United States District Court,
E.D. Michigan, Southern Division.

**Jerry KIRSCH, individually and as Co-Trustee of the Jerry Kirsch Living Trust, and Kathleen Kirsch, as Co-Trustee of the Jerry Kirsch Living Trust,**
Plaintiffs.
v.
**AOE RICOH, Inc., a wholly-owned Subsidiary of Ricoh Corporation and Savin Corporation, Toshiba America Business Solutions, Inc., Canon USA, Inc. and Canon Computer Systems, Inc., Xerox Corporation and Samsung Electronics Co., Ltd, an Intervenor,**
Defendants.

**Oct. 8, 2004.**

Joseph C. Basta, Dykema Gossett, Ann Arbor, MI, Robert L. Kelly, Dickinson Wright, Bloomfield Hills, MI, Thomas M. Schehr, Dykema Gossett, Detroit, MI, for Plaintiffs.

Kristen Isaacson Spano, Marjory G. Basile, Miller, Canfield, Detroit, MI, for Defendants.

***MEMORANDUM OPINION AND ORDER RE: CLAIM CONSTRUCTION AND NOTICE SETTING STATUS CONFERENCE***

DENISE PAGE HOOD**, District Judge.**

## I. *BACKGROUND/FACTS*

The Court held a claim construction hearing in this matter. Plaintiffs filed the instant action against various Defendants alleging that Defendants infringe Plaintiff's U.S. Patent No. 4,816,911 (the '911 patent). The '911 patent contains six claims. Claims 1 and 2 are the only claims at issue in this hearing.

Kirsch Technologies, Inc. ("KTI") obtained the '911 patent on June 13, 1989. The device disclosed in Plaintiffs' '911 patent includes an "information station" or switching device with three telephone-line type ports for use with a conventional facsimile ("fax") machine. The information station converts paper documents into digital images, stores those digital images, retrieves them on command, and prints them on command. The information station was invented to use with a personal computer ("PC") and an off-the shelf fax machine. The information station allows the user to scan data into the computer and print data from the computer. The information station allows someone who already had a PC to buy a fax machine and plug it into the PC with no modification required to the PC or the fax machine. The only additional equipment needed was the information station or switch box to connect the personal computer and the fax.

The information station or switching device uses standard connectors so that no modification to the personal computer or the fax is necessary. The fax machine plugs into a first port or telephone jack of the information station. The modem of a personal computer plugs into the second port or telephone jack of the

information station. The external telephone line plugs into the third port or telephone jack of the information station.

The information station has three states. The first switching state allows the modem of the computer to perform its standard function of communicating with the external telephone line. This communication involves the second (PC port) and third (external telephone line) ports.

The second switching state allows the fax machine to perform its standard function of communicating with the external telephone line to receive or transmit documents. This communication is between the first (fax port) and the third (external telephone line) ports.

The third switching state allows the modem of the personal computer to communicate with the fax machine. This allows the fax machine to perform as either a printer or a scanner for the PC. The modem of the PC is communicating with the modem of the fax machine (or "transceiver"). In order to activate the fax machine to operate as a printer while in the third switching state, the fax machine is "tricked" to believing that it is connected to the external telephone line via the third port and receiving an incoming telephone call. The '911 patent simulated the telephone connection by including circuitry that operated to create the illusion that the fax machine is receiving an incoming telephone signal.

## II. *STANDARD OF REVIEW*

A determination of infringement requires a two-step analysis. Gentry Gallery, Inc. v. Berkline Corp., 134 F.3d 1473, 1476, 45 U.S.P.Q.2d 1498, 1500 (Fed.Cir.998). "First, the claim must be properly construed to determine its scope and meaning. Second, the claim as properly construed must be compared to the accused device or process." *Id*. Claim construction is an issue of law. Markman v. Westview Instruments, Inc., 517 U.S. 370, 388-90, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). "Whether certain claim language invokes 35 U.S.C. s. 112, para. 6 is an exercise of claim construction and is therefore a question of law." Personalized Media v. Int'l Trade Comm'n, 161 F.3d 696, 702, 48 U.S.P.Q.2d 1880, 1886 (Fed.Cir.1998).

In interpreting claims, a court "should look first to the intrinsic evidence of record, *i.e*., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582, 39 U.S.P.Q.2d 1573, 1577 (Fed.Cir.1996). The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication. *Id*. Absent an express intent to impart a novel meaning, "terms in a claim are to be given their ordinary and accustomed meaning." Renishaw PLC v. Marposs Socleta' per Azioni, 158 F.3d 1243, 1249, 48 U.S.P.Q.2d 1117, 1121 (Fed.Cir.998); Carroll Touch, 15 F.3d at 1577, 27 USPQ2d at 1840 ("[T]he words of a claim are generally given their ordinary and accustomed meaning, unless it appears from the specification or the file history that they were used differently by the inventor.").

If the intrinsic evidence alone will resolve any ambiguity on a disputed claim term, then it is improper to rely on extrinsic evidence. Anything outside of the intrinsic evidence (patent itself, the specification, the file history) is extrinsic evidence. *See,* Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). The interpretation of patent claims is more a legal than a factual determination and is to be made by the judges rather than juries. Markman, 517 U.S. at 388-90. The court must construes the terms of art forming parts of the claim. Framson v. Advance Offset Plate, Inc., 720 F.2d 1565, 219 U.S.P .Q. 1137, 1142 (Fed.Cir.1983).

While words in a claim are generally given their ordinary and customary meaning. Vitronics, 90 F.3d at 1582. A patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is stated in the patent specification or file history. *Id*. The established rules of claim construction include a prohibition against reading extraneous limitations into the claims which are not present. Renishaw, 158 F.3d at 1249 (Fed.Cir.1998).

Limitations appearing in a claim cannot be ignored. Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co., 520 U.S. 17, 29, 117 S.Ct. 1040, 137 L.Ed.2d 146 (1997). Extrinsic evidence may only be considered if the terms cannot be construed from intrinsic evidence. An accused device has no place in the claim construction protocol. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1580 (Fed.Cir.1991). Finally, courts do not redraft claims. Quantum Corp. v. Rodime, PLC, 65 F.3d 1577, 1584 (Fed.Cir.1996).

