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DATCARD SYSTEMS, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

DATCARD SYSTEMS, INC., a California corporation,

Plaintiff,

v.

PACSGEAR, INC., a California corporation,

Defendant.

AND RELATED COUNTERCLAIM

Civil Action No.
SACV10-1288 MRP (VBKx)

NOTICE OF APPEAL OF PLAINTIFF DATCARD SYSTEMS, INC. TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT

The Honorable Mariana R. Pfaelzer

NOTICE IS HEREBY GIVEN that Plaintiff DatCard Systems, Inc. ("DatCard") in the above named case hereby appeals to the **United States Court of Appeals for the Federal Circuit** from the final judgment entered by the United States District Court for the Central District of California on June 7, 2013 (Docket No. 168, attached hereto as Exhibit A), the March 12, 2013 Order Re Pacsgear Inc.'s Motion for Summary Judgment of Invalidity and Noninfringement of the "Timeout" Patent (Docket No. 160, attached hereto as Exhibit B), the April 1, 2013 Order Re DatCard Inc.'s Motion for Summary Judgment of Infringement of U.S. Patents 7,783,174 and 7,734,157 (Docket No. 163, attached hereto as Exhibit C), the April 1, 2013 Order Re Pacsgear's Motion for Summary Judgment of Invalidity of "Search/Burn" and "HIPAA" Patents (Docket No. 164, attached hereto as Exhibit D), the April 1, 2013 Order Granting Pacsgear Inc.'s Motion for Summary Judgment of Non-Infringement of the "Search/Burn" Patents (Docket No. 165, attached hereto as Exhibit E), and the October 26, 2012 Claim Construction Order (Docket No. 145, attached hereto as Exhibit F).

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 10, 2013

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EXHIBIT A

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PACSGEAR, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

DATCARD SYSTEMS, INC., a California corporation,

Plaintiff,

v.

PACSGEAR, INC., a California corporation,

Defendant.

AND RELATED COUNTERCLAIM

Civil Action No.
SACV10-1288 MRP(VBKx)

FINAL JUDGMENT UNDER RULE 54(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE

The Honorable Mariana R. Pfaelzer

Plaintiff DatCard Systems, Inc. brought the present action against Defendant Pacsgear, Inc. alleging infringement of five patents: U.S. Patent Nos. 7,302,164 ("the '164 Patent"), 7,729,597 ("the '597 Patent"), 7,783,174 ("the '174 Patent"), 7,734,157 ("the '157 Patent"), and 7,801,422 ("the '422 Patent"). Pacsgear filed counterclaims seeking a declaration that each of the patents is not infringed, is invalid, and is unenforceable due to inequitable conduct.

On March 12, 2013, this Court granted Pacsgear summary judgment of invalidity of the '422 Patent. On April 1, 2013, this Court granted Pacsgear summary judgment of non-infringement of the '164 Patent, the '597 Patent, and the '174 Patent. Also on April 1, 2013, this Court granted Pacsgear summary judgment of invalidity of the '157 Patent. Through these rulings, the Court has determined that Pacsgear has no liability under any of the five patents in suit.

The only remaining undecided claims are (1) Pacsgear's counterclaim for a declaration of invalidity of the '164 Patent, '597 Patent, and '174 Patent, and (2) Pacsgear's counterclaim for a declaration of unenforceability of all five patents in suit due to inequitable conduct.

DatCard has informed the Court that it plans to appeal at least some of this Court's summary judgment rulings. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court expressly finds that there is no just reason for delay of DatCard's appeal of the summary judgment rulings.

Accordingly, **FINAL JUDGMENT IS HEREBY ENTERED UNDER FED. R. CIV. P. 54(b) AS FOLLOWS**:

1. Judgment is entered in favor of Pacsgear on DatCard's claim of infringement of the '164 Patent, based upon this Court's finding on summary judgment that Pacsgear has not infringed the '164 Patent;

2. Judgment is entered in favor of Pacsgear on DatCard's claim of infringement of the '597 Patent, based upon this Court's finding on summary judgment that Pacsgear has not infringed the '597 Patent;

3. Judgment is entered in favor of Pacsgear on DatCard's claim of infringement of the '174 Patent, based upon this Court's finding on summary judgment that Pacsgear has not infringed the '174 Patent;

4. Judgment is entered in favor of Pacsgear on DatCard's claim of infringement of the '157 Patent, based upon this Court's finding on summary judgment that the asserted claims of the '157 Patent are invalid under 35 U.S.C. § 103;

5. Judgment is entered in favor of Pacsgear on DatCard's claim of infringement of the '422 Patent, based upon this Court's finding on summary judgment that the asserted claims of the '422 Patent are invalid under 35 U.S.C. § 103;

6. Judgment is entered in favor of Pacsgear on Pacsgear's counterclaim for a declaration of non-infringement of the '164 Patent, based upon this Court's finding on summary judgment that Pacsgear has not infringed the '164 Patent;

7. Judgment is entered in favor of Pacsgear on Pacsgear's counterclaim for a declaration of non-infringement of the '597 Patent, based upon this Court's finding on summary judgment that Pacsgear has not infringed the '597 Patent;

8. Judgment is entered in favor of Pacsgear on Pacsgear's counterclaim for a declaration of non-infringement of the '174 Patent, based upon this Court's finding on summary judgment that Pacsgear has not infringed the '174 Patent;

9. Judgment is entered in favor of Pacsgear on Pacsgear's counterclaim for a declaration of invalidity of the '157 Patent, based upon this Court's finding on summary judgment that the asserted claims of the '157 Patent are invalid under 35 U.S.C. § 103; and

/ / /

10. Judgment is entered in favor of Pacsgear on Pacsgear's counterclaim for a declaration of invalidity of the '422 Patent, based upon this Court's finding on summary judgment that the asserted claims of the '422 Patent are invalid under 35 U.S.C. § 103.

11. As discussed above, there are two remaining undecided claims: (1) PacsGear's counterclaim for a declaration of invalidity of the '164 Patent, '597 Patent, and '174 Patent, and (2) Pacsgear's counterclaim for a declaration of unenforceability of all five patents in suit due to inequitable conduct.

12. DatCard has stated that it plans to appeal some of this Court's summary judgment rulings. The parties agree to stay the proceedings on the above remaining counterclaims until after DatCard's appeal of the summary judgment ruling is decided. The Court concurs and hereby stays the proceedings on the two remaining claims identified above, pending appeal. Any motions for attorneys' fees are also stayed and need not be filed, pending appeal.

13. PacsGear, as prevailing party, is entitled to recover its costs, pursuant to Rule 54(d), in an amount to be determined.

Mariana R. Pfaelzer

DATED: June 6, 2013

Hon. Mariana R. Pfaelzer
United States District Judge

15464482

EXHIBIT B

Link: 71

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DATCARD SYSTEMS, INC., a California corporation,

Plaintiff,

v.

PACSGEAR, INC., a California corporation,

Defendant.

Case No. 8:10-cv-01288-MRP-VBK

Order Re Pacsgear Inc.'s Motion for Summary Judgment of Invalidity and Noninfringement of the "Timeout" Patent

I. Introduction

DatCard Systems, Inc. ("DatCard") has sued Pacsgear, Inc. ("Pacsgear") for infringement of U.S. Patent No. 7,801,422 (filed Jun. 5, 2009), entitled "System and Method for Producing Medical Image Data onto Portable Digital Recording Media." Pacsgear has moved for summary judgment for invalidity and noninfringement. The Court determines that the '422 patent claims are obvious in light of the prior art. But a genuine issue of material fact remains regarding

noninfringement. Consequently, Pacsgear's motion for summary judgment is granted as to invalidity but denied as to noninfringement.

II. Technical Background

The medical imaging industry historically used film for the storage, transmission, and retrieval of medical images. Eventually, digital images replaced film. Medical images are now stored in a special digital format called DICOM on servers known as PACS. Figure 1 illustrates an image production system comprising an application server (110) and portable production stations (the 300 series).

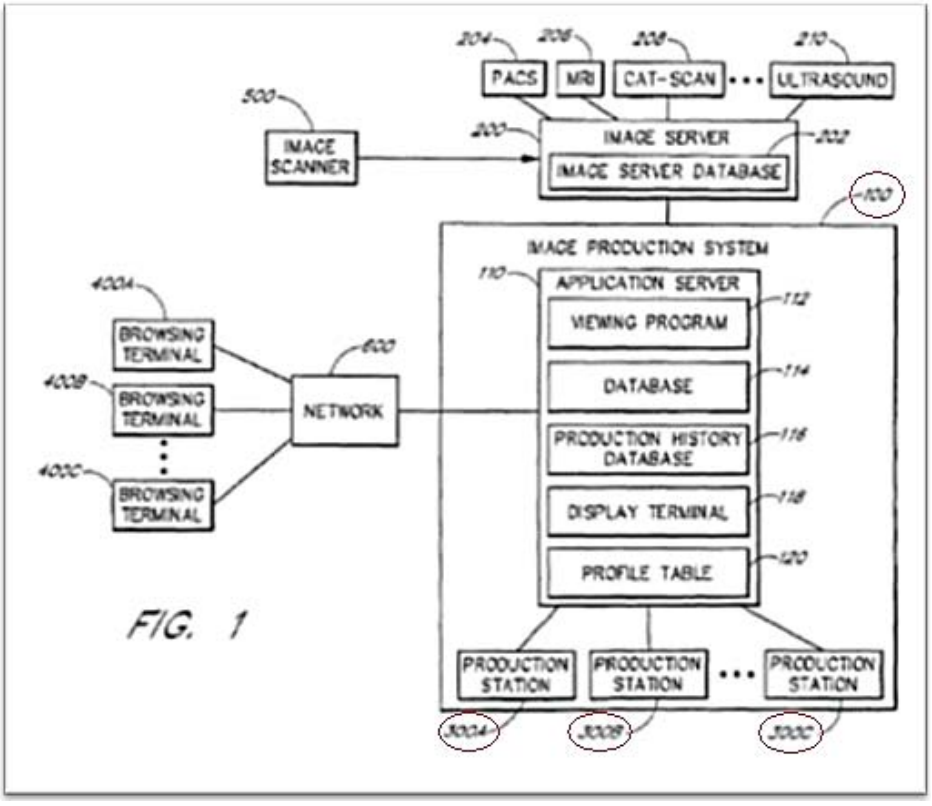


FIG. 1

DICOM images can be distributed using the internet. But the internet implicates privacy and security interests. Also, transmitting voluminous medical image data strains bandwidth limitations. Portable digital recording medium such as compact discs ("CDs") present a useful alternative. Transmitting MRI images from an MRI machine to a CD requires *burning* data on the CD. For some types of CDs, data can only be burned once. So it is important to verify that *all* of the desired image data has successfully transmitted to the CD before initiating the burning process.

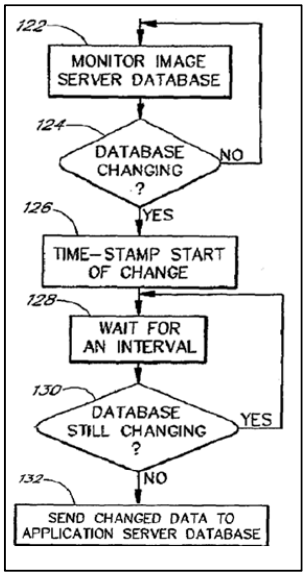
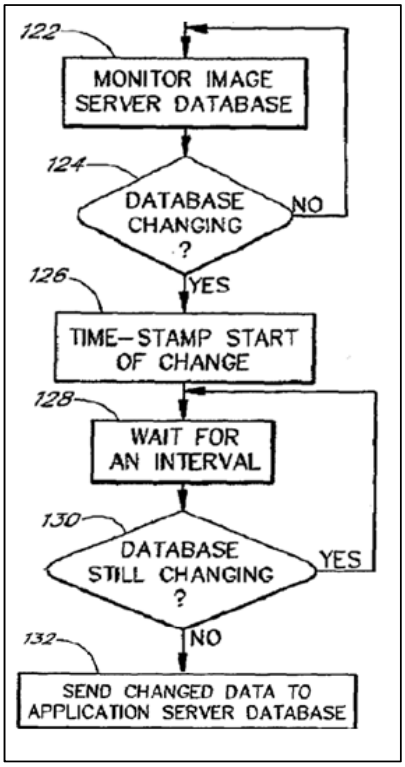


Figure 3 of the '422 patent specification depicts a flowchart for this verification process. Steps 122 and 124 involve monitoring the image server database. If the database is ***not*** changing (124, No), the system loops back to step 122 and continues to monitor the image server database for changes. By contrast, if the database ***is*** changing (124, Yes), the system notes the time-stamp (126), then waits for an interval (128) before checking whether the database is still changing (130). If the database ***is*** still changing (130, Yes), the system enters another loop including the steps of: (1) waiting for an interval (128); and (2) checking to see if the database is still changing (130). The system exits this loop only when the database is no longer changing (130, No).

When the database stops changing (130, No), the system sends the changed data to the application server database (132).

The changed data corresponds to "the data changed since the time-stamped moment." '422 at 5:37-38. Ultimately, the application server sends a copy of the changed data to production stations which, in turn, burn the data on CDs. Because the CDs also contain viewing software, they can be used on any computer which meets the software requirements.

