



## I. INTRODUCTION

Magistrate Judge Love has submitted a Report and Recommendation denying the Defendants' attempts to invalidate the claims of the patent-in-suit for indefiniteness. *See* Dkt. No. 372. The Defendants have submitted objections to that Report, *see* Dkt. No. 440, and Bedrock offers this response in opposition. As the issue determined by Judge Love is a dispositive issue, this Court reviews *de novo*. *See* FED. R. CIV. P. 72(b)(3). In rejecting Defendants'<sup>1</sup> indefiniteness challenge, Judge Love applied the proper legal framework and correctly construed the means-plus-function limitations at issue. Because Defendants have still not presented clear and convincing evidence of a lack of structural support for the asserted claims, Defendants' motion should be denied.

## II. LEGAL FRAMEWORK

A party seeking to invalidate a patent on the basis of indefiniteness must overcome the presumption of validity with clear and convincing evidence. *See Young v. Lumenis, Inc.*, 492 F.3d 1336, 1344–45 (Fed. Cir. 2007). “Indefiniteness requires a determination whether those skilled in the art would understand what is claimed. To make that determination, [the Federal Circuit has] explained that “[i]n the face of an allegation of indefiniteness, general principles of claim construction apply.” *Id.* at 1346. Under 35 U.S.C. § 112 ¶ 6, construing a means-plus-function limitation is a two-step inquiry. “The first step in construing [a means-plus-function] limitation is a determination of the function of the means-plus function limitation.” *Medtronic, Inc. v. Advanced Cardiovascular Sys., Inc.*, 248 F.3d 1303, 1311 (Fed. Cir. 2001). Once a court

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<sup>1</sup> Amazon.com Inc., Softlayer Technologies, Inc., Google, Inc., Match.com, LLC, Yahoo! Inc., MySpace Inc., and AOL LLC (collectively, “Defendants”).

has determined the limitation's function, "the next step is to determine the corresponding structure disclosed in the specification and equivalents thereof." *Id.*

### **III. ARGUMENT**

#### **A. Defendants Have Presented No Evidence Regarding the Level of Ordinary Skill in the Art.**

"Before reviewing the bounds of the claim in light of the specification, the analysis requires attention to the level of skill assigned to a person of ordinary skill in the art." *AllVoice Computing PLC v. Nuance Communs., Inc.*, 504 F.3d 1236, 1240 (Fed. Cir. 2007). Significantly, Defendants have made no effort to specify the proficiency of the hypothetical person of ordinary skill in the art. Instead, Defendants offer only attorney argument as to what structures are disclosed, what structures are not disclosed, and whether the disclosed structures are adequate. This does not constitute clear and convincing evidence as is required to invalidate a means-plus-function claim for indefiniteness. *See Budde v. Harley-Davidson, Inc.*, 250 F.3d 1369, 1376–77 (Fed. Cir. 2001) ("Thus, a challenge to a claim containing a means-plus-function limitation as lacking structural support requires a finding, by clear and convincing evidence, that the specification lacks disclosure of structure sufficient to be understood by one skilled in the art as being adequate to perform the recited function."). For this reason alone, Defendants have not met their burden. Even on the merits, however, Defendants fail to establish that the asserted claims are indefinite. As such, their Motion should be denied.

#### **B. The Disputed Limitations Are Definite.**

##### *1. Claims 2 and 6: "dynamically determining maximum number"*

In analyzing this limitation, Judge Love correctly first found the function of the claim term to be "dynamically determining maximum number for the record search means to remove in the accessed linked list of records." Dkt. No. 372 at 12. As Judge Love noted, in arguing that a

maximum number of records requires a single quantity or number to be determined, Defendants improperly read an additional limitation into the recited claims. *Id.* The claim language is clear and does not “explicitly recite[]” such a requirement; as such, Judge Love correctly refused to import it into the recited claims. *See Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed Cir. 1999) (“The statute [35 U.S.C. § 112 ¶ 6] does not permit limitation of a means-plus-function claim by adopting a function different from that explicitly recited in the claim.”).

Further, Defendants’ suggestion that the Search Table Procedure and the Alternate Version of Search Table Procedure “cannot be used to determine a maximum number to remove because the records have already been removed” misses the mark. Dkt. No. 440 at 3. The function of “dynamically determining maximum number” is performed by the executable software instructions which, at the time the record search means is invoked by the caller, choose whether to execute the Search Table Procedure or the Alternate Version of Search Table Procedure. United States Patent No. 5,893,120 (“120 patent”) at 6:56-7:15. The choice between these two procedures, based upon factors such as how much memory is available in the system storage pool, general system load, time of day, and the number of records currently residing in the information system, results in either the removal of all expired records, some but not all of them, or none of them. *Id.* at 6:66-7:10. This determination, in itself, is the performance of the recited function, and Defendants have not adduced any evidence, let alone clear and convincing evidence, which suggests otherwise.