## III. ANALYSIS

### A. Claim 1 of the '911 Patent

#### 1. Language in Claim 1

The '911 patent allows a user to purchase an off-the-shelf fax machine and hook it up to a PC, enabling the user to print, scan, fax and send data without modifying the PC or fax machine. Claim 1 of the '911 patent is as follows (the highlighted terms are in dispute):

1. An information station comprising:

a computer for receiving, storing and transmitting digital electronic signals;

a ***facsimile transceiver*** for converting printed information into digital electronic signals and for converting digital electronic signals into printed information;

a ***serial interface*** coupled to said computer and capable of receiving said digital electronic signals produced by said facsimile transceiver;

a ***switching means*** responsively coupled to said computer and having a first port coupled to said facsimile transceiver, having a second port coupled to said serial interface means and having a third port adapted for coupling to a telephone line;

said ***switching means*** being responsive to said computer:

(a) to assume a first switching state in which said serial interface is connected to said third port for enabling communication between said computer and said telephone line;

(b) to assume a second switching state in which said facsimile transceiver is connected to said third port for enabling communication between said computer and said telephone line; and

(c) to assume a third switching state in which said facsimile transceiver is connected to said serial interface

to establish communication between said computer and said facsimile transceiver;

whereby in said first switching state in formation stored in said computer may be transmitted to said telephone line, in said second switching state information converted into digital electronic signals by said facsimile transceiver may be transmitted to said telephone line, and in said third switching state information stored in said computer may be transmitted to said facsimile transceiver for conversion into printed information and information by said facsimile transceiver may be stored in said computer; and

further comprising ***current source means*** responsively coupled to said computer and coupled to said facsimile transceiver for selectively providing current to said facsimile transceiver when in said third switching state for simulating the connection of a telephone line to said facsimile transceiver.

('911 patent, Claim 1)

**2. "Facsimile Transceiver"**

The first portion of dispute in claim 1 is the term "facsimile transceiver" which is found in the language, "An information station comprising ... a ***facsimile transceiver*** for converting printed information into digital electronic signals and for converting digital electronic signals into printed information." The parties offer differing constructions of the term "facsimile transceiver." Plaintiffs propose the following construction:

A facsimile transceiver is used which includes a seamier that scans a printed image on a piece of paper and turns the image into digitized information. The facsimile transceiver also has a printer which allows the facsimile transceiver to take digitized information, such as a digitized picture or words, and print the picture or words on a piece of paper.

Joint Claim Construction Statement at 4.

In comparison, Defendants claim that "facsimile transceiver" should be constructed as follows:

The facsimile transceiver must be capable of scanning printed information (e.g., printed text, pictures, photographs, and graphics) on a piece of paper, and digitizing the printed information into digital electronic signals representing the printed information, and transmitted the digital electronic signals to a destination outside the facsimile transceiver.

The facsimile transceiver also must have the capability of receiving digital electronic signals representing printed information (e.g., printed text, pictures, photographs, and graphics) from a source outside the facsimile transceiver, and printing the printed information in human readable form on a piece of paper.

The facsimile transceiver converts printed documents into digital signals and converts digital signals into printed documents. Within the context of the ' 911 patent claims and specification, these digital signals are necessarily encoded by a modem into analog signals for transmission over the telephone lines, and the analog signals are decoded by a modem into digital signals.

The facsimile transceiver must have the capability of communicating with a public telephone network through a modem.

Id. at 5.

While acknowledging that the two constructions are similar, Plaintiffs argue that Defendants' proposed construction is nonetheless unsupported by the claim language, the patent specification, and the prosecution history of the patent. *See* Pls.' Br. in Resp. to Defs.' Joint Brief in Supp. of Claim Construction at 5 (hereinafter referred to as "Pls.' Resp. Br."). Specifically, Plaintiff contends that Defendants improperly import several limitations into the claim: "First, Defendants appear to argue that (sic) 'facsimile transceiver' limitation must be read to encompass only so-called 'conventional' facsimile transceivers. Second, Defendants' construction appears to improperly require that any communications to or from the facsimile transceiver pass through a modem in the facsimile transceiver." Id. at 5-6.

Citing Defendants' Joint Brief in Supp. of Claim Construction, Plaintiffs state that Defendants, while not expressly using the term "conventional" to describe the facsimile transceiver in their proposed construction, "pointedly try to convey the impression that the scope of the 'facsimile transceiver' limitation should somehow be limited to 'conventional' facsimile transceivers." Id. at 6. Plaintiffs argue that the word "conventional" is too ambiguous to be used to describe the type of facsimile transceiver contemplated by the claim. In Plaintiffs' estimation, the U.S. Patent and Trademark Office would likely have rejected the claim under 35 U.S.C. s. 112 as too indefinite had it used to word "conventional." Id.

Defendants argue that the specifications and prosecution history, as dictated by the claim language, describe a conventional facsimile transceiver that requires a modem-to-modem connection. *See* Defs .' Joint Reply Br. in Supp. of Claim Construction at 3 (hereinafter referred to as "Defs.' Joint Reply Br."). Because the specifications refer to a Fujitsu Model 2010 facsimile transceiver, which is only capable of modem-to-modem serial communication of analog signals through a telephone-compatible port and over a telephone line, Defendants argue that Plaintiffs' claim should be limited to facsimile transceivers with the same type of structure and functionality. Defendants further argue that "[t]he specification, and Kirsch during prosecution of the patent, explained that the invention was to use a conventional fax, and add a switch to enable the fax to connect directly to the computer's modem without any modification to the fax."

The Court is not persuaded by Defendants' argument. The specifications note that the claimed invention could be used with a "commercially available" facsimile transceiver. The Fujitsu Model 2010 is one "commercially available" unit. The Fujitsu Model 2010 referred to in the specifications, and others of similar make, require a modem-to-modem connection. The specifications merely acknowledge this fact and describe the claimed invention as being within the unit, and the unit being attached to a telephone line. However, there is no indication that other types of "commercially available units" did not exist at the time of patent prosecution. Indeed, "Defendants have identified numerous examples of alleged prior art facsimile transceivers-and, therefore, 'conventional' facsimile transceivers-having structure and/or functionality different than the exemplary model cited in the Kirsch patent." Pls.' Resp. Br. at 7; *see* Defs.' Joint Reply Br. at 17-19. The Court is not convinced that Kirsch intended to limit his claim to devices such as the Fujitsu Model 2010.

Defendants claims that the prosecution history supports its construction because Kirsch explained that his "invention can be implemented using *conventional facsimile transceivers* and without requiring such transceivers to be modified." Defs.' Joint Br. in Supp, of Claim Construction at 23 (hereinafter referred to as "Defs.' Br.") (emphasis in original) (citing Rosso Decl., Ex. 2c, p. 3). Again, the Court is not convinced that Kirsch's use of the term "conventional facsimile transceivers" was intended to limit his claim. There were other "conventional facsimile transceivers" in existence at the time patent prosecution; Kirsch chose to

describe the use of his invention in one.

The specifications state that "[t]he facsimile transceiver ... may be a *commercially available unit*." (Emphasis added). The prosecution history reveals that his "invention can be implemented using *conventional facsimile transceivers* and without requiring such transceivers to be modified." The Court concludes that the specifications do not identify the Fujitsu Model 2010, which was but one type of "commercially available unit," to the exclusion of others. The specifications describe but one embodiment, albeit the "Preferred Embodiment" in this instance, of Plaintiffs' invention. A patentee is not required to disclose every embodiment of his invention. SRI Int'l v. Matsushita Elec. Corp. of Amer., 775 F.2d 1107, 1121-22 (Fed.Cir.1985) (en banc). The Court accepts Plaintiffs' construction of the term "facsimile transceiver."