Claim 1 tracks the above flowchart. It recites:



> A method of automatically producing medical image data and related data on an optical storage medium upon expiration of a timeout period, the method comprising:
>
> > Detecting **(130)** whether a server has changed within a timeout period **(128)** after receiving **(124, Yes)** medical image data or related data from a modality and resetting the timeout period when the change is detected **(130, Yes)**; and
> >
> > automatically producing an optical storage medium comprising selected medical image data and related data from the server based on when the timeout period has expired and recording on the optical storage medium program code that, when executed, allows viewing of the selected medical image data, wherein the medical image data is formatted in a standard medical imaging format used by a computer configured for viewing the medical image data.

'422 at 9:16-31. The "automatically producing" step (138 in Fig. 3) is not depicted in the portion of Fig. 3 extracted above.

Claim 8 is the system analog to Claim 1 (method claim). The rest of the asserted claims depend on either Claim 1 or 8. They include Claim 2 (producing a label), Claim 3 (automatically producing a labeled CD), Claim 6 (a configurable timeout period), Claim 9 (label), Claim 10 (labeled CD), Claim 13 (configurable timeout period). *See* Mot. at 9.

III. Legal Principles

A. Summary Judgment

The Court shall grant summary judgment if: (1) the movant shows that there is no genuine dispute as to any material fact; and (2) the movant is entitled to judgment as a matter of law. FED.R.CIV.P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The Court must: (1) identify material facts by reference to the governing substantive law, Anderson, 477 U.S. at 248; (2) disregard irrelevant or unnecessary factual disputes, id.; and (3) view facts and draw reasonable inferences in favor of the nonmoving party, *Scott v. Harris*, 550 U.S. 372 (2007).

B. Obviousness

A patent claim is obvious when the differences between the prior art "are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art . . . .” 35 U.S.C. § 103. The ultimate determination of whether an invention would have been obvious at the time the invention was made is a legal conclusion based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations of nonobviousness. *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 406 (2007) (citing *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17-18 (1966)). The presence or absence of a motivation to combine references in an obviousness determination is also a pure question of fact. *In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000).

“[A] district court can properly grant, as a matter of law, a motion for summary judgment on patent invalidity when the factual inquiries into obviousness present no genuine issue of material facts.” *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 716 (Fed. Cir. 1991).

C. Noninfringement

Infringement, either literal or under the doctrine of equivalents, is a question of fact. *Crown Packaging Tech., Inc. v. Rexam Beverage Can Co.*, 559 F.3d 1308, 1312 (Fed. Cir. 2009). “It is . . . well settled that each element of a claim is material and essential, and that in order for a court to find infringement, the plaintiff must show the presence of every element or its substantial equivalent in

the accused device." *Lemelson v. United States*, 752 F.2d 1538, 1551 (Fed. Cir. 1985). "There can be no infringement as a matter of law if a claim limitation is totally missing from the accused device." *London v. Carson Pirie Scott & Co.*, 946 F.2d 1534, 1539 (Fed. Cir. 1991).

To find infringement under the doctrine of equivalents, any differences between the claimed invention and the accused product must be insubstantial. *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 608 (1950). One way of proving infringement under the doctrine of equivalents is to show, for each claim limitation, that the accused product "performs substantially the same function in substantially the same way with substantially the same result as each claim limitation of the patented product." *Crown Packaging Tech., Inc. v. Rexam Beverage Can Co.*, 559 F.3d 1308, 1312 (Fed. Cir. 2009). This too is a question of fact. *Id.*; *Anchor Wall Sys., Inc. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 1313 (Fed. Cir. 2003).

To prevail on a summary judgment motion of noninfringement, the defendant must establish that after resolving reasonable factual inferences in favor of the patentee, no reasonable jury could find infringement. *See IMS Tech., Inc. v. Haas Automation, Inc.*, 206 F.3d 1422, 1429 (Fed. Cir. 2000).

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IV. Discussion

The Court finds that the asserted claims in the '422 patent are invalid as obvious under 35 U.S.C. § 103. But genuine issues of material fact exist as to whether "MediaWriter," the accused product, infringes the asserted claims. Consequently, the Court grants Pacsgear's motion for summary judgment of invalidity but not noninfringement.

A. The '422 patent claims are obvious under 35 U.S.C. § 103 in light of the Samari-Kermani reference

The *Graham* factors relevant to the obviousness inquiry include: (a) the scope and content of the prior art; (b) the differences between the prior art and the claims at issue; (c) the level of ordinary skill in the pertinent art; and (d) secondary considerations of non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

U.S. Patent Application Pub. No. US 2002/0085476 A1 (filed Jan. 3, 2001), entitled "Medical Data Recording System." ("Samari-Kermani") qualifies as a prior art reference with respect to the '422 patent. During prosecution, the '422 patentee (then applicant) cited the Samari-Kermani reference in an accelerated examination support document ("AESD"). Ex. D. "[A] statement by an applicant, whether in the application or in other papers submitted during prosecution, that certain matter is 'prior art' to him, is an admission that that matter is prior art for all purposes . . . ." *Application of Nomiya*, 509 F.2d 566, 571 n.5 (C.C.P.A. 1975);

see also Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1570 Fed. Cir. 1988 ("A statement in a patent that something is in the prior art is binding on the applicant and patentee for determinations of . . . obviousness.").

Claim 1 is a method claim with two steps: (1) "detecting whether a server has changed within a timeout period . . . [and] . . . resetting the timeout period when the change is detected . . . ;" and (2) "automatically producing an optical storage medium . . . ." In the AESD, as shown below, the patentee stated that Samari-Kermani disclosed step two. This statement is binding on the patentee for the obviousness determination.

Identification of Claim Limitations Disclosed by References

Samari-Kermani

Claim 1	
A method of automatically producing medical image data and related data on an optical storage medium upon expiration of a timeout period, the system comprising:	
detecting whether a server has changed within a timeout period after receiving medical image data or related data from a modality and resetting the timeout period when the change is detected; and	**Not disclosed.**
automatically producing an optical storage medium comprising selected medical image data and related data from the server based on when the timeout period has expired and recording on the optical storage medium program code that, when executed, allows viewing of the selected medical image data.	Samari-Kermani at [57], ¶¶ 36, 39, 43–53, & 57.

The second claim step, as highlighted above, is "based on when [a] timeout period has expired." To examine the extent to which it would have been obvious for an artisan armed with the Samari-Kermani reference to perform the first step, it

is worth investigating Samari-Kermani's disclosure of timers for accomplishing medical image transmission and delivery.[1]

Timer 1: Samari-Kermani ¶36, Fig. 3

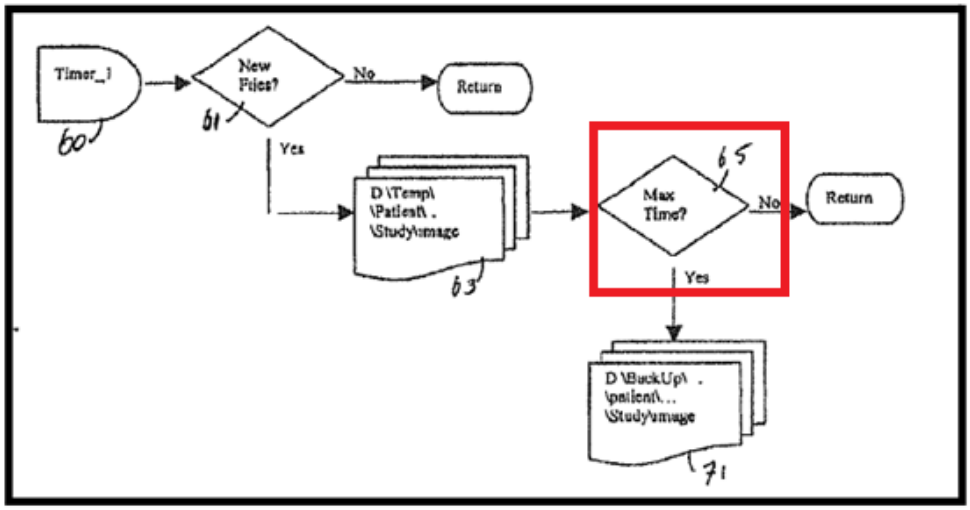

Fig 3

Timer 1 in Samari-Kermani (60 above) is a configurable timer with a default value of 1 (one) second. It checks for incoming new files. Upon receipt, it stores the new files in a temporary directory (illustrated as "D\Temp\" in 63 below). Then, once per second, it checks the temporary database for any changes in the previous thirty[2] seconds. If no new files have arrived in the previous thirty seconds, the file extension for the corresponding patient's timestamp file is changed from

[1] As DatCard's expert, Jack Goldberg, stated in his rebuttal report, "The Samari publication includes four timers that perform four functions: Timer_1 is used to check for incoming new files in an incoming directory, Timer_2 is used to move pending jobs in queue to be processed, Timer_3 is used to check the end of the job, and Timer_4 is used to start the backup process."

[2] . . . or "Max Time" . . .

"bsy" to "rdy."[3] *Id.* The presence of a ready (".rdy") file signifies that the corresponding subdirectory has not been modified in the previous thirty seconds and is now ready for backup storage. Consequently, upon detection of a ".rdy" file, the contents of the corresponding subdirectory are moved to the Backup Directory.

The Samari-Kermani reference thus discloses an invention involving *detecting whether subdirectories within a temporary folder have changed within a trailing time period*. By comparison, the Claim 1 and its dependent claims in the '422 patent require "*detecting whether a server has changed within a timeout period after receiving medical image data or related data from a modality*." These are very similar disclosures. The difference between monitoring the claimed "server" (as Claim 1 of the '422 patent requires) versus a "temporary folder" (as in Samari-Kermani) is not significant. Perhaps a medical image server (such as PACS) is a larger entity than a folder within a server. But the distinction, to the extent there is any for purposes of obviousness, is trivial. As such, Samari-Kermani discloses "detecting whether a server has changed within a timeout period after receiving . . . data . . . ."

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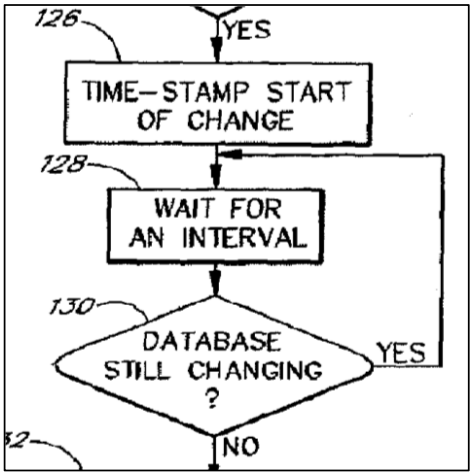
[3] Presumably, "bsy" and "rdy" stand for "busy" and "ready" respectively.

The Court next analyzes whether Timer 1 and Fig. 3 of the Samari-Kermani reference disclose or render obvious "*resetting* the timeout period when the change is detected" step. Preliminarily, the Court construes the term "resetting." In the '422 specification, "resetting" corresponds to the ***loop*** in Fig. 3 (shown below) which ***connects*** "Database Still Changing? Yes" ***back*** to "Wait for an Interval." In this context, resetting cannot mean interrupting a timeout period ***before or during*** the "wait for an interval" because "a claim interpretation that excludes a preferred embodiment from the scope of the claim is rarely, if ever, correct." *On-Line Techs., Inc. v. Bodenseewerk Perkin-Elmer GmbH*, 386 F.3d 1133, 1138 (Fed. Cir. 2004). Instead, in light of the specification, "resetting" refers to finishing the "wait for an interval," or timeout period, and restarting another "wait for an interval" step. This comports with the Court's claim construction finding that the time of detection is *after* the expiry of the timeout period. ECF No. 145 at 35.



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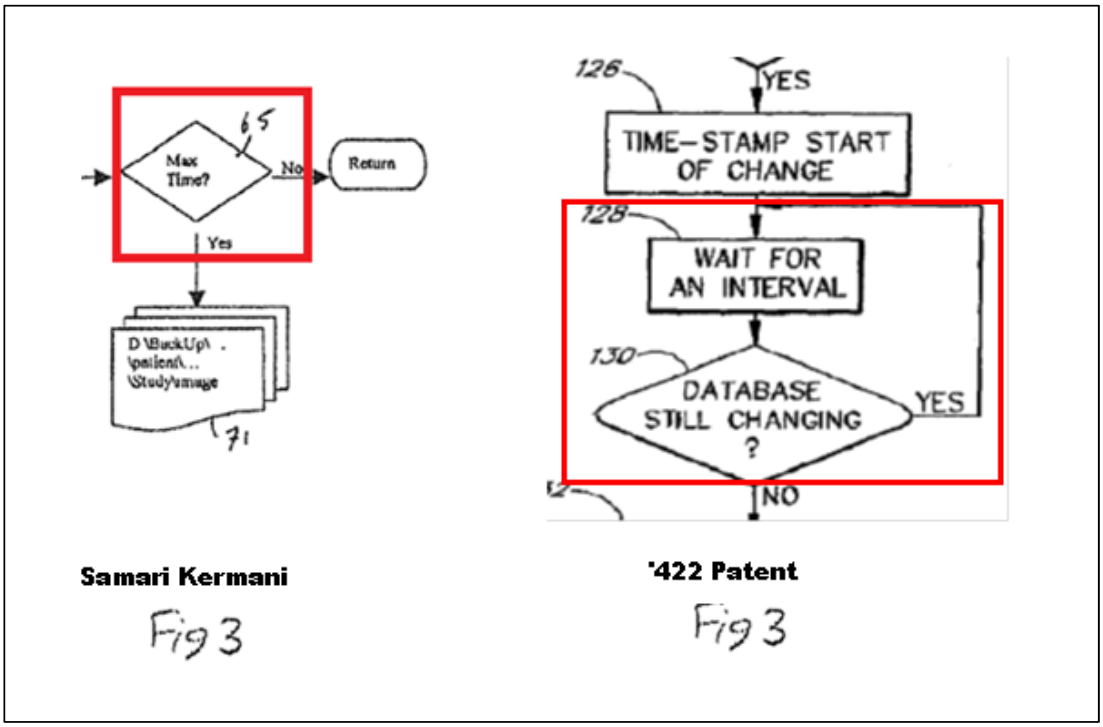
As depicted below, "Max Time? → No" in Samari-Kermani's Fig. 3 corresponds to "Database Still Changing? → Yes" in '422 Fig. 3. Instead of looping back and waiting for another interval, as in '422 Fig. 3, the process in "Max Time? No" simply culminates in "Return," effectively ending the sequence.



