United States District Court,
S.D. California.

Lucent TECHNOLOGIES, INC,
Plaintiff.
v.
GATEWAY, INC and Gateway Country Stores LLC; and, Microsoft Corporation; and, Dell, Inc,
Defendants.

Civil Nos. 02CV2060-B(WMc), 03CV0699-B(WMc), 03CV1108-B(WMc)

Oct. 14, 2005.

David A. Hahn, Attorney at Law, Christopher Scott Marchese, Jason W. Wolff, John E. Gartman, John W. Thornburgh, Joseph Patrick Reid, Juanita R. Brooks, Shekhar Vyas, Kimberly Kennedy, Fish and Richardson, San Diego, CA, Edward Charles Donovan, Karen Michelle Robinson, Kirkland & Ellis LLP, Washington, DC, Elizabeth T. Bernard, James E. Marina, Jeanne M. Heffernan, John M. Desmarais, Jonas Reale McDavit, Jordan N. Malz, Michael P. Stadnick, Paul A. Bondor, Robert A. Appleby, Kirkland and Ellis, New York, NY, Eric D. Hayes, Gregory F. Corbett, Kirkland and Ellis, Chicago, IL, Kenneth H. Bridges, Kirkland and Ellis, San Francisco, CA, Alan D. Albright Fish and Richardson, Austin, TX, Brian M. Rostocki, Cathy L. Reese, Fish & Richardson P.C., Wilmington, DE, Gregory A. Madera, John M. Skenyon, Kurt L. Glitzenstein, Fish and Richardson, Boston, MA, John Bustamante, Fish and Richardson, Austin, TX, Kelly C. Hunsaker, Fish and Richardson, Redwood City, CA, Renee Skinner, Thomas M. Melsheimer, Fish and Richardson, Dallas, TX, for Plaintiffs.

Joseph A. Micallef, Scott M. Border, John L. Newby, Arnold and Porter, Edward Charles Donovan, Gregory F. Corbett, Karen Michelle Robinson, Kirkland & Ellis LLP, Washington, DC, Ryan M. Nishimoto, Arnold & Porter LLP, Los Angeles, CA, David A. Hahn, Attorney at Law, San Diego, CA, Elizabeth T. Bernard, James E. Marina, Jordan N. Malz, Kirkland and Ellis, New York, NY, for Defendants.

ORDER CONSTRUING CLAIMS FOR UNITED STATES PATENT NUMBER 4,582,956

RUDI M. BREWSTER**, District Judge.**

Before the Court is the matter of claims construction for U.S. Patent Number 4,582,956 ("the '956 Patent") in the above titled cases for patent infringement. FN1 Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), the Court conducted a Markman hearing regarding construction of the disputed claim terms for the ' 956 Patent on July 12 and 13, and September 14, 2005. Plaintiff Lucent Technologies, Inc. ("Lucent") was represented by the Kirkland & Ellis law firm, Defendant Gateway Inc. ("Gateway") was represented by the Dewey Ballantine law firm, Defendant Microsoft Corporation ("Microsoft") was represented by the law firm of Fish and Richardson and Defendant Dell, Inc. ("Dell") was represented by the Arnold and Porter law firm.

The purpose of the Markman hearing was for the Court, with the assistance of the parties, to prepare jury instructions interpreting the pertinent claims for all claim terms at issue in the '956 Patent. Additionally, the Court and the parties prepared a "case glossary" for terms found in the claims and the specification for the '956 Patent, considered to be technical in nature and which a jury of laypersons would not understand clearly without specific definition. As the case advances, the parties may request additional terms to be added to the glossary as to further facilitate the jury's understanding of the disputed claims.

After careful consideration of the parties' arguments and the applicable statues and case law, the Court **HEREBY CONSTRUES** all claim terms in dispute in the '956 Patent and **ISSUES** the relevant jury instructions as written in exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in exhibit B, attached hereto.

IT IS SO ORDERED.

