IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Intellectual Ventures I LLC and	§	
Intellectual Ventures II LLC,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 6:15-CV-660-JRG**
	§	
HCC Insurance Holdings, Inc.,	§	**JURY TRIAL DEMANDED**
HCC Life Insurance Company,	§	
HCC Specialty Insurance Company,	§	
HCC Specialty Underwriters, Inc.,	§	
Houston Casualty Company, and	§	
Professional Indemnity Agency, Inc.,	§	
	§	
Defendants.	§	

INTELLECTUAL VENTURES I LLC AND INTELLECTUAL VENTURES II LLC'S
OBJECTIONS TO
MAGISTRATE MITCHELL'S REPORT AND RECOMMENDATION

INTRODUCTION

Pursuant to Local Rule CV-72(b), Plaintiffs respectfully object to, and request reconsideration of, two parts of Magistrate Judge Mitchell's Report and Recommendation issued on August 26, 2016. (Dkt. 102, "Magistrate Report") Plaintiffs request reconsideration of the recommended constructions for the terms "packet" from the '442 Patent and "agent" from the '752 Patent.

CONSTRUCTION OF "PACKET" FROM THE '442 PATENT

Plaintiffs proposed a plain and ordinary construction for the term "packet" and Defendants proposed a construction of "a basic unit of transport over a channel including a header, a payload, and an error correction code." The Court recommended adoption of Defendants' proposed construction. Plaintiffs respectfully disagree.

The plain and ordinary meaning of "packet" is undisputed by the parties. Nowhere in Defendants' briefing materials, nor at the claim construction hearing, did Defendants challenge the plain and ordinary meaning of packet. The Court did not address the plain and ordinary meaning of the term, and the Magistrate Report acknowledged "that the Court generally presumes terms possess their ordinary meaning, this presumption can be overcome by statements of clear disclaimer." Magistrate Report at 3 citing *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1343-44 (Fed. Cir. 2001). There is no clear disclaimer of the plain and ordinary meaning of the term packet, and as a result the plain and ordinary meaning should still apply.

The claim language of the two independent claims in which the term appears do not require the inclusion of error correcting codes. As shown below, claims 1 and 24 both contain

claim elements related to error correction of information contained within the patents, not the

specific use of error correction codes to perform that correction:

> 1. A shared-memory multi-processor system comprising:
> a switch fabric configured to switch packets containing data;
> a plurality of channels configured to transfer the packets;
> a plurality of switch interfaces configured to exchange the packets with the switch
> fabric, exchange the packets over the channels, and *perform error correction of
> the data in the packets* exchanged over the channels;
> a plurality of microprocessor interfaces configured to exchange the data with a
> plurality of microprocessors, exchange the packets with the switch interfaces over
> the channels, and perform error correction of the data in the packets exchanged
> over the channels; and
> a memory interface configured to exchange the data with a memory device,
> exchange the packets with the switch interfaces over the channels, and perform
> error correction of the data in the packets exchanged over the channels.

> 24. A method of operating a shared-memory multi-processor system, the method
> comprising:
> exchanging data between a plurality of microprocessors and a plurality of
> microprocessor interfaces;
> exchanging packets containing the data between the microprocessor interfaces
> and a plurality of switch interfaces over channels;
> exchanging the packets between the switch interfaces through a switch fabric;
> exchanging the packets between the switch interfaces and a memory interface
> over the channels;
> exchanging the data between the memory interface and a memory device; and
> in the interfaces, *performing error correction of the data in the packets* exchanged
> over the channels.

U.S. Patent 6,516,442 Claims 1 and 24 (emphasis added). The language in the independent

claims requires error correction of the data in the packets, not the inclusion of error correcting

codes. Nowhere in Defendants' briefing materials, nor at the claim construction hearing, did

Defendants show a clear requirement that independent claims require the inclusion of error

correcting codes within the term "packets." Neither did the Court cite to such a requirement.

