25.) However, there is nothing in the claim language or specification to support the notion
22 that Plaintiff intended to limit “being structured” to the use of a one-dimensional database. See
23 Linear Tech. Corp. v. Int’l Trade Com’n, 566 F.3d 1049, 1058 (Fed. Cir. 2009) (statements
24 made during patent prosecution insufficient to establish a “clear and unmistakable” intent to
25 limit scope of a claim in a manner different from the claim language). In sum, the Court
26 concludes that the claim term “being structured” means “set up or arranged.”

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1 8. “cumulative index of revisions”

2 Disputed Term	“The system of claim 8 wherein the technical database further 3 comprises a cumulative index of revisions to publications....”
4 Plaintiff’s 5 Construction	no construction needed due to plain meaning
6 Defendant’s 7 Construction	the list of all changes made since the first change, but excluding 8 merely updated information

9 Plaintiff contends that “cumulative index of revisions” has a “plain meaning” and thus
10 requires no construction. (Jt. Stmt. at 25.) In contrast, Defendant argues that this claim term
11 means “the list of all changes made since the first change, but excluding merely updated
12 information.” (*Id.*) The Court disagrees with Plaintiff’s unsupported assertion that the
13 meaning of “cumulative index of revisions” is sufficiently clear to obviate the need for
14 construction. See United States Surgical Corp. v. Ethicon, Inc., 103 F.3d 1554, 1568 (Fed.
15 Cir.1997) (claim construction appropriate “when the meaning or scope of technical terms and
16 words of art is unclear and in dispute and requires resolution to determine”). Therefore, the
17 question remains whether Defendant’s proposed construction is appropriate.

18 Defendant cites the preferred embodiment, which notes that “[t]he revision letter index
19 is cumulative in that it includes all changes, not just the changes since the last CD-ROM
20 release.” (‘806 Patent at 61:32-34.) This supports Defendant’s contention that the “cumulative
21 index of revisions” necessarily includes “the list of all changes [to publications] made since the
22 first change....” (Jt. Stmt. at 25.) However, it does not support the second aspect of
23 Defendant’s proposed construction, as it makes no mention of “excluding merely updated
24 information.” To the contrary, the preferred embodiment specifies that the cumulative list
25 includes “all” changes, and not only the most recent changes.⁴ As such, the Court construes the

26 ⁴ Equally unhelpful is Defendant’s citation to Mr. Sandifer’s expert report which, as noted,
27 was submitted during the reexamination process of the ‘806 Patent. (Jt. Stmt. at 26; Lavorga Decl.
28 Ex. 17.) Defendant cites generally to twenty pages of the report without identifying specifically
 what and where in the report Defendant’s proposed construction of “cumulative index of revisions”
 is supported. (Lavorga Decl. Ex. 17 at 69-89.) Nevertheless, the Court has independently
 reviewed the cited pages of the Sandifer report and has found no support for Defendant’s position.

1 claim limitation “cumulative index of revisions” to mean “the list of all changes made to
2 publications since the first change.”

3 **9. “revision selection list”**

4 **Disputed Term** The system of claim 8 wherein the technical database further
5 comprises a cumulative index of revisions to publications and
6 the computer program accesses a **revision selection list** of
7 revised publications and identifies maintenance required by the
8 publications, the computer program being responsive to the
revision selection list for updating the compliance record for
the identified profile to include maintenance required based on
revisions to the publications.

9 **Plaintiff’s** a list of items having revisions, for example, revised
10 **Construction** publications, from which one or more items may be selected

11 **Defendant’s** a list of revised publications from which individual revised
12 **Construction** publications can be selected but excluding an up-to-date list

13 The first question presented regarding this term is whether the “list” (which is part of
14 “revision selection list”) referenced in Claim 9 is limited to “publications,” as advocated by
15 Defendant, or alternatively, whether the “list” refers more generally to “items” in the database
16 that have been revised as claimed by Plaintiff. Neither party is entirely correct. The language
17 of Claim 8 as well as the patent specification clearly state that the revision selection list refers
18 to changes or updates to “publications.” Claim 9 expressly provides that the system tracks any
19 “revisions to publications” and allows the user to identify, perform and comply with any
20 “maintenance required based on revisions to publications.” (‘806 Patent at 83:47-84:4
21 (emphasis added).) Thus, the Court construes “revision selection list” to mean a list of
22 “revisions to publications” as proposed by Plaintiff—as opposed to either “a list of items
23 having revisions” or “a list of revised publications,” as advocated by Defendant.

24 With respect to the issue of what the user may select from this list of revisions to
25 publications, Defendant argues that Claim 9 includes a limitation that the user cannot select
26 revisions to publications from an “up-to-date list.” (Jt. Stmt. at 26.) As support, Defendant
27 relies on the description of the preferred embodiment, and in particular, the discussion
28 concerning changes in maintenance and repair publications. (Id. (citing ‘806 Patent at 61:19-

1 58).) However, there is no discussion of an “up-to-date list” in this section of the patent. But
2 even if there were, the law is clear that a court should “not ordinarily rely on the preferred
3 embodiments alone as representing the entire scope of the claimed invention.” CCS Fitness,
4 Inc. v. Brunswick Corp., 288 F.3d 1359, 1370 (Fed. Cir. 2002). Thus, the Court construes
5 “revision selection list” to mean “a list of revised publications from which individual revisions
6 to publications can be selected.”