EXHIBIT A

UNITED STATES PATENT NUMBER 4,582,956***-CLAIM CHART***

VERBATIM CLAIM LANGUAGE	***COURT'S CLAIM CONSTRUCTION***
CLAIM 1	**CLAIM 1**
A method for displaying at a selected station special service information during a silent interval between ringing signals from a telephone switching system, said system being capable of sending to said selected station a modulated and an unmodulated signal during said silent interval, said modulated signal representing said special service information; said method comprising the steps of:	A method for displaying at a selected station **special service information [data representing, for example, the digits of the calling station directory number, an alpha-numeric message, or any other indication which is intended to be displayed]** during a silent interval between ringing signals from a telephone switching system, said system being capable of sending to said selected station a **modulated (signal) [a signal carrying information (intelligence expressed digitally as countable zeros and ones)] and an unmodulated signal [a signal containing no information (intelligence expressed digitally as countable zeros and ones)]** during said silent interval, said **modulated signal** representing said **special service information;** said method comprising the steps of:
detecting said unmodulated signal during said silent interval between said ringing signals;	detecting said **unmodulated signal** during said silent interval between said ringing signals;
responsive to the detection of said unmodulated signal, receiving said modulated signal representative of said special service information during said silent interval;	**responsive to [responding or reacting to]** the detection of said **unmodulated signal,** receiving said **modulated signal** representative of said **special service information** during said silent interval;
storing said special service information during said silent interval; and	storing said **special service information** during said silent interval; and
displaying said stored special service information at said selected station during said silent interval.	displaying said stored **special service information** at said selected station during said silent interval.
CLAIM 4	**CLAIM 4**

The method as set forth in claim 1 in which said special service information includes a message type and wherein said receiving step includes the step of receiving said modulated signal representative of said message type during said silent interval after detecting said unmodulated signal.	The method as set forth in claim 1 in which said **special service information** includes a **message type [category of message]** and wherein said receiving step includes the step of receiving said **modulated signal** representative of said **message type** during said silent interval after detecting said **unmodulated signal.**
CLAIM 5	**CLAIM 5**
The method as set forth in a claim 4 in which special services information further includes a message length and wherein said step of receiving said modulated signal representative of said special services information further includes the step of receiving said modulated signal representative of said message length to store said special service information during said silent interval.	The method as set forth in a claim 4 in which **special services information** further includes a message length and wherein said step of receiving said **modulated signal** representative of said **special services information** further includes the step of receiving said **modulated signal** representative of said message length to store said **special service information** during said silent interval.
CLAIM 6	**CLAIM 6**
The method as set forth in claim 5 in which said special services information further includes a check sum and wherein said step of receiving said modulated signal representative of said special services information further includes the step of receiving said modulated signal representative of said check sum to ascertain errors introduced in sending said special service information during said silent interval.	The method as set forth in claim 5 in which said **special services information** further includes a **check sum [information used for the detection of errors in the transmitted information]** and wherein said step of receiving said **modulated signal** representative of said **special services information** further includes the step of receiving said **modulated signal** representative of said **check sum** to ascertain errors introduced in sending said **special service information** during said silent interval.
CLAIM 9	**CLAIM 9**
Apparatus for displaying at a selected station special service information during a silent interval between ringing signals from a telephone switching system, said system being capable of sending to said selected station a modulated and an unmodulated signal during said silent interval, said modulated signal representing said special service information; said apparatus comprising	Apparatus for displaying at a selected station **special service information** during a silent interval between ringing signals from a telephone switching system, said system being capable of sending to said selected station a **modulated** and an **unmodulated signal** during said silent interval, said **modulated signal** representing said **special service information;** said apparatus comprising
detector means for detecting said unmodulated signal during said silent interval between said ringing signals;	detector means for detecting said **unmodulated signal** during said silent interval between said ringing signals; "Detector means"

	Function: The function of this element is detecting said **unmodulated signal** during said silent interval between said ringing signals. *Structure:*
	Fig. 1, Box 102, Col. 2, Ln. 4-10, Col. 3, Lns. 67-Col. 4, Ln. 4.
receiver means responsive to the detection of said unmodulated signal for receiving said modulated signal representative of said special service information during said silent interval;	receiver means responsive to the detection of said **unmodulated signal** for receiving said **modulated signal** representative of said **special service information** during said silent interval; "Receiver means" *Function:* The function of this element is receiving said **modulated signal** representative of said **special service information** during said silent interval. *Structure:*
	Fig. 1, Box 102, Col. 2, Ln. 4-10, Col. 3, Lns. 67-Col. 4, Ln. 4.
memory means for storing said special service information during said silent interval; and	memory means for storing said **special service information** during said silent interval; and "Memory means" *Function:* The function of this element is storing said **special service information** during said silent interval *Structure:*
	Data memory Fig. 1, box 123 (*See, e.g.,* Col.4, Lns.58-61, Col.4, Ln.61-Col.5, Ln.10), or, in the event the **special service information** is eight bits or less, then the structure is box 123 and the receive buffer register of the UART Fig. 1, box 125.
display means for displaying said stored special service information at said selected station during said silent interval.	display means for displaying said stored **special service information** at said selected station during said silent interval. "Display means" *Function:* The function of this element is displaying said stored **special service information** at said selected station during said silent interval. *Structure:*
	Display unit 126 (*See* Col. 5, Lns. 35-38).
CLAIM 15	**CLAIM 15**
A method for displaying at a selected station special service information during a silent interval between ringing signals	A method for displaying at a selected station **special service information** during a silent interval between ringing signals from a telephone switching system, said system being capable of