**3. "Serial Interface"**

The parties also offer differing constructions of the term "serial interface" in the phrase, "An information station comprising ... a ***serial interface*** coupled to said computer and capable of receiving said digital electronic signals produced by said facsimile transceiver," Plaintiffs propose that the phrase be constructed to as follows:

The computer includes an interface through which the computer is connected to the facsimile transceiver. One or more electrical conductors connect the interface of the computer to the facsimile transceiver. The interface allows digitized information from the facsimile transceiver to be sent to the computer. FN1

FN1. Plaintiffs' proposed claim construction initially contained the following sentence: " 'Serial interface' covers standard parallel interfaces as well as serial interfaces." Plaintiffs have removed this sentence from its proposed claim construction for this limitation, stating that it was "intended to convey Kirsch's argument regarding the range of equivalents for the term rather than its literal construction." *See* Pls.' Reply Br. at 6 n. 1.

Joint Claim Construction Statement at 10. Defendants suggest that the phrase be constructed to state:

Within the context of the '911 patent claims and specification, the term "serial interface coupled to said computer and capable of receiving said digital electronic signals produced by said facsimile transceiver" must include as part of it a modem connected to the computer. A modem is a devise for encoding digital electronic signals compatible with a computer into analog signals and decoding analog signals into digital electronic signals compatible with a computer.

As the claim language stales, this limitation means: "serial interface coupled to said computer and capable fo receiving said digital electronic signals produced by said facsimile transceiver."

The term "serial" means transmitting information over a single date line sequentially. The term "serial" does not include "parallel" in which information is transmitted in parallel over a plurality of date lines.

The term "serial interface" does not include an RS-232C interface, a Centronis interface, or any other computer interface that does not include a modem or s not for transmitting information sequentially over a telephone-compatible line.

The phrase "receiving said digital electronic signals produced by said facsimile transceiver" refers to the digital electronic signals produced by the facsimile transceiver representing printed information scanned by the facsimile transceiver and transmitted by the modem of the facsimile transceiver over a telephone-compatible line to the modem of the computer.

*Id*. at 12.

Defendants claim that the "serial interface" referred to in claim 1 must be construed as being limited to an interface having a modem for communicating with the modem of a facsimile transceiver. *See* Defs.' Br. at 24-27. Plaintiffs respond that such a limitation is unjustified. *See* Pls.' Resp. Br. at 8.

The term "serial" is commonly understood to mean that data is transmitted sequentially, one bit at a time. *See* Pls.' Br. at 6; Defs.' Br. at 24. The Court notes that the plain language of claim 1, which expressly states that the serial interface is coupled to said computer and receives signals produced by said facsimile transceiver, supports Kirsch's contention that his invention contemplated the serial interface being "coupled to said computer," and not to the facsimile transceiver. Similarly, the plain language of claim 1 does not support a construction *requiring* a common interface between the computer and facsimile transceiver. *See* Pls.' Br. in Supp. of Proposed Claim Construction at 6 (hereinafter referred to as "Pls.' Br.").

Defendants contend that intrinsic evidence adds a limitation not evinced by the plain language of claim 1. For support, Defendants cite the '911 patent to argue that the serial interface described in claim 1 contains a modem. Defendants observe that the '911 patent states:

"The computer includes a *serial interface in the form of a synchronous communication circuit and modem* for communicating with the facsimile transceiver." ('911 patent, col. 2, lines 60-63; emphasis added.)

"*[T]he modem 20 ...* together with synchronous communication card 18 *comprises a serial interface* for connection to computer 10." ('911 patent, col. 8, lines 8-11; emphasis added.)

"The computer has *a serial interface including* a synchronous communication interface and *modem* for communicating with the facsimile transceiver. (sic) (' 911 patent, Abstract; emphasis added.)

"Preferably *modem 20 provides a serial communication link* at least 9,600 baud in a synchronous fashion." ('911 patent, col. 4, lines 27-29; emphasis added.)

"The digital electronic signals are transmitted by the *serial communication link comprising modem 20* and synchronous communication card 18 to the personal computer 10." ('911 patent, col. 4, lines 62-67).

"The information station of claim 1 wherein said *serial Interface comprises* a synchronous communication interface attached to said computer and a *modem* coupled to said synchronous communication interface." ('911 patent, claim 4; emphasis added.)

Defs.' Br. at 25 (emphases in original).

Plaintiffs have not attempted to rebut the citations of intrinsic evidence specifically cited above. Instead, Plaintiffs claim that "[t]he language of claim 1 does not include the word 'modem.' " *See* Pls.' Resp. Br. at 8.

Plaintiffs further claim that "the specification and prosecution history of the '911 patent use the term 'serial interface' in a manner consistent with its ordinary meaning." Id. Defendants do not contest this latter point. *See* Defs.' Br. at 24.

Because the language of claim 1 states that the interface is "capable of receiving digital electronic signals produced by said facsimile transceiver," Plaintiffs contend that the limitation does not allow for a construction requiring a modem as part of the serial interface, since "a computer modem is designed to receive analog signals from an external device such as a facsimile transceiver." *See* Pls.' Resp. Br. at 8-9 (emphasis in original). Plaintiffs asserts this same argument in connection with their contention that the specification refutes Defendants proposed construction.

Plaintiffs next argue that constructing the "serial interface" limitation in claim 1 to require a modem would render claim 4 superfluous. *See* Pls.' Resp. Br. at 9. Claim 4 recites the specific embodiment "wherein said serial interface comprises a synchronous communication interface attached to said computer and a modem coupled to said synchronous communication interface." Citing Clearstream Wastewater Sys., Inc. v. Hydro-Action, Inc., 206 F.3d 1440, 1446 (Fed.Cir.2000), Plaintiffs contend that adopting Defendants proffered construction of claim 1 would violate the principle of claim construction requiring claim differentiation. *See* Pls.' Resp. Br. at 9.

Referring to the prosecution history, Plaintiffs assert that Defendants' construction must be rejected because "[c]laim 1 was initially rejected by the U.S. Patent and Trademark Office ... as anticipated by U.S. Patent No. 4,652,933 ("Koshiishi")." Id . at 10. Plaintiffs argue that the interface connecting the computer and facsimile transceiver in Koshiishi does not include a modem in its reference. Because each element of a prior art reference must be disclosed in the reference, Plaintiffs claim that the U.S. Patent and Trademark Office did not construe the "serial interference" limitation as requiring a modem. Id. Defendants did not rebut this particular argument.

The Court concurs with the Plaintiffs' arguments. Defendants' proposed construction of "serial interface" is not tenable. As stated earlier, the portion of claim 1 relevant to this discussion states that the embodiment contemplates "a serial interface coupled to said computer and capable of receiving said digital electronic signals produced by said facsimile transceiver."

