IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LIMELIGHT NETWORKS, INC.,
Plaintiff,

v. Civil Action No. 3:15-cv-720-JAG

XO COMMUNICATIONS, LLC
and AKAMAI TECHNOLOGIES INC.
Defendants.

ORDER

This matter comes before the Court pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996), to construe terms in ten disputed patents in this case. The plaintiff, Limelight Networks, Inc. ("Limelight") and the defendant Akamai Technologies, Inc. ("Akamai") contest the construction of thirty-five terms in the opposing party's patents.

Phillips v. AWH Corp. and its progeny set forth the principles of claim construction. 415 F.3d 1303 (Fed. Cir. 2005). A district court must give the words the ordinary and customary meaning they would have to a person of ordinary skill in the art. *See id.* at 1317. "[T]he person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* at 1313.

The claim language itself stands at the top of the source hierarchy, followed by other intrinsic evidence—the written description and prosecution history. *See id.* at 1324. Further, "the specification '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 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). In addition, "the

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prosecution history 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, making the claim scope narrower than it would otherwise be." *Id.* at 1317 (citing *Vitronics Corp.*, 90 F.3d at 1582–83).

After considering intrinsic evidence, the Court may look to extrinsic evidence, including inventor testimony, dictionaries, and learned treatises. Extrinsic evidence, however, cannot contradict the intrinsic record. *See id.* at 1317.

I. Terms Over Which the Parties Disagree

1. Limelight Patent No. 7,715,324 ('324 Patent)

Disputed Term	Limelight's Proposed Construction	Akamai's Proposed Construction	Court's Definition
TERM 1 "uniform resource indicator"	"a sequence of characters that identifies a requested source, such as all or part of a URL"	"Information in a request's Uniform Resource Locator ('URL'), such as all or part of a URL"	"a sequence of characters that identifies a requested source, such as all or part of a URL"
TERM 2 "protocol attribute selector"	"a software process that can analyze each request to select protocol attributes to be used to deliver requested content" (Interpreting "each request" to mean both the first request over each new connection but also as multiple requests within the same connection."	"a software process that can analyze a first request over a first connection and a second request over a second connection to select protocol attributes to be used to deliver requested content"	"a software process that can analyze each request to select protocol attributes to be used to deliver requested content"

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For **Term 1,** the '324 Patent uses "uniform resource indicator" and "uniform resource identifier" interchangeably. The specification says in Column 7, Lines 21-24 (7:21-24), that HTTP utilizes URLs as well as "Uniform Resource Identifiers (URIs) to identify information. URLs are used in the primary embodiment. Other embodiments use URIs . . . ." This is the *only* mention in the patent of a uniform resource identifier, and it clearly indicates that other embodiments will use uniform resource identifiers. In order to read this portion of the specification consistently with the remainder of the patent, the term uniform resource indicator, as used in the patent, must be synonymous with uniform resource identifier. Akamai does not argue that the proffered definition is incorrect for a uniform resource identifier, and the Court finds that it is consistent with the claim and the specification.

With reference to **Term 2,** the Court must construe claims "so as to be consistent with the specification, of which they are a part." *Phillips*, 415 F.3d at 1315 (citing *Merck & Co. v. Teva Pharms. USA, Inc.*, 347 F.3d 1367, 1371 (Fed. Cir. 2003)). The claim language of the '324 Patent itself does not explicitly limit a second request over a first connection, while the specification teaches that the server is capable of modifying "parameters on a connection-by-connection and even a request-by-request basis," and describes the process as "R2/C1." ('324 Patent, 21:1-17.) This ability is reiterated at Column 22, Lines 8-11.[1] The claim terms do not prohibit such a communication, and the specification language shows that the patent *can* (although is not *required* to, as argued by Akamai) receive multiple requests over the same connection.

[1] "As previously noted, the process can be repeated for each new request (e.g. R2/C1) and/or reach new connection (e.g. R1/C2) as determined by the data source 750 or caching function." ('324 Patent, 22:8-11.)

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2. Limelight Patent No. 8,750,155 ('155 Patent)

Disputed Term	Limelight's Proposed Construction	Akamai's Proposed Construction	Court's Definition
TERM 3 "the data source is configured to monitor a first connection for a request"	"the data source listens for the duration of a connection for a request"	"the data source monitors a first connection for a request"	"the data source is configured to monitor a first connection for one or more requests"
TERM 4 "a request for content" / "a request"	Plain meaning; if construction required, then "a request for content, which can include an HTTP GET statement and other information"	"a request for content, such as a HTTP GET request"	Plain meaning
TERM 5 "using information from the request" / "based on the request"	Plain meaning; if construction is required, then "using information derived from or associated with the request"	"using/based on information directly acquired from the request"	Plain meaning
TERM 6 "parameters relate / relating to utilization of available processing or memory capabilities of part or all of a system supporting the first connection"	Plain meaning	"parameters are measurement(s) of actual processing or memory of an end user or other server making the first connection"	"parameters relate / relating to utilization of available processing or memory capabilities of part or all of a system supporting the first connection, but not those relate/relating to link capacity or the size or type of content"

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The system contemplates the ability to receive multiple requests over one connection. The Court construes **Term 3** consistent with that embodiment. As demonstrated in Fig. 2A of both the '324 and the '155 Patent, the patents relate to and concern the same server system described at illustration 206 in the patents.

In construing **Term 4,** both parties agree that the '155 Patent describes a system that can request content other than an HTTP GET request, and agree that the specification includes other embodiments that should be included in the claim construction. The only issue is how to define the term appropriately. Akamai takes issue with Limelight's proposed definition, arguing that the phrase "and other information" is ambiguous, but Akamai's suggested addition of "such as an HTTP GET request" is unnecessary given the various kinds of content that can be requested in the specification. The plain meaning of "request for content" accurately defines the term.

Giving **Term 5** its plain meaning avoids improper limitation of the claim. While Akamai seeks to limit the term to only using information "directly acquired" from the request, the claim language itself leaves open the possibility of using the information that may be associated with the request but not contained within it. "The usage of a term in one claim can often illuminate the meaning of the same term in other claims." *Phillips*, 415 F.3d at 1314. In the '155 Patent, Claim 13 uses the language "based on" information, and the specification describes a process that can use information "derived from" the request. Taking the broader language from other claims in light of the specification, the patent contemplates other types of information, such as metadata, that the system can use that may not be contained directly within the request yet nonetheless is associated with it.

The Patent Office limited **Term 6** by deleting the phrase "link capacity, and/or a size or type of the content." (Dk. No. 92, Ex. P.) The prosecution history is intrinsic evidence available

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