from a telephone switching system, said system being capable of sending to a said selected station a modulated and an unmodulated signal during said silent interval, said modulated signal representing said special service information; said method comprising the steps of:	sending to a said selected station a **modulated** and an **unmodulated signal** during said silent interval, said **modulated signal** representing said **special service information;** said method comprising the steps of:
detecting said unmodulated signal after the beginning of said silent interval between said ringing signals;	detecting said **unmodulated signal** after the beginning of said silent interval between said ringing signals;
responsive to the detection of said unmodulated signal, receiving said, modulated signal representive [sic] of special service information during said silent interval;	responsive to the detection of said **unmodulated signal,** receiving said **modulated signal** representive [sic] of **special service information** during said silent interval;
storing said special service information during said silent interval; and	storing said **special service information** during said silent interval; and
displaying said stored special service information at said selected station during said silent interval.	displaying said stored **special service information** at said selected station during said silent interval.
CLAIM 16	**CLAIM 16**
A method for displaying at a selected station special service information received during a silent interval between ringing signals from a telephone switching system, said system being capable of sending to said selected station an input signal during said silent interval, said input signal comprising a single frequency umodulated [sic] frequency shift keyed (FSK) signal followed by a modulated FSK signal, said modulated FSK signal representing said special service information; said method comprising the steps of:	A method for displaying at a selected station **special service information** received during a silent interval between ringing signals from a telephone switching system, said system being capable of sending to said selected station an input signal during said silent interval, said input signal comprising a single frequency **umodulated** [sic] **frequency shift keyed (FSK) signal [an FSK signal containing no information (intelligence expressed digitally as countable zeros and ones)]** followed by a **modulated FSK signal [an FSK signal carrying information (intelligence expressed digitally as countable zeros and ones)],** said **modulated FSK signal** representing said **special service information;** said method comprising the steps of:
at said selected station, within said silent interval between ringing signals, following a first period of time during which neither said unmodulated nor said modulated signal is received, detecting said single frequency unmodulated FSK signal for a second period of time within said silent interval between ringing signals, said detecting being independent of a length of said second period, said single frequency unmodulated FSK signal representing no	at said selected station, within said silent interval between ringing signals, following a first period of time during which neither said **unmodulated** nor said **modulated signal** is received, detecting said single frequency **unmodulated FSK signal** for a second period of time within said silent interval between ringing signals, said detecting being independent of a length of said second period, said single frequency **unmodulated FSK signal** representing no detectable information;

detectable information;	
following said detecting of said single frequency unmodulated FSK signal, detecting and demodulating said modulated FSK signal to produce an indication of characters of said special service information;	following said detecting of said single frequency **unmodulated FSK signal,** detecting and **demodulating [recovering a data message from a modulated signal]** said **modulated FSK signal** to produce an indication of characters of said **special service information;**
storing said indication of said special service information during said silent interval; and	storing said indication of said **special service information** during said silent interval; and
displaying said stored special service information at said selected station during said silent interval.	displaying said stored **special service information** at said selected station during said silent interval.
CLAIM 17	**CLAIM 17**
The method of claim 16 wherein said first period of time is at least 300 milliseconds long.	The method of claim 16 wherein said first period of time is at least 300 milliseconds long.
CLAIM 18	**CLAIM 18**
Apparatus for displaying at a selected station special service information received during a silent interval between ringing signals from a telephone switching system, said system being capable of sending to said selected station an input signal during said silent interval, said input signal comprising a single frequency unmodulated frequency shift keyed (FSK) signal and a modulated FSK signal, said modulated FSK signal representing said special service information; said apparatus comprising:	Apparatus for displaying at a selected station **special service information** received during a silent interval between ringing signals from a telephone switching system, said system being capable of sending to said selected station an input signal during said silent interval, said input signal comprising a single frequency **unmodulated frequency shift keyed (FSK) signal and a modulated FSK signal,** said **modulated FSK signal** representing said **special service information;** said apparatus comprising:
means for detecting, within said silent interval between ringing signals, following a first period of time during which neither said unmodulated nor said modulated signal is received, said single frequency unmodulated FSK signal for a second period of time within said silent interval between ringing signals, said detecting being independent of a length of said second period, said single frequency unmodulated FSK signal representing no detectable information;	means for detecting, within said silent interval between ringing signals, following a first period of time during which neither said **unmodulated** nor said **modulated signal** is received, said single frequency **unmodulated FSK signal** for a second period of time within said silent interval between ringing signals, said detecting being independent of a length of said second period, said single frequency **unmodulated FSK signal** representing no detectable information;
	"Means for detecting" *Function:*