The plain language of this claim and the specification do not allow for Defendants' assertion "that the modem of the computer's serial interface ( *i.e.*, the "modem coupled to said computer") is capable of being directly connected to the modem of the fax for modem to modem serial communication of analog signals through their respective telephone-compatible ports." *See* Defs.' Reply Br. at 6. The plain language of the claim does not state that analog transmission must be used. Rather, the claim embodies the transmission of digital electronic signals. It is undisputed that a modem cannot receive digital electronic signals. Therefore, the serial interface cannot be read to include a modem. If such a construction were adopted, the serial interface could not, as the claim requires, receive digital electronic signals produced by a facsimile transceiver.

The Court notes that the examples cited by Defendants are susceptible to Defendants' interpretation. Notwithstanding the fact that Plaintiffs have not attempted to address the examples Defendants offer as support for their construction, the Court is not convinced that these examples are definitively determinative of the appropriate construction of claim 1.

Further, Plaintiffs' argument that adopting Defendants' construction of claim 1 would render claim 4 superfluous is persuasive. Under Clearstream, 206 F.3d at 1446, the doctrine of claim differentiation requires this Court to presume that different words used in different claims result in a difference in meaning and scope for each of the claims. While this doctrine cannot be used to make a claim broader than what is contained in the written description, it does prevent the "narrowing of broad claims by reading into them the limitations of narrower claims." *Id*. In accordance with this principle, the Court concludes that the "serial interface" embodied in claim 1 does not necessarily include a modem; claim 4 evinces that Kirsch knew how to qualify a claim's embodiment by so indicating.

Finally, the Court finds Plaintiffs' contention regarding the Koshiishi patent convincing. Under In re Robertson, 169 F.3d 743, 745 (Fed.Cir.1999), "[a]nticipation under 35 U.S.C. s. 102(c) requires that 'each and every clement as set forth in the claim is found, either expressly or inherently described, in a single prior art reference' " ( *citing* Verdegaal Bros., Inc. v. Union Oil Co. of Cal., 814 F.2d 628, 631 (Fed.Cir.1987)). That claim 1 was initially rejected by the U.S. Patent and Trademark Office under s. 102(c) informs the Court that a modem was not expressly or inherently described in the Koshiishi patent. A finding that claim 1 does not envision the "serial interface" containing a modem is consistent with the Patent and Trademark Office's initial rejection of claim 1 of the '911 patent.

**4. "Switching Means"**

Claim 1 uses the term "switching means," the construction of which the parties disagree. The portion of claim 1 relevant to the instant discussion is:

An information comprised of ... a ***switching means*** responsively coupled to said computer and having a first port coupled to said facsimile transceiver, having a second port coupled to said serial interface means and having a third port adapted for coupling to a telephone line;

said ***switching means*** being responsive to said computer:

(a) to assume a first switching state in which said serial interface is connected to said third port for enabling communication between said computer and said telephone line;

(b) to assume a second switching state in which said facsimile transceiver is connected to said third port for enabling communication between said computer and said telephone line; and

(c) to assume a third switching state in which said facsimile transceiver is connected to said serial interface to establish communication between said computer and said facsimile transceiver;

whereby in said first switching state in formation stored in said computer may be transmitted to said telephone line, in said second switching state information converted into digital electronic signals by said facsimile transceiver may be transmitted to said telephone line, and in said third switching state information stored in said computer may be transmitted to said facsimile transceiver for conversion into printed information and information by said facsimile transceiver may be stored in said computer.

Plaintiff proposes that the "switching means" term be constructed in accordance with the following:

A switching circuit receives instructions from the computer. The switching circuit is made up of electrical

components through which electrical current flows to switch the information station between different states of operation. The switching means can be circuitry within the fax machine.

The switching circuit has electrical components that serve as the connection, or first port to the fax machine's printer and scanner. A port can be multiple conductors which provide access to a circuit. The switching circuit also has electrical components that serve as the connection, or second port, to the serial interface of the computer. The switching circuit also has electrical components that serve as the connection, or third port, to a telephone line. The telephone line is connected to the facsimile transceiver through a telephone connector jack on the facsimile transceiver.

When the facsimile transceiver is connected to the computer, the switching circuit can be controlled from the computer. The computer can send instructions to the switching circuit so that the facsimile transceiver can be switched between different states of operation.

One set of instructions from the computer cause the switching circuit to connect the computer (via the serial interface) to the telephone line by establishing an electrical connection between the second port and third port. This is the first switching stale. This allows the computer to send digitized in formation over the telephone line to a remote location.

Another set of instructions from the computer cause the switching circuit to connect the facsimile transceiver to the telephone line by establishing an electrical connection between the first port and the third port. This is the second switching state. This allows the facsimile transceiver to send a document to a remote location or receive a faxed document from a remote source. This is the standard operation of a facsimile transceiver.

Another set of instructions from the computer causes the switching circuit to connect the facsimile transceiver to the computer over the serial interface by establishing an electrical connection between the first port and the second port. This is the third switching state. It allows the computer to use the facsimile transceiver as a printer to print out information from the computer. It also allows the computer to use the facsimile transceiver as a scanner to scan documents into the computer in digitized form.

Joint Claim Construction Statement at 19-21; *See* Pl.'s Br. at 9. FN2

FN2. The Court acknowledges the filing of Plaintiffs' Errata for: (1) Plaintiffs' Claim Construction Statement; (2) Joint Claim Construction Statement; and (3) Plaintiffs' Brief in Support of Plaintiffs' Proposed Claim Construction Statement, and changes the references contained therein accordingly.

Defendants separate the "switching state" limitation into four parts. *See* Joint Claim Construction Statement at 25. The four parts are:

Part 1 of Limitations: a switching means responsively coupled to said computer and having a first port coupled to said facsimile transceiver, having a second port coupled to said serial interface and having a third port adapted for coupling to a telephone line.

Part 2 of Limitations: said switching means being responsive to said computer ... (a) to assume a first switching state in which said serial interface is connected to said third port for enabling communication

between said computer and said telephone line ... whereby in said first switching state information stored in said computer may be transmitted to said telephone line.

Part 3 of Limitations: said switching means being responsive to said computer ... (b) to assume a second switching state in which said facsimile transceiver is connected to said third port for enabling communication between said computer and said telephone line ... whereby ... in said second switching state information converted into digital electronic signals by said facsimile transceiver may be transmitted to said telephone line.

Part 4 of Limitations: said switching means being responsive to said computer ... (c) to assume a third switching state in which said facsimile transceiver is connected to said serial interface to establish communication between said computer and said facsimile transceiver; whereby ... and in said third switching state information stored in said computer may be transmitted to said facsimile transceiver for conversion into printed information and information converted into digital electronic signals by said facsimile transceiver may be stored in said computer.

*See* id. at 25-36.

