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

BARTEX RESEARCH, LLC	§	
	§	
v.	§	**CIVIL ACTION NO. 6:07-CV-385**
	§	
FEDEX CORP., et al.	§	

ORDER ADOPTING CLAIM CONSTRUCTION OPINION OF MAGISTRATE JUDGE

The above entitled and numbered civil action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. The Memorandum Opinion and Order of the Magistrate Judge (the "Opinion"), which contains his construction of disputed terms in U.S. Patent No. 6,666,377 ("the '377 patent") (Doc. No. 124), has been presented for consideration. Plaintiff BarTex Research LLC ("Plaintiff") objects to the Magistrate Judge's claim construction and moves for reconsideration (Doc. No. 148). Defendants FedEx Corporation, FedEx Express Corporation, FedEx Ground Package System, Inc. and FedEx Kinko's Office and Print Services n/k/a FedEx Office and Print Services, Inc. ("Defendants") oppose Plaintiff's motion (Doc. No. 151).

For the following reasons, the Court is of the opinion that the Magistrate Judge's construction of the disputed terms is correct. The Court hereby **ADOPTS** the Opinion of the United States Magistrate Judge as the opinion of this Court. Plaintiff's objections are overruled and its motion for reconsideration is **DENIED**.

DISCUSSION

The Opinion construed the terms "scanning process," "second," "abbreviated," and "personal identification information." Plaintiff objects to the construction of each term.

I. Scanning Process

Plaintiff contends the Magistrate Judge ignored the plain language of the claim and the differences between independent claims. PL.'S MOT. at 3. The term "scanning process" appears in independent claims 1 and 10, but not in independent claim 17. Claims 1 recites "a first bar code portion, which represents a first format bar code, and would be found as valid when scanned by a first bar code scanning process to provide first information." Claim 10 recites "a first part which is interpreted by a first bar code scanning process to obtain first abbreviated information." Claim 17, on the other hand, recites "a first part having first information encoded therein in a first bar code format." Plaintiff argues the Magistrate Judge imported the "encoded" limitation of claim 17 into claims 1 and 10 by failing to limit "scanning process" such that it required a database link or call. PL.'S MOT. at 5.

Although the term "scanning process" does not appear outside of the claims, Plaintiff identifies portions of the written description that discuss scanning a bar code. For example, the written description discloses using cameras, personal digital assistants, bar code scanners, and camera add-on units "to input and decode these bar codes." '377 Patent 2:3-14. In one embodiment, personal identifying information, such as a photograph, can be encoded in a bar code on a credit card. *Id.* 2:66-3:8. Figure 3 depicts the process of converting the bits representing such a photograph into a base 41 number, chosen for the disclosed embodiment because the exemplary type 39 bar code format provides the possibility of 41 different values for each digit. *Id.* 3:40-50. After conversion to base 41, the bits representing the photograph are encoded as a type 39 bar code, encrypted, and finally stored on the credit card. *Id.* 3:50-55. This bar code can be read (or scanned), reconverted into the original base 41 number, and used to drive a display device, i.e., to show the photograph on

a screen. *Id.* 57-58. In this embodiment, the scanning process obtains information directly from the bar code.

The written description continues, disclosing an alternative to the previously described embodiment. *Id.* 3:63-4:8. The alternative is not different because it involves a scanning process and the previous embodiment did not. The alternative is different because the information stored in the bar code cannot be directly used to drive a display device. *Id.* 3:63-64 ("the information can represent a pointer to a database"). In this alternative, the scanning process obtains a pointer to a database. *Id.* The database pointer is then used to obtain the image of a person. *Id.* 4:4-8.

Plaintiff emphasizes the use of the term "scanned" when disclosing the obtainment of a command and address for retrieving the photograph. PL.'S MOT. at 3-4 ("In discussing this particular example, the patentee thus specifically referred to scanning the bar code to retrieve this particular pointer, and accessing the database to return the image of a person"). As used in the patent, the word "scan" does not possess special meaning requiring a link or call to a database. Although the word "read" is used to describe the first discussed embodiment where bits representing a photograph are directly obtained from the bar code, *id.* 3:57-58, this is insufficient to create a distinction between a "reading process "and a "scanning process" such that one requires a link or call to a database and the other does not. Indeed, the patent uses the terms "read" and "scan" interchangeably. In the next disclosed embodiment, a cellular telephone or PDA is used to "read[] the bar code and decode[] it as noted above." *Id.* 4:24-27. In this embodiment, where the bar code is "read," the information can be obtained directly from the bar code, *id.* 4:27-34, or "the information can represent a pointer to a database, e.g. a publicly available database. This database can later be accessed as part of an information transfer." *Id.* 4:34-37. This language is identical to the language prefacing the earlier

embodiment where a photograph was obtained from a database. *Compare id.* 4:34-37 *with id.* 3:63-65. Thus, the appearance of the word "scan" at 4:5 or at 4:51 does not impart the word with a special meaning requiring a link or call to a database.