Samari Kermani

Fig 3

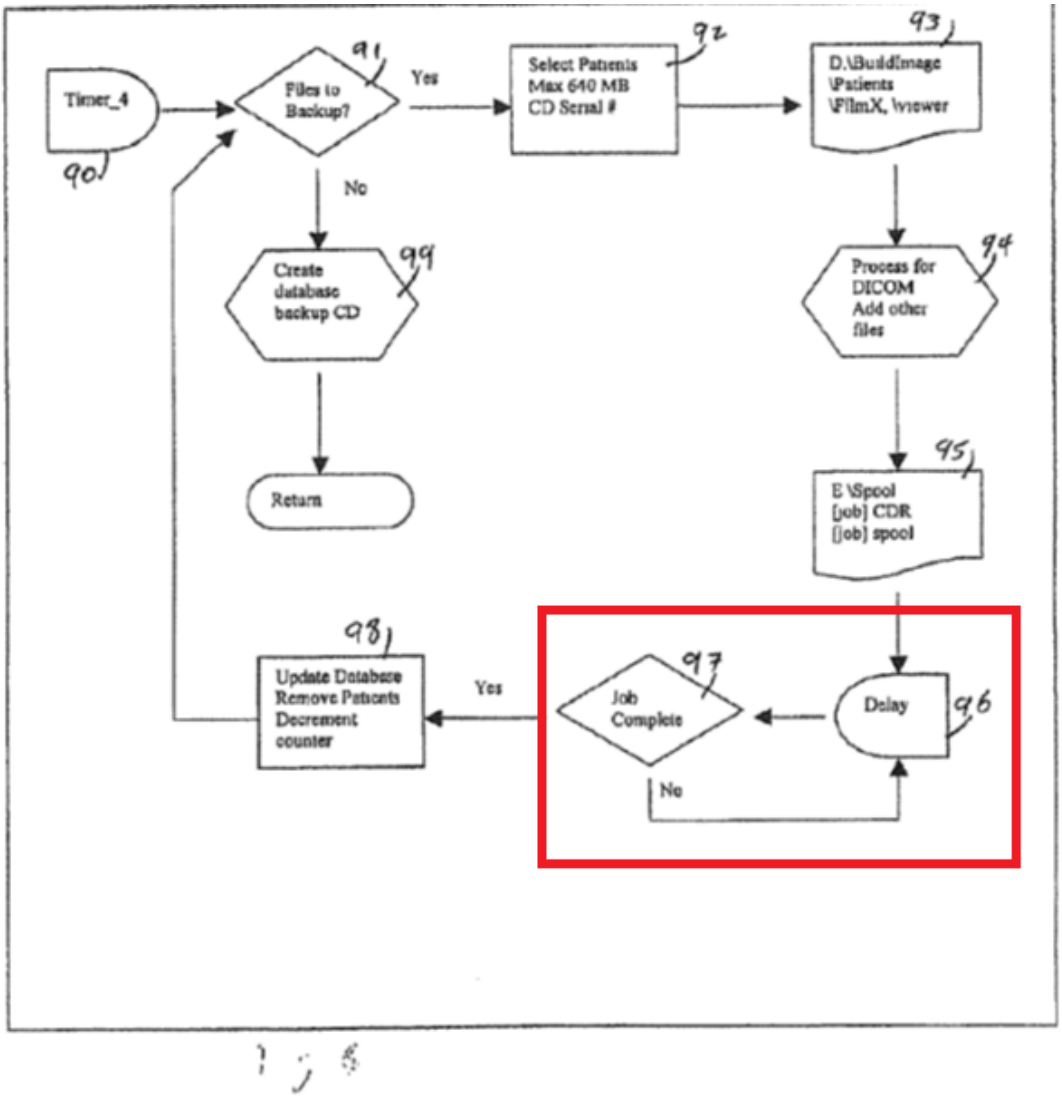
'422 Patent

Fig 3

The side-by-side schematics from the prior art reference (left) and the description of the claimed invention (right) illustrate the marginal nature of the differences between the two designs. Instead of checking once per second for changes spanning the trailing thirty seconds as in the Samari-Kermani reference (pictured on the left), the claimed invention (pictured on the right) checks for changes once every thirty seconds by employing a looped delay device. The use of a looped

delay device represents the only missing claim element in Samari-Kermani. As such, it does not render the '422 patent claims nonobvious. Indeed, Samari-Kermani itself discloses the use of a looped delay device to accomplish the different goal of backing up data in Timer 4 (reproduced below).

Timer 4: **Samari-Kermani, Fig. 6**



Delay loop 96 is highlighted in the Timer 4 schematic as shown in Fig. 6 of Samari-Kermani. Like an alarm clock, timer 4 is programmed to "go off" at a particular time on a particular day each week to execute the backup process. Samari-Kermani states, "[o]nce a backup job is created, the software then goes through a timed delay 96 waiting for the job to finish by checking for job complete 97." Samari-Kermani at ¶63. "Once done, the database is updated with the patient and study information of all the patients on that CD and the CD unique serial number in Update Database step 98. The process starts anew by checking to see if there are any more files to back up 91." *Id.* Delay timer 96 in Timer 4, unlike Timer 1, is not directed to checking for changes in a database. Nonetheless, it discloses, within the same prior art reference, the use of a looped delay, i.e., recursively waiting for an interval until the performance of a task, here the completion of a job. Armed with the Samari-Kermani reference's disclosure of looped delays in Timer 4, it is only a matter of changing the end goal to be performed from "detecting job completion" to "detecting changes in database" to arrive at the claimed invention. And Samari-Kermani already discloses a method of detecting changes in temporary subdirectories, although that method does not employ looped delays.

In the context of the '422 patent, the Court agrees with Pacsgear that the ordinarily skilled artisan is someone with a Bachelor's Degree in Electrical

Engineering or Computer Science or the equivalent derived from several years of work experience with programming, databases, and storage devices. *See* Mot. at 1. Such an artisan, armed with the Samari-Kermani application, would find that taking the delay timer 96 from the Backup Timer 4 and inserting it into the schematic for Timer 1 presents an obvious redesign. If anything, Fig. 6 is sufficient proof that an artisan could accomplish the goals of Timer 1 with a Delay timer on a loop because it accomplishes the identical goal albeit for the different purpose of determining job completion. As a technical matter, checking for job completion is not *more* amenable to techniques involving delayed loops than checking for database changes. Devising a looped delay is simply an alternate way of accomplishing the goal of monitoring for changes.

Dr. Goldberg testified on behalf of DatCard that basic computer timers neither taught nor suggested the claimed elements. Neither lack of teaching nor lack of suggestion is dispositive for the obviousness inquiry after *KSR*. 550 U.S. at 406. "An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Western Union Co. v. Moneygram Payment Sys., Inc.*, 626 F.3d 1361, 1369-70 (Fed. Cir. 2010). In the context of Claim 1 as a whole, it would have been obvious for an artisan armed with Samari-Kermani to implement

Timer 1 with a delay timer on a loop, given that Samari-Kermani disclosed a delay timer to achieve a trivially different goal of ensuring job completion (Timer 4) as opposed to monitoring subdirectory changes (Timer 1).

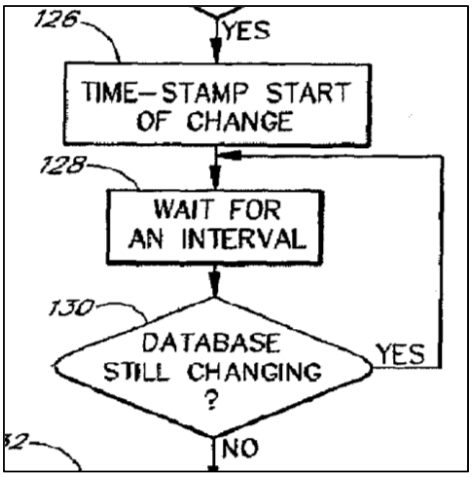
The Court next examines secondary considerations – an important safeguard against hindsight bias. DatCard's expert, Dr. Rowberg, attributes limited sales of its product by characterizing the medical profession as notoriously cautious in adopting new and unproven products. "Despite these obstacles, DatCard was still able to sell over a hundred units in a short period of time." Rowberg at 67. To show a nexus between DatCard's sales success and the '422 patent claims, Dr. Rowberg highlights the failure of Codonics – a product that lacked the ability to record a viewer on a removable medium – an ability recited in Claim 1. *Id.* The Court finds that these and the other cited secondary considerations (settlement with Codonics, evidence of copying, satisfaction of a long-felt need) are unpersuasive. The differences between Samari-Kermani's teachings on the one hand and Claim 1 of the '422 patent on the other are trivial. To the extent that any of the above considerations are attributable to the differences between Samari-Kermani and Claim 1 of the '422 patent, the nexus between such differences and the submitted secondary considerations is insignificant and fails to overcome the clear and convincing evidence of obviousness.

After analyzing the secondary considerations, the Court finds that Samarai-Kermani by itself presents clear and convincing evidence that Claim 1 of the '422 patent is obvious. The only other independent claim, i.e., Claim 8, recites two limitations not admitted as disclosed in the AESD: (1) "wherein the timer resets when the application server detects an additional change in the database before a timeout interval, measured from the timestamp, elapses;" and (2) "wherein the timer times out when the application server detects no additional change in the database after the timeout interval, measured from the timestamp, elapses." These claim limitations are simply system equivalents to the "resetting the timeout period when the change is detected" limitation of method claim 1. As such, claim 8 as a whole is obvious for the same reasons as claim 1. The '422 applicant admitted in the AESD that all other asserted dependent claim limitations were disclosed in Samari-Kermani. None of the dependent claims, taken as a whole, are non-obvious in light of the Samari-Kermani disclosures.

The Court has homed in on the difference between the '422 claims and the Samari-Kermani reference and finds that each asserted claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art. As such, the Court grants Pacsgear's summary judgment motion of invalidity under 35 U.S.C. § 103 as to all asserted claims.

B. The Court denies Pacsgear's summary judgment motion of noninfringement

Pacsgear argues that "[b]ecause the detection in the MediaWriter occurs after the timer expires and the maximum-time number is preset (e.g., 30) and cannot be reset, the MediaWriter does not infringe Claim 1 literally or under the doctrine of equivalents." Mot. at 12. This notion of "interrupt and restart" contradicts the Court's claim construction of "reset" as "finish and restart" as well as its construction that the time of detection is *after* expiry of the timeout period. Pacsgear's construction excludes Fig. 3 of the '422 patent (shown here) which performs the "Database Still Changing?" inquiry only ***after*** the expiry of the "Wait for an Interval" period. Thus, the fact that m_RxStudytimer (the timer in MediaWriter) *expires* before the subroutine is initiated is not dispositive.



As for Claim 8, Pacsgear argues that m_RxStudytimer is initiated when the MediaWriter application turns on. Claim 8 requires "an application server . . . configured to create a timestamp when the application server detects a change in the database, ***thereby initiating a timer***." As DatCard points out, Pacsgear's expert, Mr. Jestice, admitted at a deposition that he had not done anything to determine

that the timer was started when the MediaWriter was turned on. *See* Ian Jestice Deposition at 210:7-10 ("Q. Is there anything in the code that was provided to you that indicated where the local archive manager was instantiated? A. I haven't looked."). As such, there is a genuine issue of material fact about *when* the timer is initiated.

Finally, Pacsgear argues that its MediaWriter timer does not reset – instead it restarts automatically *regardless* of whether a change in the database is detected. "As the MediaWriter doesn't detect anything before the timer initiates the maximum-time/comparison subroutine, it can't detect any additional change in the database ***before*** the timeout interval . . . ." Mot. at 13. Again, the Court has construed "reset" to mean "finish and restart," not "pause and restart." Detection does not take place *before* the timeout period expires, i.e., "Wait for an Interval." As such, Pacsgear's noninfringement arguments do not merit summary judgment. Pacsgear argues that because "MediaWriter doesn't infringe the only two asserted independent claims of the '422 patent, it also doesn't infringe the asserted dependent claims, namely Claims 2, 3, 6, 9, 10, and 13." Mot. at 14. Consequently, the Court's finding of noninfringement as to the independent claims applies to the dependent claims.