The only disputed portion of the "switching means" term relates to additional limitations suggested by what Defendants classify as "Part 1 of Limitations." Defendants' proposed construction of "Part 1 of Limitations" is as follows:

In light of the specification, a "switching means" comprises an electromechanical switch having three "ports." A "port" is a socket into which an external device can be plugged. The first port is coupled to the facsimile transceiver, meaning that a telephone-compatible line connects the modem of the facsimile transceiver to the port. The second port is coupled to the serial interface, meaning that a telephone-compatible line connects to the modem of the computer to the port. The third port is coupled to a telephone line, moaning that a telephone-compatible line connects an actual telephone line (e.g., at telephone jack in the wall) to the port.

The switching means is computer-controlled by, and thus responsively coupled to, the computer such as by placing appropriate data bits on the computer's data bus and by then addressing appropriate circuits, such as the address decoder circuits, in the switching means, the switching means is caused to connect two selected ports to one another.

*See* Joint Claim Construction Statement at 26. All Defendants argue that this Court should adopt a construction that limits the "switching means" limitation to the "single, specific description" described in the specifications. *See* Defs.' Br. at 29.

Plaintiffs refute Defendants' construction on two bases. First, Plaintiffs classify this argument as being one where Defendants are attempting to "have their cake and eat it too," because construing the "switching means" limitation would "essentially require the Court to engage in a 'means-plus-function' analysis even if the Court determines that the 'switching means' limitation is not in a 'means-plus-function' format." *See* Pls.' Resp. Br. at 11-12.

Plaintiffs also argue that the language of the "switching moans" limitation should be accorded its ordinary meaning to those of ordinary skill in the art. Id. The term "switch" was commonly understood at the time of

the invention to mean a device that enabled a change of state of operation. Plaintiffs contend that because "a variety of interchangeable electrical components through which electrical current flows to change the state of operation of a device were commonly known within the art at the time the application that matured into the '911 Patent was filed ( *e.g .,* transistors)," the "switching means" limitation, which uses electromechanical relays, should not be construed to envision only to the structure listed in the specifications. *See* Pls.' Resp. Br. at 12.

Defendants, while not responding to Plaintiffs' first assertion in their Reply Brief, argue with regard to Plaintiffs' second assertion that it is irrelevant that a person of ordinary skill might understand that there are structures other than electromechanical relays which could be used because such knowledge does not overcome the fact that the specification specifies that the invention uses electromechanical relays. *See* Defs.' Reply Br. at 10 (citing Watts v. XL Sys., Inc., 232 F.3d 877, 883 (Fed.Cir.2000)).

Defendants also argue that Plaintiffs' assertion that the facsimile transceiver, as opposed to the switching mechanism described in claim 1 and the specifications, "switches" states is inaccurate. In pages 9-11 of their brief, Defendants describe the operation of the Information Station of the '911 Patent. In those pages, the Defendants correctly state that "[t]he switching circuit ... operates in three different 'switching slates' in response to instructions from the computer." *See* Defs.' Br. at 9. Plaintiffs have not argued with this technically correct categorization of the Information Station, Plaintiffs, however, impliedly argue that the "switching," while occurring outside of the facsimile transceiver, causes the facsimile transceiver lo "switch" states, lo wit: "the 'current source means' provides current to the facsimile transceiver in the *first* switching state as well as the third switching state." *See, e.g.,* Pls.' Resp. Br. at 15.

The Court acknowledges Plaintiffs' analysis, but concurs with Defendants' analysis. The meaning of "switching" in claim 1 and the specification refers to that which occurs in the "switching circuit," not the actions of the facsimile transceiver that occur *because* of the switching in the switching circuit. As Defendants observe:

The fax is thus not "switched between different states of operation," and is unaware of any switching states or even that it is connected to a switch. All the fax know s (or thinks it knows) is what it normally knows-it is or is not connected to a telephone line.

*See* Defs.' Reply Br. at 8. Understanding the claim in this way requires a conclusion that, notwithstanding claim 1's statement that the current source means provides current "to said facsimile transceiver when in said third switching state," only the switching circuit is in the "third switching state" when the current source means is providing current, not the facsimile transceiver itself.

The parties also disagree as to the appropriate definition of "port," as used in the "switching means" limitation. Plaintiffs advocate the use of the definition: "an interface to an electronic device ( *e.g.,* computer, facsimile transceivers and other peripherals, etc.) and their components ( *e.g.,* circuit boards, integrated circuits, etc.)." *See* Pls.' Resp. Br. at 13. Defendants argue that a "port" is a socket into which an external device can be plugged. *See* Joint Claim Construction Statement at 25. Plaintiffs note that "[n]owhere in the claims, the specification, or the prosecution history are the words 'socket', 'plugged' or 'telephone-compatible line' used in describing the ports or their interrelationship with other structural elements of the claimed invention."

Defendants argue that the definition proffered by Plaintiff, though commonly accepted as the definition of

"port," is inapplicable to Patent '911 because the specification "consistently and exclusively uses the term 'port' to refer to elements 30, 32, 34, and 38, into which a telephone-compatible line is plugged so that the computer using its modem and the fax using its modem can communicate with one another or with a remote device, other telephone line or simulated telephone line." *See* Defs.' Reply Br. at 9. Defendants contend that each of the "ports" in the "switching means" of the '911 patent must be configured to receive a telephone-compatible line. *See* Defs.' Br. at 30.

This Court agrees with Defendants' analysis of "electromechanical" and "port." For support of both of these arguments, Defendants cite to the specification at Col. 3, lines 4-20 wherein the specification states:

The information station includes a switching circuit which allows the apparatus to function in three modes. In one mode the computer is connected to an external telephone line through the synchronous communication circuit and modem. This allows the computer to communicate with a remote system or facsimile transceiver in a remote station mode. A second switching state connects the facsimile transceiver with an external telephone line to allow the facsimile transceiver to send and receive fax messages. This second mode of operation provides flexibility in allowing the facsimile transceiver equipment to be used to send and receive documents when it is not being used as a component of the information station. The third switching state places the information station in a local mode in which the facsimile transceiver is connected to the computer through the modem and synchronous communication circuit.

Defendants also cite the specification at Col. 7, line 58 to Col. 59, line 27. The specification states:

In order to overcome these problems, the invention employs a computer controlled switching apparatus which allows the facsimile transceiver to be directly connected to the modem. The switching apparatus has the additional advantage of allowing the facsimile transceiver to be selectively switched to an external commercial telephone line, to allow the facsimile transceiver to be used for sending ordinary messages to a remote location. The switching circuit also permits the modem to be connected to the external commercial telephone line, thereby placing the information station of the invention in a remote access condition in which digital electronic signals from the computer can be transmitted to a remote station or second facsimile transceiver.