Lastly, Defendants harp on an alleged lack of a disclosed algorithm as support for their argument that the specification lacks sufficient structure for making the dynamic decision. However, as Judge Love stated, “Defendants have failed to show that one of ordinary skill in the

art would not recognize the pseudo-code of the Search Table Procedure and Alternate Search Table Procedure as the corresponding structure to the recited functions.” Dkt. No. 372 at 13. Furthermore, “in software cases . . . algorithms in the specification need only disclose adequate defining structure to render the bounds of the claim understandable to one of ordinary skill in the art.” *AllVoice Computing PLC v. Nuance Communs., Inc.*, 504 F.3d 1236, 1245 (Fed. Cir. 2007); *see also Alcatel United States Res., Inc. v. Microsoft Corp.*, No. 6:06 CV 500, 2008 U.S. Dist. LEXIS 49615, at \*46 (E.D. Tex. June 27, 2008) (“Courts allow a patentee to express an algorithm in *any understandable terms*, which includes mathematical formulas, prose, flow charts, or any other manner that provides sufficient structure.”) (emphasis added). Thus, Defendants’ assertion that the portion of the ‘120 specification describing the *dynamic* choice between the Search Table Procedure and Alternate Search Table Procedure is somehow insufficient is misplaced. *See* ‘120 patent at 6:66-7:10 (“The implementor even has the prerogative of choosing among these [search procedure] strategies *dynamically* . . . thus sometimes removing *all* expired records, at other times removing *some but not all* of them, and yet at other times choosing to remove *none* of them.”) (emphasis added).

2. *Claim 5: “hashing means . . .”*

Defendants assert that Judge Love erred in refusing to import Defendants’ proffered “executing a hashing function” limitation into the recited claim. However, as was delineated in the briefing and recognized by Judge Love, executing a hashing function is not a required function of this claim because “[t]he claim language explicitly states the function is ‘to provide access to records stored in memory of the system and using an external chaining technique to store the records with same hash address at least some of the records automatically expiring.’” Dkt. No. 372 at 7.

The '120 patent discloses a hashing technique with external chaining, which entails (i) a hash function, (ii) a hash table, and (iii) linked lists chained from the hash table. *See* '120 patent at 4:53-5:33. Of these “hashing means,” it is the linked lists, themselves, that “provide access to records stored in a memory of the system,” and it is the hash table that “us[es] an external chaining technique to store the records with same hash addresses, at least some of the records automatically expiring.” *See* Decl. of Dr. Mark Jones (Dkt. No. 275-8) at ¶¶ 25-27. Thus, contrary to Defendants’ assertions, nothing in the recited function of this limitation requires the execution of a hashing function, and Defendants’ repeated attempts to interject limitations which are not “explicitly recited” in the claim language are contrary to Federal Circuit precedent and plainly improper. *See Micro Chem.*, 194 F.3d at 1258.

Furthermore, as Judge Love recognized, Defendants’ assertion that “the specification fails to disclose a hash algorithm” is factually wrong as well. Dkt. No. 372 at 9. The specification of the '120 patent discloses pseudocode for hashing. Specifically, the specification discloses the function “hash,” which takes “record\_key” as an argument and “returns value in the range 0 . . . table\_size -1.” *See* '120 patent at the “Search Table Procedure” and “Alternate Search Table Procedure” appendices. The '120 patent also lists operations that could serve as the inner functionality for hashing: “truncation, folding, transposition, modulo arithmetic, and combinations of these operations.” *See* '120 patent at 5:5-7. As such, even if this Court finds that “executing a hashing function” is a necessary limitation of this claim term, the disclosed structure “render[s] the bounds of the claim understandable to an ordinary artisan.” *Telecordia Techs., Inc. v. Cisco Systems, Inc.*, Nos. 2009-1175, 2009-1184, 2010 WL 2653251, at \*10 (Fed. Cir. July 6, 2010) (citing *Intel Corp. v. VIA Techs., Inc.*, 319 F.3d 1357, 1365-66 (Fed. Cir. 2003)).

3. *Claims 1 and 5: “record search means utilizing a search key to access the linked list”*

Defendants again argue that executing a hashing function is a necessary limitation of this claim term. However, executing a hashing function is not part of the recited function for this limitation; rather, it is the structure disclosed in the specification for performing part of the recited function. Thus, defendants’ argument regarding this limitation essentially asks this Court to require the structure corresponding to the recited function to have its own corresponding structure. That is, Defendants maintain that the disclosed algorithm for accessing the linked list, which they recognize is “hashing on [the search] key to locate a storage address within the array,” is insufficient structure because there is no disclosed *hashing* algorithm. Dkt. No. 283 at 8. This assertion is contrary to the Federal Circuit’s decision in *Telecordia*, which made clear that the absence of internal circuitry or code within a corresponding structure does not automatically render the claim indefinite; rather, “the specification need only disclose adequate defining structure to render the bounds of the claim understandable to an ordinary artisan.” *See Telecordia*, 2010 WL 2653251, at \*10.

Again, however, even if executing a hashing function were required, “the ‘120 specification does disclose how to execute a hashing function.” Dkt. No. 372 at 9. The specification discusses hashing techniques and cites various known hashing methods known by those of ordinary skill in the art, such as “truncation, folding, transposition, modulo arithmetic, and combinations of these operations.” ’120 patent at 4:53-5:52.

#### **IV. CONCLUSION.**

Defendants have not satisfied their burden to establish indefiniteness by clear and convincing evidence and cannot do so. As such, the Court should deny Defendants’ Objections to Judge Love’s Report and Recommendation rejecting Defendants’ indefiniteness challenge.

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Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the forgoing document via the Court's CM/ECF system pursuant to the Court's Local Rules this 14th day of February, 2011.

/s/ Ryan A. Hargrave  
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