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V. Conclusion

The Court determines that the '422 patent claims are obvious in light of the Samari-Kermani reference. Genuine issues of material fact remain regarding noninfringement. Consequently, Pacsgear's motion for summary judgment is granted as to invalidity but denied as to noninfringement. IT IS SO ORDERED.

DATED: March 12, 2013

Mariana R. Pfaelzer

Hon. Mariana R. Pfaelzer
United States District Judge

EXHIBIT C

Link: 64

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DATCARD SYSTEMS, INC.
Plaintiff,
v.
PACSGEAR INC.
Defendant.

Case No. 8:10-cv-01288-MRP-VBK

Order Re DatCard Inc.'s Motion for Summary Judgment of Infringement of U.S. Patents 7,783,174 and 7,734,157

I. INTRODUCTION

DatCard Systems, Inc. ("DatCard") has sued Pacsgear, Inc. ("Pacsgear") for patent infringement. The asserted patents are U.S. Patent Nos. 7,183,174 (filed Jun. 12, 2009) ("the '174 patent") and 7,734,157 (filed Jun. 24, 2009) ("the '157 patent"). The patents generally relate to technology for transmitting medical images (like MRI images) to compact discs ("CDs"). DatCard moves for summary judgment of infringement. The accused product is Pacsgear's "MediaWriter." DatCard argues that Pacsgear's customers directly infringe Claims 1-4 and 7 of the '174 patent and that Pacsgear itself indirectly infringes under a theory of

contributory infringement. As to the '157 patent, DatCard argues that Pacsgear directly infringes Claims 7 and 12. For the reasons provided below, the Court denies DatCard's motion of summary judgment of infringement for the '174 patent. The Court grants DatCard's motion for summary judgment of infringement for the '157 patent as to certain versions of MediaWriter (versions 4.0 and earlier) but denies the motion as to versions 4.0.1 and beyond.

II. LEGAL PRINCIPLES

A. Summary Judgment

The Court shall grant summary judgment if: (1) the movant shows that there is no genuine dispute as to any material fact; and (2) the movant is entitled to judgment as a matter of law. Fed. Rule Civ. Proc. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The Court must: (1) identify material facts by reference to the governing substantive law, *Anderson*, 477 U.S. at 248; (2) disregard irrelevant or unnecessary factual disputes, *id.*; and (3) view facts and draw reasonable inferences in favor of the nonmoving party, *Scott v. Harris*, 550 U.S. 372 (2007).

B. Infringement

Determining patent infringement is a two-step process. *Hearing Components, Inc. v. Shure Inc.*, 600 F.3d 1357, 1370 (Fed. Cir. 2010). First, the asserted patent claim must be construed as a matter of law. *Id.* Second, the properly construed

claims must be compared to the accused product. *Id.* "An infringement issue is properly decided upon summary judgment when no reasonable jury could find every limitation recited in the properly construed claim is or is not found in the accused device either literally or under the doctrine of equivalents."*Gart v. Logitech, Inc.*, 254 F.3d 1334, 1339 (Fed. Cir. 2001).

III. ANALYSIS

A. The Court Denies DatCard's Motion for Summary Judgment of Infringement for the '174 Patent

Claim 1 of the '174 patent is a system claim. *Id.* at col. 9 II. 25-47. One of the claim elements is "a search module configured to ***automatically*** search the database for ***related data*** based on the user selection . . . ." *Id.* at col. 9 II. 35-36 (emphasis added). The Court has previously issued a Claim Construction order in this case. ECF No. 135. Pursuant to that Order, "automatically" means "without user selection or direction," whereas "related data" refers to "[d]ata that is: (1) formatted in a standard medical imaging format; and (2) related to the selected medical imaging data." *Id.* at 34.

The MediaWriter's search module is configured to search for diagnostic reports such as "HL7" reports. *See* Mot. at 14 (citing Ex. 2 at 34:8-35:3, 38:25-39:12, Ex. 23 at 58). These reports are stored in textual format – not in any standard medical imaging format. *See* Mot. at 14 (referring to diagnostic reports prepared by

radiologists as "textual reports"). On this ground alone, DatCard fails to establish its entitlement to summary judgment of infringement.

Furthermore, DatCard argues, "Specifically, ***when the 'Include Reports" button is selected***, a Media Writer uses a unique identification number associated with the selected medical image data to search the local drive for related reports with a matching identification number." *Id.* (citing Ex. 2 at 34:8-35:3, 38:25-39:12, Ex 23 at 58) (emphasis added). But the Court has construed "automatically" to mean "***without*** user selection or direction." ECF No. 135 at 34. By conceding that the MediaWriter's search module solicits user selection of the "Include Reports" button, DatCard undercuts its own argument. On this separate ground alone, DatCard fails to establish its entitlement to summary judgment of infringement.

Given the missing claim limitations in the accused product, the MediaWriter, DatCard is not entitled to summary judgment of infringement as a matter of law. Consequently, the Court denies DatCard's motion of summary judgment of infringement as to Claims 1-4 and 7 of the '174 patent with respect to Pacsgear's MediaWriter product.

B. The Court Denies in Part and Grants in Part DatCard's Motion for Summary Judgment of Infringement as to the '157 Patent

In its motion for summary judgment of infringement, DatCard argues that the accused product, Pacsgear's MediaWriter, satisfies each element of claims 7 and 12 of the '157 patent. Both claims require "a system . . . comprising . . . an image

production module that is configured . . . to automatically transmit . . . audit data . . . wherein the audit data comprises at least ***an identification specific to the computer-readable medium*** . . . .” ’157 at col. 10 II. 12-34, 50 (emphasis added). The Court has previously construed “an identification specific to the computer-readable medium” to mean “[a] unique identification for each instance of the computer-readable medium (e.g. each CD).” ECF No. 145 at 35.

Certain versions of MediaWriter (versions 4.0.1 and later) lack a unique identification for each instance of the computer-readable medium, e.g., each CD. These MediaWriter versions feature an identification called “Job ID.” But “Job ID” is not unique to each CD. Consequently, DatCard is not entitled to summary judgment of infringement as to MediaWriter versions 4.0.1 and beyond. Other versions of MediaWriter (versions 4.0 and earlier) feature an identification called “disc ID.” Disc IDs are unique for each CD and therefore constitute “an identification specific to the computer-readable medium.” Pacsgear does not dispute that the disc ID satisfies the appropriate construction of this limitation. Opp. at 19 n.13.

“Whenever a patentee with the burden of proof seeks summary judgment of infringement, it must make a prima facie showing of infringement as to each accused device before the burden shifts to the accused infringer to offer contrary evidence.” *L & W, Inc. v. Shertech, Inc.*, 471 F.3d 1311, 1318 (Fed. Cir. 2006). No

genuine issues of material fact remain as to all other claim limitations for Claims 7 and 12 of the '157 patent with respect to versions 4.0 and earlier of MediaWriter featuring disc IDs. *See* Mot. at 17-25. Because the Court finds that DatCard has made its prima facie showing of infringement, the burden shifts to Pacsgear to offer contrary evidence – which Pacsgear has failed to do.

Consequently, DatCard has proven by a preponderance of the evidence that each claim limitation of Claims 7 and 12 of the '157 patent is found in MediaWriter versions 4.0 and earlier. Thus, DatCard is entitled to summary judgment of infringement of Claims 7 and 12 of the '157 patent with respect to MediaWriter versions 4.0 and earlier. The Court notes that it has decided, in a separate order, that Claims 7 and 12 of the '157 patent are obvious. See ECF No. 74 (Pacsgear's motion for summary judgment of obviousness-based invalidity).

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IV. CONCLUSION

The Court denies DatCard's motion of summary judgment of infringement as to Claims 1-4 and 7 of the '174 patent with respect to Pacsgear's MediaWriter product. The Court denies DatCard's motion for summary judgment of infringement as to Claims 7 and 12 of the '157 patent with respect to certain versions of the MediaWriter (versions 4.0.1 and later). The Court grants DatCard's motion for summary judgment of infringement as to Claims 7 and 12 of the '157 patent with respect to other versions of the MediaWriter (versions 4.0 and earlier). But Claims 7 and 12 are invalid for obviousness. *See* ECF No. 74 (order pending).

IT IS SO ORDERED.

DATED: April 01, 2013

Mariana R. Pfaelzer

Hon. Mariana R. Pfaelzer
United States District Judge

EXHIBIT D

Link: 74

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DATCARD SYSTEM, INC., a California corporation Plaintiff, v. PACSGEAR, INC., a California corporation Defendant.	Case No. 10-cv-1288-MRP **Order Re Pacsgear's Motion for Summary Judgment of Invalidity of "Search/Burn" and "HIPAA" Patents**

I. Introduction

DatCard System, Inc. ("DatCard") has sued Pacsgear, Inc. ("Pacsgear") for infringing U.S. Patent Nos. 7,302,164 ("'164 patent"), 7,783,174 ("'174 patent"), 7,729,597 ("'597 patent") (collectively the "Search/Burn" patents), and 7,734,157 ("HIPAA patent"). The Court finds that the HIPAA patent is obvious under 35 U.S.C. § 103. However, Pacsgear has failed to submit clear and convincing evidence as to the obviousness of the Search/Burn patents.

II. Legal Principles

A. Summary Judgment

The Court shall grant summary judgment if: (1) the movant shows that there is no genuine dispute as to any material fact; and (2) the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The Court must: (1) identify material facts by reference to the governing substantive law, *Anderson*, 477 U.S. at 248; (2) disregard irrelevant or unnecessary factual disputes, *id.*; and (3) view facts and draw reasonable inferences in favor of the nonmoving party, *Scott v. Harris*, 550 U.S. 372 (2007).

The Court cannot grant summary judgment if the dispute about a material fact is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* Faced with a properly supported summary judgment, the nonmoving party may not rest upon mere allegations or denials of its pleading but must set forth specific facts showing a genuine issue for trial. *Id.* "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

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B. Obviousness

A patent claim is obvious when the differences between the prior art "are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art . . . ." 35 U.S.C. § 103. The ultimate determination of whether an invention would have been obvious at the time the invention was made is a legal conclusion based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations of nonobviousness. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 406 (2007) (citing *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17-18 (1966)). The presence or absence of a motivation to combine references in an obviousness determination is also a pure question of fact. *In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000).

"[A] district court can properly grant, as a matter of law, a motion for summary judgment on patent invalidity when the factual inquiries into obviousness present no genuine issue of material facts." *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 716 (Fed. Cir. 1991).

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III. Discussion

A. Search/Burn Patents

1. *Graham* Factors

a. The scope and content of the prior art

The Mehta article discusses providing patients with CDs containing medical images, a browser with which to view such images, a DICOM-based engine to transfer images to the receiving institutional PACS, and copies of all pertinent imaging studies for the particular patient. Mehta et al., *Enhancing Availability of the Electronic Image Record for Patients and Caregivers During Follow-Up Care*, Ex. 229. The Ratib system searches a PACS for medical images in DICOM format from multiple modalities, searches a second non-DICOM database for diagnostic reports, and burns the selected images, reports, and viewing software onto the CD. Mot. at 9 (citing Ratib Dec. ¶¶9-16). Dr. Ratib described this system in an article. Fig. 1 of this article shows a window display which allows for selection and burning of images. Fig. 2 shows a disc labeled with information about the patient and the images. Fig. 3 shows the first page seen by a user opening the CD. From here, the user can either open images or reports.

The Heartlab reference discloses multiple workstations networked together and connected to a PACS with multiple archive databases. Images originating from multiple modalities are retrieved. CDs are burned with selected and related images

along with viewing software. The Sorna reference is an advertisement for Sorna Corp.'s FilmX-I product. This product connects to a user's DICOM network, receives medical images, and burns them on up to four CD-Rs along with viewing software. Mot. at 11. The Samari-Kermani application discloses details of FilmX-I, including a system for recording X-Rays, CT scans, MRI's and other images along with viewing software onto CDs, an audit log, a timeout methodology, and automatic placing patient/study information on the label of the CDs. *Id.* at 12.

The VEPRO reference allows a user to select studies from different archives and burns those studies originating from multiple modalities on a CD-R. *Id.* Viewing software is copied on the CD to allow patients to view images on a general purpose computer. *Id.* A CD label is also created automatically by the system and the user may modify the patient name and other information designed to appear on the label. *Id.* The Seshadri reference discusses a software program for automatically locating and sending images related to a recent study using a rule-based method. Finally, the De la Huerga reference teaches a software system designed to retrieve related materials having a variety of formats, including DICOM, from multiple databases in a hospital environment using multiple workstations. These materials are burned onto CDs.

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b. The differences between the prior art and the claims at issue

The Green Report, Ex. H, submitted by Pacsgear, contains a chart illustrating the presence of every claim limitation of Claim 9 of the '164 patent in the prior art. DatCard argues that individual pieces of prior art lack certain claim limitations. Opp. at 9 (arguing that Ratib lacks plurality of browsing terminals, utilizing multiple workstations, production station, and a search module for related medical image data); *id.* at 11 (arguing that Heartlab lacks a plurality of browsing terminals configured to receive a user selection that defines selected medical image data, a search module for related medical image data, and a production station); *id.* at 11-12 (arguing that Sorna ad lacks plurality of browsing terminals and search module for related medical image data); *id* at 12 (arguing that Vepro lacks plurality of browsing terminals); *id.* (arguing that Seshadri and de la Huerga lack the claimed search module).