FIGS. 2 and 3 illustrate the switching apparatus of the invention. Referring first to FIG. 2, the switching circuit has a first port 30 for coupling to facsimile transceiver 22. A second port 32 is coupled to the modem 20 which together with synchronous communication card 18 comprises a serial interface for connection to computer 10. A third port 34 is adapted for connection to a telephone line depicted diagrammatically at 36. In addition, the switching circuit includes a fourth port 38 for connection to the "telephone connector" jack of facsimile transceiver 22. Tn FIG. 2 the telephone connector jack is depicted diagrammatically at 40.

The switching circuit further comrises (sic) a first relay 42 coupled between ports 30 and 34. A second relay 44 is coupled between ports 32 and 34. A third relay 46 is coupled to port 38 and also to a resistor 48 which provides a current path when that relay is closed, as will be more fully discussed below. Each of the relays includes a set of double pole, double throw contacts and a relay coil 42a, 44a and 46a, respectively. The relay coils are energized by a computer interface circuit illustrated in FIG. 3 and discussed below.

* * *

In operation, the switching circuit is computer controlled by placing a predetermined address on address bus

60. The address decoders 56 and 58 decode this address and cause the data latch to strobe the data then on the data bus into the data latch. The data having been latched, the address lines can then be used for other purposes within the computer. The data latch circuit 62 decodes three bits of the latched data signal, energizing the appropriate relay coils. By placing the appropriate data bits on the data bus and by then addressing the address decoder circuits, any combination of relays 42, 44 and 46 can be energized or de-energized.

* * *

In use, the switching circuit can normally assume one of three switching states to selectively connect the computer interface modem to the telephone line for transmitting computer stored information over the telephone line to a remote station or to a facsimile transceiver; or to connect the facsimile transceiver to the telephone line to allow the transceiver to transmit or receive printed information converted by facsimile transceiver into digital electronic signals for transmission over the telephone lines; or to connect the facsimile transceiver to the computer interface modem so that digital electronic information can be conveyed between the transceiver and the modem in normal information station mode.

In light of the specifications, the Court determines that Defendants' proposed construction of this portion of the "switching means" claim is more appropriate than that proffered by Plaintiffs. While Plaintiffs claim that "[t]he switching means can be circuitry within the fax machine," this assertion is contrary to the specification and prosecution history of the '911 patent. As Defendants observe the "switching means," as described in the specification, is an electromechanical switch that is separate and distinct from either the computer or the facsimile.

Acknowledging that a patentee is not required to disclose all embodiments of his invention in the specification, where a term's definition is limited by its usage in the specification, a court properly confines the terms by that definition. Vitronics, 90 F.3d at 1582 (stating that the specification acts as a dictionary when it defines terms by implication). Accordingly, Plaintiffs will be confined to the embodiment specified in the specification.

Because the Court agrees with Defendants' construction of the term "switching means" the Court need not address Defendants' alternative argument that the switching means limitation of claim 1 should be construed as a means plus function limitation. *See,* Defs' Br. at 34.

**5. "Current Source Means"**

The final dispute in claim 1 involves the term "current source means," found in the phrase: "further comprising ***current source means*** responsively coupled to said computer and coupled to said facsimile transceiver for selectively providing current to said facsimile transceiver when in said third switching state for simulating the connection of a telephone line to said facsimile transceiver."

Plaintiffs propose that the "current source means" term be constructed as follows:

The facsimile transceiver includes a source of electrical current in the form of a power supply and electrical conductors. Instructions from the computer direct the path with the current takes. Current from the current source moans flows through electrical components of the facsimile transceiver.

When the computer sends instructions to the facsimile transceiver to enter the third switching state (allowing the computer to use the facsimile transceiver as a printer or scanner), current (from the current source moans) selectively energizes the facsimile transceiver.

When the computer places the facsimile in the third switching state, the information station acts as if the facsimile transceiver were connected to an outside telephone line in that the facsimile transceiver printer and scanner are operational to print and scan, *i.e.,* the current source causes the facsimile transceiver to act in the same manner when printing a document from the computer or scanning a document into a computer as it does when receiving or sending a fax over the telephone line. FN3

FN3. Plaintiffs' Errata corrected its proposed construction of the "current source means" limitation, as well.

*See* Joint Claim Construction Statement at 42; *see also* Pls .' Br. at 21 and Errata.

Defendants' proposed construction states:

This claim limitation is expressed as a "means-plus-function" limitation pursuant to 35 U.S.C. s. 112, [para.] 6. Under that patent statute, "an element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, materials or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material or acts described in the specification and equivalents thereof." The claim limitation then must be construed as including only a structure which is the same or equivalent to the structure described in the specification for performing the identical function.

The "current source means" disclosed in the patent includes at least the power supply circuit 50 which includes at least the 12 volt DC power supply source and noise filter capacitors 52.

The "current source means for providing current ... for simulating the connection to a telephone line" must be construed as requiring circuitry specifically associated with the interface of the telephone circuitry of the facsimile transceiver, whose sole function is to create a condition which is sensed by the facsimile transceiver that a telephone line has been and is connected thereto, and requiring no switching by the facsimile transceiver to a data port that is separate from the telephone port. In other words, current from the current source means must be provided to the facsimile transceiver over the telephone line from the Central Office when the facsimile transceiver is communicating over a telephone line to a remote facsimile machine, thereby enabling the modem of the facsimile transceiver to communicate directly with the modem of the computer's serial interface via their respective telephone ports.

The current source moans is "responsively coupled to said computer and coupled to said facsimile transceiver for selectively providing current to said facsimile transceiver when in said third switching state for simulating the connection of a telephone line to said facsimile transceiver" in that: in the third switching stated, by the computer placing appropriate data bits on the computer's data bus and by the computer then addressing appropriate circuits, such as the address decoder circuits, in the switching means, the switching means is caused to connect the current source means to the first port of the switching means (and thus the current source means is "responsively coupled to said computer" in that the connection of the current source means is computer-controlled), which is in turn coupled through a telephone-compatible line to the telephone port of the facsimile transceiver (and thus the current source moans is also "coupled to said facsimile transceiver"), so that in the third switching state (and only in the third switching state) current is provided to the telephone port of the facsimile transceiver (and this the current source means is "for selectively providing current to said facsimile transceiver when in said third switching state") in place of the

current normally received by facsimile transceiver over the telephone line from the Central Office when the facsimile transceiver is communicating with a remote facsimile transceiver in normal operating mode ( *e.g.*, such as in the second switching state), thereby enabling the modem of the facsimile transceiver to communicated directly with the modem of the computer's serial interface over telephone-compatible lines via their respective telephone ports the same way the facsimile transceiver communicates from its modem through its telephone port over an actual telephone line with a remote facsimile machine (and thus, "for simulating the connection of a telephone line to said facsimile transceiver").

