

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

TIMEBASE PTY LTD.,)	
)	
Plaintiff,)	Civil Action No. 07-cv-1687 (JNE/JJG)
vs.)	
)	
THE THOMSON CORPORATION, WEST PUBLISHING CORPORATION, AND WEST SERVICES, INC.)	TIMEBASE’S SUPPLEMENTAL CLAIM CONSTRUCTION MEMORANDUM
)	
Defendants.)	
)	

TimeBase respectfully requests that the Court consider the following additional information concerning issues discussed at the Markman hearing.

TimeBase can accept a construction of “attribute” that merges the two parties’ proposals, that is: a characteristic or descriptor that is a piece of code or mark-up that describes a point on an axis of a multidimensional space for example, the section number, or ID, or the effective date of a section of statute.

The defendants said at the hearing that TimeBase cannot use multidimensional space in its own products. The argument is not relevant to claim construction. Claims are construed according to the patent. The Court may consider the accused product for context. *Wilson Sporting Goods Co. v. Hillerich & Bradsby Co.*, 442 F.3d 1322, 1327 (Fed. Cir. 2006) (“[W]hile a claim is not to be construed in light of the accused device, in an infringement case, it must inevitably be construed in context of the accused device.”).

Second, the argument is factually wrong. When deposed by Mr. Litsey on July 23, TimeBase’s 30(b)(6) designee described some ways in which TimeBase uses multidimensional space in one of its products, using a document produced a month earlier. (Exh. A to the Bayer Declaration). Slide 2 in Exh. A demonstrates getting a list of versions,

and slides 5 and following show searching and other actions in multidimensional space. Point to point movement is allowed, but not required. Thus, TimeBase requests that the Court disregard the defendants' argument.

The defendants misstated TimeBase's memorandum. Their slide 84 claims that TimeBase says:

**The Court cannot further
construe its construction of
multidimensional space even if
the definition is unclear.**

(TimeBase Response Br. at 23 (Dkt. 155 at 29))

We have checked the page referred to in the slide, and find no such statement. (See p. 23 of TimeBase's brief, Exh. B to the Bayer Declaration). The argument is unfair, and the defendants' PowerPoint should be disregarded where it conflicts with the arguments TimeBase actually made.

The definition of multidimensional space was clear to the Patent Office in the reexamination of the '592 patent. The Examiner said:

This makes it possible to locate each piece or block of text at a particular point in a "multidimensional space" using as coordinates the attributes added to the piece or block of text. In addition, Multidimensional space refers to an area not having boundaries and that is capable of, or involves, more than three dimensional. *Id*, col. 7, 11. 41-54.

(Exhibit D to TimeBase's Opening Claim Construction Memorandum, at page 592REEX002432).

The Examiner's citation to column 7, lines 41-45 is exactly the construction TimeBase has proposed from the '592 patent:

Multidimensional space refers to an area not having boundaries and that is capable of, or involves, more than three dimensions.

It could not be clearer that “point-to-point” movement is not part of the definition of multidimensional space. The specification does not require it, the claims do not recite it, and the Patent Office did not require it. Dependent claim 2, for example, recites a searching means. It would make no sense to interpret claim 2 to require both searching and point-to-point movement.

The defendants argue that this case would be over if their incorrect construction of multidimensional space were to be adopted. Even if the claims were improperly limited to point-to-point movement, (i.e., the defendants' added limitation) the defendants would still infringe.

Respectfully submitted,

/s/ Joseph N. Hosteny

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that **TIMEBASE'S SUPPLEMENTAL CLAIM CONSTRUCTION MEMORANDUM** was served on October 6, 2010 upon Thomson's counsel, listed below, by ECF notification:

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