The corpus of prior art lacks an express disclosure of: (1) a plurality of browsing terminals and workstations, (2) a search module for related data, and (3) a production station. Arguably, one or more of the above are highly *suggested* in the prior art. But they are not clearly present. But that is not fatal to the obviousness analysis. Common sense can provide a reason to combine the teachings of the various references *and* to supply the missing pieces. Furthermore, an explicit teaching, suggestion, or motivation to combine the various references is

no longer needed. Claim 9's contribution to the prior art includes: (1) expansion of a medical-image-search system from a single browsing terminal to multiple browsing terminals; (2) expansion of the scope of the search to related medical image data; and (3) use of a production station such as a CD burning robot.

c. The level of ordinary skill in the prior art

The Court finds that a person having ordinary skill in the relevant art would have a background in the architecture of information systems. Such person would also have thorough familiarity with DICOM and would understand the demands of a medical environment, e.g., patient confidentiality, needs of physicians, etc. The person would furthermore be familiar with the design, use, and implementation of PACS. *See* Rebuttal Expert Report of Steven Horii, Ex. B, at 4.

d. Secondary considerations of nonobviousness

DatCard cites long-felt need as a secondary consideration. Opp. at 20-21. It cites the hospital industry's inertia in the transition from film to digital, and the further transition from technicians to automated PACS systems. DatCard further cites its sale of 1,000 units of the PacsCube product to show commercial success of its invention. Pacsgear notes that DatCard only sold 130 units in its first two full years in operation.

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2. Legal Determination of Obviousness

Again, Pacsgear does not need to cite any explicit teaching, suggestion, or motivation in the prior art to combine the various references and/or to fill any gaps in the prior art, to the extent such gaps exist. But what Pacsgear *does* need to put forth – to overcome the presumptive non-obviousness of Claim 9 – is a *reason* to combine references at the critical date and/or a *reason* to add elements to the prior art. Pacsgear has, at its disposal, the use of *common sense* in this analysis. But mere recitation of the phrase "common sense" will not do. Pacsgear must articulate its common sense theory and express *why* common sense would render the patented claim obvious.

Pacsgear argues that "[i]f we look at the inventors' options to accomplish each function, it is undeniable they were obvious," Mot. at 5, and then cites the limited number of available choices for each function. The flaw with this argument is that it assumes that the PHOSITA would have an awareness of the problem solved by the invention. Often, the inventive contribution lies in defining the problem in a new revelatory way. Once the problem is defined, the solution might well be obvious; but the problem remains non-obvious. If courts invalidated patents simply because the problems described in the specifications bore obvious solutions, a significant percentage of existing patents would vanish. Such an analysis almost *invites* hindsight bias. An important check to hindsight bias is assessing patents not

only for the solutions they teach, but also for the problems that the solutions are directed toward.

Pacsgear's showing that the added features in the claimed inventions fail to yield unexpected results does not suffice to render Claim 9 obvious, although such evidence is highly probative. Pacsgear has not submitted evidence of the extent of the design need or market pressure which would have provided the PHOSITA with a blueprint of the problem to be solved. The patent cannot provide this blueprint. DatCard's expert, Dr. Rowberg cited the expense of processing and storing film, the various logistical problems associated with retrieving film jackets. Importantly, Dr. Rowberg testified that "[d]espite these recognized problems, ***hospitals stuck with the film-based distribution system***." Opp. at 21. Hospitals which switched to CDs still relied on technicians who manually burned images to CDs. *Id.* These systems were labor intensive and crude. Dr. Rowberg's citation of industry inertia is evidence that at the time of Mr. Wright's invention, the industry was slow to respond to this long-felt need. Inertia in an industry suggests headwinds facing innovators in that space. Pacsgear, in this instance, bears the burden to show, by clear and convincing evidence, that any such headwinds were mild enough to render Mr. Wright's invention obvious. This, Pacsgear has failed to do.

Pacsgear's rebuttal of DatCard's secondary considerations is inadequate. Pacsgear responds to DatCard's evidence of commercial success by vague

challenges to DatCard's expert's definition of the relevant market. Rep. at 7-8. Pacsgear cites a market survey listing fifty (50) PACS sellers. *Id.* The *number* of competitors distributing non-infringing PACS systems is not persuasive without additional facts demonstrating their success. As such, Pacsgear has failed to present clear and convincing evidence of obviousness.

Claims in the later Search/Burn patents are refinements of the '164 claims. The '597 claims search and retrieve selected and related data through two separate interfaces, whereas the '174 claims search and retrieve selected and related data from one database but may originate from a single modality. Pacsgear has failed to demonstrate the obviousness of the basic invention claimed in the '164 patent. The Court finds that Claim 9 of the '164 patent is non-obvious. The analysis is identical to claims 10-13, 15-17, and the continuation patents ('597 Cls. 1, 6, '174 Cls. 1, 8).

The Court finds that Pacsgear has failed to submit clear and convincing evidence of obviousness as to the Search/Burn claims.

B. HIPAA Patent

The prior art references of the Heartlab DICOMView Enterprise System, the Ratib Article, and Mehta, disclose the first two limitations of Claim 1 of the HIPAA patent. Mot. at 20.The Court finds that these references "receive, via a computer-implemented interface from a requester, one or more requests for production of stored medical data related to the first patient; and for each request

for production of stored medical data related to the first patient: producing the portable computer readable medium containing the requested medical data related to the first patient, wherein the requested medical data comprises medical image data formatted in a standard medical imaging format used by a computer configured for viewing the medical image data." HIPAA patent, Cl. 1. The missing element is automatically transmitting audit data specific to the computer-readable medium, where such identification includes an identification of the requester of the data, the patient, and an identifier specific to the computer-readable medium, wherein the audit data is for at least one audit record in the plurality of audit records in the audit database.

"Keeping paper records of filmed medical images was standard practice for decades prior to the claimed invention. Co-inventor Chet LaGuardia testified that the information stored by DatCard's patented device was essentially the same information that had been kept in paper format for years at every hospital he had ever worked in his twenty years as a radiology technician." Mot. at 21. The transition from analog to digital in the medical imaging industry provides a significant motivation to implement a similar transition for the task of auditing. Thus, this industry transition itself provided the blueprint for the problem to be solved by the PHOSITA. Indeed, Dr. Rowberg agreed, when asked, that the PHOSITA would have naturally shifted away from paper logs to electronic logs.

Common sense suggests that the HIPAA patent's claimed invention is obvious because auditing, by definition, requires keeping track of certain identifiers. No explicit teaching, suggestion, or motivation in the prior art is required. The specific identifiers, e.g., name of patient, name of requester, identifier specific to medium, do not render Claim 1 non-obvious. Indeed, these very identifiers were used in the analog (paper) domain previously. Mot. at 22. Claims 3 and 6 simply add additional information to be tracked, namely an identification number specific to the CD, and the date and time the CD was burned. Claim 7 is the system equivalent to Claim 1 with one difference – it requires an interface configured to receive two requests for production of data. Dependent claims 9 and 12 mirror claims 3 and 6.

Each patent claim, as a whole, amounts to nothing more an *electronic implementation* of the previously manual task of keeping track of information pertaining to medical images. The electronic implementation of this widespread task does not deserve patent protection unless there is something inventive about the implementation itself. But here, no technical difficulty is surmounted. No hurdle is overcome. Names of specific identifiers do not render the accompanying claims non-obvious. Finally, none of the secondary considerations raised by DatCard appear to address the HIPAA patent claims specifically. As such, common sense suffices as the source of clear and convincing evidence that the invention claimed in the HIPAA patent is obvious.

IV. Conclusion

For the above reasons, the Court finds that Pacsgear has failed to meet its burden of proof that the Search/Burn claims are invalid as obvious. But the Court finds that the HIPAA claims are obvious. As such, the HIPAA claims are invalid under 35 U.S.C. § 103.

IT IS SO ORDERED.

DATED: April 1, 2013

Hon. Mariana R. Pfaelzer
United States District Judge

EXHIBIT E

Link: 68

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DATCARD SYSTEMS, INC., a California corporation

Plaintiff,

v.

PACSGEAR, INC., a California corporation

Defendant.

Case No. CV-10-01288-MRP

Order Granting Pacsgear Inc.'s Motion for Summary Judgment of Non-Infringement of the "Search/Burn" Patents

I. Introduction

DatCard Systems, Inc. ("DatCard") has sued Pacsgear, Inc. ("Pacsgear") for patent infringement. The asserted patents relate to technology for searching and burning medical images. They are U.S. Patent Nos. 7,302,164 ("the '164 patent"), 7,729,597 ("the '597 patent"), and 7,783,174 ("the '174 patent") (collectively the "Search/Burn patents"). Pacsgear seeks summary judgment of non-infringement with respect to Claims 9-13, 15-17, and 21 of the '164 patent, Claims 1 and 6 of

the '597 patent, and Claims 1-5, 7-10, and 13 of the '174 patent. For the reasons provided below, the Court grants Pacsgear's motion.

II. Legal Principles

A. Summary Judgment

The Court shall grant summary judgment if: (1) the movant shows that there is no genuine dispute as to any material fact; and (2) the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The Court must: (1) identify material facts by reference to the governing substantive law, *Anderson*, 477 U.S. at 248; (2) disregard irrelevant or unnecessary factual disputes, *id.*; and (3) view facts and draw reasonable inferences in favor of the nonmoving party, *Scott v. Harris*, 550 U.S. 372 (2007).

The Court cannot grant summary judgment if the dispute about a material fact is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* Faced with a properly supported summary judgment motion, the nonmoving party may not rest upon mere allegations or denials of its pleading but must set forth specific facts showing a genuine issue for trial. *Id.* "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

B. Non-Infringement

"Summary judgment of non-infringement requires a two-step analytical approach. First, the claims of the patent must be construed to determine their scope. Second, a determination must be made as to whether the properly construed claims read on the accused device." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1304 (Fed. Cir. 1999). "[S]ummary judgment of non-infringement can only be granted if, after viewing the alleged facts in the light most favorable to the non-movant, there is no genuine issue whether the accused device is encompassed by the claims." *Id.*

III. Discussion

System claims 9-13, 15-17, and 21 of the '164 patent require a search for "***related medical image data***." Claims 1 and 6 of the '597 patent require a search for "***additional medical data***" related to the patient. Finally, claims 1-5, 7-10, and 13 of the '174 patent require searching for "***related data***." On October 26, 2012, the Court issued a Claim Construction Order in this matter. Doc. 145. The Court construed "related medial image data" ('164), "additional medical data . . . related to the patient" ('597), and "related data" ('174) as "[d]ata that is: (1) formatted in a standard medical imaging format, and (2) related to the selected medical imaging data." *Id.* at 34. "Such data types," the Court noted, "include images, patient demographics, and exam information such as patient name, age, exam number,

exam modality, exam machine name, and exam date because all of the above are in the standard medical imaging format (in the header or the image). Data types not formatted in the standard medical imaging format are outside the scope of these terms." *Id.*

Starting with version 3.0, the MediaWriter's search module began including diagnostic reports related to selected images. Ex. 258, Cavanaugh Dec., ¶¶2-17. These reports are not formatted in any standard medical imaging format. They are merely textual data. *See* Opp. at 4 (describing diagnostic reports as "textual data"). As such, they fall outside the scope of the asserted claims. The MediaWriter does not search for any other data formatted in a standard medical imaging format. The end result of executing a MediaWriter search is not substantially the same as the end result of the search module claimed in the patents. The MediaWriter search procures data in a textual format. The claimed search modules are directed to procuring related data in a standard medical imaging format. On the facts presented, no reasonable jury could deem textual data as equivalent to data formatted in a standard medical imaging format.

IV. Conclusion

The MediaWriter searches for diagnostic reports. These reports are stored in a textual format – not a standard medical imaging format. In light of the specification, the Court has construed the terms "related medical image data"

('164, Cls. 9-13, 15-17, 21), "additional medical data related to the patient ('597, Cls. 1, 6), or "related data" ('174 Cls. 1-5, 7-10, and 13) as limited to data in a standard medical imaging format because that is what the patentee disclosed as the invention. The patentee should get what he disclosed. No reasonable jury could find infringement here (either literal or under the doctrine of equivalents). Consequently, the Court grants Pacsgear's motion for summary judgment that the MediaWriter does not infringe, either literally or under the doctrine of equivalents, Claims 9-13, 15-17, and 21 of the '164 patent, Claims 1 and 6 of the '597 patent, and Claims 1-5, 7-10, and 13 of the '174 patent.

IT IS SO ORDERED.

DATED: April 01, 2013

Mariana R. Pfaelzer

Hon. Mariana R. Pfaelzer
United States District Judge

EXHIBIT F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DATCARD SYSTEMS, INC., a California corporation Plaintiff, v. PACSGEAR, INC., a California corporation Defendant.	Case No. 8:10-cv-01288-MRP-VBK **Claim Construction Order**

I. Introduction

Datcard Systems, Inc. ("Datcard") has sued Pacsgear, Inc. ("Pacsgear") for patent infringement.[1] ECF No. 1. Datcard's patented inventions facilitate the handling and delivery of medical image data. The asserted patents fall into three

[1] The asserted patents are U.S. Patent No. 7,302,164 (filed Jan. 17, 2001), entitled "System and Method for Producing Medical Image Data onto Portable Digital Recording Media"; U.S. Patent No. 7,729,597 (filed Jun. 24, 2009) (continuation of the '164 patent); U.S. Patent No. 7,783,174 (filed Jun. 12, 2009) (continuation of the '164 patent); U.S. Patent No. 7,734,157 (filed Jun. 24, 2009) (continuation of the '164 patent); and U.S. Patent No. 7,801,422 (filed Jun. 5, 2009) (continuation of the '164 patent).

groups: (1) Search and Burn; (2) HIPAA; and (3) Timeout. The Search and Burn group includes three patents. These patents claim various ways of managing the flow of medical image data from cradle to grave, i.e., from the image-generation device, to intermediate database servers, and ultimately to the end-user in the form of a labeled CD. The HIPAA patent automates the process of regulatory compliance relating to the privacy of medical records. The Timeout patent claims a way to avoid the premature burning of data onto CDs.