That is, when the switching means is operating in the third state, the current source means is instructed by the computer to transmit current from the current source means to the facsimile transceiver. The computer causes the current source means of the switching means to transmit a current through the first port of the switching means to the telephone port of the facsimile transceiver via a telephone cord. Such a current "tricks" the facsimile transceiver into believing that it is receiving the loop current from the public telephone network as if it were a remote facsimile station. In this manner, the current source means is "simulating the connection of a telephone line to the facsimile transceiver."

*See* Joint Claim Construction Statement at 44-46.

All parties acknowledge that the "current source means" limitation is a "means-plus function" within the meaning of 35 U.S .C. s. 112, para. 6. A means-plus-function limitation recites a function to be performed rather than definite structure or materials for performing that function. Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc., 145 F.3d 1303, 1307 (Fed.Cir.1998). Such a limitation must be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. 35 U.S.C. s. 112 para. 6. The first step in analyzing a claim written in means-plus-Function form is to identify the claimed function. Chiuminatta, 145 F.3d at 1308.

Once a court establishes that a means-plus-function limitation is at issue, it must identify and construe that limitation, thereby determining what the claimed function is, and what structures disclosed in the written description correspond to the "means" for performing that function. The phrase "means for" generally invokes s. 112 para. 6, and is typically followed by the recited function and claim limitations. Greenberg v. Ethicon Endo Surgery, Inc., 91 F.3d 1580, 1584 (Fed.Cir.1996). In identifying the function of a means-plus-function claim, a claimed function may not be improperly narrowed or limited beyond the scope of the claim language. Micro Chem. Inc. v. Great Plains Chem. Co., 194 F.3d 1250, 1258 (Fed.Cir.1999). Conversely, neither may the function be improperly broadened by ignoring the clear limitations contained in the claim language. The function of a "means-plus-function" claim must be construed to include the limitations contained in the claim language.

**a. Identifying the Claimed Function**

All parties agree that the recited function of the Current Source Moans is "selectively providing current to said facsimile transceiver when in said third switching state for simulating the connection of a telephone line to said facsimile transceiver." *See* Defs.' Br. at 38; Pls.' Br. at 13. Accordingly, this Court concludes that the function of the Current Source Means as that stated by the parties.

**b. Meaning of the Words used to Describe the Claimed Function**

Plaintiffs assert that the intrinsic patent sources require the "current source means" limitation to be construed to mean: "to selectively provide current to the facsimile transceiver so as to cause the facsimile transceiver

to act in the same manner when printing a document from the computer or scanning a document into a computer as it does when receiving or sending a fax over the telephone line." *See* Pls.' Br. at 13-14.

Defendants argue that the claim language requires a construction explaining that "the current is provided from the 'current source means' to the facsimile transceiver in and only in the third switching state." *See* Defs.' Br. at 39-40. According to Defendants, "[n]o current ia provided to the facsimile transceiver by the Current Source Means in the first or second switching states." *Id*. at 40.

Plaintiffs disagree with this construction, citing the specification for support. Specifically, Plaintiffs' cite to Column 8, lines 62-64 and Column 9, lines 10-12 of Patent '911, wherein the specification states: "When energized, however, relay 42 switches to the alternate position, disconnecting the facsimile transceiver from port 34 and connecting it to the supply 50 ... Similarly, when relay 42 is in the energized position and power supply voltage is applied to the first port 30." *See* Pls.' Resp. Br. at 14-15. Plaintiffs also cite to Column 9, lines 28-30. Therein, the specification states that "[i]n the first switching state, the remote information state, the first and second relays are energized." Id. at 15. Plaintiffs argue that these citations demonstrate that the "current source means" provides current to the first and third switching states, and not just the third switching state. Id.

Notwithstanding Defendants' assertion that the ordinary meaning of the term "selectively" requires the adoption of Defendants construction, this Court concurs with Plaintiffs based on Plaintiffs' citations to the specification. The Court recognizes that claim 1 states that the "current source means" operates by "selectively providing current to said facsimile transceiver when in said third switching state." As Plaintiffs argue, however, the term "selectively providing current" does not refer to selection among switching states, but rather as to whether or not current is being provided to effectuate instructions from the computer to the facsimile transceiver in the third switching state." *See* Pls.' Resp. Br. at 15-16.

Defendants' arguments to the contrary are not persuasive. For example, Defendants argue that the specification describes the switching apparatus as being used to " 'selectively connect' or 'selectively switch' two of three elements (PC, fax, and telephone line) in a first switching state (PC, and telephone line), a different two in a second switching state (fax and telephone), and a different two in a third state (fax and PC)." *See* Defs.' Br. at 40. The apparent difference between the use of the term "selectively" in the examples cited by Defendants and the use of the term in the "current source means" limitation is the verb being modified by the term. In the former the term modifies "switch" or "connect," whereas the latter usage modifies "provide."

The common meaning of "selectively" is "in a selective manner [or] by selection." *See* WEBSTER'S THIRDS NEW INTERNATIONAL DICTIONARY 2058 (3d cd.1993). Accordingly, "selectively providing current to said facsimile transceiver when in said third switching state" merely means that the "current source means," in a selective manner or by selection, provides current to the facsimile transceiver when the switching circuit is in its third state. This selective provision of current to the switching circuit when the it is in its third state, while to the exclusion of the other two states at this juncture, does not require the conclusion that the current source means *never* converts energy to a form usable during the first and third states; the specification contemplates that the first and third states are to be "energized" at some point during the operation of the Information Station. *See* Patent '911, Col. 8, lines 62-64; Col. 9, lines 10-12; Col. 9, lines 28-30. FN4

FN4. For those same reasons, the Court finds Defendants citations to the prosecution history equally

unavailing. *See* Defs.' Br. at 40-41.

Defendants next attempt to limit the claim's recitation that the "current selection means" is "for selectively providing *current* to said Facsimile *for stimulating* the connection to a telephone line." *See* Defs.' Br. at 41 (emphasis in original). Defendants argue that:

The plain and ordinary meaning of the phrase 'providing current ... for stimulating" means that it is the providing of current and current alone that stimulates the connection to a telephone line. In other words, it is solely the existence of current provided to the facsimile transceiver that is sensed by the facsimile transceiver to stimulate the connection of a telephone line, and not commands, instructions, or other data that may be provided to the facsimile transceiver. The current is provided for the sole purpose of effectuating the simulation and it is the current alone that effectuates the stimulation.

Id.

The Court finds this construction of the "current source limitation" unduly restrictive. Consistent with the Court's conclusion that the current source "energizes" the switching circuit in both the first and second states, this Court also concludes that the current's sole purpose is *not* to stimulate the facsimile transceiver when the switching circuit is in the third state. The specification supports this conclusion: "In the first switching state, the remote information station state, *the first and second relays 42 and 44 are energized*." *See* '911 Patent, Col. 9, lines 28-30. In addition, as Plaintiff notes, "commands, instruction, and data are represented as current." *See* Xydis Decl. I, para. 12. This fact belies Defendants' argument that it is solely the existence of current provided to the facsimile transceiver that is sensed by the facsimile transceiver to stimulate the connection of a telephone line, and not commands, instructions, or other data that may be provided to the facsimile transceiver.

