



UNIVERSITY OF
MARYLAND
SCHOOL OF LAW

**PATENT LAW
UPDATE**

***Akamai Techs.,
Inc.
v.
Cable &
Wireless
Internet Serv.,
Inc.***

No. 03-1007
Federal Circuit
Sept. 15, 2003

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On September 15, 2003, the Federal Circuit, *inter alia*, reversed the district court’s entry of judgment on the jury verdict that certain claims of U.S. Patent No. 6,108,703 were not anticipated by U.S. Patent No. 6,185,598. The patented technology related to improved Internet webpage access. The Federal Circuit stated:

C&W appeals the jury finding that claims 1 and 3 were valid as not anticipated by the disclosure of the ‘598 patent. . . . A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present. “[T]he dispositive question regarding anticipation is whether one skilled in the art would reasonably understand or infer from the prior art reference’s teaching that every claim [limitation] was disclosed in that single reference.” [T]he parties have narrowed the disputed issues of validity to a single point of contention—the placement of the load balancing software at either the DNS servers or the origin server.

[C]laims 1 and 3 do not include a load balancing limitation. While the written description unquestionably contemplates the preferred location of the load balancing software, claims 1 and 3 do not expressly require its presence. . . . The plain meaning of the claim language does not require any load balancing mechanism. Instead, it simply requires the embedded object to be served from “the content servers as identified by the first level and second level name servers.” Load balancing, if required at all, could be at either the DNS servers or the content provider server. The ordinary meaning of the term “identifying” in claims 1 and 3 covers standard DNS resolution, without any sort of load balancing. Absent evidence that a “patentee unequivocally imparted a novel meaning to [the] term[] or expressly relinquished claim scope during prosecution,” we give the limitation its full ordinary and customary meaning.

The only question that remains is whether the written description or the prosecution history unequivocally shows that the inventors imparted a novel meaning to the term “identifying” to include load balancing. The written description does not specifically define the term “identifying.” Rather, the discussion with respect to load balancing focuses on the DNS servers as performing “special function[s],” e.g., load balancing functions, without any reference to the term “identifying.” Similarly, the parties have pointed to nothing in the prosecution history with respect to the term “identifying.” Akamai’s only evidence that supports its special definition of the term “identifying” is the testimony of one of the inventors, Mr. Farber, of the ‘598 patent. . . . This extrinsic evidence is not the unequivocal evidence, indicating the term “identifying” should take anything other than its ordinary and accustomed meaning. While this possibly suggests that the inventors believed the “identifying” step included a load balancing function, “what the patentee subjectively intended his claims to mean is largely irrelevant to the claim’s objective meaning and scope.” It is also not testimony that clearly supports the proposition that the term “identifying” has a special meaning to one of ordinary skill in the art.