The parties dispute the meaning of certain claim terms in the patents. In this Markman order, the Court construes those terms.

II. Principles of Claim Construction

The purpose of claim construction is to determine the meaning and scope of the patent claims asserted to be infringed. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008). Claim construction is a pure question of law. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). For purposes of claim construction, the Court reviews both intrinsic and extrinsic evidence, placing emphasis on the former.

A. Intrinsic Evidence.

i. Claim Language

"The words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*¸ 415 F.3d 1303, 1312 (Fed. Cir. 2005) (citation

omitted). "[T]he ordinary and customary meaning of a claim term is the meaning that the term 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." *Id.* at 1313. "The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation." *Id.* "That starting point is based on the well-settled understanding that inventors are typically persons skilled in the field of the invention and that patents are addressed to and intended to be read by others of skill in the pertinent art." *Id.*

ii. Specification

The specification is "always highly relevant to the claim construction analysis." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 978 (Fed. Cir. 1995). As Judge Rich wrote shortly after the creation of the Federal Circuit, "the specification . . . is the primary basis for construing the claims." *Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448, 452 (Fed. Cir. 1985). "[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs." *Phillips*, 415 F.3d at 1316. "In other cases, the specification may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor." *Id.* In such

cases, the inventor's intention as expressed in the specification "is regarded as dispositive." *Id.*

iii. Prosecution History

The Court also considers the patent's prosecution history, if it is in evidence. "The prosecution history, which we have designated as part of the "intrinsic evidence," consists of the complete record of the proceedings before the PTO and includes the prior art cited during the examination of the patent." *Id.* The patentee created the prosecution history much like the specification in an attempt to explain and obtain the patent, and thus the prosecution history provides evidence about how the PTO and the inventor understood the patent. *Id.* "Yet because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Id.* "Nonetheless, the 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.*

B. Extrinsic Evidence

In addition to using intrinsic evidence, this Court is also authorized to use extrinsic evidence in claim construction. *Phillips*, 415 F.3d at 1317 ("[W]e have . .

. authorized district courts to rely on extrinsic evidence . . . ."). Extrinsic evidence "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Id*. While extrinsic evidence can shed light on claim meaning, it is "less significant than the intrinsic record in determining 'the legally operative meaning of claim language.'" *Id*. (citation omitted). Finally, extrinsic evidence is "unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence." *Id.* at 1319.

III. CLAIM CONSTRUCTION

A. Search Burn Patents

The three Search Burn patents are directed to systems and methods for facilitating the search and delivery of a patient's medical images.[2] The parties dispute the meaning of certain claim terms. Some disputes are over identical terms in all three patents. Other disputes are over similar terms across the patents. The Court has grouped these disputes because the analyses are similar. The grouped disputes (with corresponding patent numbers) are:

i. "related medical image data" ('164), "additional medical data . . . related to the patient" ('597), and "related data" ('174);

ii. "database" ('164, '174);

[2] The three Search Burn patents are: (1) U.S. Patent No. 7,302,164 (filed Jan. 17, 2001) ("the '164 patent"), entitled "System and Method for Producing Medical Image Data onto Portable Digital Recording Media"; (2) U.S. Patent No. 7,729,597 (filed Jun. 24, 2009) ("the '597 patent") (continuation of the '164 patent); and (3) U.S. Patent No. 7,783,174 (filed Jun. 12, 2009) ("the '174 patent") (continuation of the '164 patent).

iii. "automatically" ('597, '174); and

iv. whether the claim elements "printing" and "affixing" the label must occur sequentially ('164).

The Court next considers each dispute in turn:

i. "related medical image data" ('164 patent), "additional medical data . . . related to the patient" ('597 patent), "related data" ('174 patent)

The relevant claim limitations for these disputed claim terms are:

(a) "a search module configured to search the database for ***related medical image data*** that is related to the selected medical image data . . . ." '164 patent at col. 10 II. 53-55 (emphasis added);

(b) "automatically searching, based on the received request, a second computer database via a second database interface for ***additional medical data*** also ***related*** to the patient . . . ." '597 patent at col. 9 II. 34-36 (emphasis added); and

(c) "a search module configured to automatically search the database for ***related data*** based on the user selection . . . ." '174 patent at col. 9 II. 24-47 (emphasis added).

The accused infringing product, MediaWriter version 3.0, allows the user to burn a radiologist's text reports onto a CD along with selected images.[3] Not surprisingly, the parties dispute whether the claim terms above cover non-image data like text reports.

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[3] Pacsgear's Motion for Summary Judgment of Non-Infringement of the Search/Burn Patents [hereinafter "Mot."] at 3 (ECF No. 67). Datcard's opposition to the above motion is hereinafter referred to as "Opp." ECF No. 87.

(a) "related medical image data" '164 patent

The Court finds that "related medical image data" means data which is (1) in a standard medical imaging format, and (2) is related to the selected medical image data.[4] The Court rests this finding on three bases: (1) claim language; (2) the rule of internal consistency; and (3) support in the specification.

1. Claim language

The phrase "related medical image data" contains three nested modifiers. We start with the word "data." "Image" modifies "data" yielding "image data." "Medical" modifies "image data" yielding "medical image data." Finally, "related" modifies "medical image data" yielding "related medical image data." But before construing "related medical image data," it is helpful to analyze the meaning of the sub-phrase "medical image data." "Medical image data" is neither a technical term of art in the relevant field,[5] nor a specially defined term in the specification.

The first limitation of Claim 9 recites: "a medical server configured to receive medical image data that is generated by a plurality of imaging modalities, the ***medical image data being formatted in a standard medical imaging format*** used by specialized computers configured for viewing medical images . . . ." Here, "medical image data" plainly refers to data formatted in a standard medical

[4] Whether or not this covers a radiologist's text report turns on whether the report is stored in a standard medical imaging format.

[5] *See, e.g.*, Dr. Rowberg's testimony, Opp. at 16 ("I almost wonder if it's a legal term instead of a medical term because it's out of my normal vocabulary.").

imaging format. Thus, "related medical image data" simply means medical image data that is related to the selected medical image data. Put another way, "related medical image data" means data that is both: (1) formatted in standard medical imaging format; and (2) related to the selected medical image data.

Datcard argues that "related medical image data" means any kind of data (not just medical image data) that is related to the selected medical image data. Opp. at 21. This is incorrect because it fails to account for the modifying effect of "medical image" upon "data." Pacsgear argues that "related medical image data" only refers to images. Mot. at 9. This too is incorrect because it would exclude non-image data formatted in standard medical imaging format. Some such non-image data include "patient demographics[] and exam information such as patient name, patient age, exam number, exam modality, exam machine name, and exam date." '164 patent at col. 1 II. 48-55 (listing non-image DICOM compatible data types stored in the header preceding the exam images).

2. The rule of internal consistency

Under this rule, "[a] word or phrase used consistently throughout a claim should be interpreted consistently." *Phonometrics, Inc. v. Northern Telecom Inc.*, 133 F.3d 1459, 1465 (Fed. Cir. 1998). Thus, the Court should interpret "related medical image data" consistently throughout Claim 9.

Claim 9 contains other instances of "related medical image data":

> the selected medical image data, recorded in the standard medical imaging format,
>
> the ***related medical image data, recorded in the standard medical imaging format***, and
>
> ***a viewing program that is configured to allow viewing of*** the selected and the ***related medical image data*** that is recorded onto the data storage medium on widely accessible computers not specifically configured with standard medical imaging software for ***viewing of medical images***.
>
> '164 patent at col. 1 II. 40-50 (Claim 9).

"Related medical image data" in the above instances is plainly limited to data recorded in the standard medical imaging format. The rule of internal consistency thus calls for the same construction for "related medical image data" in the claim limitation under consideration.

3. Support in the specification

The specification of the '164 patent provides further support for limiting the scope of "related medical image data" to data formatted in the standard medical imaging format. The specification states:

> To ease the communication of data, the DICOM (Digital Imaging and Communications in Medicine) standard was developed by ACR-NEMA (American College of Radiology-National Electrical Manufacturer's Association) for communication between medical imaging devices and PACS. In addition to the examined images, patient demographics, and exam information such as patient name, patient age, exam number, exam modality, exam machine name, and exam date can also be stored and retrieved in DICOM compatible data format. A DICOM file stores patient and exam information in the header of the file, followed by the exam images. PACS store ***medical image data*** in DICOM format.

'164 patent at col. 1 II. 43-55.

The specification, therefore, supports the Court's construction of "related medical image data" as limited to data formatted in standard medical imaging format.

The Court's approach has: (1) placed primary emphasis on the plain and ordinary meaning of the claim language; (2) abided by the rule of internal consistency; and (3) construed "related medical image data" in light of specification. "Related medical image data" is data: (1) formatted in the standard medical imaging format; (2) related to the selected medical image data. The parties dispute about whether "related medical image data" covers a radiologist's test reports. Under the Court's construction, the answer to that question depends on whether radiologist reports are formatted in the standard medical imaging format. Pacsgear asserts that such reports are not in a standard medical imaging format. Mot. at 3 ("[The radiologist's] reports are in text format . . . ."). Datcard does not appear to take a contrary position. "Related medical image data" does not cover such reports, assuming they are not formatted in a standard medical imaging format.

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(b) "additional [related] medical data," '597 patent; and "related data" '174 patent

The relevant claim terms are:

(1) "automatically searching, based on the received request, a second computer database via a second database interface for ***additional medical data*** also ***related*** to the patient . . . ." '597 patent at col. 9 II. 34-36 (emphasis added); and

(2) "a search module configured to automatically search the database for ***related data*** based on the user selection . . . ." '174 patent at col. 9 II. 24-47 (emphasis added).

Claim terms like "related data" and "additional [related] medical data" have fewer modifiers for "data" than the claim term "related medical image data." This might seem, at first blush, to support a broader construction for the former claim terms than the latter. Not surprisingly, the seemingly broader claim terms appear in continuation patents. "The name of the game is the claim" for parent patents and continuations alike.[6] But the Court must pay close attention to the specification when construing a claim term in a continuation.[7] The fundamental tension between the prohibition against importing limitations from the specification into the claims on the one hand, and construing claims in light of the specification on the other, is of special concern in the continuations context. Even in a regular setting, the

[6] Giles S. Rich, *The Extent of the Protection and Interpretation of Claims – American Perspectives*, 21 INT'L REV. INDUS. PROP. & COPYRIGHT L. 497, 499, 501 (1990).

[7] *See* Mark A. Lemley & Kimberly A. Moore, *Ending Abuse of Patent Continuations*, 84 B.U. L. REV. 63 (2004)

prohibition against importing limitations and the mandate of construing claims in light of the specification presents a fundamental problem of claim construction.

No Federal Circuit opinion captures the essence of this fundamental problem quite as vividly as *Arlington Industries, Inc. v. Bridgeport Fittings, Inc.*, 632 F.3d 1246 (Fed. Cir. 2011). Judge Lourie's opinion in that case, concurring in part and dissenting in part, is particularly revealing. In relevant part, Judge Lourie states, "[T]he basic mandate is for claims to be interpreted in light of the specification of which they are a part because the specification describes what the inventors invented. The specification is the heart of the patent. In colloquial terms, '***you should get what you disclose.***'" *Arlington Indus.*, 632 F.3d at 1257 (Lourie, J., concurring in part and dissenting in part). To that point, the author of the majority opinion, Chief Judge Rader, stated,

> The concurrence-in-part and dissent-in-part characterizes the specification as the "heart of the patent" and, using "colloquial terms," states that "you should get what you disclose." This devalues the importance of claim language in delimiting the scope of legal protection. "Claims define and circumscribe, the written description discloses and teaches." *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1347 (Fed.Cir.2010) (en banc). To use a colloquial term coined by Judge Rich, "***the name of the game is the claim***." Giles S. Rich, *The Extent of the Protection and Interpretation of Claims–American Perspectives*, 21 INT'L REV. INDUS. PROP. & COPYRIGHT L. 497, 499, 501 (1990). Indeed, unclaimed disclosures are dedicated to the public. *Johnson & Johnston Assocs. Inc. v. R.E. Serv. Co.*, 285 F.3d 1046, 1051 (Fed.Cir.2002) (en banc).
>
> *Id.* at 1255, n.2 (emphasis added).

Incidentally, the difference between "the name of the game is the claim" and "you should get what you disclose" is identical to that between the prohibition against importing limitations and construing the claims *in light of* the specification.

Returning to the claim terms at hand, the dispute between the parties is whether "additional [related] medical data" in the '597 patent and "related data" in the '174 patent are limited to DICOM images, to the exclusion of non-image data like text reports. Again, both parties propose incorrect constructions. The terms are neither so broad as to encompass all types of data, nor so narrow as to be limited to images. Instead, as explained below, "related data" and "additional [related] medical data" are limited to data: (1) in a standard medical imaging format; and (2) related to the selected medical image data.

