

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEON STAMBLER, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 01-065-SLR  
 )  
 RSA SECURITY, INC., )  
 VERISIGN, INC., )  
 OMNISKY CORPORATION, )  
 )  
 Defendants. )

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**MEMORANDUM OPINION**

Dated: January 29, 2003  
Wilmington, Delaware

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

On February 2, 2001, plaintiff Leon Stambler ("Stambler") filed this action against defendants RSA Security, Inc. ("RSA Security"), Verisign, Inc. ("Verisign"), and Omnisky Corporation ("Omnisky") alleging infringement of certain claims of United States Patent Nos. 5,793,302 (the "'302 patent"), 5,936,541 (the "'541 patent") and 5,974,148 (the "'148 patent) (collectively, the "Stambler patents"). (D.I. 1)

The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1338(a) and 2201(a). Currently before the court is defendants' joint motion for summary judgment of non-infringement. (D.I. 300) For the following reasons, the court shall grant in part and deny in part defendants' motion.

**II. BACKGROUND**

The Stambler patents, each entitled "Method for Securing Information Relevant to a Transaction," generally relate to a method of authenticating a transaction, document or party to the transaction using known encryption techniques. (D.I. 293, 294, 295) The patented methods enable parties to a transaction to assure the identity of an absent party and the accuracy of information involved in the transaction. (Id.) The patented methods thus provide for secure transactions and prevent fraud. (Id.)

### III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there

must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

#### **IV. DISCUSSION**

A determination of infringement requires a two-step analysis. First, the court must construe the asserted claims so as to ascertain their meaning and scope. Second, the claims as construed are compared to the accused product. See KCJ Corp. v. Kinetic Concepts, Inc., 223 F.3d 1351, 1355 (Fed. Cir. 2000). Claim construction is a question of law while infringement is a question of fact. See id. To establish literal infringement, "every limitation set forth in a claim must be found in an accused product, exactly." Southwall Tech., Inc. v. Cardinal IG Co., 54 F.3d 1570, 1575 (Fed. Cir. 1995). An accused product that does not literally infringe a claim may still infringe under the doctrine of equivalents if each limitation of the claim is met in the accused product either literally or equivalently. See Sextant Avionique, S.A. v. Analog Devices, Inc., 172 F.3d 817, 826 (Fed. Cir. 1999).

Each of the named defendants uses an encryption technique called SSL. SSL creates a secure connection for communications between two parties. SSL was developed in the 1990's by Netscape and made freely available to the world. SSL is commonly used for transmitting sensitive information, such as credit card numbers, over the Internet.

Defendants have made an extensive laundry list of non-infringement arguments. For claim 27 of the '541 patent, defendants argue non-infringement based on: (1) SSL does not use a "credential;" (2) SSL does not use a credential including a VAN; (3) SSL does not create the VAN "by coding credential information with a secret key of the credential issuing entity;" (4) the SSL digital certificate is not "previously issued to at least one of the parties;" (5) the SSL digital signature does not authenticate a party to a transaction; and (6) SSL does not involve "coding information associated with at least two parties to generate a joint code." For claims 1, 16, 28, and 35 of the '148 patent, defendants assert non-infringement based on: (1) SSL does not create a "VAN;" (2) SSL does not use a "secret key of the first party;" (3) the SSL MAC does not attest to the authenticity of the first party; (4) SSL does not use an instrument with two VANs; and (5) the step in SSL of computing a first hash is not "an error detection code." For claim 34 of the '302 patent, defendants assert non-infringement based on: (1) SSL

does not satisfy the limitation "the credential being previously issued to a first party by a second party;" (2) SSL does not meet the requirement "wherein information previously stored in the credential comprises at least a variable authentication number (VAN);" (3) SSL does not satisfy the limitation "previously coding the first error detection code (EDC1) with the first information associated with the second party to derive a variable authentication number (VAN);" (4) SSL does not perform a step of "uncoding the VAN using the second information associated with the second party;" and (5) SSL does not "authenticate the first party . . . if the second error detection code (EDC2) corresponds to the third error detection code (EDC3)." Plaintiff disputes these allegations and asserts the existence of genuine issues of material fact precluding summary judgment.

**A. The '541 Patent**

Defendants' arguments regarding (1) SSL does not use a "credential," (2) SSL does not use a credential including a VAN, (3) SSL does not create the VAN "by coding credential information with a secret key of the credential issuing entity," and (4) the SSL digital signature does not authenticate a party to a transaction, all depend on a claim construction proposed by defendants that has not been adopted by the court. As such, these arguments do not merit any further discussion.

Defendants also assert that the SSL digital certificate is not "previously issued to at least one of the parties" and that SSL does not involve "coding information associated with at least two parties to generate a joint code." The court agrees.

Based on the court's claim construction, the SSL digital certificate is not "previously issued to at least one of the parties." The court construed the term "wherein a credential is previously issued" to mean "the credential referenced in the claim must already be issued before the execution of the steps recited in the claim." Under plaintiff's infringement theory, the digital certificate is the credential and the digital signature is the VAN. In SSL, however, the digital signature is created only when the certificate is issued and not afterward (i.e., the VAN is only created at the time the credential is issued). Thus, the digital signature (VAN) is created only once - when the digital certificate (credential) is issued, which is prior to the steps in the claimed method. Because the claim requires the digital signature (VAN) to also be created after the certificate (credential) is issued, no reasonable jury could conclude that SSL literal infringes claim 27.

Similarly, based on the plain language of claim 20 (from which claim 27 depends), SSL does not involve "coding information associated with at least two parties to generate a joint code." Plaintiff does not dispute that the information used by SSL to

create the joint code consists entirely of random numbers. The court finds that no reasonable jury could conclude that a random number is "associated with" the parties to the transaction.<sup>1</sup>

**B. The '148 and '302 Patents**

The court finds that each of the ten non-infringement arguments listed above for the '148 and '302 patents require defendants to have prevailed on claim construction terms (when they did not) or involve genuine issues of material fact for the jury to resolve. Thus, summary judgment of non-infringement is inappropriate on the '148 and '302 patent.

**V. CONCLUSION**

For the reasons stated, the court shall grant-in-part and deny-in-part defendant's motion for summary judgment of non-infringement. An appropriate order shall issue.

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<sup>1</sup>For the two limitations the court has found literally absent from the accused process, defendants have either failed to address infringement under the doctrine of equivalents or failed to prove non-infringement under the doctrine of equivalents by clear and convincing evidence.

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**O R D E R**

At Wilmington, this 29th day of January, 2003, consistent with the opinion issued this same day;

IT IS ORDERED that:

1. Defendants' motion for summary judgment of literal non-infringement of claim 27 of the '541 patent (D.I. 300) is granted.

2. Defendants' motion for summary judgment of non-infringement of claim 27 of the '541 patent under the doctrine of equivalents (D.I. 300) is denied.

3. Defendants' motion for summary judgment of literal non-infringement and non-infringement under the doctrine of equivalents of claim 1, 16, 28, and 35 of the '148 patent and claim 34 of the '302 patent (D.I. 300) is denied.

Sue L. Robinson  
United States District Judge