Further, the claim construction selected by the Court is incompatible with dependent

claims at issue in the case. Dependent claims 2 and 25 require the addition of error correction

codes to the packet. If the Court's recommended construction for the term packet is inserted into

these claims, the result is two sets of error correction codes contained within each packet, which is never disclosed by the '442 Patent. This language is shown below:

> 2. The shared-memory multi-processor system of claim 1 wherein the interfaces are configured to add error correction codes to the **[a basic unit of transport over a channel including a header, a payload, and an error correction code]**s being transferred over the channels to check the error correction codes in the **[a basic unit of transport over a channel including a header, a payload, and an error correction code]**s being received over the channels and to transfer a retry request if one of the **[a basic unit of transport over a channel including a header, a payload, and an error correction code]**s being received has an error.
>
> 25. The method of claim 24 wherein performing error correction of the data in the **[a basic unit of transport over a channel including a header, a payload, and an error correction code]**s exchanged over the channels comprises:
> adding error correction codes to the **[a basic unit of transport over a channel including a header, a payload, and an error correction code]**s being transferred over the channels;
> checking the error correction codes in the **[a basic unit of transport over a channel including a header, a payload, and an error correction code]**s being received over the channels; and
> transferring a retry request if one of the **[a basic unit of transport over a channel including a header, a payload, and an error correction code]**s being received has an error.

U.S. Patent 6,516,442 Claims 2 and 25 (emphasis and claim construction language added).

Nowhere in Defendants' briefing materials, nor at the claim construction hearing, did Defendants show any disclosure of two sets of error correcting codes being utilized simultaneously. Neither did the Court cite to such any such disclosure, because none exists, and a person skilled in the art would know to reject a construction of the term "packets" with such a requirement.

The Court's construction is incorrect because it conflates generalized error correction with a specific type of error correction involving the implementation of error correction codes. This approach improperly reads a limitation from a preferred embodiment into the claim language. The claim language as cited by the Court in the Magistrate Report refers to error correction generally, not the specific inclusion of error codes: "claims 1 and 24 of the '442 Patent recite that the interfaces perform 'error correction of the data in the packets exchanged

over the channels.'" Magistrate Report at 13. A person skilled in the art would know that error correction can be performed by other methods other than the inclusion of error correcting codes. Nowhere in Defendants' briefing materials, nor at the claim construction hearing, did Defendants show an explicit requirement that a packet contain error correction codes. Since the Court did not cite to such any such disclosure either, it should not attempt to amend the plain and ordinary meaning of the term packet with additional requirements pulled from the preferred embodiment.

CONSTRUCTION OF "AGENT" FROM THE '752 PATENT

Plaintiffs proposed a plain and ordinary construction for the term "agent" and Defendants proposed a construction of "a process that occupies a place and that is mobile, *i.e.,* can move from a first place to a second place." Defendants' argument was based in an incorporation by reference of another patent that included the definition of agent proffered by Defendants. The Court recommended adoption of Defendants' proposed construction. Plaintiffs respectfully disagree.

To reach its conclusion, the Court made a number of incorrect assumption regarding the incorporation of the other patent and the references to agent contained within the specification of the '752 Patent. As noted by the Court, "[a]n exemplary construction for an agent system is taught by U.S. Pat. No. 5,603,031, issued to the Assignee of the present invention, the text of which is incorporated herein by reference." Magistrate Report at 25 citing '752 Patent at 5:27-31. The Court fails to analyze what language is incorporated by reference, as the reference is not incorporated in its entirety. When the Patentee sought to incorporate a reference in its entirety, it explicitly did so, as when the Patentee sought to incorporate two earlier continuations:

> The present application is a continuation of U.S. patent application Ser. No. 09/712,712, filed Nov. 14, 2000, allowed, which is a continuation of application Ser. No. 09/178,366, filed Oct. 23, 1998, now U.S. Pat. No. 6,163,794, each of **which is incorporated herein by reference in its entirety.**

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