Texas Digital, a case criticized in *Phillips*, had listed two circumstances where the patent's specification and prosecution history must be consulted to determine if the patentee has used claim terms in a manner inconsistent with the ordinary meaning reflected in a dictionary definition: (1) where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning; and (2) if the inventor has disavowed or disclaimed scope of coverage by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope. 415 F.3d at 1319 (citing *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193 (Fed. Cir. 2002).

But *Phillips* characterized *Texas Digital*'s take on claim construction as placing "too little [reliance] on intrinsic sources, in particular the specification and prosecution history."

Phillips stated, "Assigning such a limited role to the specification . . . is inconsistent with our rulings that the specification is ***the single best guide to the meaning of a disputed term*** . . . ." *Id.* at 1320-21 (citation omitted). *See Irdeto Access, Inc. v. Echostar Satellite Corp.*, 383 F.3d 1295, 1300 (Fed. Cir. 2004) ("Even when guidance is not provided in explicit definitional format, the specification may define claim terms ***by implication*** such that meaning may be found in or ascertained by a reading of the patent documents."); *Bell Atl. Network Servs., Inc. v. Covad Commc's Grp., Inc.*, 262 F.3d 1258, 1268 (Fed. Cir. 2001) ("[A] claim term may be clearly redefined without an explicit statement of redefinition.").

To be sure, *Phillips* acknowledged "that the purpose underlying the *Texas Digital* line of cases – to avoid the danger of reading limitations from the specification into the claim – is sound." *Id.* at 1323. But *Phillips* also acknowledged that "the distinction between using the specification to interpret the meaning of a claim and importing limitations from the specification into the claim can be a difficult one to apply in practice." *Id.* "[T]he line between construing terms and importing limitations can be discerned with reasonable certainty and

predictability ***if the court's focus remains on understanding how a person of ordinary skill in the art would understand the claim terms***." *Id.* (emphasis added). "[T]he person of ordinary skill in the art is deemed to read the claim 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." *Phillips*, 415 F.3d at 1313. *See also Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) ("We cannot look at the ordinary meaning of the term . . . ***in a vacuum***. Rather, we must look at the ordinary meaning in the context of the written description and the prosecution history.").

Datcard seeks too broad a construction by interpreting "related data" to include "data in general." Opp. at 10. The three patents share a common specification. This specification only describes an invention where "data" in "related data" or "additional [related] medical data" is stored in a standard medical imaging format. It is perfectly legitimate to ask for more real estate, so to speak, by drafting broader claim terms in a continuation application; so long as those newer and broader claims are moored to the specification. Construing "related data" and "additional [related] medical data" as referring to data in a standard medical imaging format is not an exercise in importing a limitation from a preferred embodiment in the specification. Instead, it is a grant of patent protection that ends at what the

patentee disclosed and described in the specification. It is a construction of the claims in light of the entire specification; not a construction of claims in a vacuum.

Pacsgear is also incorrect in limiting "related data" and "additional [related] medical data" to images. The patent specification states, "In addition to the examined images, ***patient demographics[] and exam information*** . . . can also be stored and retrieved in DICOM compatible data format . . . in the header of the file, followed by the exam images." '164 patent col. 1 II. 58-52. These non-image data types, i.e., patient demographics and exam information, are as much part of the standard medical imaging standard as the images themselves. There is no basis for excluding these types of related data or additional related medical data from the claim scope. While Pacsgear attempts to exclude such non-image DICOM data from the claim scope, Datcard attempts to do the opposite, i.e., include non-image ***non-***DICOM data such as the radiologist's text reports within the claim scope. Under the Court's construction, "related data" and "additional [related] medical data" exclude a radiologist's text reports unless they are stored in a standard medical imaging format.

ii. "database" ('164, '174, '597);

Claim 9 of the '164 patent, in relevant part, recites:

> ***a database*** configured to store medical image data generated by the plurality of imaging modalities;

> a plurality of browsing terminals configured to receive a user selection that defines selected medical image data;
>
> a search module configured to search ***the database*** for related medical image data that is related to the selected medical image data

Claim 1 of the '174 patent, in relevant part, recites:

> ***a database*** configured store medical image data generated by the one or more imaging modalities;
>
> a plurality of browsing terminals configured to receive a user selection that defines selected medical image data for a patient;
>
> a search module configured to automatically search ***the database*** for related data based on user selection

The parties dispute about the construction of the claim limitation "database." Pacsgear contends that database means "the electronic collection of image data stored in a way to allow for easy search and retrieval following the request of a user." Mot. at 7. Datcard cites the dictionary for a definition of database as "a structured set of data held in a computer." Opp. at 9.

In the context of the above claims, it is redundant to define database in terms of its contents. The claim language itself performs that task by requiring "a database" to be configured to store medical image data, which the Court previously construed as limited to data in a standard medical imaging format. While the Court agrees with Pacsgear that "*the* database" in the above claims plainly refers back to "a database" earlier in the same claim, it also agrees with Datcard that a database is merely "a structured set of data held in a computer."

Claim 1 of the '597 patent, in relevant part, recites:

> automatically searching a first computer ***database*** via a first database interface for a first set of medical image data related to the patient based on the received request;
>
> automatically retrieving the first set of medical imaging data related to the patient;
>
> automatically searching, based on the received request, a second computer ***database*** via a second database interface for additional medical data also related to the patient, wherein the second interface is different from the first interface

Unlike the '164 and '174 patents, where "the database" referred back to "a database," Claim 1 of the '597 patent defines two separate databases. Here, too, it is redundant to limit "database" by the type of content stored because the claims adequately do that by reciting the steps of searching the first database for medical image data and the second database for additional medical data. The Court has already construed "medical image data" and "additional medical data" to mean data in a standard medical imaging format. Consequently, again, the Court agrees with Datcard that a database is merely "a structured set of data held in a computer."

iii. "automatically" ('597, '174)

Claim 1 of the '597 patent is a multi-step method patent. The claim recites:

> A computer-implemented method for automatically generating a portable computer-readable medium containing medical data related to a patient, comprising:

> receiving, via computer-implemented interface a request for medical data related to the patient;
>
> ***automatically*** searching a first computer database via a first database interface for a first set of medical imaging data related to the patient based on the received request;
>
> ***automatically*** retrieving the first set of medical imaging data related to the patient;
>
> ***automatically*** searching, based on the received request, a second computer database via a second database interface for additional medical data also related to the patient, wherein the second interface is different from the first interface;
>
> ***automatically*** receiving the additional related medical data; and
>
> ***automatically*** generating a portable computer-readable medium, at a production station, containing the first set of medical imaging data related to the patient and the additional related medical data, wherein the first set of medical imaging data is formatted in a standard medical imaging format used by a computer configured for viewing the medical imaging data.
>
> '597 patent col. 9 II. 24-47 (Claim 1)

First, the claim requires receiving a request for medical data. Next, the claim requires automatic performance of a series of tasks (retrieving, searching, receiving, and generating). The parties dispute the meaning of "automatically." According to Datcard, automatically means that "once initiated, the function is performed by a machine, without the need for manually performing the function." Opp. at 11. Given that "automatically" appears in several recited steps, Datcard's definition must be applied to *each* step. Datcard is effectively construing "automatically" as "once ***[each step]*** is initiated, the function is performed by a

machine, without the need for manually performing the function." But that is not a satisfactory interpretation of the claim language because the "receiving" limitation lacks an "automatically" qualifier despite the fact that once a user initiates the receiving step by submitting a request for medical data, the receiving function is performed by a machine, without the need for manually performing the function.

In the specification, the patentee compares and contrasts two disclosed embodiments – one with the "automatically" feature with one without. The embodiment without the "automatically" feature states, "The user is then asked in step 180 if he/she desires to find related data of that patient for comparative study. If the user answers yes, the application server 110 then searches for related data." '164 patent at col. 8 II. 37-41; and "[s]till referring to FIG. 5, the user is then prompted to select all or some of the related data from the list of found related data for production, in step 184." '164 patent at col. 8 II. 54-56. By contrast, the embodiment with the "automatically" feature states, "In another embodiment, once the user has selected a patient/exam combination, the application server 110 automatically searches for related data ***without asking for user direction***," '164 patent at col. 8 II. 46-49, and "In another embodiment, all found related data are automatically selected by the application server 110 for production, ***without prompting for user selection***."

"Automatically," in the context of the claim language and in light of the specification, means performing the claim steps beginning with "automatically" *without* first asking for user selection or direction for *each* step. Mot. at 17.

iv. whether the claim elements "printing" and "affixing" the label must occur sequentially ('164).

Claim 16 recites "printing a label using the production station, wherein the label includes identifying information associated with the selected medical image data; and affixing the label to the data storage medium using the production station." Opp. at 22. "The MediaWriter . . . uses a CD Burner with an ink jet system that quickly and directly places information on the CD." Mot. at 14. Pacsgear construes Claim16 as requiring printing to take place before affixing. *Id.* (arguing non-infringement because Pacsgear's products do not first print, ***then*** affix the label to the CD). But "[u]nless the steps of a method actually recite an order, the steps are not ordinarily construed to require one." *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1342 (Fed. Cir. 2001). While some order is inherent in certain subsets of the claim steps (e.g., receiving data before storing it, searching data before recording it, etc.), Claim 16 does not recite any order of performance for the steps. Instead, the claim recites "printing . . . and affixing." '164 patent at col. 11 II. 47-52.

The Court finds that printing and affixing are not sequential operations.

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B. HIPAA Patent

The HIPAA patent is U.S. Patent No. 7,734,157 (filed Jun. 24, 2009) ("the '157 patent"), entitled "System and Method for Producing Medical Image Data onto Portable Digital Recording Media." The parties dispute the meaning of some claim terms in Claim 7 in the '157 patent:

> A system for generating a portable computer-readable medium containing medical data for a first patient, wherein the medical data for the first patient are audited based on a plurality of audit records stored in an audit database, comprising:
>
> ***a computer-implemented interface configured to receive two or more requests for production of stored medical data related to the first patient***; and
>
> an image production module that is configured, for each request for production of stored medical data related to the first patient;
>
> to produce the portable computer-readable medium containing the requested medical data related to the first patient, wherein the requested medical data comprises medical image data formatted in a standard medical imaging format used by a computer configured for viewing the medical image data; and
>
> upon producing the computer-readable medium, to automatically transmit, to the audit database, audit data that is specific to the computer-readable medium produced in response to the request for stored medical data, wherein the audit data comprises at least ***an identification specific to the computer-readable medium***, an identification of a requester of the stored medical data, and an identification of the first patient, and is for at least one audit record in the plurality of audit records in the audit database.

'157 patent at col. 10 II. 12-38.

The parties dispute the meaning of the bolded claim language. The Court addresses each dispute in turn:

i. "a computer-implemented interface configured to receive two or more requests for production of stored medical data related to the first patient"

Pacsgear contends that this claim term requires a user to make two requests for production relating to the same patient. Pacsgear's opposition to Datcard's motion for summary judgment of infringement for the '174 and '157 patents [hereinafter "Opp."] at 17.[8] Given that Claim 7 is a directed to an apparatus claim and not a method claim, Datcard argues that "[t]he disputed claim limitation says nothing about what a 'user' must do." Reply at 17. According to Datcard, the claim limitation only means that the computer interface must have structural components enabling it to receive two or more requests for production of stored medical data related to the first patient. *Id.* The Court agrees with Datcard. The disputed claim term refers to a system's configuration to receive two or more requests. This system claim does not refer to user action.

ii. "an identification specific to the computer-readable medium"

Pacsgear proposes the following construction: "an identification unique to the *single* compact disc or other storage medium." Opp. at 19. Datcard proposes "an

[8] Datcard's motion is hereinafter referred to as "Mot."

identification, such as a clearly defined or identified number, of the computer-readable medium (plural)." Mot. at 23.

The plain and ordinary meaning of the claim language is written in the singular given that the word "medium" is in a singular form. But this could mean that the singular form attaches to the type of medium (CD, DVD, Bluray, flash drive, each being one medium), or it could mean that the singular form means "one CD." The first line of the patent specification states, "This invention relates to a system and method for the production of medical image data on portable digital recording ***media*** such as compact ***discs***." '157 patent at col. 1 II. 23-25. The patentee has thus used the plural form "media" when discussing multiple compact discs. The first line of the section called "Summary of the Invention" states, "The claimed system allows for digital medical image data to be produced on a portable digital recording ***medium*** such as ***a CD***." *Id.* at col. 2 II. 7-9 (containing further references to the singular form such as "a CD," "the CD," and "the same CD"). The specification further states, "The number of CDs produced corresponds to the 'number of copies' number sent by the application server 110 in step 142." *Id.* at col. 6:66-67, 7:1. But in a section entitled "Detailed Description of the Preferred Embodiment," the specification states, "Digital portable recording ***medium*** comprises ***CDs*** and DVDs . . . any ***suitable portable digital recording medium*** can be substituted for ***CDs.***" *Id.* at col. 3 II. 30-31.

