

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

ALEXSAM, INC.,
Plaintiff-Appellant

v.

**CIGNA CORPORATION, CIGNA HEALTH AND
LIFE INSURANCE COMPANY, CONNECTICUT
GENERAL LIFE INSURANCE COMPANY, CIGNA
HEALTHCARE OF TEXAS, INC.,**
Defendants-Appellees

2022-1599

Appeal from the United States District Court for the
Eastern District of Texas in No. 2:20-cv-00081-RWS-RDP,
Judge Robert Schroeder, III.

Decided: April 1, 2024

STEVEN RITCHESON, Insight, PLC, Marina del Rey, CA,
argued for plaintiff-appellant. Also represented by
JACQUELINE KNAPP BURT, Heninger Garrison Davis, LLC,
Atlanta, GA; TIMOTHY C. DAVIS, W. LEE GRESHAM, III, Bir-
mingham, AL.

RICARDO BONILLA, Fish & Richardson P.C., Dallas, TX,

argued for defendants-appellees. Also represented by NEIL J. MCNABNAY, BRET THOMAS WINTERLE, LANCE E. WYATT, JR.

Before PROST, TARANTO, and HUGHES, *Circuit Judges*.

HUGHES, *Circuit Judge*.

AlexSam, Inc. appeals a summary judgment decision holding that Cigna Corp. and its affiliates did not infringe AlexSam, Inc.’s multifunction card system patent. Because AlexSam, Inc. failed to provide sufficient evidence of infringement, we affirm.

I

A

AlexSam, Inc. (AlexSam) owns U.S. Patent No. 6,000,608 (the ’608 patent), disclosing a “multifunction card system.” J.A. 7. The basic premise of the patent is the ability to use a debit or credit card for purposes other than financial transactions. In the case at hand, the function would be to use a debit or credit card that could also provide a healthcare provider with a cardholder’s medical account information and other health-related information. *See* Appellant’s Br. at 3 n.1.

AlexSam’s infringement claims center on independent claim 32 of the ’608 patent, which is representative:

A multifunction card system comprising:

- a. at least one debit/medical services card having a unique identification number encoded on it comprising a bank identification number approved by the American Banking Association for use in a banking network;

- b. a transaction processor receiving card data from an unmodified existing standard point-of-sale device, said card data including a unique identification number;
- c. a processing hub receiving directly or indirectly said card data from said transaction processor; and
- d. said processing hub accessing a first database when the card functions as a debit card and said processing hub accessing a second database when the card functions as a medical card.

'608 patent at 15:65–16:11.

Dependent claim 33, also at issue in this case, simply claims that the multifunction card includes a user's medical identification number. *Id.* at 16:12–14.

B

On March 18, 2020, three years after the '608 patent's expiration, AlexSam filed suit against Cigna Corp., Cigna Health and Life Insurance Co., Connecticut General Life Insurance Co., and Cigna Healthcare of Texas, Inc. (collectively, Cigna) in the Eastern District of Texas, alleging that Cigna's Consumer-Driven Health Plan debit cards infringed independent claim 32 and dependent claim 33 of the '608 patent. Before holding a *Markman* claim construction hearing, the trial court issued suggested preliminary constructions for disputed claims to facilitate discussion between the parties. AlexSam requested that the trial court adopt the same construction for the term "unmodified" in claim 32 that was used in a virtually identical claim from a case 15 years prior. *See AlexSam, Inc. v. Datastream Card Servs. Ltd.*, No. 2:03–CV–337, 2005 WL 6220095, at *9 (E.D. Tex. June 10, 2005) (hereinafter, *Datastream*). Compare J.A. 80 (AlexSam proposing the *Datastream*

construction in this case), *with* J.A. 598 (AlexSam noting that since 2005, courts have used the *Datastream* construction at AlexSam’s request).

The trial court adopted the *Datastream* construction but added two commas to it at Cigna’s request for clarity. The final construction for “unmodified” in claim 32 reads: “a terminal, for making purchases, that is of the type in use as of July 10, 1997, and that has not been reprogrammed, customized, or otherwise altered with respect to its software or hardware for use in the card system.” J.A. 80.

After the close of discovery, Cigna filed a motion for summary judgment of non-infringement and AlexSam filed a motion for summary judgment of infringement. After a hearing on the motions, the magistrate judge overseeing the case issued a recommendation that the trial court grant Cigna’s motion for summary judgment of non-infringement, based on a proposed finding that AlexSam lacked sufficient evidence to establish Cigna’s infringement, and deny AlexSam’s summary-judgment motion. The trial court accepted the magistrate judge’s recommendation, granting Cigna’s motion and denying AlexSam’s motion. *Alexsam, Inc. v. Cigna Corp.*, No. 2:20-cv-81 (E.D. Tex. Mar. 16, 2022), ECF No. 248. This appeal followed. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

II

Our court reviews a claim construction based on intrinsic evidence *de novo* and reviews any findings of fact based on extrinsic evidence for clear error. *SpeedTrack, Inc. v. Amazon.com*, 998 F.3d 1373, 1378 (Fed. Cir. 2021). “We review summary judgment decisions under regional circuit precedent . . .” *Unwired Planet, LLC v. Apple Inc.*, 829 F.3d 1353, 1356 (Fed. Cir. 2016). The Fifth Circuit reviews the grant of summary judgment *de novo*. *Patel v. Tex. Tech Univ.*, 941 F.3d 743, 747 (Fed. Cir. 2019). “Summary judgment is appropriate when, drawing all justifiable inferences in the nonmovant’s favor, the movant shows that

there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Unwired Planet*, 829 F.3d at 1356; *see also* Fed. R. Civ. P. 56(a); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000).

III

AlexSam raises two issues on appeal: (1) whether the district court erred in applying the district court’s and parties’ agreed-upon claim construction for claim 32 of the ’608 patent and (2) whether AlexSam lacked sufficient evidence for a reasonable jury to find that Cigna infringed the ’608 patent. We address each in turn.

A

During the *Markman* proceedings previously discussed at Section I.B, *supra*, the district court construed the meaning of the term “unmodified existing standard point-of-sale [(POS)] device,” which is found in claim 32 (element b) of the ’608 patent. At that time, AlexSam had proposed the construction. J.A. 598. Now, AlexSam argues that while claim 32 was construed correctly, the district court erred by ignoring the end of the construction, which states “for use in the card system.” We disagree.

AlexSam has advocated for over fifteen years for the same claim construction contained in claim 32 of the ’608 patent. *See, e.g., Datastream*, 2005 WL 6220095, at *9; *AlexSam, Inc. v. Humana, Inc.*, No. 2:07-cv-288, 2009 WL 2843333, at *4 (E.D. Tex. Aug. 28, 2009). For the first time, on summary judgment in this case, AlexSam argues for a broader construction of claim 32. AlexSam asserts that “for use in the card system” means that “a closed system that required single-function dedicated hardware to be installed in each retail location” would not result in infringement of the ’608 patent. J.A. 960. Conversely, a “general use POS that applied a BIN (or encrypted BIN) to access a processing hub over an existing banking network would

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