7 **10. “responsive to revision selection list”**

8 **Disputed Term** the computer program accesses a revision selection list of
9 revised publications and identifies maintenance required by the
10 publications, the computer program being **responsive to the**
11 **revision selection list** for updating the compliance record for
the identified profile to include maintenance required based on
revisions to the publications.

12 **Plaintiff’s** reacting to changes in a selection list
13 **Construction**

14 **Defendant’s** automatically updating based on revisions to the publications
15 **Construction**

16 The focus of the parties’ final dispute with respect to Claim 9 relates to the effect of the
17 revision selection list on the computer program. On the one hand, Plaintiff contends that the
18 program reacts to changes in the list, while Defendant asserts that the program is automatically
19 updated as a result of changes to the list. (Jt. Stmt. at 27.) In support of its proposed
20 construction, Plaintiff relies on the Tdata decision which ruled that, “The language ‘responsive
21 to the revision selection list for updating maintenance required’ means ‘reacting to changes in a
22 selection list for revising information related to required maintenance.’” Tdata, Slip. Op. at 20.
23 However, the TData court provides no analysis to support its construction other than noting
24 that “the clause refers back to the words ‘revision selection list’ set forth earlier in the same
25 claim....” Id. Given its lack of any meaningful analysis, the Tdata court’s construction is
26 neither helpful nor instructive on this point.

27 In contrast, the Court finds that the Defendant’s proposed construction accurately
28 describes the interaction between the computer program and the revision selection list under

1 the '806 Patent. The language set forth in Claim 9 clearly states that the computer program is
2 used to access the revision selection list, which is a list of revised publications and the
3 maintenance specifically required by those publications. Based on the information contained in
4 the revision selection list, the program updates both the maintenance requirements and the
5 compliance record for the particular equipment, which corresponds to profile being utilized by
6 the user. Thus, the program is not merely “reacting to changes in the selection list,” as
7 suggested by Plaintiff. Rather, upon revision to a publication in the database, the program
8 updates the maintenance requirements and compliance record.

9 Based on the above, the Court construes “responsive to the revision selection list” as
10 “updating based on revisions to the publications.”⁵

11 **C. PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AS TO LACHES DEFENSE**

12 Plaintiff moves for summary judgment as to Defendant’s affirmative defense of laches.
13 (Docket 110.) In its opposition, Defendant requests that the Court strike Plaintiff’s motion on
14 the ground that Plaintiff failed to certify that the parties met and conferred prior to bringing
15 such motion. In particular, Paragraph 5 of this Court’s Standing Order for Civil Cases
16 expressly states, “Meet and Confer Requirement; All parties are required to meet and confer
17 before filing any motion with this court, and to certify that they have complied with this
18 requirement.”

19 Plaintiff has acknowledged its failure to comply with this requirement and has refiled
20 and renoticed its motion for a later date. Plaintiff should have filed a notice of withdrawal of
21 motion, as required by Civil Local Rule 7-7(d), but failed to do so. Therefore, the Court denies
22 the instant motion as moot, without prejudice to its consideration of Plaintiff’s refiled motion.
23 Accordingly, the Court grants Defendant’s request to strike Plaintiff’s motion for summary
24 judgment as to Defendant’s laches defense, as well as its supporting papers. (Docket 110, 111,
25 112.) The Court will not countenance Plaintiff’s continued disregard of the orders and Local
26 Rules of this Court.

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⁵ Defendant did not provide support to include the limitation “automatically” updating.

1 **IV. CONCLUSION**

2 For the reasons set forth above,

3 **IT IS HEREBY ORDERED THAT:**

4 1. Defendant’s Motion for Summary Judgment as to Claim Construction and
5 Plaintiff’s Cross-Motion for Partial Summary Judgment Regarding Claim Construction are
6 **GRANTED IN PART** and **DENIED IN PART**, as set forth above. The Claims of the ‘806
7 Patent in dispute shall be construed as follows:

Claim Term	Construction
system	none required
a program running on a computer	one or more computer software programs in operation on one or more computers
knowledge-based access to, and management of	access based on knowledge of the user, and control, which includes any and all changes to the database including but not limited to the creation, deletion, and modification of content
being structured	set up or arranged
identified profile	data that identifies a given subject, such as a component or components
generating	none required
compliance record	none required
cumulative index of revisions	the list of all changes made to publications since the first change
revision selection list	a list of revised publications from which individual revisions to publications can be selected
responsive to the revision selection list	updating based on revisions to the publications

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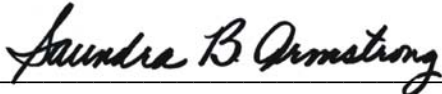
2. Plaintiff's Cross-Motion for Partial Summary Judgment Regarding Laches Affirmative Defenses is STRICKEN and DENIED AS MOOT.

3. This Order terminates Docket Nos. 100, 106 and 110.

4. The Clerk shall STRIKE Docket Nos. 110, 111 and 112 from the record.

IT IS SO ORDERED.

Dated: November 10, 2009


SAUNDRA BROWN ARMSTRONG
United States District Judge