UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN DIVISION

WEB TRACKING SOLUTIONS, LLC and DANIEL WEXLER,	)	
Plaintiffs/ Counterclaim Defendants,	)	
v.	)	Case No: 1:08-cv-03139-RRM-RER
GOOGLE, INC.,	)	**JURY TRIAL DEMANDED**
Defendant/ Counterclaim Plaintiff.	)	

PLAINTIFFS WEB TRACKING SOLUTIONS, LLC'S AND DANIEL WEXLER'S CLAIM CONSTRUCTION PRESENTATION

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Submitted on April 19, 2010

Plaintiffs' Claim Construction Presentation

US005960409A

United States Patent [19]

Wexler

[11] **Patent Number: 5,960,409**

[45] **Date of Patent: Sep. 28, 1999**

[54] **THIRD-PARTY ON-LINE ACCOUNTING SYSTEM AND METHOD THEREFOR**

[76] Inventor: **Daniel D. Wexler,** 481 Stratford Rd., Brooklyn, N.Y. 11218

[21] Appl. No.: **08/729,188**

[22] Filed: **Oct. 11, 1996**

[51] **Int. Cl.**[6] **G06F 13/14**; G06F 13/42; H04L 12/46; H04L 29/02

[52] **U.S. Cl.** **705/14**; 709/224; 709/245; 709/218; 707/501

W3 Organization, "HTTP Request Fields", http://www.w3.org/pub/WWW/Protocols/HTTP/HTRQ Header-s.html, May 3, 1994, pp. 1–5.

Primary Examiner—Eric W. Stamber
Attorney, Agent, or Firm—DeMont & Breyer, L.L.C.; Wayne S. Breyer; Jason Paul DeMont

[57] **ABSTRACT**

A system and method for providing on-line third party accounting and statistical information is disclosed. A third party accounting service receives a download request signal ultimately intended for an advertiser Web site. The down-

United States Patent [19]

Wexler

[11] **Patent Number: 5,960,409**

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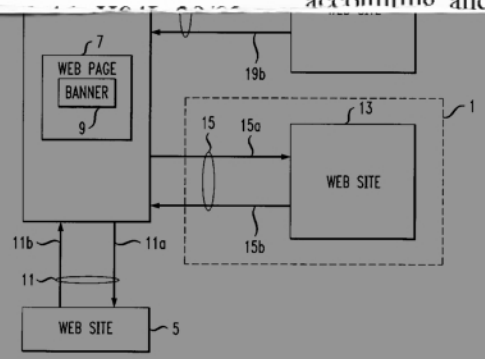
[57] **ABSTRACT**

A system and method for providing on-line third party accounting and statistical information is disclosed. A third



Legal Framework

- *Markman v. Westview Instruments*
- *Phillips v. AWH Corporation*

Infringement Analysis is a Two Step Process

1. Determine meaning and scope of patent claims.

***Markman v. Westview Instruments, Inc.*, 52 F.3d 967,967 (Fed. Cir. 1995) (en banc), *aff'd* 517 U.S. 370 (1996)**

2. Comparison of properly construed claims to accused product.

***Markman v. Westview Instruments Inc.*, 517 U.S. 370, 372 (1996)**

Claim Language

- Three sources of intrinsic evidence
  - Claims
  - Specification
  - Prosecution history
- Extrinsic evidence
  - e.g., Dictionaries

Claims Define The Invention

It is a "bedrock principle" of patent law that "the
claims of a patent define the invention to which the patentee is entitled the right to exclude." *Innova,* 381 F.3d at 1115; *Markman,* 52 F.3d at 980 ("The written description part of the specification itself does not delimit the right to exclude. That is the function and purpose of claims.").

***Phillips v. AWH Corp.,* 415 F.3d 1303, 1312 (Fed. Cir. 2005).**

Claims Define The Invention

Construction of some claim terms simply requires adoption of the well known meaning of such terms.

"In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. *See Brown v. 3M,* 265 F.3d 1349, 1352 (Fed.Cir.2001) (holding that the claims did "not require elaborate interpretation")."

***Phillips,* 415 F.3d at 1314.**

Specification

- Useful to construe claim terms
- But improper to import limitations from specification into claims
- Specification cannot limit claim scope absent "intentional disclaimer, or disavowal of claim scope."

***Phillips,* 415 F.3d at 1312-1313, 1316.**

Specification

"Although the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments."

***Phillips,* 415 F.3d at 1312-1313.**

Specification

Even single embodiment does not limit claim scope "unless the patentee has demonstrated a clear intention to limit the claim scope using 'words or expressions of manifest exclusion or restriction.'"

***Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004), quoting *Teleflex, Inc. v. Ficosa North American Corp.* 299 F.3d 1313, 1327 (Fed. Cir. 2002).**

Prosecution History

"[I]t is also true that the prosecution history may not be used to infer the intentional narrowing of a claim absent the applicant's clear disavowal of claim coverage."

***Sunrace Roots Enterprise Co., Ltd. v. SRAM Corp.*, 336 F.3d 1298, 1306 (Fed. Cir. 2003)**

"To be given effect, such a disclaimer must be clear and unmistakable."

***Id.* (internal citations omitted)**

Prosecution History

"Prosecution disclaimer does not apply to an ambiguous disavowal."

***Computer Docking Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1375 (Fed. Cir. 2008).**

"Yet because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes"

***Phillips v. AWH Corp.*, 415 F.3d 1303 , 1317 (Fed. Cir. 2005) (citation omitted).**