Finally, Defendants argue that the "current source means" "selectively provides current to the facsimile transceiver 'for simulating the connection to a telephone line.' " *See* Defs.' Br. at 43. Adopting Defendants' construction would mean that "the facsimile transceiver as an actual telephone line connected thereto, thereby requiring no switching by the facsimile transceiver to a data port that is separate from the telephone port through which it ordinarily receives data over an actual telephone line." Id. The Court disagrees with Defendants' assessment.

As Plaintiffs argue, the phrase, "for simulating the connection of a telephone line to said facsimile transceiver":

refers to simulating the operation of the facsimile machine when connected to the telephone line. A connection between the telephone line and the facsimile transceiver exists in the second switching state ( *i.e.,* enabling the facsimile transceiver to receive or send facsimiles over the telephone line). Thus in stimulating this connection, the facsimile transceiver performs similar operations ( *i.e.,* printing a document from a computer or scanning a document into a computer) using substantially the same components, but in this case, when connected to the computer.

*See* Pls.' Resp. Br. at 16-17.

As stated earlier, in identifying the function of a means-plus-function claim, a claimed f unction may not be

improperly narrowed or limited beyond the scope of the claim language. Micro Chem. Inc., 194 F.3d at 1258. The Court determines that, in many respects, Defendants have narrowed or limited the "current source means" limitation beyond the scope of the claim language. Accordingly, the Court determines that Plaintiffs' construction is the more appropriate one.

Plaintiffs argue that Figure 2 of the '911 Patent demonstrates that the "current source means" is identified as the power supply circuit 50. Arguing that this represents the structure of the claimed function, Plaintiffs point to the specification, which states that "[t]ho switching circuit further includes a power supply circuit 50 which is connected to a 12 volt DC source, as illustrated, and also to ground as illustrated. The supply includes noise filter capacitors 52 and is coupled to the first and second relays as illustrated" Col. 8, lines 27-31. The specification continues: "Similarly, when the relay 42 is in the energized position and power supply voltage is applied to the first port 30. This simulates the connection of the facsimile transceiver to a telephone line." Col.9, lines 10-13.

Defendants' contend that Plaintiffs' assertion regarding the "current source means" is "fatally flawed." *See* Defs.' Reply Br. at 15. "The corresponding structure to a function set forth in a means-plus-function limitation must actually perform the recited function, not merely enable the pertinent structure to operate as intended ..." *See,* Asyst Technologies, Inc. v. Empak, Inc., 268 F.3d 1364, 1371 (Fed.Cir.2001). The function of the "current source means" limitation is "selectively providing current to said facsimile transceiver when in said state for simulating the connection of a telephone line to said facsimile transceiver."

Defendants observe that Plaintiffs have not convincingly rebutted, "the power supply circuit 50 cannot, by itself, selectively provide current for simulating the connection of the facsimile transceiver to the telephone line." *See* Defs.' Reply Br. at 15-16; Pls.' Br. at 17-18. To provide such current requires at least power supply circuit 50 as part of the switching circuit, connection to a 12 volt DC source and to ground, and coupled to the first relay 42 and second relay 44 and then to the first port (fax port) 30, and the electrical conductors shown in Figure 2 which provide the current path from the power supply circuit, through the first relay 42 and the fax port 30 to the facsimile transceiver 22. The Court notes, however, that "[u]nder 35 U.S.C, s. 112, para. 6, the construction of the 'current source means' element also includes structures that are 'equivalent' to the power supply circuit disclosed in the ' 911 patent and that perform the function recited in the claim element." *See* Pls.' Br. at 15. The identification of "equivalent" structures is a question of fact for the jury. *See* In re Haynes Microcomputer Prod., Inc. Patent Litig., 982 F.2d 1527, 1541 (Fed.Cir.1992). The Court declines at this juncture to adopt Defendants' interpretation.

**B. Claim 2**

Plaintiffs are generally in agreement with Defendants' proposed construction for claim 2 as sot forth in the Joint Claim Construction Statement. Plaintiffs argue that the words "telephone port" do not appear in the claims, specification, or prosecution history of the '911 patent. Plaintiffs also argue that Plaintiffs disagree with Defendants' use of the words "public telephone network" and "to a remote facsimile machine" for the same reason that although the specification mentions the words "telephone line," neither the claim or specification limit the potential destination of any transmission beyond "a telephone line."

The Court agrees with Plaintiffs that the claim language does not limit the term "ports" to "telephone lines" and that the claims and specification do not limit the potential destination of any transmission beyond a "telephone line." For the reasons set forth above in this Court's interpretation of the term "ports," the Court

adopts Plaintiffs' version of Defendants' proposed construction of Claim 2 to read:

The information station of claim 1 wherein the switching means includes a first relay coupled between the first port of the switching means (i.e., the port going to the facsimile transceiver) and the third port of the switching means (i.e., going to the telephone line). The switching means also includes a second relay coupled between the second port of the switching means (i.e., the port going to the computer) and the third port of the switching means (i.e., going to the telephone line).

The switching means is controlled by the computer and responds to instructions sent from the computer. As such, the computer transmits instructions that cause the relays to be energized or de-energized, thereby placing the switching means into the desired first, second, or third switching state.

When the computer causes the first and second relays to be energized, the switching means is in the first switching state, thereby causing information received through the second port of the switching means from the computer to be transmitted through the third port of the switching means to the telephone line.

When the computer causes the first and second relays means to be de-energized, the switching means is in the second state, thereby causing information received through the first port of the switching means form the conventional facsimile machine to be transmitted through the third port of the switching means to the telephone line.

**III. CONCLUSION**

The Court interprets the disputed terms as more fully set forth above. In light of the Court's interpretation of the disputed terms above, the Court denies without prejudice the pending dispositive motions filed by Defendants Toshiba and Xerox, noting that some of the arguments raised by the parties may be moot. At the status conference. Defendants Toshiba and Xerox will notify the Court whether they wish to reinstate their motions as written or with supplementation or file new motions and briefs. The Court will also set forth a new briefing schedules to be followed by all parties who wish to file dispositive motions pursuant to this Court's interpretation of the disputed claims.

IT IS ORDERED that Defendant Toshiba's two Motions for Summary Judgment **(Case No. 00-72774, Docket No. 27, filed March 12, 2001 and Docket No. 48, filed September 12, 2002)** and Defendant Xerox's Motion for Summary Judgment **(Case No. 00-72778, Docket No. 33, filed October 18, 2002)** are DENIED without prejudice. These motions may be reinstated after the Court holds a status conference in this matter.

IT IS FURTHER ORDERED that a Status Conference be held in this matter on **Monday, November 22, 2004, 3:45 p.m.**

E.D.Mich.,2004.
Kirsch v. Aoe Ricoh, Inc.