The Court now turns to Plaintiff's assertion that the Magistrate Judge's construction imports the "encoded" limitation of claim 17 into claims 1 and 10. A bar code is necessarily encoded. *See id.* 1:58-59 (a bar code is "a symbolical code"). This is confirmed by claims 5 and 6, which depend from claim 1, and claim 14, which depends from claim 10. Each of these dependent claims identifies specific forms of bar code encoding *See, e.g.*, *id.* 8:19-21 ("A bar code as in claim 1 wherein said second bar code portion includes information which is encoded in two separate directions"). Claims 3 and 12, which depend from 1 and 10 respectively, recite a "scanning process which is used to decode" the bar codes of claims 1 and 10. If these bar codes are decoded, then it necessarily follows that they are initially encoded. Clearly, the bar codes of claims 1 and 10 are encoded no matter how "scanning process" is construed.

Plaintiff also argues the construction makes claims 1 and 10 duplicative of claims 17 and 10. PL.'S MOT. at 5. The principle of claim differentiation creates a "presumption that each claim in a patent has different scope," *Curtiss-Wright Flow Control Co. v. Velan, Inc.*, 438 F.3d 1374, 1380 (Fed. Cir. 2006). However, "claim drafters can also use different terms to define the exact same subject matter. Indeed this court has acknowledged that two claims with different terminology can define the exact same subject matter." *Id.* (citations omitted). Nevertheless, the Magistrate Judge's construction did not make claims 1, 10, and 17 coextensive. For example, claim 1 requires an association between the first and second bar code formats, but claim 17 does not. *Compare* '377 Patent 7:65-66 *with* '377 Patent 9:8-9 (claim 17 merely requires the second format is different than

said first format). Similarly, claim 10 is silent with respect to bar code formats, whereas claim 17 imposes requirements on each bar code part. *Compare id.* 8:38-46 *with id.* 9:3-10.

Finally, Plaintiff relies on a purported association between the scanning process and Figure 7A. Figure 7A is a "special new bar code[]." '377 Patent 5:48. The bar code in Figure 7A includes a first part that is found as legal when scanned for linear codes, and a second part that is found as invalid or illegal when scanned for linear codes. *Id.* 5:56:62. In the disclosed embodiment, some amount of information can be obtained from the first part. *Id.* 5:63-6:5. "Enhanced bar code information can be obtained from the additional portion. This enhanced can be additional information, or it can be the same information as in the first bar code portion, as well as additional information." *Id.* 6:32-35. The specification explains, "[i]n the context of this [Figure 7A] system, the linear bar code information ***can*** represent an address for look up of the type described above with reference to FIG. 4." *Id.* 6:36-38 (emphasis added). Relying on this passage, Plaintiff argues "calling or linking to a database is not an alternative with respect to [the embodiment of Figure 7A.]" PL.'S MOT. at 5. Plaintiff continues "Figure 7A necessarily requires a link or call to a database." *Id.* Clearly, it does not. Figure 7A **can** be used in a process that includes a link or call to a database, but it does not require a link or call.

II. Second

Plaintiff objects to the Magistrate Judge's construction of the term "second" because it did not incorporate an independent positioning and/or placement limitation. PL.'S MOT. at 6. Plaintiff argues one skilled in the art would understand bar code portions must be independently placed because the patent discloses independent scanning of each portion. *Id.* 6-8. Plaintiff offers the written description of Figure 7 and statements made during prosecution to bolster its claim. *Id.*

During prosecution, the patentee attempted to distinguish the claimed invention from the Williams reference. PL.'S MOT. EX. B2 at B000120. The patentee explained "the present system defines two different bar codes in two different formats . . . . This system enables the user to scan either of the two bar codes and still obtain a complete version of the information that is encoded in the bar code." The Williams reference, on the other hand, taught the use of a "second bar code includ[ing] only the additional information that is supplemental to the information in the first bar code." *Id.* at B000121. To obtain all of the encoded information, a user must scan both bar codes. *Id.* In the claimed invention, the second bar code contains not only supplemental information, but also all of the information encoded on the first bar code—thereby enabling a user to scan only the second bar code to obtain all the information. *Id.* From this explanation of the invention, Plaintiff concludes "[e]ither bar code part or portion may be scanned. There is no need for both bar code parts or portions to be scanned; one or the other may be independently scanned." PL.'S MOT. at 7. The Court does not disagree—the invention clearly contemplates independently scanning bar code portions—but these statements do not implicate *placement*.