Thus, the patentee has used "medium" when referring to both singular and plural forms of CD at different places in the specification. But in these last statements, the patentee is not referring to the plural form ("CDs") as a solution to the problem that arises when the requested medical data exceeds the storage capacity of a single disc. Instead, the plural form is only invoked to describe the generic medium of compact discs. When referencing the actual operation of the claimed invention, the specification is clear that only one CD is anticipated to store image data. The only instances of the plural form, "CDs," in the context of the operation of the invention are references to the number of copies requested by the user. Again, the specification states, "The number of CDs produced corresponds to the 'number of copies' number sent by the application server 110 in step 142." *Id.* at col. 6:66-67, 7:1.

Datcard argues that "[i]f the requested medical data exceeds the storage capacity of a single disc, a set of discs is a suitable portable digital recording medium." Mot. at 22. That may be so, but the specification is void of any reference to multiple CDs being used to store one image because of size constraints. The patent neither describes a multiple-CD-based solution to the size-constraint problem, nor evidences the patentee's possession of such an invention at the time of filing. As a technical matter, it is just as plausible to have unique identification numbers for multiple discs for the same job (with a numerical suffix, for example,

indicating the disc number for the same job), as it is to have a unique identifier specific to a set of discs. Given the claim language, and in light of the void in the specification for this issue, the appropriate construction for "computer readable medium," therefore, is limited to one compact disc. Accordingly, the claim term "an identification specific to the computer readable medium" refers to a unique identification for each instance of the computer-readable medium (e.g., each CD).

C. Timeout Patent

The Timeout patent is U.S. Patent No. 7,801,422 (filed Jun. 5, 2009) ("the '422 patent"), entitled "System and Method for Producing Medical Image Data onto Portable Digital Recording Media." The parties dispute the meaning of some claim terms in Claims 1 and 8 of the '422 patent. The Court discusses each claim in turn.

i. Claim 1

Claim 1 of the Timeout patent, with the point of contention bolded, states:

> A method of automatically producing medical image data and related data on an optical storage medium upon expiration of a timeout period, the method comprising:
>
> > ***detecting whether a server has changed within a timeout period after receiving medical image data or related data*** from a modality and resetting the timeout period when the change is detected; and
> >
> > automatically producing an optical storage medium comprising selected medical image data and related data from the server based on when the timeout period has expired and recording on the optical storage medium program code that, when executed, allows viewing of the selected medical image data, wherein the medical image data is

> formatted in a standard medical imaging format used by a computer configured for viewing the medical image data.

'422 patent, col. 9 II. 15-32.

Before commencing a comparative study of the parties' diverging contentions regarding the meaning of the bolded claim phrase, the Court introduces two concepts to aid the analysis: (1) the time of detection; and (2) the range of detection. The time of detection refers to the discrete point in time when the system performs the detecting step. The range of detection refers to the time interval for which detection takes place. These are fundamentally different ideas. An analogy helps to define the concepts and draw out the distinction. Consider the year-to-date gain of a stock, where the stock price is checked at the end of the first quarter. Here, the time of detection is April 1. The range of detection for the year-to-date gain is the three-month period between January 1 and March 31.

Returning to the case at bar, the disputed claim phrase is "detecting whether a server has changed within a timeout period after receiving medical image data or related data." Pacsgear's proposed construction conflates the concepts of time and range of detection. DatCard's proposed construction is that whereas the time of detection is *after* the expiry of the timeout interval, the range is *before*. The Court reviews the claim language and specification to determine the appropriate time of detection and range of detection for the detecting step.

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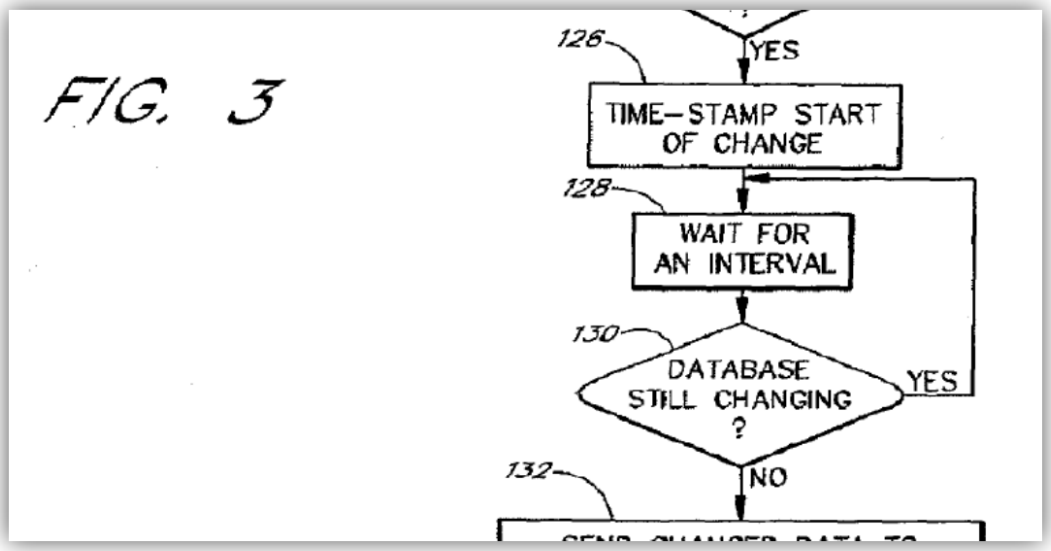
(a) Time of detection

The claim language states "detecting whether a server has changed within a timeout period after receiving medical image data or related data." PacsGear argues that this claim language "requires the detection to take place **before** the time interval expires." Mot. at 2. The only way the claim language "requires" the detection to take place before the time interval expires is if the phrase "detecting whether a server has changed within a timeout period" is rearranged as follows: "detecting, within a timeout period, whether a server has changed." A more likely interpretation is that the phrase "within a timeout period" qualifies "server has changed" and not "detecting." While the claim language does not settle the issue, the specification does.



'442 Patent, Figure 3.

The detecting step 130 in Figure 3 entitled "Database Still Changing?" occurs *after* step 128 entitled "Wait for an Interval." The specification provides further confirmation that the time of detection is *after* the timeout period. "[U]pon observing a change in the image server database 202, '[t]he application server 110 then proceeds to step 128 and waits for an interval, typically 35 to 65 seconds. ***After*** the interval, the application server 110 ***checks*** whether the image server database 202 is still changing, in step 130.'" Mot. at 2 (citing the '422 patent specification, col. 5:28-33) (emphasis).

PacsGear's argument in its motion that "Claim 1 requires the detection to take place **before** the time interval expires" might be logically consistent with the claim language, but wholly excludes the preferred embodiment in the '422 specification. "A claim construction that excludes the preferred embodiment 'is rarely, if ever, correct and would require highly persuasive evidentiary support.'" *Adams Respiratory Therapeutics, Inc. v. Perrigo Co.*, 616 F.3d 1283, 1290 (Fed. Cir. 2010) (quoting *Vitronics Corp. v. Conceptronic Inc.*, 90 F.3d 1576, 1583-84 (Fed. Cir. 1996)). PacsGear has failed to provide the requisite "highly persuasive evidentiary support."

In light of Figure 3 and the cited language in the specification, the Court finds that the time of detection is *after* the expiry of the timeout interval. "There is sometimes a fine line between reading a claim in light of the specification, and

reading a limitation into the claim from the specification." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (citation omitted). The Court has taken care not to import this limitation from the preferred embodiment into Claim 1, and has only interpreted the claim language *in light of* the specification.

(b) Range of detection

By arguing that "knowing that the size of the database is increasing after the expiration of the waiting interval tells you nothing about whether the database was changing 'before' or 'within' the waiting interval," Pacsgear has effectively argued that the range of detection is *after* the expiry of the timeout interval. Reply at 2-3. The Court rejects this argument because Pacsgear improperly connects the phrase "after the expiration of the waiting interval" to the changes in the "size of the database." Nothing in the patent refers to post-timeout changes in the size of the database.

The present-continuous tense of the phrase "Database Still Changing" in Figure 3 might suggest a detection mechanism for post-timeout changes in the database. But that phrase does not exist in isolation; it appears in a sequential flowchart immediately ***after*** step 128 entitled "Wait for an Interval." The claim language, "detecting whether a server has changed," maps to "Database Still Changing?" Thus, Pacsgear's argument mischaracterizes the patented claim by

improperly isolating a phrase from a sequential flowchart and further improperly focusing on a difference in tense.

The Court finds that the range of detection is *before* the expiry of the timeout interval.

(c) "timeout period"

The parties dispute the meaning of the phrase "timeout period" in Claim 1. PacsGear argues that the "timeout period" refers to "a period that starts over every time an **unpredictable** event occurs." DatCard argues that "timeout period" refers to "a predefined length of time that began at the occurrence of a **specified** event." Opp. at 5. PacsGear's use of the word "period" in its construction is consistent with DatCard's use of the phrase "predefined length of time." Further, the specification states that "[t]he application server 110 then proceeds to step 128 and waits for an interval, typically 35 to 65 seconds." '422 patent at col. 5 II. 29-31. In light of the specification, the Court finds that the timeout period is a predefined length of time. The parties' only remaining dispute is whether the event triggering a restart of the timeout period is unpredictable or specified.

PacsGear's proposed qualification of the event triggering a restart of the timeout period as "unpredictable" contradicts the preferred embodiment which specifies the triggering event as "a change in the image server database." '422 patent at col. 5 II. 26-29 ("If there is a change in the image server database 202,

then the application server 110 proceeds to step 126 and time-stamps the moment that the change started."). The Court does not define the timeout period in terms of the type of event which triggers a resetting of that period. The claim step in question recites "detecting whether a server has changed within a timeout period after receiving medical image data or related data from a modality and resetting the timeout period when the change is detected." Thus, the claim language itself discloses further claim limitations pertaining to the event triggering a resetting of the timeout period, i.e., a change in the server. The event triggering the resetting of the timeout period does not inform the definition of the claim term "timeout period" in and of itself, which simply refers to a predefined period of time.

Thus, the Court construes "timeout period" as a predefined period of time.

ii. Claim 8

Claim 8 of the Timeout patent, with the point of contention bolded, states:

> A system for automatically producing medical images on an optical storage medium, the system comprising:
>
> > a database configured to receive one or more medical images from at least one modality;
> >
> > an application server coupled to the database and configured to create a timestamp ***when the application server detects a change in the database***, thereby initiating a timer,
> >
> > wherein the ***timer resets when the application server detects an additional change in the database before a timeout interval***, measured from the timestamp, elapses; and

> wherein the timer times out when the application server detects no additional change in the database after the ***timeout interval***, measured from the timestamp, elapses; and
>
> a production station coupled to the application server and configured to automatically produce an optical storage medium comprising one or more selected medical images from the database based on when the timer times out, wherein the medical image data is formatted in a standard medical imaging format used by a computer configured for viewing the medical image data.

The parties dispute the meaning of the phrase "wherein the timer resets when the application server detects an additional change in the database before a timeout interval." As with Claim 1, the parties' dispute is over the time and range of detection referred to by the "detects" step. Pacsgear's error lies in its conflation of the concepts of time and range of detection. The Court construes the disputed terms in Claim 8 in a manner consistent with its construction for Claim 1. Datcard proposes that the word "timer" refers to "a device which keeps track of time." It is not clear whether Pacsgear disputes this position. The Court does not need to construe claim language not in dispute.

Thus, consistent with its construction for Claim 1, the Court finds that the time of detection for the "detects" step is *after* the expiry of the timeout interval, whereas the range for detection is *before*.

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IV. CONCLUSION

The Court adopts the constructions set forth in this opinion for the disputed claim terms in this suit. The constructions shall govern all proceedings in this case.

Search and Burn claims	**Claim Construction**
"related medical image data" ('164), "additional medical data . . . related to the patient" ('597), "related data" ('174)	Data that is: (1) formatted in a standard medical imaging format; and (2) related to the selected medical imaging data. Such data types include images, patient demographics, and exam information such as patient name, age, exam number, exam modality, exam machine name, and exam date because all of the above are in the standard medical imaging format (in the header or the image). Data types not formatted in the standard medical imaging format are outside the scope of these terms.
"database" ('164, '174, '597)	A structured set of data held in a computer.
"automatically" ('597, '174)	Performing the corresponding claim step without first asking for user selection or direction for the step.
Whether the claim elements "printing" and "affixing" the label must occur sequentially ('164)	No.
HIPAA claims	**Claim Construction**
"a computer-implemented interface configured to receive two or more requests for production of stored	A system configured to receive two or more requests. This claim does not refer to user action.

medical data related to the first patient"	
"an identification specific to the computer-readable medium"	A unique identification for each instance of the computer-readable medium (e.g. each CD).
Timeout claims	**Claim Construction**
"detecting whether a server has changed within a timeout period after receiving medical image data or related data"	Time of detection is *after* the timeout interval expires. The range of detection is *before*. The timeout period is a predefined period of time. For a fuller discussion of the concepts "time of detection" and "range of detection," refer to parts (a) and (b) of Section III.C.i. *Supra* at 27-31.
"wherein the timer resets when the application server detects an additional change in the database before a timeout interval."	Time of detection is *after* the timeout interval expires. The range of detection is *before*. The timeout interval is a predefined period of time. For a discussion of the concepts of "time of detection" and "range of detection," refer to parts (a) and (b) of Section III.C.i. *Supra* at 27-31.
"timer"	No construction necessary at this time given the absence of a dispute.

IT IS SO ORDERED.

DATED: October 26, 2012

Mariana R. Pfaelzer

Hon. Mariana R. Pfaelzer
United States District Judge