IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SEQUOIA TECHNOLOGY, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 18-1127-LPS-CJB
	)	(CONSOLIDATED)
DELL INC., DELL TECHNOLOGIES	)	
INC. (and its subsidiary EMC	)	
CORPORATION (AKA DELL EMC)),	)	
	)	
Defendants.	)	
	)	
RED HAT, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 18-2027-LPS-CJB
	)	
SEQUOIA TECHNOLOGY, LLC and	)	
ELECTRONICS AND	)	
TELECOMMUNICATIONS RESEARCH	)	
INSTITUTE,	)	
	)	
Defendants.	)	
	)	
SEQUOIA TECHNOLOGY, LLC,	)	
	)	
Counterclaim Plaintiff,	)	
	)	
v.	)	
	)	
RED HAT, INC. and INTERNATIONAL	)	
BUSINESS MACHINES COPORATION,	)	
	)	
Counterclaim Defendants.	)	
	)	

REPORT AND RECOMMENDATION

In this consolidated action between, *inter alia*, Sequoia Technology, LLC ("Sequoia")

and Electronics and Telecommunications Research Institute ("ETRI") and Red Hat, Inc. ("Red

Hat"), presently before the Court is the matter of claim construction. The Court recommends that the District Court adopt the constructions as set forth below.

I.   BACKGROUND

A.   Procedural Background

On July 31, 2018 and August 23, 2018, Sequoia filed Complaints in four different actions alleging infringement of United States Patent No. 6,718,436 (the "'436 patent"); the Complaints were filed against four sets of Red Hat's customers, which are, respectively, Defendants Dell, Inc., Dell Technologies, Inc. and EMC Corporation (in Civil Action No. 18-1127-LPS-CJB), Hewlett Packard Enterprise Co. (in Civil Action No. 18-1128-LPS-CJB), Hitachi Ltd. and Hitachi Vantara Corp. (in Civil Action No. 18-1129-LPS-CJB) and Super Micro Computer, Inc. (in Civil Action No. 18-1307-LPS-CJB).[1] On December 19, 2018, Red Hat filed a declaratory judgment action in Civil Action No. 18-2027-LPS-CJB against Sequoia and, thereafter, filed the operative First Amended Complaint ("FAC") against both Sequoia and ETRI in that action. (Civil Action No. 18-2027-LPS-CJB, D.I. 16) Red Hat's FAC seeks a declaratory judgment that it does not infringe the '436 patent and that the patent is invalid. (*Id.*)

These actions were thereafter all consolidated, with the lead case being Civil Action No. 18-1127-LPS-CJB. (D.I. 56) Chief Judge Leonard P. Stark has referred the consolidated cases to the Court to hear and resolve all pre-trial matters up to and including expert discovery matters. (*See, e.g.*, D.I. 20)

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[1]   All citations herein, unless otherwise noted, are to the docket in the lead case, Civil Action No. 18-1127-LPS-CJB.

The parties filed their joint claim construction brief on June 11, 2020. (D.I. 153) On July 29, 2020, the Court conducted a *Markman* hearing by video conference. (D.I. 184 (hereinafter "Tr.")).

B.   Factual Background

Red Hat is a Delaware corporation and a "leading contributor to free and open source software[.]" (Civil Action No. 18-2027-LPS-CJB, D.I. 16 at ¶ 14) It manufactures Red Hat Enterprise Linux, or "RHEL," for the commercial market. (*Id.* at ¶ 16) RHEL is accused of infringing the '436 patent. (*See, e.g.*, *id.* at ¶ 27)

Sequoia is a Delaware limited liability company. (*Id.* at ¶ 7) ETRI is a South Korean research institution and the record owner of the '436 patent; it licenses the patent to Sequoia. (*Id.* at ¶¶ 8, 21)

The '436 patent is titled, "Method for Managing Logical Volume in Order to Support Dynamic Online Resizing and Software Raid and to Minimize Metadata and Computer Readable Medium Storing the Same[.]" ('436 patent, Title) The patent relates to "RAID," or "Redundant Array of Independent Disks," which is a "way of storing the same data to different locations of multiple hard disks [which] is usually utilized in a server with important data." (*Id.*, col. 1:26-32) The invention described in the '436 patent relates to methods that work by constructing a "logical volume," which is a "virtual disk drive," out of "multiple physical disk drives[.]" (*Id.*, col. 1:24-26) The '436 patent uses a series of tables to keep track of where and how the data in a logical volume is located among the physical drives. (*Id.*, Abstract) By way of the disclosed methods, the patent aims to minimize the use of metadata and to "support dynamic online resizing" and RAID. (*Id.*) Further details regarding the '436 patent will be provided below in Section III.

II.   STANDARD OF REVIEW

It is well-understood that "[a] claim in a patent provides the metes and bounds of the right which the patent confers on the patentee to exclude others from making, using, or selling the protected invention." *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989). Claim construction is a generally a question of law, although subsidiary fact finding is sometimes necessary. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 325-26 (2015).

The Court should typically assign claim terms their "'ordinary and customary meaning[,]'" which is "the meaning that the term[s] would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (citations omitted). However, when determining the ordinary meaning of claim terms, the Court should not extract and isolate those terms from the context of the patent; rather it should endeavor to reflect their "meaning to the ordinary artisan after reading the entire patent." *Id.* at 1321; *see also Eon Corp. IP Holdings LLC v. Silver Spring Networks, Inc.*, 815 F.3d 1314, 1320 (Fed. Cir. 2016).

In proceeding with claim construction, the Court should look first and foremost to the language of the claims themselves, because "[i]t 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." *Phillips*, 415 F.3d at 1312 (internal quotation marks and citations omitted). For example, the context in which a term is used in a claim may be "highly instructive." *Id.* at 1314. In addition, "[o]ther claims of the patent in question, both asserted and unasserted, can . . . be valuable" in discerning the meaning of a particular claim term. *Id.* This is "[b]ecause claim terms are

normally used consistently throughout the patent, [and so] the usage of a term in one claim can often illuminate the meaning of the same term in other claims." *Id.* Moreover, "[d]ifferences among claims can also be a useful guide[,]" as when "the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." *Id.* at 1314-15.

In addition to the words of the claims, the Court should look to other intrinsic evidence. For example, the Court should analyze the patent specification, which "may reveal a special definition given to a claim term . . . that differs from the meaning [that term] would otherwise possess" or may reveal an intentional disclaimer of claim scope. *Id.* at 1316. Even if the specification does not contain such revelations, it "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Id.* at 1315 (internal quotation marks and citation omitted). That said, however, the specification "is not a substitute for, nor can it be used to rewrite, the chosen claim language." *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004). And a court should also consider the patent's prosecution history, if it is in evidence, because it "can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution[.]" *Phillips*, 415 F.3d at 1317.

Extrinsic evidence, "including expert and inventor testimony, dictionaries, and learned treatises[,]" can also "shed useful light on the relevant art[.]" *Id.* (internal quotation marks and citations omitted). Overall, while extrinsic evidence may be useful, it is "less significant than the intrinsic record in determining the legally operative meaning of claim language." *Id.* (internal

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