	The function of this element is detecting said single frequency **unmodulated FSK signal.** *Structure:*
	Fig. 1, box 112, col. 2, Lns. 4-7
means, responsive to said means for detecting said single frequency unmodulated FSK signal, for detecting and demodulating, following said detection of said single frequency unmodulated FSK signal, said modulated FSK signal to produce an indication of characters of said special service information;	means, responsive to said means for detecting said single frequency **unmodulated FSK signal,** for detecting and **demodulating,** following said detection of said single frequency **unmodulated FSK signal,** said **modulated FSK signal** to produce an indication of characters of said **special service information;** "Means for detecting and demodulating" *Function:* The function of this element is detecting and demodulating said **modulated FSK signal** to produce an indication of characters of said **special service information.** *Structure:*
	Fig. 1, box 102, Col. 2, Lns. 4-10, Col. 3, Ln.67-Col.4, Ln.4
means for storing said indication of said special service information during said silent interval; and	means for storing said indication of said **special service information** during said silent interval; and "Means for storing" *Function:* The function of this element is storing said indication of said **special service information** during said silent interval. *Structure:*
	Data memory Fig. 1, box 123 (*See, e.g.*, Col.4, Lns.58-61, Col.4, Ln.67-Col.5, Ln.10), or, in the event the **special service information** is eight bits or less, then the structure is box 123 and the receive buffer register of the UART Fig. 1, box 125.
means for displaying said stored special service information at said selected station station during said silent interval.	means for displaying said stored **special service information** at said selected station station during said silent interval. "Means for displaying" *Function:* The function of this element is displaying said stored **special service information** at said selected station during said silent interval. *Structure:*
	Display unit 126 (*See e.g.* Col. 2, Lns. 14-16, Col. 5, Lns. 35-38)

CLAIM 19

The apparatus of claim 18 wherein said first period of time is at least 300 milliseconds long.

CLAIM 19

The apparatus of claim 18 wherein said first period of time is at least 300 milliseconds long.

EXHIBIT B

GLOSSARY FOR UNITED STATES PATENT NUMBER 4,582,956

TERM	DEFINITION
check sum	information used for the detection of errors in the transmitted information
demodulating	recovering a data message from a modulated signal
frequency shift keyed (FSK) signal	a signal that may comprise two carrier frequencies, one of which represents a 'zero' and the other of which represents a 'one'
message data	intelligence of the message without any of the protocols that surround it
message type	category of message
modulated signal	a signal carrying information (intelligence expressed digitally as countable zeros and ones)
modulated FSK signal	an FSK signal carrying information (intelligence expressed digitally as countable zeros and ones)
responsive to	responding or reacting to
special service information	data representing, for example, the digits of the calling station directory number, an alpha-numeric message, or any other indication which is intended to be displayed
unmodulated signal	a signal containing no information (intelligence expressed digitally as countable zeros and ones)
unmodulated FSK signal	an FSK signal containing no information (intelligence expressed digitally as countable zeros and ones)

FN1. Lucent originally filed two separate patent infringement actions, one against Defendant Gateway (02CV2060), and a second against Defendant Dell (03CV1108). Microsoft intervened in the action filed by Lucent against Gateway. Microsoft also filed a declaratory judgment action against Lucent (03CV0699) and Lucent filed counterclaims for patent infringement against Microsoft in that action. On July 7, 2003, the Court entered an order consolidating these three cases. There are a total of 15 different patents involved in these three cases collectively.

S.D.Cal.,2005.
Technologies, Inc. v. Gateway, Inc.