Plaintiff similarly confuses independent scanning with independent placement when explaining Figure 7A. Figure 7A depicts a first bar code part 700 and a second bar code part 710. The written description explains "[t]he enhanced or non-linear information 710 can represent the total information. A person with a sufficiently advanced bar code scanner can read the entire information. A person with only a linear bar code scanner, however, may scan only the information 700." '377 Patent 6:38-43. Once again, these statements teach independently scanning the bar code portions but they do not teach independently placing the bar codes. None of the intrinsic evidence requires independent placement of the bar codes parts.

III. First Abbreviated Information

Plaintiff contends the Magistrate Judge's construction of "first abbreviated information" is not supported by the context of the claim and the specification. PL'S. MOT at 9. Plaintiff's objection to the construction of this term is related to its objection to the Magistrate Judge's construction of "scanning process" which did not incorporate linking or calling to a database. *Id.* Plaintiff's proposed construction was "one or more characters that represent some larger piece of information that can be linked or called to a database, and that database, using the character(s), can decipher or determine the larger piece of information represented." *Id.* Once again, Plaintiff relies on a portion of the written description disclosing the use of a database to obtain the image of a person. As explained above, *supra* Part I, the patent describes an embodiment where the data necessary for displaying the image of a person is encoded directly in a bar code. '377 3:41-62. The patent also describes an alternative embodiment where a command and database address are encoded in the bar code. *Id.* 3:63-4:8. In this embodiment, the command and address are used to access a database which provides the image of a person. *Id.* Plaintiff characterizes this command and address as an "abbreviation" of the image stored in the database. PL.'S MOT. at 9-11. The ordinary meaning of the term does not support such a characterization. Moreover, the claim language itself refutes Plaintiff's interpretation.

Plaintiff articulates the ordinary meaning of the term as "to make briefer; *esp* : to reduce to a shorter form intended to stand for the whole." *Id.* at 9. Plaintiff's interpretation of a command and address as an abbreviation of an image is inconsistent with this ordinary meaning. In the exemplary embodiment, an image of a person is stored in a database. Such an image would consist of a series of bits that when interpreted by a computer could be displayed on a monitor or other device as an

image. In the ordinary meaning of the term, an abbreviation of this image data would consist of a subset of these bits. The command and address, on the other hand, are not a shorter form of the original image. The bits comprising a command would depend on the database system's specification and the bits comprising the address would refer to a location in the database systems's memory. If the identical image was stored in a different address, the address would arbitrarily change. If the image was deleted from the database system, the address would remain the same but the image itself would be inaccessible at that address. Thus, the command and address values have no direct relationship to the image of a person; they are not abbreviations of the image.

The term "abbreviated" appears only in independent claim 10. Claim 10 recites "a first part which is interpreted by a first bar code scanning process to obtain first abbreviated information, and a second part which is interpreted by a second bar code scanning process to obtain second information, which has more information than said first information, wherein said additional information includes the same information as said first information, and also includes additional information." '366 Patent 8:38-46. The context of the claim establishes a relationship between first information and second information. The first information is a truncated form of the second information. The second information includes all of the first information and also includes additional information. Said another way, the first information is an abbreviation of the second information. The first information is not an abbreviation of whatever is stored in a database.

IV. Personal Identification Information

The Magistrate Judge determined no construction was necessary for this term, but explained "Personal Identification Information" consists of information used to identify people. Plaintiff alleges this explanation essentially adopted the Defendants' proposal. PL.'S MOT. at 11. Plaintiff

objects to the Magistrate Judge's construction and reiterates its proposed construction, "information which may be used to personally identify a user." *Id.* at 11-12. Plaintiff contends such a construction does not preclude Personal Identification Information from identifying corporations or other non-persons.

When describing personal identification information, the written description discloses identifying information such as "a picture of the user's face, fingerprint information, dynamic information about the user's signature, i.e. the way that the user actually makes the signature." '377 3:13-17. Although the word "user" is employed, every example of identifying information can only be used to identify a person. Although claims are not limited to examples described in the specification, *see Phillips*, 415 F.3d at 1323, these examples, coupled with the adjective "personal," would compel one of ordinary skill in the art to conclude "personal identification information" excludes corporations and other non-persons. *See Phillips*, 415 F.3d at 1312-13.

CONCLUSION

For the foregoing reasons, the Court finds Plaintiff's objections meritless. The Court is of the opinion that the Magistrate Judge's construction of the disputed terms is correct. The Court hereby **ADOPTS** the Opinion of the United States Magistrate Judge as the opinion of this Court. Plaintiff's objections are overruled and its motion for reconsideration is **DENIED**.

So ORDERED and SIGNED this 9th day of February, 2010.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE