UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIETGOAL INNOVATIONS LLC,	:	
Plaintiff,	:	13 Civ. 8381(JSR)
-v-	:	MEMORANDUM ORDER
TIME, INC.,	:	
Defendant.	:	

JED S. RAKOFF, U.S.D.J.

DietoGoal Innovations LLC ("DietGoal") sues Time, Inc. ("Time") for patent infringement. DietGoal alleges that Time's Recipe Searcher, available at http://browse.realsimple.com/food-recipes/browse-all-recipes/index.html, infringes U.S. Patent No. 6,585,516 (the "'516 Patent") and its associated '516 Patent Reexamination Certificate. On November 1, 2013, following full briefing, the Court conducted a "Markman" hearing on how to construe certain disputed terms in the claims of the '516 patent. *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). This Memorandum Order construes the relevant disputed terms.

By way of background, it should be noted that DietGoal originally filed its patent infringement lawsuit against Time on June 13, 2012, *DietGoal Innovations LLC v. Time, Inc.*, 12-cv-00337, in the Eastern District of Texas (hereinafter referred to as the "Texas Court"). DietGoal's lawsuit against Time was one of several patent infringement lawsuits filed by DietGoal against various defendants asserting infringement of the '516 Patent. On April 17, 2013,

DietGoal's lawsuit against Time was transferred to the Eastern District of Virginia, and then subsequently transferred to this Court. A number of other DietGoal lawsuits pending in the Eastern District of Texas were consolidated for pretrial purposes in what has been referred to as the "Kellan" litigation.

In the Kellan litigation, the Texas Court issued a claim construction ruling on February 13, 2014, construing numerous claim terms of the '516 patent. Declaration of Eric W. Buether dated March 24, 2014 ("Buether Decl."), Exhibit ("Ex.") E. Although the Texas court's claim construction ruling is not binding on this Court, we treat the construction of our sister court with considerable deference. *See, e.g., Parker-Hannifin Corp. v. Baldwin Filters, Inc.*, 724 F. Supp. 2d 810, 815-16 (N.D. Ohio 2010) (holding that the prior order would receive "deferential treatment").

The general principles guiding claim construction are well established. Unless a patent adopts its own special definition of a term, courts interpret a term in a claim according to its "ordinary and customary meaning," *i.e.*, "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention . . . ." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc) (internal quotation marks omitted). "[T]he person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* at 1313.

In undertaking such construction, "the court should look first to the intrinsic evidence of record, *i.e.*, the patent itself, including the claims, the specification and . . . the prosecution history." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). However, courts should not construe a claim as protecting only those examples recited in the specification, which may merely be illustrative. *See Phillips*, 415 F.3d at 1323; *see also Acumed LLC v. Stryker Corp.*, 483 F.3d 800, 807 (refusing to read a feature into a claim even though every embodiment disclosed included the feature). Additionally, courts may consider "extrinsic evidence," such as dictionaries and treatises, "as long as those sources are not used to contradict claim meaning that is unambiguous in light of the intrinsic evidence." *Phillips*, 415 F.3d at 1324.

Applying these principles, the Court construes the disputed claim terms of the '516 patent as follows:

The term "customized eating goals" means "computer implemented, user-specific dietary objectives." Defendant proposes the construction "a stored, user-specific, numeric dietary objective," primarily having the effect of 1) highlighting that the goal is stored by the computer and 2) quantitative in nature. However, this Court agrees with the Texas Court that 1) defendant asserts "that 'stored' is included only to make clear the goals are computer implemented and accessible by the computer, and not merely within a user's mind. The Court's construction achieves this purpose in a manner that it believes would be understandable to the jury by

explicitly addressing the issue that the goals are computer implemented, while avoiding reading a new limitation into the claim." Buether Decl. Ex. E at 20. This Court also agrees with the Texas Court that 2) an ordinary meaning of this term could be qualitative as well as quantitative, since here "there is no disclaimer or disavowal in the intrinsic record limiting the term to require reading in the preferred embodiment." *Id.*

The terms "Picture Menus" and "Picture Menus, which displays on the User Interface meals from the Database" mean "a visual display on the User Interface of at least one image of a meal from the Database." Defendant proposes the construction "pictures of meals which can be mixed and matched by a user to meet customized eating goals." However, this Court agrees with the Texas Court that defendant "seek[s] to include in their construction a particular way that the Picture Menu is used rather than focusing on what a Picture Menu is." Buether Decl. Ex. E at 28.

The term "Meal Builder" means "a computer program that allows the user to create a meal, modify the contents of a meal, and view the meal's impact on customized eating goals." Defendant proposes the construction "a computerized function that (a) allows the user to change the contents of a meal by adding and removing individual food objects and (b) visually indicates the meal's impact on customized eating goals," while plaintiff proposes the Texas Court's construction "a computer program that allows the user to create or change a meal and view the meal's impact on customized eating goals."

This Court's construction modestly alters the construction of the Texas Court by clarifying that the Meal Builder can both be used to 1) create a new meal and 2) edit a meal by adding or removing food items. Buether Decl. Ex. A, col. 4, ll. 58-61.

The term "computerized meal planning" requires no further construction. Defendant proposes the construction "planning a meal with a computer system without utilizing a network connection," on the theory that plaintiff abandoned any claim scope encompassing a networked computer system during the '516 Patent reexamination process when 1) DietGoal tried to add two claims that expressly covered a network system, 2) the Patent and Trademark Office ("PTO") rejected the proposed "network" claims under 35 U.S.C. § 112, and 3) DietGoal failed to appeal. However, this Court agrees with the Texas Court that the rejection "merely found that the specific embodiment of a network connected computer . . . was not supported in the specification. That a particular species is not supported within a specification does not mean that the more generic claim term is not entitled to the full scope of the term." Buether Decl. Ex. E at 11. Furthermore, this Court agrees with the Texas Court that DietGoal's decision not to appeal the PTO's rejection of the claims was "not an acquiescence to including a negative limitation limiting the meaning of 'computer' to something less than what one of ordinary skill in the art would understand in light of the specification. *Id.*

The terms "Food Object" and "Food Objects" require no further construction. *See Philips*, 415 F.3d at 1323.

The terms "view the resulting meals' impact on customized eating goals" and "view the resulting meal's impact on customized eating goals" require no further construction. *See Philips*, 415 F.3d at 1323.

The term "database of food objects organizable into meals" requires no further construction. Defendant attempts to read in a limitation that the user must be able to organize food objects from the database into a meal. However, this conflicts with specifications that disclose that the food objects stored in the database may be assembled into meals without any action on the part of the user. *See* Buether Decl. Ex. A, FIGS. 2 & 4.

Finally, the Court agrees with and adopts the following constructions of this patent, which the parties have jointly proposed and assented to:

The term "database of food objects" means "a computer-implemented collection of food objects organized such that a computer can search and retrieve the food objects."

The term "User Interface" means "software which receives commands from a user and allows the user to view displayed results."

The term "computerized planning" should be read as identical to the term "computerized meal planning."

The term "Meal" requires no further construction.

The term "value" requires no further construction.

The term "save the meals" requires no further construction.

SO ORDERED.

Dated: New York, NY
June 30, 2014

JED S. RAKOFF, U.S.D.J.